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July 21, 2020

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Submitted via e-Filing Procedures

Re: *Commuter Rail Division of the Regional Transportation Authority d/b/a Metra—Verified
Petition for Declaratory Order and Verified Petition for Preliminary Injunction*, STB Finance
Docket No. 36420

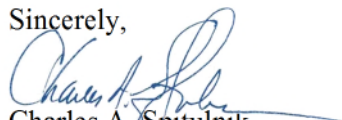
Dear Ms. Brown:

I am attaching a Verified Petition for Preliminary Injunction and Verified Petition for Declaratory Order filed by the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra.

With respect to the filing fee, we have submitted payment in the amount of \$1000 at pay.gov. However, the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (“Metra”), is a local government authority and is therefore seeking a waiver of the filing fee based on the fact that the Petition for Declaratory Order and Petition for Preliminary Injunction (hereinafter “Petitions”) are filed on behalf of the general public. See 49 C.F.R. §1002.2(e); STB Ex Parte No. 542 (Sub-No. 6) - *Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services--Policy Statement* (Served December 6, 2000). Specifically, 49 C.F.R. 1002.2(e)(1) states that “filing fees are waived for application and other proceedings which is filed by...a state or local government agency.” Metra is a local government agency filing the request on behalf of the general public and Chicago-area commuters. Accordingly, Metra requests that the filing fee submitted with the Petitions be waived.

Please do not hesitate to contact me with any questions.

Sincerely,


Charles A. Spitulnik

Counsel for Commuter Rail Division of the Regional Transportation Authority d/b/a Metra

Enclosures

FILED
July 21, 2020
SURFACE TRANSPORTATION BOARD

FEE RECEIVED
July 21, 2020
SURFACE TRANSPORTATION BOARD

BEFORE THE SURFACE TRANSPORTATION BOARD

**COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION
AUTHORITY, d/b/a METRA**

VERIFIED PETITION FOR DECLARATORY ORDER

Finance Docket No. 36420

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Dated: July 21, 2020

BEFORE THE SURFACE TRANSPORTATION BOARD

**COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION
AUTHORITY, d/b/a METRA**

VERIFIED PETITION FOR DECLARATORY ORDER

Finance Docket No. FD 36420

The Union Pacific Railroad (“UP”) has advised the Commuter Rail Division of the Regional Transportation Authority, an Illinois unit of local government, d/b/a Metra (“Metra”), that UP has no common carrier obligation to provide commuter passenger service on the UP North, UP West, and UP Northwest lines and that it intends to cease providing essential elements of that service. UP’s action will inflict serious harm on the commuting public that pre-COVID relied on this service for 89,000 trips per day. Metra hereby requests the Surface Transportation Board (“STB” or “Board”) to issue a Declaratory Order stating that UP has a long-standing and continuing common carrier obligation to provide commuter rail passenger service on the three subject UP lines; and that the STB has the jurisdiction and the authority to enforce the common carrier obligation under 49 U.S.C. § 11101 and require UP to fulfill that obligation by providing the commuter rail passenger service under the circumstances presented herein. Enforcement of UP’s common carrier obligation is entirely consistent with the Rail Transportation Policy’s goal of ensuring the rail transportation system meets the needs of the public.

I. Introduction

After forty-one years of taxpayer subsidization of its commuter rail passenger service, UP now declares it has no common carrier obligation to provide this service on three lines that comprise a part of the essential web of passenger rail lines serving Chicago and its suburbs. UP's predecessor in interest¹ acknowledged specifically that it had a common carrier obligation to provide these services on these lines. Nevertheless, and even after it has for years received subsidies for those services, UP has announced that it will no longer provide necessary support services that are essential elements of operating commuter rail passenger service on its three lines between the Ogilvie Transportation Center in Chicago and, respectively, Kenosha, Wisconsin ("UP North Line"); Harvard and McHenry, Illinois ("UP Northwest Line"); and Elburn, Illinois ("UP West Line") (collectively the "UP lines"). Two of the lines are intrastate, one is interstate, and all three operate on tracks and facilities that comprise a part of UP's interstate operating network in the greater Chicago region.

Metra has subsidized the operation of commuter service on the subject UP lines in excess of \$2 billion over the past 41 years. The subject UP lines serve 66 stations in northeast Illinois and one in Wisconsin. They account for almost 580 million annual passenger miles, over one-third of all trips on Metra annually; prior to the COVID-19 pandemic, the subject UP lines provided 89,000 daily passenger trips – approximately one-third of the daily passenger trips on the Metra system.

To preserve the operation of these essential pieces of the service to the residents of Chicago and its northern and western suburbs, Metra files this Petition for Declaratory Order requesting the Board to:

¹ As described more fully below in Section I.D, UP is the successor-in-interest to Chicago and North Western Railway Company, which UP acquired in 1995.

1. Declare that UP has a long-standing common carrier obligation that predates the formation of Metra to provide commuter rail passenger service on the UP North, UP West and UP Northwest lines; and
2. Affirm that the STB has the jurisdiction and the authority to enforce the common carrier obligation under 49 U.S.C. § 11101 and require UP to provide the commuter rail passenger service.

A. The Parties

Metra is one of the largest and most complex commuter rail systems in North America, serving Cook, DuPage, Will, Lake, Kane and McHenry counties in northeastern Illinois and the City of Kenosha in Wisconsin. Metra provides service to and from downtown Chicago with 242 stations over 11 routes totaling approximately 500 route miles and 1,200 miles of track. Prior to the COVID-19 pandemic, which severely reduced daily ridership,² Metra provided an average of 251,000 passenger trips³ each weekday. As a fundamental part of the regional transportation network, Metra provides efficient commuter rail passenger service that enhances the economic and environmental health of northeast Illinois.

UP is a Class I interstate rail carrier, providing transportation subject to the Board's jurisdiction under 49 U.S.C. § 10501. UP provides freight common carrier service in twenty-three states and over 32,000 miles in the United States and has conducted commuter rail passenger service on the UP North, UP West, and UP Northwest lines since its acquisition of the Chicago and North Western Railway Company ("CNW") in 1995.

² Mary Wisniewski, *Clean cars, fewer mystery spills, and plenty of open seats greet riders as they slowly return to mass transit*, Chicago Tribune, June 11, 2020, <https://www.chicagotribune.com/business/transportation/ct-biz-public-transit-return-cta-metra-pace-20200610-w5b734yqbrb4xhvbzent7rtfxa-story.html> (Noting initial Metra ridership decline of 97% at the start of the COVID-19 pandemic).

³ Federal Transit Administration, Transit Agency Profile: Northeast Illinois Regional Commuter Railroad Corporation (2018).

B. UP's Predecessor, the Chicago and North Western Railway Company, Provided Common Carrier Commuter Rail Passenger Service on the Subject UP Lines with respect to which UP is Currently Trying to Hold Metra Hostage

Historically, the CNW provided the commuter rail passenger service on what are now the subject UP lines, which were constructed between 1854 and 1856.⁴ These early passenger services fostered the growth of the Chicago metropolitan region. Population centers developed along the lines, taking advantage of affordable and efficient commuter service to and from downtown Chicago.⁵

In 1887, Congress passed the Interstate Commerce Act, which codified the railroads' common-law obligations as common carriers. *American Trucking Ass'n v. Atchison, Topeka & Santa Fe R.R. Co.*, 387 U.S. 397, 406 (1967). Accordingly, CNW, like all other railroads then operating in the U.S. had a statutory common carrier obligation for all service operated on their lines – freight, as well as both long-distance passenger service (now known as “intercity” service) and short distance passenger service within major metropolitan areas (now known as “commuter” service). At no time did CNW receive any legislative or any regulatory agency authority to discontinue the commuter rail passenger service.

C. Illinois Enacted Legislation to Provide an Option for the Railroads to Obtain Subsidization for Operating Commuter Service by Entering into Contractual Arrangements with Metra Rather Than Operate the Service at a Loss

In 1974, as railroads filed for bankruptcy, Chicago area voters created the Regional Transportation Authority (“RTA”) by referendum to provide an avenue for railroads like the CNW to have tax funds subsidize their commuter rail passenger services. Regional Transportation

⁴ See *Chi. & N. W. Ry. Co.*, 137 I.C.C. 1, 104-105 (1928). CNW was formed from various predecessors in 1864, 137 I.C.C. at 98, and became Chicago and North Western Transportation Company in 1972. *N. W. Emps. Transp. Corp.-Pur.-Chi. & N.W. Ry. Co.*, 342 I.C.C. 58, 60 (1972). It returned to the Chicago and North Western Railway Company name in 1994. *E.g., Chi. and N. W. Transp. Co.-Abandonment and Discontinuance of Serv. Exemption--In Hennepin County, MN*, ICC Docket No. AB-1 (Sub-No. 252X), slip op. at 1, n.1 (Service Date July 15, 1994).

⁵ See generally Chicago & North Western History, <https://metrarail.com/about-metra/our-history/chicago-north-western-history> (last visited July 17, 2020).

Authority Act, 70 ILL. COMP. STAT. 3615 (2019). “[W]ithin 180 days after receiving a written request from [the private carriers] [the RTA or Metra must] tender and offer to enter into . . . a purchase of service agreement that is in conformity with this Act and that covers the public transportation services by rail.” 70 ILCS 3615/2.02. RTA took over rail passenger commuter services on some of the commuter lines in response to the bankruptcies of the Chicago, Rock Island and Pacific Railroad (the “Rock Island”) and the Chicago, Milwaukee, St. Paul and Pacific Railroad (the “Milwaukee Road”). In other cases, at the request of the railroads, RTA entered into contracts, i.e., purchase of service agreements (“PSA”), with them to financially subsidize their long-standing commuter rail passenger services. The three subject UP lines fall into the latter category. From the outset of this arrangement, CNW explicitly acknowledged that it retained an independent obligation as a common carrier on the affected lines. In a 1978 Commuter Improvement Grant Agreement, RTA and CNW agreed that “[i]n the event no Service Agreement is in effect, Railroad [CNW] shall provide Commuter Rail Service over or upon the Project Facilities *in accordance with its common carrier obligation.*” See **Exhibit A**, RTA and CNW Commuter Grant Agreement, Article VI, Section 6.02 (“1978 Agreement”) (emphasis supplied).

The RTA eventually bought the tracks of both the Rock Island and the Milwaukee Road that had long been used in commuter service and created the Northeast Illinois Regional Commuter Railroad Corporation (“NIRC”) to operate the lines in 1982. The RTA was reorganized in 1983, and a commuter rail division was created to oversee all commuter passenger rail services. The Commuter Rail Division of the RTA, known as Metra, through NIRC operated the lines formerly owned by the Rock Island and Milwaukee Road directly and executed PSAs with the other railroads for operation of the remaining commuter lines. At this time, CNW continued to negotiate and execute its own PSAs with RTA and Metra, respectively, for subsidization of the commuter

rail passenger services it continued to provide on the UP North, UP West, and UP Northwest lines. At no time did CNW receive any legislative or regulatory agency authority to discontinue this service.

D. UP Service on the Subject UP Lines

UP acquired the CNW in 1995. *Union Pac. Corp., Union Pac. R.R. Co. and Mo. Pac. R.R. Co.—Control—Chi. and N. W. Transp. Co. and Chi. and N. W. Ry. Co.*, ICC Finance Docket No. 32133 (Service Date Mar. 7, 1995).⁶ Upon UP's acquisition of CNW, UP, as the surviving entity, succeeded to CNW's ownership of and common carrier obligation on the UP North, UP West and UP Northwest lines. Since 1995, UP has provided this commuter rail passenger service pursuant to three successive PSAs with Metra. The third, current PSA, attached as **Exhibit B**, was negotiated in 2010. Under the current PSA, UP employees operate the trains, maintain all three commuter lines, and perform various administrative functions. **Exhibit B**, Article 2. Metra owns and provides the rolling stock required for the operation of the commuter trains on the three subject UP lines. UP owns and maintains the track, bridges and signal systems, which are also used for freight services. Metra retains overall authority over fares. **Exhibit B**, Article 2.02. Metra will continue providing equipment to UP in the event the PSA between Metra and UP expires.

In recognition of the important public interest in the freight and commuter rail passenger service on these three lines, Metra, the State of Illinois and the Federal government have invested heavily in improving the lines to ensure the viability of continued operations. Metra's total annual operating budget for service on the subject UP lines for Fiscal Year 2019 was \$236.3 Million. This represents 29.5% of Metra's total system operating budget.

⁶ CNW was formally merged into UP on October 1, 1995. *E.g., West Texas Util. Co. v. Burlington N. R. Co.*, 1 S.T.B. 638, 650 n.17 (1996).

In 2019 alone, Metra paid to UP \$61 Million in operating payments under the terms of the PSA. In addition, Metra provides subsidies to UP in the form of materials including fuel, mechanical parts, rent, utilities, and uniforms. For 2019, these in-kind subsidies totaled \$37 Million. As a result, in just one year, Metra and Illinois taxpayers paid UP over \$98 Million under the PSA. To summarize:

UP direct expenses to run service:	\$199 Million
Ticket revenues:	- <u>\$138 Million</u>
UP Operating Deficit:	\$ 61 Million

Metra purchased materials to support service: (Diesel fuel, mechanical parts, rent, utilities, uniforms)	+ <u>\$ 37 Million</u>
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Total Metra/taxpayer contribution:	\$98 Million
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Further, since 1979 the State of Illinois and the Federal Transit Administration have invested \$1.2 Billion in capital improvements on these lines. These investments benefit both the commuting public and the fluidity of UP's operation of the interstate freight services that have continued unabated on these lines concurrently with commuter rail passenger service.

The term of the 2010 PSA extended through December 31, 2016. UP and Metra agreed to extend that PSA through 2019. In the summer of 2019, UP requested that Metra take over the commuter rail passenger service on the subject UP lines. Metra and UP continued negotiations but UP thereafter would only agree to 60-day extensions of the PSA. The latest extension provided an expiration date of August 31, 2020.

During negotiations for the new agreement, the parties disagreed on whether UP possessed a common carrier obligation to provide service if the parties were unable to negotiate new terms. Metra asserted that UP has a common carrier obligation with respect to commuter rail passenger service, independent of the terms of the PSA. UP responded that it no longer has an obligation to

continue operating commuter rail passenger service on the subject UP lines after the expiration of the PSA. UP is wrong. Its common carrier obligation continues.

E. The District Court Dispute over Union Pacific's Common Carrier Obligation

On December 5, 2019, UP asked the U.S. District Court for the Northern District of Illinois to declare that UP has no common carrier obligation to operate commuter rail passenger service on its lines after the expiration of the PSA. *Union Pac. R.R. Co. v. Commuter Rail Div. of the Reg'l Transp. Auth., d/b/a Metra*, No. 1:19-cv-07957 (N.D. Ill. Filed Dec. 5, 2019). On March 3, 2020, Metra filed a Motion to Dismiss or Stay Based on Primary Jurisdiction asking the Court to dismiss the Complaint without prejudice because this Board has primary jurisdiction over matters related to determination and enforcement of a rail carrier's common carrier obligation, or in the alternative, refer the matter to this Board and stay the matter pending consideration by the Board. That Motion remains pending.

F. UP's Reduction of Service Notification

On June 30, 2020, Cynthia M. Sanborn, UP Vice President for Network Planning and Operations, notified Metra, via letter attached as **Exhibit C**, that despite its pending action in the District Court UP planned to begin discontinuing services associated with the UP North, UP West, and UP Northwest lines beginning on August 31, 2020.⁷ UP intends to discontinue providing the following services, without District Court or STB authority, by November 30, 2020: law and claims, passenger ticket agents, federally mandated mechanical car and mechanical locomotive repair, engineering and communications and telecommunications. Each of these functions is integrally related to the commuter rail passenger services on these lines and constitute part of the

⁷ UP's letter states that revenue accounting will be transferred on July 31, 2020. However, Metra already provides revenue accounting services. The actual reduction in services will begin on August 31, 2020 when UP stops Law and Claims services.

transportation that UP provides on the subject UP lines. Federal safety regulations require the inspection and periodic maintenance of passenger equipment and locomotives. *See generally* 49 C.F.R. Part 238, “Passenger Equipment Safety Standards” *and* 49 C.F.R. Part 229 “Railroad Locomotive Safety Standards.” Because Metra currently relies on UP to provide these maintenance and inspection services, UP’s threatened refusal to provide them threatens the viability of the commuter rail passenger service on the subject UP lines.

In response to UP’s letter, and in order to avoid a potentially devastating lapse in service, Metra has asked UP to continue fulfill its common carrier obligation to provide this commuter rail passenger service by maintaining the coaches and rolling stock as it does now. *See Exhibit D*, page 2. UP must also continue to perform the other services it currently provides under contract, until either: (1) the parties reach agreement to transfer those services from UP to Metra; or (2) UP elects to provide those services pursuant to its long-standing common carrier obligation to operate the commuter rail passenger service without the subsidy provided by a PSA. *Exhibit D*, page 2. In addition, concurrent with the filing of this Petition, Metra has filed a Petition for a Preliminary Injunction in this matter to require UP to provide the commuter rail passenger service to avoid a severe disruption in Chicago commuter rail service.

Because of the importance of receiving confirmation of UP’s long-standing and continuing common carrier obligation in order to preserve the viability of the crucial service on its lines, and consistent with Metra’s motion before the District Court, Metra submits this Petition for Declaratory Order to resolve the dispute created by UP with respect to the status of that obligation. The relief Metra requests in this Petition and its Petition for Preliminary Injunction is limited to the extraordinary circumstances presented in this Petition. No new precedent is created here. The Board’s decision here is limited to the unique circumstance where a railroad has a common carrier

obligation to provide commuter rail passenger service on its lines that has not been otherwise relieved by legislative or regulatory authority.

II. ARGUMENT

A. The STB Has Jurisdiction to Issue a Declaratory Order in this Proceeding to Resolve an Important Question Affecting Rail Service in the Chicago Region

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321(b)(4) to issue a declaratory order to eliminate a controversy or remove uncertainty. The nature of the commuter rail passenger service in this case raises unique and unprecedented legal and jurisdictional questions regarding UP's remaining, long-standing common carrier obligation to provide commuter rail passenger service on the UP North, UP West, and UP Northwest lines. The STB is best suited to assure that Metra's commuters are not left in the lurch and to address these questions through a declaratory order proceeding.

UP's claim that it does not have a common carrier obligation to provide commuter rail passenger service on the UP North, UP West, and UP Northwest lines unavoidably implicates issues regarding the nature of its ongoing common carrier obligation. This Board must address the scope and application of UP's common carrier obligation under 49 U.S.C. § 11101 to provide this commuter rail passenger service, because this Board is the only forum with the expertise to properly adjudicate the complex questions presented under the unique facts of this case. While courts have jurisdiction to adjudicate some matters that could also be addressed by the STB, courts often refer complex matters involving unique railroad obligations to the STB. *See e.g. Ill. Cent. R.R. v. South Tec Dev. Warehouse, Inc.*, No. 97-c-5720, 1999 U.S. Dist. LEXIS 11222 *4-*6 (N.D. Ill. 1999) (referring question of reasonableness of demurrage charges to STB but rejecting request to refer additional question regarding application of demurrage to boxcar traffic). The questions surrounding UP's unprecedented claim that a railroad may disregard its common carrier obligation

when it has received a request to provide service pursuant to that obligation, and the confirmation of what constitutes the elements of the service required as part of fulfilling that obligation, requires the institutional knowledge and expertise of the Board.

“Courts recognize that the STB has substantial expertise in determining what constitutes an unlawful refusal to provide service under [49 U.S.C.] § 11101.” *Chlorine Inst., Inc. v. Soo Line R.R.*, No. 14-cv-1029, 2014 U.S. Dist. LEXIS 71825, *8 (D. Minn. 2014) (citations omitted). Courts “almost invariably defer to the STB’s expertise” with respect to disputes over whether a carrier’s practices violate § 11101.” *Id.* at *6. In addition, “[c]ases involving the extent to which a party has an obligation to provide rail service and whether it has met that obligation can be difficult because often the required factual determinations are inherently subjective.” *Groome & Assocs., Inc. and Lee K. Groome v. Greenville Cty Econ. Dev. Corp.*, STB Docket No. NOR 42087, slip op. at 5 (Service Date July 27, 2005). In circumstances where a railroad stops providing service requested by the public, “[t]he Board reviews whether the carrier was justified in stopping service, and whether, and when, it should have taken steps to reinstitute service.” *Id.* at 6 (citing *GS Roofing Prods. Co. v. Surface Transp. Bd.*, 143 F.3d 387 (8th Cir. 1998); *Decatur Cty. Comm’rs, et. al. v. The Cent. R.R. Co. of Ind.*, STB Finance Docket No. 33386, slip op. at 7 (Service Date Sept. 29, 2000), *aff’d*, *Decatur Cty. Commissioners v. Surface Transp. Bd.*, 308 F.3d 710 (7th Cir. 2002) (setting forth a balancing test for the reasonableness of an embargo)).

The Board has routinely issued declaratory orders to resolve disputes over the existence or extent of railroads’ common carrier obligation. *See e.g., Naval Nuclear Propulsion Program, United States Army Military Surface Deployment and Distrib. Command, and Fluor Marine Propulsion, LLC—Petition for Declaratory Order*, STB Finance Docket No. 36298 (Service Date Oct. 15, 2019); *Union Pac. R.R. Co.—Petition for Declaratory Order*, STB Finance Docket No.

35219 (Service Date June 11, 2009); and *Pejepscot Indus. Park, Inc., d/b/a Grimmell Indus.—Petition for Declaratory Order*, 6 S.T.B. 886 (2003). Likewise, the Board is best situated to address the complex questions of what actions are part of fulfilling that common carrier obligation, issues that arise because of UP’s proposal to cease providing essential elements of the commuter rail passenger services on the subject UP lines.

Finally, the Rail Transportation Policy of 49 U.S.C. § 10101 raises public policy implications that this Board is uniquely qualified to address. Specifically, 49 U.S.C. § 10101(4), states that, in regulating the railroad industry, it is the policy of the United States Government to “ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes *to meet the needs of the public . . .*” (emphasis supplied). The Board, “given its far greater and unique experience in dealing with such matters, is far better suited than any court to uniformly apply national rail policy.” *Buffalo Crushed Stone, Inc. v. R.J. Corman R.R. Corp.*, No. 97-cv-0875E, 2001 U.S. Dist. LEXIS 4832, *15-*16 (W.D.N.Y. 2001).

The issues set forth in this case demand the special expertise of the Board. To address the important legal and public policy issues raised by this Petition, the Board must address the questions presented and grant the relief requested by Metra.

B. UP has a Common Carrier Obligation to Provide the Long-Standing Commuter Rail Passenger Service on the UP North, UP West, and UP Northwest Lines that has Never Been Extinguished by Any Statute or Regulatory Agency with Jurisdiction Over the Matter and Therefore Remains Fully in Effect

“Railroads have a statutory common carrier obligation under 49 U.S.C. § 11101(a) to provide transportation or service upon reasonable request.” *Riffin v. Surface Transp. Bd.*, 733 F.3d 340, 346 (D.C. Cir. 2013) (internal citations omitted). The scope of that obligation begins with the definition of “transportation” in the statute. “Transportation”:

includes—

- (A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the *movement of passengers or property*, or both, by rail, regardless of ownership or an agreement concerning use; and
- (B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property;....

49 U.S.C. § 10102(9) (emphasis supplied).

In this case, CNW’s fulfillment of its common carrier obligation on the UP North, UP West, and UP Northwest lines continued when the merger with UP occurred in 1995 and included the obligation to provide commuter rail passenger service. That obligation remains in full force and effect today following UP’s acquisition of CNW. “No carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.” *Chicago & N. W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 320 (1986) (internal citations omitted). No statute has repealed, and no public agency ever entered an order releasing the UP or its predecessors from the obligation to provide this service.

Nor has the fact that CNW and now UP have been providing commuter rail passenger service under contract to Metra diminished their continuing common carrier obligation. Pursuant to the Illinois RTA Act, which allowed the CNW and later the UP to enter into contractual relationships to continue running service and obtain compensation, Metra is subsidizing UP’s operation of the commuter rail passenger service under the terms of the PSA. However, UP, as the owner of the line and successor to CNW, still has a common carrier obligation to provide commuter rail passenger service if that PSA lapses.

The law is clear on this point. Courts have held that railroads’ “obligation as common carriers is comprehensive and exceptions are not to be implied.” *American Trucking Ass’n*, 387 U.S. at 407. Railroads “cannot lawfully make fulfilling their statutory obligations contingent upon whether they think it is ‘worth it’ to do so. Rather, a carrier must adhere to its statutory obligations even if it suffers hardship in so doing.” *Pejepscot Indus. Park, Inc.* 6 S.T.B. at 898 (citing *Decatur Cty. Comm’rs*, 308 F.3d at 715). UP cannot walk away from a 150-year old service obligation that, pre-COVID, was relied upon for 89,000 daily passenger trips--approximately one-third of the total daily passenger trips on Metra—and now provides transportation for first responders and front line workers assisting in the recovery. The STB must order UP to fulfil its long-standing common carrier obligation on the subject UP lines.

1. UP’s Common Carrier Obligation to Provide Commuter Rail Passenger Service in Illinois and Wisconsin that it Inherited from CNW Remains in Place, Unaffected by the Passage of Time and the Intervening Contractual Subsidies

Commuter rail passenger service on the UP North line to Waukegan began in 1855, and to Kenosha in 1867. Service on the UP Northwest line began in 1857 and service on the UP West line began in 1864. Congress established the common carrier obligation of railroads in the late 19th century and, consistent with that obligation, CNW continued to provide common carrier commuter rail passenger service on these lines for the next hundred years. In 1975, 1980 and 1984, CNW sought subsidization of its service and, under the authority granted in the RTA Act, asked the RTA to enter into PSAs to obtain payment for the service. CNW confirmed in the 1978 Agreement, discussed *supra*, that if the PSAs lapsed it would still have a common carrier obligation to provide commuter rail passenger service.

Railroads like BN, CNW and later UP, which were primarily engaged in freight service, continued to provide commuter rail passenger service under their long-standing common carrier

obligation on these lines for generations. When UP purchased CNW in 1995, *Union Pac. Corp.*, ICC Finance Docket No. 32133, it assumed the long-standing common carrier obligations for commuter rail passenger service in the Chicago area. *See Groome & Assocs.*, STB Docket No. NOR 42087, slip op. at 10 (“By acquiring full ownership of an active railroad, [the owner] assumed a common carrier obligation”). UP’s common carrier obligation for the commuter rail passenger service on these three lines, as a result, remains in effect and was never extinguished by any legislation or Board authorization. Metra stepped in to subsidize the service in conjunction with RTA, as discussed above, on the three subject UP lines pursuant to the existing PSA.

Upon expiration of the PSA, UP’s common carrier obligation remains in place and UP is obligated to continue operating commuter rail passenger service pursuant to that obligation until such time as that obligation is extinguished under applicable law. If there is no PSA with Metra, UP must provide service on the subject UP lines unless and until it is relieved of the common carrier obligation. “The only appropriate mechanisms a railroad may employ to excuse itself, permanently or temporarily, from its common carrier obligations on a line of railroad are abandonment or embargo,” *Pejepscot Industrial Park, Inc.*, 6 S.T.B. at 898. Accordingly, UP’s long-standing common carrier obligation remains.

i. The Common Carrier Obligation Persists to this Day

The common carrier obligation refers to the statutory duty of rail carriers subject to the STB’s jurisdiction to provide “transportation or service on reasonable request.” 49 U.S.C. § 11101(a). The definition of “transportation” includes “movement of passengers.” 49 § 10102(9). “The statutory common carrier obligation imposes a duty upon railroads to provide transportation or service on reasonable request. This duty reflects the well-established principle that railroads are held to a higher standard of responsibility than most private enterprises.” *GS Roofing Products Co.*, 143 F.3d at 391(internal citations omitted). “[A] railroad may not refuse to

provide services merely because to do so would be inconvenient or unprofitable. In addition, a railroad may not unilaterally abandon a line at its own election; it must instead apply for and receive permission from the proper administrative agency.” *Id.* (internal citations omitted). The law governing the common carrier obligation does not distinguish between the standards and responsibilities imposed by that obligation for freight service or for commuter rail passenger service. While the governing statutes previously distinguished between the processes for terminating freight and passenger service, *see infra at page 18*, it never diminished the duty to respond to requests for service as a common carrier for as long as that obligation continues.

A railroad subject to the Board’s jurisdiction may not abandon or discontinue common carrier service at will. “Before termination of [a] carrier’s service obligation, the [Interstate Commerce Commission] must be permitted time and scope to assure the public interest is considered and protected.” *Gibbons v. United States*, 660 F.2d 1227, 1234 (7th Cir. 1981). Bankrupt railroads retain their common carrier obligation. *Id.* at 1234-35. Indeed, “a railroad may not refuse to provide services merely because to do so would be inconvenient or unprofitable.” *GS Roofing Products*, 143 F.3d at 391. Even when track that is subject to the Board’s jurisdiction has become unused over a lengthy period and has been removed, the line of railroad would still be subject to the Board’s jurisdiction because abandonment authority has never been obtained for such rail line. *See Chelsea Prop. Owners—Abandonment—Portion of the Consol. Rail Corp.’s W. 30th St. Secondary Track in New York, N.Y.*, 8 I.C.C.2d 773, 790-91 (1992), *aff’d sub nom. Consol. Rail Corp. v. Interstate Commerce Comm’n*, 29 F.3d 706 (D.C. Cir. 1994) (rail line remains within the Board’s jurisdiction unless Board abandonment authority is obtained even if the rail line has not been used for many years or has been removed).

Historically, this legal framework applied to both passenger and freight railroads. When Congress transferred many of the regulatory functions of the former Interstate Commerce Commission (“ICC”) to the STB in 1996, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995) (“ICCTA”), repealed the portions of the U.S. Code that established separate specific procedures to govern “discontinuing or changing interstate train or ferry transportation subject to State law,” and “discontinuing or changing train or ferry transportation in one State.” See 49 U.S.C. §§ 10908, 10909 (1993) (repealed by ICCTA). ICCTA did not, however, eliminate the STB’s general jurisdiction over passenger rail, or the common carrier obligation to provide service on reasonable request absent a line abandonment under 49 U.S.C. § 10903.

In *DesertXpress Enters., LLC—Petition for Declaratory Order*, STB Finance Docket No. 34914 (Service Date May 7, 2010), the STB addressed whether its jurisdiction over interstate rail service included passenger rail. The STB explained that ICCTA “repealed the statutory sections regulating passenger train discontinuance and special passenger rates—a significant reduction in (but not elimination of) the regulation of passenger transportation.” *Id.* at 13. The Board held that the interstate passenger rail service proposed in *DesertXpress* was subject to the Board’s jurisdiction. “Nowhere in the statute or its legislative history has Congress defined the interstate rail network as essentially or exclusively freight-based.” *Id.* at 17. “Congress’s intent in ICCTA was to *broaden* the preemptive scope of STB regulation of railroad operations described in section 10501(b).” *Id.* at 14 (emphasis in original). “There is no basis [] for concluding that Congress [] anticipated and carved out—much less eliminated—from the scope of the Board’s jurisdiction any and every other form of interstate passenger operations that might arise in the future as part of the nation’s general system of rail transportation.” *Id.*

ICCTA repealed the statutes that established a separate procedure for discontinuance of passenger service, but ICCTA did not absolve railroads of their existing common carrier obligations or eliminate the STB's jurisdiction over passenger rail service. Therefore, even after the expiration of Metra's subsidy arrangement with UP under the existing PSA relating to commuter rail passenger service on the subject UP lines, UP's common carrier obligation to provide commuter rail passenger service remains. Just as there was "no basis for concluding that Congress [] anticipated and carved out—much less eliminated—from the scope of the Board's jurisdiction any and every other form of interstate passenger operations that might arise in the future as part of the nation's general system of rail transportation," *id.* at 14, there is no basis for concluding that Congress intended to allow railroads with a long-standing common carrier obligation to unilaterally cease providing a service relied upon, pre-COVID, for 89,000 daily passenger trips each day when, as here, it has received a reasonable request to continue providing that service.

ii. Neither Prior to Signing the PSA with Metra Nor at Any Time Thereafter, did CNW Take Action to Eliminate the Common Carrier Obligation

When the railroads operating commuter rail passenger service in the Chicago area asked the RTA to enter into PSAs to subsidize existing commuter rail passenger services in the 1970s and 1980s, the railroads, including CNW, did not absolve themselves of their existing common carrier obligations. Nor did they take any regulatory action at the time to secure any change in the status of those obligations. Section 6.02 of the 1978 Agreement affirmed that "[i]n the event no Service Agreement is in effect, Railroad [CNW] shall provide Commuter Rail Service over or upon the Project Facilities *in accordance with its common carrier obligations*" (emphasis supplied). **Exhibit A** Section 6.02. CNW acknowledged that it had a common carrier obligation if there was no PSA in effect. When the UP acquired "full ownership of an active railroad," UP,

“assumed a common carrier obligation.” *Groome and Associates*, STB Docket No. NOR 42087, slip op. at 10. There is simply no support that either CNW or UP was relieved of the common carrier obligation to provide commuter rail passenger service on the UP North, UP West or UP Northwest lines.

UP cannot hide behind the ICC’s decision in *Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois d/b/a Metra—Exemption—Tariff Filing Requirements*, ICC Docket No. NOR 41506 (Service Date Feb. 24, 1995) (“*Metra Tariff Filing Requirements*”) as a justification for UP’s assertion that it has no common carrier obligation. In that case, the ICC concluded that, at that time, Metra, not the operating railroads, would have been the party responsible for filing tariffs associated with the commuter service.

The central question of *Metra Tariff Filing Requirements* was whether Metra should be exempt from the tariff filing requirements of Subtitle IV of Title 49. ICC Docket No. NOR 41506, slip op. at 2. The ICC found that Metra was exempt because, “the usual rationale for tariff filing requirements, that public tariffs help to eliminate undesirable pricing practices in markets where pricing decisions are not disciplined by normal competitive pressures, has no application to Metra’s commuter service.” *Id.* at 3. The crux of the issue was whether Metra, as a commuter service, should be subject to a tariff filing requirement that was fundamentally directed at freight railroads providing common carrier services to rail shippers, not a commuter rail passenger service.

The ICC’s holdings related to Metra as the entity that “holds itself out to provide the commuter service at issue,” *id.*, are implicated only insofar as Metra is the named party which commuters recognize as providing the service. The ICC recognized that, for purposes of the tariff filing requirements, Metra was the facilitator of the service from the view of the passengers. *Id.* However, the question of the status of CNW’s (or its successor UP’s) passenger common carrier

obligation did not arise because at the time only Metra was holding out as the offeror of the service. The ICC did not address whether CNW had ever relinquished its common carrier obligation, or any other aspect of the complexities of the common carrier obligation as it related to the underlying commuter rail passenger service that are presented here.

The ICC, in the *Metra Tariff Filing Requirements* case, did not and could not have expanded upon Metra's authority under its governing statute. Nor was the ICC being called upon to express an opinion as to whether UP or any other railroad providing Metra service might have a continuing common carrier obligation upon the expiration of an existing PSA with Metra. The focus was on what entity, if any, should be required to file tariffs at the ICC at that time. Given the limited scope of the inquiry in that proceeding, there was no reason for the ICC to address the status of CNW/UP's unquestioned common carrier obligation to provide commuter rail passenger service in the absence of a PSA with Metra.

2. Removal of the Separate Statutory Authority to Approve Discontinuance of Passenger Service Left Intact the STB's Jurisdiction Over the Regulation of the Passenger Rail Common Carrier Obligation

Neither the ICCTA nor any other statute has relieved UP of its obligation to provide commuter rail passenger service upon reasonable request. The removal of the statutes establishing separate authority for discontinuance of passenger rail service effected no such change. The removal of the statute that described specific STB authority to approve passenger train *discontinuance* did not affect the agency's authority to authorize operation of passenger service or to enforce any passenger common carrier obligation that had not been lawfully terminated prior to 1995 or otherwise transferred to Amtrak.

In *DesertXpress*, the STB noted that "ICCTA's legislative history shows that the Conference Committee considered, but then expressly rejected, complete elimination of Board jurisdiction over passenger transportation in favor of a more limited 'curtailment' of Board

regulation of such transportation.” *DesertXpress*, STB Finance Docket No. 34914, slip op. at 13 (citing ICCTA Conference Report 167, reprinted in 1995-2 U.S.C.A.A.N. 852). The ICCTA, as the STB held in *DesertXpress*, did not remove the STB’s jurisdiction over the operation of passenger rail services. Under the unique circumstances arising from UP’s succeeding to CNW’s long-standing service, Metra’s request that UP provide that service as a common carrier if UP terminates the PSA is reasonable. The Board retains authority to regulate some terms of that commuter rail passenger service, including the reasonableness of passenger service and rates.

In the wake of the ICCTA and the transfer of the Board’s regulatory authority from the ICC, the STB conceived of the possibility that it might, in highly unusual circumstances, apply some of its regulations to passenger rail service. In a 1997 final rule removing the now-obsolete regulatory provisions under 49 C.F.R. Part 1136, which required rail passenger carriers to file tariffs and notices of fare increases, the Board wrote:

We conclude that the regulations in [49 C.F.R.] part 1136 can be eliminated . . . [U]nder the ICCTA, with certain exceptions not relevant here, ‘the Board does not have jurisdiction . . . over mass transportation provided by a local governmental authority.’ 49 U.S.C. 10501(c)(2). Even as to rail passenger transportation that might not qualify for that exemption, our regulatory authority is quite limited. The vast bulk, if not all of such transportation is currently provided by Amtrak, over which we have no rate regulatory authority. The tariff filing requirements formerly applicable to rail carriers at former 49 U.S.C. 10761 and 10762 have been repealed, and *the circumstances under which we have authority to determine the reasonableness of rates are extremely limited.*

Removal of Obsolete Regulations Concerning Rail Passenger Fare Increases, STB Docket No. Ex Parte 624, slip op. at 2-3 (Service Date June 18, 1997) (Final Rule) (emphasis added; footnotes omitted). The emphasized language suggests that the Board believes that its authority over the reasonableness of rates, passenger-related or otherwise, is “extremely limited,” but not non-existent. The Board went on to state: “[f]inally, we see no need to institute a rulemaking proceeding regarding disclosure of interstate passenger fares. *As to any passenger transportation*

not covered by the mass transportation exemption of section 10501(c)(2), we believe that the pertinent rate disclosure regulations issued at 49 CFR part 1300 would cover required disclosure of passenger fares.” *Id.* slip op. at 3 (emphasis added). This passage expressly asserts that the Board conceived that its regulatory provisions would implicate passenger fares and service in some circumstances.

While the Board’s statements confirm that it has the authority in limited circumstances to determine the reasonableness of passenger service and rates, it also suggests that the exercise of such authority would be exceedingly rare, given the large carve-outs for public transportation operated by local governmental entities and transfer of most interstate passenger rail service to Amtrak, which leave as a practical fact almost no passenger rail subject to the Board’s jurisdiction. Where a common carrier by railroad with no remaining obligation to provide passenger service offers only freight service and does not otherwise hold itself out as providing passenger service, the STB’s discussion does not suggest that freight railroads could be subject to demands for passenger service rates and terms. The story is different here, however, where UP has a remaining, unextinguished obligation to provide its long-standing commuter rail passenger service.

3. The Rail Passenger Service Act (“RPSA”) Does Not Relieve UP of its Common Carrier Obligation with Respect to the Long-Standing CNW Commuter Rail Passenger Service

Before the creation of Amtrak, all railroads had a common carrier obligation for all passenger service operated on their lines – both long distance (now known as “intercity” service) and short distance service within major metropolitan areas (now known as “commuter” service). UP’s predecessor in interest, CNW, provided the commuter rail passenger service on the subject UP lines that are now the focus of the dispute between UP and Metra. Upon the merger of CNW and UP, UP as the surviving entity succeeded to CNW’s obligation. *See supra Union Pac. Corp.*, ICC Finance Docket No. 32133.

With the creation of Amtrak by the RPSA, CNW had the option to convey its obligation to provide long-distance, or intercity, service to Amtrak. Section 401(a), Rail Passenger Service Act of 1970, Pub. L. 91-518, 84 Stat. 1327, 1334 (October 30, 1970) (“Before May 1, 1971, the Corporation is authorized to contract and, *upon written request therefore from a railroad*, shall tender a contract to relieve the railroad, from and after May 1, 1971, of its entire responsibility for the provision of *intercity rail passenger service*”) (emphasis supplied)).

The RPSA, however, did not affect the obligation to provide commuter rail passenger service. It offered freight railroads only the opportunity to convey their intercity passenger obligations to Amtrak. The ICC specifically noted in 1972 with respect to CNW that “[w]ith the inauguration of Amtrak passenger operations on May 1, 1971, CNW no longer carries [sic] passengers in intercity service, although its commuter operations in and around Chicago remain extensive.” *North Western Employees—Pur.—Chicago & N.W. Ry. Co.*, 342 I.C.C. 58, 103 n.1 (1972). CNW could not and did not transfer its obligations to provide commuter rail passenger service to Amtrak and therefore, the common carrier obligation it held in 1971 with respect to this service, remains today.

Any common carrier obligation for commuter service that was in effect upon the creation of Amtrak under the RPSA remained intact after the assumption by Amtrak of the freight railroads’ intercity passenger service obligations unless or until that obligation was discontinued in accordance with the then-existing law. Likewise, when Congress relieved Consolidated Rail Corporation (“Conrail”) of the obligation to operate commuter services on the lines it acquired from the northeast railroads, Northeast Rail Services Act of 1981, Pub. L. 97-35, §§ 1133(2), 1137, 95 Stat. 643, 644-647 (1981) (“NERSA”), that statute relieved Conrail, but no other railroads, of the common carrier obligation to provide commuter service.

Neither the ICCTA, nor the RPSA, nor NERSA extinguished UP's common carrier obligation to provide commuter rail passenger service. CNW acknowledged in the 1978 Agreement that its common carrier obligation would continue should the public subsidy of the commuter rail passenger service cease. There is no question that this obligation continues. Neither CNW nor UP ever sought or received authority to cease this service. UP's common carrier obligation for commuter rail passenger service on these three lines, therefore, remains in effect.

4. The STB May Issue an Order Enforcing UP's Compliance with its Common Carrier Obligation with Respect to this Commuter Service

The STB may issue an order enforcing UP's compliance with its common carrier obligation for this commuter rail passenger service. 49 U.S.C. § 11101 requires a common carrier subject to the jurisdiction of the STB to provide transportation upon reasonable request. UP has received such a request from Metra. *See* EXHIBIT D. The STB has the authority to enforce that obligation for commuter rail passenger service in this case despite the jurisdictional carve out that prevents the STB from exercising jurisdiction over certain commuter rail transportation in some circumstances. *See* 49 U.S.C. § 10501(c)(2). That exception applies when the service is provided by a public authority or by a railroad pursuant to a contract with a public authority. If there is no contract, there is no exception. The statute does not in any way limit the STB's continuing jurisdiction over the UP's never-extinguished common carrier obligation with respect to this commuter rail passenger service in the absence of a PSA with Metra.

Section 10501(c)(2) states that a local government authority "includes a person or entity that contracts with the local governmental authority to provide transportation services." Once UP's contract with Metra expires, the commuter rail passenger service is no longer service provided by a "local government authority," but is an obligation arising through UP's long-standing, never-discontinued, never-relinquished, long-standing common carrier obligation and is

enforceable under 49 U.S.C. § 11101. Ultimately, it is that long-standing obligation that the Board must enforce in this case. *See e.g. Union Pac. R.R. Co.*, STB Finance Docket No. 35219, slip op. at 6-7 (granting petition for declaratory order and clarifying that UP has an obligation to provide rates and service for the transportation of chlorine); *and Naval Nuclear Propulsion Program*, STB Finance Docket No. 36298, slip op. at 6-7 (granting petition for declaratory order and finding that Canadian Pacific had a common carrier obligation to provide service on a specified segment of track). Enforcement of UP's common carrier obligation in this case is also entirely consistent with the Rail Transportation Policy's goal of ensuring the rail transportation system meets the needs of the public.

III. Conclusion

The facts of the case present the unique scenario in which a Class I freight railroad also has a long-standing common carrier obligation to provide commuter rail passenger service that is subject to the jurisdiction of the Board. Despite the substantial alteration of the regulatory framework for passenger rail, no legislation or STB action relieved UP of the common carrier obligation it acquired when it purchased CNW in 1995. UP has a long-standing common carrier obligation to provide commuter passenger rail service on the UP North, UP West, and UP Northwest lines which the Board must enforce to avoid a transportation crisis in the greater Chicago area.

The relief Metra requests is limited to the facts of this case and does not require the Board to set new precedent or broaden the scope of the common carrier obligation. Metra simply seeks to ensure that Chicago-area commuters can continue to rely on a service they have been subsidizing for decades, and which UP has a legal obligation to provide.

Metra respectfully requests the Board issue a Declaratory Order stating that UP has a common carrier obligation to provide commuter passenger rail service on the subject UP lines, and the STB has the jurisdiction and the authority to enforce the common carrier obligation.

Respectfully Submitted,



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*Counsel for the Commuter Rail Division of
the Regional Transportation Authority*

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July 2020, I have caused a copy of the foregoing Verified Petition of the Commuter Rail Division of the Regional Transportation Authority, d/b/a Metra, for Declaratory Order to be served upon the following individual via e-mail:

Craig Richardson
Vice President – Law
Union Pacific Railroad
1400 Douglas Street, Stop 1580
Omaha, Nebraska 68179-1580
cvrichar@up.com

A handwritten signature in blue ink, appearing to read "Charles A. Spitulnik", written over a horizontal line.

Charles A. Spitulnik
Kaplan Kirsch & Rockwell LLP
1634 I (Eye) Street, NW
Suite 300
Washington, DC 20036
(202) 955-5600
cspitulnik@kaplankirsch.com

Dated: July 21, 2020

VERIFICATION

I, Charles J. Harrison, Director of Real Estate and Railroad Contracts, verify under penalty of perjury that I have knowledge of the factual statements made in the foregoing Petition for Declaratory Order and that such statements are true and correct, to the best of my knowledge, information and belief.

Further, I certify that I am qualified and authorized to file this verification.

Executed on July 20, 2020.

By: Charles J. Harrison

Charles J. Harrison
Director, Real Estate and Railroad Contracts
Commuter Rail Division of the Regional Transportation Authority d/b/a Metra

Commuter Rail Division of the Regional Transportation Authority, d/b/a Metra

Sworn to and subscribed before me

this 20th day of July, 2020.

Vicki J. Ladage
Notary Public

My commission expires: 2/8/23

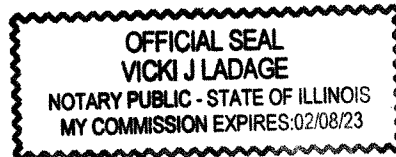


EXHIBIT A

CNW

ORDINANCE NO. 78-7

BE IT ORDAINED that:

1. The proposed Commuter Improvement Grant Agreement ("Agreement") between the Chicago and North Western Transportation Company and the Regional Transportation Authority ("Authority"), which is attached to this ordinance, is hereby approved.

2. The Chairman of the Authority is hereby authorized and directed on behalf of the Authority to execute and deliver said Agreement, and the Temporary Secretary is hereby authorized and directed on behalf of the Authority to attest said Agreement.

3. The Chairman of the Authority is hereby authorized and directed to take such action as he deems necessary or appropriate to implement, administer, and enforce said Agreement, No substantive amendment to the Agreement, and no modification of the list of projects in the Agreement shall be approved on behalf of the Authority, without approval of the Board of Directors of the Authority.

JANUARY 12, 1978

CHICAGO AND



TRANSPORTATION COMPANY

LAW DEPARTMENT
DIRECT DIAL NUMBER

(312) 454-6516

January 13, 1978

Regional Transportation Authority
300 North State Street
Chicago, Illinois 60610

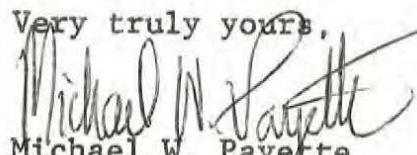
Gentlemen:

As counsel for the Chicago and North Western Transportation Company, a Delaware corporation (hereinafter called "North Western"), I am familiar with the Commuter Improvement Grant Agreement, dated January 13, 1978 (hereinafter called the "Agreement") between the Regional Transportation Authority (hereinafter called "RTA") and North Western setting forth the terms of a \$17 million grant from the RTA to be used by North Western to perform rehabilitation projects. I have examined such corporate and other documents and records and such questions of law as I have considered necessary or appropriate for the purposes of this opinion. On the basis of such examination, I advise you that in my opinion:

- (i) North Western is a corporation duly organized and existing and in good standing under the laws of Delaware;
- (ii) North Western is qualified to transact business in, and is in good standing under the laws of, the State of Illinois;
- (iii) the execution, delivery and performance of the Agreement by North Western has been duly authorized by all requisite corporate action of North Western;
- (iv) the Agreement has been duly executed and delivered by North Western and, assuming due execution and delivery by RTA, constitutes a valid and binding obligation of North Western enforceable in accordance with its terms, subject to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditor's rights generally;

- (v) compliance by North Western with the terms and conditions of the Agreement will not result in a breach of, or default under, any judgment, decree, mortgage, indenture or other agreement applicable to North Western known to me;
- (vi) to the best of my knowledge and belief, there is no action, proceeding, litigation or investigation pending or threatened against North Western before any court or by or before any governmental authority which would materially adversely affect the ability of North Western to perform its undertakings set forth in the Agreement; and
- (vii) all governmental and other approvals required to permit the performance by North Western of its obligations under the Agreement have been obtained.

Very truly yours,


Michael W. Payette
Attorney

MWP: mh
cc: Hopkins, Sutter, Mulroy,
Davis & Cromartie
One First National Plaza
Chicago, Illinois 60603

COMMUTER IMPROVEMENT GRANT AGREEMENT

This Agreement, entered into this 13th day of January, 1978, by and between the Regional Transportation Authority ("RTA"), and the Chicago and North Western Transportation Company, a Delaware corporation, a rail carrier authorized to provide mass public transportation within the State of Illinois ("Railroad").

WHEREAS, RTA and Railroad entered into a Memorandum of Agreement ("Memorandum"), dated January 6, 1977, by which RTA agreed to pay Railroad a \$17 million grant to be used by Railroad to perform rehabilitation projects, payments under said grant to be made as the work is performed; and

WHEREAS, the Memorandum contains a list of projects which were to be performed in part with the proceeds from the Grant and RTA and Railroad have now agreed to modify and supersede the list in the Memorandum; and

WHEREAS, Railroad has agreed to use its best efforts to assist RTA in obtaining Federal and State of Illinois government funds for all or a portion of the \$17 million grant;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, this Agreement is made to implement Part C of said Memorandum of Agreement by providing financial assistance to Railroad in the form of a grant ("Grant"), to set forth the terms and conditions upon which the Grant will be made and to set forth the agreement of the parties as to the manner in which the work will be undertaken and completed, and as to the use of facilities which are improved with the Grant.

ARTICLE I

Designation of the Grant Projects and the Amount of the Grant

1.01 The Projects. Railroad agrees to undertake and complete those items of work which are selected in the manner hereinafter provided ("Projects"), and to provide for the use of Project Facilities and equipment in accordance with this Agreement and all applicable laws. Two or more items of work may be combined into a single Project. The items of work are generally described as:

<u>Item of Work</u>	Estimated Cost as of <u>December 15, 1977</u>
1. Renew rail and turnouts and replace electro-mechanical	

	interlocking plant with an all relay interlocking faci- lity at Kedzie	\$2,700,000
2.	Install 210,000 cross ties	3,922,000
3.	Renew 52.9 track miles of rail	5,591,000
4.	Ballast and surface 95 track miles	655,000
5.	Replace 12 Cummins engines	1,200,000
6.	Repairs to bi-level coaches for improved performance, plus new 480-volt jumper cables and receptacles for 248 coaches	2,950,000
		<u><u>\$17,018,000</u></u>

Projects to be performed shall include item of work Nos. 1, 2, 3 and 4 on the above list, and such other items of work from said list as shall be agreed upon by RTA and Railroad. The selection of other Projects from said list, and the order of priority for all Projects, shall be mutually determined by the Chief Operating Officer of RTA and the Vice President-Operations of Railroad. All Projects so selected shall be completed not later than November 30, 1980 unless, and to the extent that, Railroad's failure so to complete any Project is due to failure by RTA promptly to

obtain funding for such Project. The quantities of cross ties, rail and ballast to be installed as set forth on the above list represent the totals of such materials to be installed (which totals may decrease if corresponding costs increase); and the estimated costs for such items set forth on the above list represent only that portion of the total estimated costs for such materials which is allocable to Commuter Rail Service in accordance with Exhibit 17-A of the Service Agreement. It is agreed that Items of Work numbered 1, 5 and 6 are required only for Commuter Rail Service and that therefore no part of the cost thereof shall be allocated to freight or inter-city passenger service.

1.02 Amount of Grant. (a) RTA agrees to make a Grant to pay for Project Costs, as determined upon completion of the Projects and final audit thereof in accordance with this Agreement, in an amount up to but not to exceed \$17,000,000 in the aggregate. Unless the Authority may otherwise consent pursuant to paragraph (b) of this Section 1.02, any excess of such aggregate Project Costs over \$17,000,000 shall be paid by Railroad, provided, however, that nothing in this Agreement shall be deemed to modify or

amend the Service Agreement dated December 23, 1976. In the event that the aggregate Project Costs of the Projects selected by mutual determination of RTA and Railroad is less than \$17,000,000, the Chief Operating Officer of RTA and the Vice President-Operations of Railroad shall agree upon alternative rehabilitation Projects for improved rider comfort and service so that the total amount of the Grant will equal \$17,000,000. RTA shall not be liable under this Agreement for any amount in excess of \$17,000,000, the total amount of the Grant. Payments shall be made in accordance with Article V hereof.

(b) In the event that at any time cost increases or changes in Projects cause Railroad's estimates of the total Eligible Costs for all Projects to exceed \$17,000,000, Railroad shall immediately notify the Authority. The Authority shall, within 20 days after receipt of such notice, give notice to Railroad setting forth such restrictions, modifications or reductions in scope of one or more Projects as will reduce Railroad's estimate of Eligible Costs for all such Projects to \$17,000,000 or less and/or (b) give notice to Railroad increasing the \$17,000,000

limitation on Project Costs to such greater amount as such notice shall specify, provided, however, that in the event the Authority's notice reduces the scope of any of Items of Work Numbers 2, 3 or 4, any reduction in items of Work Numbers 2, 3 or 4 shall unless the parties otherwise agree, be applied pro-rata to each of Items of Work Numbers 2, 3 and 4 in proportion to the estimated cost of each such item as set forth in Section 1.01, above.

1.03 UMTA and IDOT Approval. The parties agree that RTA may apply to UMTA and IDOT for funds to pay a part of the cost of each Project to be performed. No Project for which such an application has been, or will be, made by RTA shall be performed unless the grants for such Project are first approved by UMTA and IDOT. If grants have been applied for for a Project, and such applications have been finally rejected by UMTA or IDOT, RTA shall nevertheless elect to proceed with sufficient Projects in accordance with this Agreement so that aggregate Project Costs of the Projects under this Agreement satisfy the requirements of Section 1.02, provided, however, that the RTA shall elect so to proceed with Item of Work Number 1 before proceeding with any other work hereunder.

ARTICLE II

Definitions

As used in this Agreement, the following terms shall have the following meanings, respectively:

Agreement -- this Commuter Improvement Grant Agreement and all exhibits hereto as from time to time amended or modified pursuant to the terms hereof.

Article -- an Article of this Agreement.

Commuter Rail Service -- the commuter rail transportation service provided to the public by Railroad on a regular and continuing basis in the service area described in the Service Agreement.

Contract -- a contract for a Project entered into under this Agreement.

Eligible Costs -- expenditures made and costs incurred by Railroad which meet all the requirements of Section 4.02, below.

Equipment Lease -- the Equipment Lease between the RTA and Railroad, dated December 13, 1977, and covering the lease of 264 bi-level coaches and 46 locomotives by Railroad from the RTA.

Equipment Purchase Agreement -- the Agreement between RTA and Railroad, dated as of June 1, 1977, and covering the purchase of 264 bi-level coaches and 46 locomotives by RTA from Railroad and executed on December 13, 1977.

Grantee Proposal -- a proposal of Railroad described in Section 7.03.

IDOT -- the Illinois Department of Transportation and any agency, division or administration thereof.

Project -- the meaning thereof set forth in Section 1.01.

Project Cost -- the sum of (i) the Eligible Costs incurred in performing the work on the Projects, including work done by Railroad, plus (ii) any labor protection costs RTA is required to pay pursuant to Article XII, plus (iii) the cost to RTA of any materials, supplies or equipment furnished to Railroad with respect to the Project.

Project Facilities -- any facilities, equipment, materials or real property purchased, acquired, constructed, improved, renovated or refurbished as part of the Projects.

Project Funds -- all grant payments received by Railroad from RTA, pursuant to this Agreement.

Railroad -- Chicago and North Western Transportation Company.

RTA -- Regional Transportation Authority.

Section -- a Section of this Agreement.

Service Agreement -- the Purchase of Service Agreement entered into between RTA and Railroad on December 23, 1976, and any successor agreement under which RTA purchases Commuter Rail Service from Railroad.

UMTA -- the United States Department of Transportation and any agency, division or administration thereof.

ARTICLE III

Contracts

3.01 Project Contracts. When a Project has been selected, and its starting time and priority have been mutually determined, the parties hereto shall execute a contract ("Contract") for that Project. Each Contract shall conform in all respects to and be subject to the applicable provisions of this Agreement, shall contain the provisions required by applicable governmental rules and regulations and otherwise shall be substantially in the form of Appendix A hereto attached. Each Contract for a Project for which UMTA and/or IDOT has made or is to make funds available shall also include without limitation the clauses and provisions required for such a contract by UMTA and/or IDOT, as the case may be. Each Contract shall include all provisions required by the Illinois Fair Employment Practices Act and regulations thereunder.

3.02 General Contract Requirements. Upon execution of a Contract, Railroad shall itself or through its subcontractors, as approved by RTA based upon applicable state or federal standards, commence, carry on, and complete the Project with all practicable dispatch, in a sound,

economical manner, in accordance with the standards with regard to materials and workmanship representative of the railroad industry, and in accordance with the provisions of the Contract, this Agreement, and all applicable laws and guidelines. Railroad and its subcontractors shall comply with all applicable provisions of Federal, State and local laws, regulations and requirements. Prior to beginning work or incurring any Eligible Cost for a Project under a Contract, Railroad shall submit to RTA all plans, specifications, drawings, subcontracts, Grantee Proposals and related documents necessary to perform and complete the Project, and shall obtain RTA's written approval of them which approval shall be promptly (having regard for any approvals which may be necessary from UMTA and IDOT) given or denied.

3.03 Submission and Retention of Data, Contracts and Other Documents. Railroad shall submit to RTA such data, reports, records, contracts, subcontracts and other documents relating to each Project as RTA may reasonably require. Railroad shall retain intact, for three years following each Project close-out, all Project documents, financial records, and supporting documents.

3.04 Changed Conditions Affecting Performance.

Railroad shall immediately notify the RTA of any change in conditions or local law, or of any other event, which may significantly affect its ability to perform any or all of the Projects in accordance with the provisions of this Agreement or any Contract.

3.05 No RTA Obligations to Third Parties. RTA

shall not be liable for any obligations or liabilities of Railroad, its subcontractors or its or their subcontractors to any person in connection with the performance of the Projects pursuant to the provisions of this Agreement or any Contract, without the specific written consent of RTA, and notwithstanding its concurrence in or approval of the award of any Contract or subcontract or the solicitation thereof.

ARTICLE IV

Accounting Records and Eligible Costs

4.01 Project Account. Railroad shall establish and maintain as an integral part of its current accounting system, separate accounts for each Project ("Project Account"), the form and content of which shall be subject to approval by RTA.

4.02 Eligible Costs. Expenditures made and costs incurred by Railroad under a Contract shall be reimbursable as Eligible Costs to the extent they meet all of the requirements set forth below. They must:

1. be necessary or desirable in order to accomplish the Project;
2. be actual net costs to Railroad (i.e., the price paid minus any refunds or rebates received by Railroad which have the effect of reducing the cost actually incurred) including fringe benefits and direct overhead and material handling additives in connection with labor and material furnished by Railroad, and otherwise shall be calculated in accordance with Appendix C;
3. be incurred (and be for work performed) after the date of the Contract, unless specific authorization from RTA to the contrary is received;
4. be satisfactorily documented in accordance with Section 4.03;
5. be treated uniformly and consistently under accounting principles and procedures heretofore used by Railroad, and those approved or prescribed by Railroad for its subcontractors;
6. be properly allocable to Commuter Rail Service under Exhibit 17-A of the Service Agreement; and

7. be incurred pursuant to and in conformity with subcontracts, Grantee Proposals, plans, specifications, drawings and related documents approved in advance by RTA.

If it is impractical to determine exact costs of indirect or service functions, Eligible Costs will include such allowances for these costs as are in accordance with General Managers' Association of Chicago (GMA) Rules Covering Preparing Joint Facility and other Bills between Carriers as may be in effect at the time the work is done, or a successor or comparable publication if the GMA is no longer in existence.

4.03 Documentation of Project Costs. All costs charged to the Projects, including any approved services furnished or supplied by Railroad or others, shall be supported by properly prepared, maintained or executed payrolls, time records, invoices, contracts, purchase orders, supporting documents, or vouchers evidencing in detail the nature and propriety of the charges.

4.04 Checks, Orders and Vouchers. Any check or order drawn by Railroad with respect to any item which is chargeable against a Project Account will be drawn only in

accordance with a properly signed voucher then on file in the office of Railroad stating in proper detail the purpose for which such check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents (or true copies thereof) pertaining in whole or in part to the Projects shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other similar documents not relating to the Projects.

4.05 Audit and Inspection of Records. Railroad shall at all times during normal business hours, before, during and after the performance of the Projects, permit the authorized representatives of RTA, UMTA, IDOT, and the Comptroller General of the United States, (a) to inspect and audit all data and records of Railroad relating to its performance of the Projects, (b) to have access to all sites of construction or fabrication, and (c) to inspect all work performed under this Agreement or any Contract. Railroad shall furnish to RTA monthly, with its requisitions for payment, progress reports and detailed billings containing such information as RTA, UMTA or IDOT may reasonably request.

ARTICLE V

Requisitions and Payments

5.01 Payments. (a) Under a Contract, Railroad may make monthly requests for payment from RTA of preliminary Eligible Costs of the Project, and RTA shall honor such requests in the manner set forth in this Article. In order to receive RTA Grant payments, Railroad shall:

1. complete, execute and submit to RTA payment requisition forms approved by RTA;
2. submit to RTA an explanation of the purposes for which costs have been incurred to date; and
3. have submitted all financial and progress reports currently required by this Agreement.

(b) Upon receipt of the payment requisition form and the accompanying information in satisfactory form on or before the 15th day of a month, RTA shall process the requisition and RTA shall then reimburse preliminary Eligible Costs incurred by Railroad on or before the last day of the month in which such payment requisition form was received by it.

(c) Not later than 60 days prior to the first day of each month for which Railroad plans to submit a payment requisition under paragraph (b) of this Section, Railroad shall provide the Authority with a preliminary invoice for such month showing the Eligible Costs for which Railroad estimates it will request payment for such month under paragraph (b) of this Section.

(d) Reimbursement of any cost item pursuant to this Section 5.01 shall not constitute a final determination by RTA that such cost item is an actual Eligible Cost and shall not constitute a waiver of any violation of the terms of this Agreement or a Contract committed by Railroad. The RTA will make a final determination as to whether each cost item is an actual Eligible Cost only after a final audit of the Project has been conducted as provided in Section 5.02.

5.02 Project Settlement and Close-Out. Within six (6) months after receipt of notice of successful completion of such of the Projects the aggregate preliminary Eligible Costs and other Project Costs of which equal or exceed \$17,000,000, or the termination of this Agreement,

RTA shall perform a final audit of such Projects to determine the actual Eligible Costs incurred, and shall pay to Railroad all remaining unpaid actual Eligible Costs; provided that the aggregate of all Project Costs and all payments to Railroad by RTA under this Agreement and all Contracts shall never exceed \$17,000,000. If the final audit of any Project indicates that RTA has made payments to Railroad which, together with other Project Costs, exceed \$17,000,000, (by reason of having reimbursed Railroad for costs finally determined not to have been actual Eligible Costs or for any other reason), then Railroad shall promptly remit such excess to RTA. The Project close-out shall occur when RTA notifies Railroad of the results of the final audit of such Project and forwards the final Grant payment or, in the case of an excess payment by RTA, when any required refund of Grant funds has been received from Railroad by RTA. Close-out shall be subject to any continuing obligations imposed on Railroad or incurred by RTA under this Agreement or a Contract.

5.03 Simultaneous Performance. In the case of each Project the cost of which is allocated between Railroad

and the Authority on the basis of relative usage for Commuter Rail Service, freight and inter-city passenger service, Railroad agrees that it will pay for or perform the portion of such Project for which it is responsible simultaneously with performance of, and the Authority's payment for, the portion of such Project for which the Authority is responsible.

ARTICLE VI

Continued Use in Commuter Rail Service and Use of the Project Facilities

6.01 Applicability of This Article. This Article applies only to the Kedzie Interlocker, the ties, rail and ballast used to rehabilitate any track and any other property or materials permanently installed on Railroad's right-of-way as part of a Project.

6.02 Continuance of Service. During the period of use of the Project Facilities (as set forth in Section 6.03), Railroad shall provide Commuter Rail Service over or upon the Project Facilities in accordance with the terms of the Service Agreement. In the event no Service Agreement is in effect, Railroad shall provide Commuter Rail Service

over or upon the Project Facilities in accordance with its common carrier obligations. Reduction or termination of such service may be made only upon compliance with all applicable statutory and regulatory provisions. Railroad shall give written notice to RTA of any such service reduction or termination no later than the earlier of (a) 30 days prior to any such service reduction or termination or (b) the filing of a request for such termination or reduction with the appropriate regulatory agency.

6.03 Use of Project Facilities. Railroad agrees that the Project Facilities will continue to be used for the period of the useful life of such facilities for the provision of Commuter Rail Service (certain track will be used for both Commuter Rail Service and freight service) within Railroad's service area within the State of Illinois substantially as described in the Service Agreement unless such continued use (i) is changed pursuant to the terms of said Service Agreement, or (ii) if the Service Agreement is no longer in effect, is changed pursuant to Section 6.02. For the purpose of this Agreement, the useful life of the Project Facilities or the improvement, renovation or refurbish-

ment of such facilities shall be deemed to be the later of twenty (20) years from the time a Project is completed or such time when the continued use of such facilities in Railroad's Commuter Rail Service is no longer compatible with the overall level of Railroad's Commuter Rail Service (except that the useful life of frogs and switchpoints shall be deemed to be 10 years). If any Project Facilities are not used in a manner consistent with, or are withdrawn from, such Commuter Rail Service at the initiative of Railroad, Railroad shall immediately notify RTA, and Railroad shall pay to RTA the greater of (i) the salvage value (less expense of removal) of such portion of the Project Facilities so withdrawn as were paid for or provided by RTA pursuant to this Agreement, or (ii) the amount of the original Grant paid by RTA attributable to such Project Facilities, reduced by 5% of such amount for each year such Project Facilities were used in Commuter Rail Service pursuant to this Agreement (except reduced by 10% for each such year of such use in the case of frogs and switchpoints). Notwithstanding the foregoing, however, in the event that Railroad ceases to use such Project Facilities for the provision of Commuter Rail Service at the specific request or direction

of the RTA, except as otherwise provided in a Service Agreement, Railroad may instead elect, in complete discharge of its obligations to the RTA with respect to such Project Facilities no longer used, either to pay to the RTA the net salvage value at the time so removed from such service of the portion of such Project Facilities paid for by the Grant, or to make such portion of such Project Facilities available to the RTA to remove at its cost and expense, provided, however, that the RTA shall have no obligation to remove such portion of such Project Facilities. Railroad shall submit to RTA upon reasonable request such information as is required in order to assure compliance with this Section and shall immediately notify RTA in all cases where Project Facilities are used in a manner substantially inconsistent with this Article. In the event that Project Facilities newly constructed or substantially rehabilitated by Project Funds are damaged or destroyed during the period of required use, Railroad agrees to promptly restore or reconstruct such facilities to the level of utility existing prior to such damage or destruction. Railroad shall, during the period of required use, maintain the rehabilitated track as required by the Service Agreement. If no Service Agreement is in effect, Railroad shall maintain said track in reasonable condition and repair for use in pro-

viding Commuter Rail Service of the same overall level as was required under the last preceding Service Agreement as in effect at the time such Service Agreement terminated.

ARTICLE VII

Material Procurement and Awarding of Contracts

7.01 Procurement Procedures. (a) Except as otherwise specifically approved in advance by RTA in accordance with Sections 7.02 or 7.03, competitive bidding procedures shall be followed with respect to the hiring of independent contractors and the purchasing of materials or equipment when the contract price or cost of such materials or equipment exceeds \$5,000. The total amount of a specific service, equipment or material needed for a Project shall be included for purposes of determining the applicability of this competitive bidding requirement and the \$5,000 standard. Notwithstanding the foregoing and notwithstanding Sections 7.02 and 7.03, Railroad will follow such bid solicitation or competitive bidding procedures as RTA may be required by UMTA or IDOT to impose in any particular case.

(b) When competitive bidding procedures are re-

quired, Railroad shall give full opportunity for free, open and competitive bidding for each contract to be let by Railroad. Railroad shall give such publicity in its advertisements or calls for bids for each such contract as will provide adequate competition and Railroad may submit its own bid. The award of each such contract shall be made by Railroad as soon as practicable to the lowest responsible bidder except as otherwise specifically approved in writing by RTA. All competitive bidding shall be conducted in accordance with the procedures for pre-bid approval, post-bid approval and post-award requirements set forth in Appendix D.

7.02 Professional and Consulting Services Contracts Without Competitive Bidding. Subject to Section 4.02 and this Article VII, contracts for professional or consulting services may be negotiated without first seeking competitive bids. Each such contract shall state the maximum compensation or reimbursement that may be paid under the terms of the contract. The following shall be submitted to RTA for approval prior to the execution of a third party contract negotiated pursuant to this Section:

1. a list of all, and not less than three, consultants considered;

2. a summary of proposals, if any, from each consultant, or if there are no such proposals, an explanation of why there are none;
3. an analysis of the proposals giving reasons for final selection of the consultant selected (including a statement showing the adequacy of the consultant's qualifications for the services to be performed);
4. an analysis of the method of payment including the reasonableness of the compensation; and
5. a copy of the proposed contract.

After RTA approval of the above, and upon contract execution, Railroad shall promptly submit to RTA one copy of the executed contract. No change or modification requiring additional funds shall be made to any contract and no work shall be commenced and no costs or obligations incurred in consequence of such change or modification without the prior written approval of RTA.

7.03 Grantee Proposals. If Railroad, in connection with any Project, in good faith believes it to be more efficient and economical for Railroad itself to furnish labor, engineering or design services, materials or supplies or any other services or products, in lieu of obtaining the

same pursuant to contracts with third parties, Railroad shall furnish to RTA for its prior written approval a proposal (herein referred to as a "Grantee Proposal") before performing or furnishing any such labor, services, materials or supplies. Each such Grantee Proposal shall set forth:

1. A list of all third parties considered by Railroad as a possible source of such labor, services, materials or supplies;
2. A summary of all proposals, if any, obtained from such third parties, or if no such proposals were sought, an explanation of Railroad's failure to seek the same;
3. An explanation and analysis of Railroad's Grantee Proposal, explaining in detail the reasons why Railroad believes that it will be able to furnish such labor, services, materials or supplies more efficiently and economically than any third party;
4. An analysis of the method of payment to Railroad for such labor, services, materials or supplies and the reasonableness of the amount thereof;
5. A statement of Railroad's actual cost for any such materials or supplies; and
6. A statement of the maximum amount which RTA may be called upon to pay (as a Grant payment hereunder) to Railroad for such labor, services, materials or supplies.

If Such Grantee Proposal is approved in writing by RTA, Railroad may proceed to perform or furnish such labor, services, materials or supplies in accordance with such Grantee Proposal, but no change or modification in such Grantee Proposal shall be made and no additional work shall be performed and no additional costs or obligations shall be incurred in consequence of such change or modification without the prior written approval of RTA.

7.04 Materials Furnished in Kind. Anything to the contrary in this Agreement notwithstanding, the RTA may elect to furnish in kind equipment, materials, supplies, or products required by Railroad for a Project, provided, however that such equipment, materials, supplies or products at a minimum comply with applicable American Railway Engineers Association or Association of American Railroads engineering standards and are compatible with Railroad's existing plant and equipment at the time so furnished.

ARTICLE VIII

Termination and Remedies

8.01 RTA's Right of Termination. RTA shall have

the right to terminate this Agreement if Railroad (i) shall be in substantial default in the observance or performance of any of the covenants, conditions or agreements on the part of Railroad contained herein or in a Contract, or (ii) shall have used any Project Funds for any purpose other than as authorized by this Agreement or by RTA in writing, or (iii) has made any material misrepresentation or omission in this Agreement or any document furnished pursuant to this Agreement (each of which events is hereinafter called an "Event of Default"), and Railroad fails to cure said Event of Default or the consequences of such misrepresentation or omission within sixty days after receiving notice in writing thereof from RTA. In the event Railroad is not able to cure said Event of Default, but said Event of Default relates to only one or more of the Projects, but not all of the Projects, RTA shall not terminate, except as to the Project or Projects to which the default relates, and Section 8.02 shall not apply to those Projects to which the Event of Default does not apply; provided, however, that the total amount of the Grant, and of RTA's liability under this Agreement, shall be reduced by the estimated cost of such Project or Projects to which the Event of Default does relate.

8.02 RTA's Remedies. In the event any Event of Default by Railroad as described in Section 8.01 has occurred, and has not been cured by Railroad, RTA shall have the following remedies. RTA may, in addition to any other remedies available to RTA under this Agreement or by law, (i) withhold or delay payment of any and all payment requisitions submitted by Railroad, or any portion thereof, with respect to the Project or Projects to which the default relates, and (ii) if payment or payments have already been made, demand and be entitled to receive back from Railroad such payment or payments or any portion thereof with respect to the Project or Projects to which the default relates, provided, however, that any such payments shall be reduced by 5% of the Eligible Cost of such Project (except 10% in the case of frogs and switchpoints) for each year such Project was used in Commuter Rail Service pursuant to this Agreement.

8.03 Railroad's Remedies. In the event under a Contract Railroad does not receive Project payments within thirty days after all of the documentation of preliminary Eligible Costs required by Article V, Section 5.01 has been submitted to RTA, RTA shall incur the additional obligation

to pay an amount equal to two percentage points over the prime rate charged per annum by The First National Bank of Chicago on 90-day loans to substantial and responsible commercial borrowers of the highest credit standing in effect from time to time (or the maximum lawful rate, whichever is less) on such overdue Project payments for the period of time during which they are overdue.

ARTICLE IX

Representations and Warranties of Railroad and Opinion of Counsel

9.01 Railroad's Warranties with Regard to Materials, Workmanship and Permits. Railroad warrants to RTA that all materials, supplies, equipment and products furnished under each Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with this Agreement. Railroad warrants that Railroad has or will obtain all licenses, permits or other authorizations required to meet the obligations assumed hereunder and under any Contract.

9.02 Railroad's Representations. Railroad hereby represents and warrants to RTA as follows:

1. Railroad is a corporation (i) duly organized, validly existing and in good standing under the laws of its state of incorporation, and (ii) duly qualified to do business and in good standing in the State of Illinois.
2. The execution, delivery and performance of this Agreement by Railroad has been duly authorized by all requisite corporate action of Railroad.
3. No consent to or approval of the transactions contemplated hereby by Railroad's stockholders is required by law.
4. Neither the execution or the delivery of this Agreement, nor the fulfillment of or compliance with the terms hereof by Railroad, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, the Certificate of Incorporation or By-Laws of Railroad or any judgment, decree, mortgage, indenture, agreement or instrument which is or may become applicable to Railroad.
5. All government and other approvals required to permit the performance by Railroad of its obligations under this Agreement have been obtained or will be obtained.
6. There are no actions, suits or proceedings of any kind pending or, to the knowledge of Railroad threatened against or affecting Railroad before any court, administrative agency or other body which would materially and adversely affect the performance of Railroad's obligations under this Agreement.

7. Railroad is not included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standards Provisions.

9.03 Opinion of Counsel. When this Agreement is executed by Railroad, Railroad will furnish RTA with an opinion of Railroad's counsel, dated the date on which this Agreement is executed by Railroad and to the effect that (i) Railroad is a corporation duly organized and existing and in good standing under the laws of its jurisdiction of incorporation; (ii) Railroad is qualified to transact business in, and is in good standing under the laws of, the State of Illinois; (iii) the execution, delivery and performance of this Agreement by Railroad has been duly authorized by all requisite corporate action of Railroad; (iv) this Agreement has been duly executed and delivered by Railroad and, assuming due execution and delivery by RTA, constitutes a valid and binding obligation of Railroad enforceable in accordance with its terms; (v) compliance by Railroad with the terms and conditions of this Agreement will not result in a breach of, or default under, any judgment, decree, mortgage, indenture or other agreement

applicable to Railroad known to such counsel; (vi) to the best of the knowledge and belief of such counsel, there is no action, proceeding, litigation or investigation pending or threatened against Railroad before any court or by or before any governmental authority which would materially adversely affect the ability of Railroad to perform its undertakings set forth in this Agreement; and (vii) all governmental and other approvals required to permit the performance by Railroad of its obligations under this Agreement have been obtained or, if not, such opinion shall specify all such approvals which Railroad must obtain in order to perform Railroad's obligations under this Agreement.

9.04 RTA's Representations. RTA hereby represents and warrants to Railroad as follows:

1. RTA is a municipal corporation duly organized, validly existing and in good standing under the Constitution and laws of the State of Illinois and has the power and authority to execute this Agreement and to perform its obligations hereunder.
2. The execution, delivery and performance of this Agreement by RTA has been duly authorized by all requisite action of RTA and of any other authority, or such authorization will be promptly sought.

3. This Agreement has been duly executed and delivered by RTA and constitutes a valid and binding obligation of RTA enforceable in accordance with its terms.
4. Neither the execution or the delivery of this Agreement, nor the fulfillment of or compliance with the terms hereof, by RTA, will violate or conflict with the Constitution or laws of the State of Illinois or any subdivision thereof, or conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under any judgment, decree, agreement or instrument which is applicable to the RTA.
5. All government and other approvals required to permit the performance by RTA of its obligations under this Agreement (except for differences between grant applications of RTA to UMTA or IDOT and the estimated costs set forth in Section 1.01 hereof) have been obtained or will have been obtained prior to the required date of payment of Project Funds to Railroad.
6. There are no actions, suits or proceedings of any kind pending or, to the knowledge of RTA threatened against or affecting RTA before any court, administrative agency or other body which could materially and adversely affect the performance of RTA's obligations under this Agreement, except for the matters described in a letter of even date herewith from RTA's counsel to Railroad.

ARTICLE X

Government Grants

Railroad will use its best efforts to assist RTA

in obtaining a grant or grants of funds from UMTA and IDOT in an aggregate amount equal to all or a portion of the total Grant herein provided for. Railroad agrees to amend this Agreement, to enter into additional agreements, and to take all action which may be required by the governmental authority or authorities proposing to make any such grant or grants and as directed by RTA (or to the extent necessary to facilitate any reasonable alternative financing arrangement proposed by RTA), provided that such amendment, agreement or action is without additional cost to Railroad and that RTA shall indemnify Railroad and hold it harmless from any and all losses, additional costs and obligations of whatever kind or nature (including, but not limited to, the additional cost of labor protection) then or thereafter arising from or related to any such amendment, agreement or action taken by Railroad as directed by the RTA, and provided further that, unless Railroad shall have first consented thereto in writing, Railroad shall have no obligation to take any action materially modifying the manner and time it receives payments of the Project Funds from RTA hereunder. Such amendments, agreements and actions may relate to, but are not

limited to: additional or different audits and access to records and information, and inspections, by RTA, UMTA, IDOT, EEOC or the Illinois FEPC.

ARTICLE XI

Equal Employment Opportunity and Fair Employment Practices

11.01 Compliance with Act. Railroad agrees that it will, with respect to its obligations hereunder and under each Contract, comply with the provisions of Title VI of the United States Civil Rights Act of 1964 (P.L. 88-352, 78 Stat. 253, 42 U.S.C. 2000e et seq.), as the same may be amended, and with the Illinois Fair Employment Practices Act (Ill. Rev. Stat. (1973), Ch. 48, §§851-867), as the same may be amended, and with regulations promulgated thereunder, and Railroad shall require all of its subcontractors and suppliers to so comply during the period they are performing services or providing supplies pursuant to this Agreement or a Contract.

11.02 Affirmative Action Program. Before the date this Agreement becomes binding upon the RTA and Railroad,

Railroad shall have filed with the Fair Employment Practices Commission and RTA an affirmative action program for employment with respect to its employees performing any work hereunder or under any Contract. Such program shall insure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, national origin, or ancestry, and such affirmative action program will include provisions relating to hiring, upgrading, demotion, transfer, recruitment, recruitment advertising, selection for training and rates of pay or other forms of compensation. Railroad hereby agrees that throughout the period of use of the Project Facilities (as defined in Article VI) it will fully comply with such program and shall provide RTA with all information reasonably requested by it pursuant to the requirements of Section 4 and 4A of the Illinois Fair Employment Practices Act (Ill. Rev. Stat. (1973), Ch. 48, §§854-854A), as the same may be amended. No discrimination in any employment by Railroad shall be made in any term or aspect of employment because of race, religion, national origin, sex or political reasons or factors, and Railroad shall require all of its subcontractors and suppliers to comply with this Article.

11.03 Chicago Plan. No construction contract or subcontract shall be let by the RTA or Railroad, or by contractors or subcontractors of either of them, unless such contract or subcontract complies in all respects to the extent required by law or by UMTA with the "Chicago Plan" as set forth in volume 41 of Code of Federal Regulations, Part 60-11 (1977), except that §60-11.23(2) thereof shall be deemed to be corrected to change the acceptable minimums with respect to operating engineers to: calendar year 1974, 8.3-10.1%; 1975, 10.2-11.9%; 1976, 12.0-13.8%; 1977, 13.9-15.6%; and 1978, 15.7% and above.

ARTICLE XII

Labor Protection

12.01 Labor Protection and Labor Protection Costs.

(a) Pursuant to Sections 2.15 and 2.16 of the Regional Transportation Authority Act ("Act"), RTA agrees that it will have financial responsibility for, and that Railroad will have no financial responsibility for, the fair and equitable protection of employees of Railroad who are adversely affected by action(s) initiated by or taken at the direction of RTA pursuant to this Agreement in the event

such action(s) of RTA cause claims which are allowed under the terms of existing agreements covering employees of Railroad negotiated pursuant to Section 13(c) of the Urban Mass Transportation Act of 1969, as amended [49 U.S.C. §1609(c)] and/or Section 405(b) of the Rail Passenger Service Act of 1970, as amended [45 U.S.C. §565(b)] or any existing agreement covering employees of Railroad or agreement required to be entered into pursuant to said existing agreement. RTA will pay all claims allowed pursuant to said labor protection agreements under the aforementioned circumstances, but all other costs and obligations arising from the terms of said labor protection agreements shall be borne by and be the exclusive obligation of Railroad. Nothing in this paragraph shall be construed to limit RTA's other duties, obligations or financial responsibilities under Sections 2.15 or 2.16 of the Act.

(b) Railroad will, pursuant to Section 2.16(b) of the Act, either on behalf of or jointly with RTA, negotiate with the accredited representatives of the employees of Railroad authorized to act for them, such labor protective arrangements as are required by the Act in the event existing agreement(s) are not or cannot be utilized pursuant to

paragraph 12.01(a) hereof. Said labor protection agreements shall cover employees of Railroad who may be adversely affected by actions of RTA specified in paragraph 12.01(a). RTA and Railroad shall have the same financial responsibilities as provided in paragraph 12.01(a). Nothing in this paragraph shall be construed to limit RTA's other duties, obligations or financial responsibilities under Section 2.15 or 2.16 of the Act. Railroad shall, to the fullest extent feasible, cooperate with RTA in the administration and implementation of any labor protection agreement arising from the application of this Article. Reasonable additional costs of administration and implementation shall be compensated by RTA. Railroad further agrees that, pursuant to Section 2.16(b) of the Act, if agreement cannot be reached on the terms of such protective arrangement, any party may submit any matter in dispute to arbitration. In such arbitration, each party shall have the right to select one nonvoting arbitration board member. An impartial arbitrator will be selected by the American Arbitration Association and appointed from a current listing of the membership of the National Academy of Arbitrators, upon request of any party. Unless otherwise specified by the parties, the following procedure in interest arbitration shall be followed:

The party requesting arbitration shall name its arbitrator at the time the request for arbitration is made. Within five working days after receipt of such request, the other party shall name its arbitrator. Within seven working days thereafter, the two arbitrators or their representatives shall meet to select the impartial chairman of the Board of Arbitration. Should the two arbitrators be unable to agree upon the appointment of a third arbitrator within ten working days after the second of the arbitrators was named, then either party to the arbitration may request the American Arbitration Association to furnish a list of five arbitrators who are currently available to serve from which the third member shall be selected to serve as Chairman. The list requested shall be composed of arbitrators who are experienced in interest arbitration. Within seven days after the receipt of the list, the arbitrator shall be selected from the panel by each party alternately striking a name until only one name remains. The order of striking shall be determined by the toss of a coin.

The impartial arbitrator's decision shall be final and binding on all parties. Each party shall pay an equal share of the impartial arbitrator's fees and expenses.

(c) In the event an adversely affected employee of Railroad makes a claim and elects to take protection more favorable or other than any allowed under any existing agreement made or entered into pursuant to paragraphs 12.01(a) and 12.01(b) hereof, and pursuant to an agreement hereafter entered into by Railroad without RTA's participation or

approval which agreement or claim does not arise from action(s) initiated by or taken at the direction of RTA, RTA shall have no financial responsibility for said claim.

(d) In the event an employee of Railroad who is adversely affected by action(s) initiated by or taken at the direction of RTA makes a claim and elects to take protection more favorable or other than any allowed under any existing agreement made or entered into pursuant to paragraphs 12.01(a) and 12.01(b) hereof, and pursuant to an agreement hereafter entered into by Railroad without RTA's participation or approval which agreement did not arise from action(s) initiated by or taken at the direction of RTA, then RTA will have financial responsibility for such portion of the fair and equitable protection of employees as RTA would have paid under existing agreements made and entered into pursuant to paragraphs 12.01(a) and 12.01(b) hereof.

12.02 Arbitration Costs. In any arbitration arising from labor protection agreements specified in paragraphs 12.01(a) and 12.01(b) interpreting and/or applying terms and conditions specified therein, or in an arbitration to determine terms and conditions to be contained in such

agreements pursuant to Section 2.16(b) of the Act, the costs of Railroad shall be divided equally between RTA and Railroad.

12.03 Labor Law Compliance. Railroad will, with respect to Railroad's obligations hereunder, comply with all applicable requirements of Federal and State labor laws, including, without limitation, laws relating to minimum wages, limitations upon employment of minors, minimum fair wage standards for minors, and payment of wages due employees and regulations established according to law to protect the health and safety of employees.

12.04 Non-Interference with Labor Agreements. Nothing in this Agreement shall be applied or construed to authorize or require conduct which violates any of Railroad's labor agreements or, except to the extent Railroad is reimbursed therefor, which requires payment by Railroad of any penalty or payment pursuant to such agreements; provided, however, that Railroad will not directly or indirectly propose any new provision or change in any existing provision, in such agreements which would, as compared with such agreements in effect on June 30, 1975, increase any prohibition against conduct that may be undertaken or required by RTA

pursuant to this Agreement. If RTA proposes a procedure to be followed, or insists that outside contractors be used, implementation of which would violate any of Railroad's labor agreements, Railroad will use good faith efforts in informal negotiations (but without any obligation to institute procedures under Section VI of the Railway Labor Act) to obtain a modification or waiver of the applicable provisions of such agreements to permit such change to be implemented in accordance with this Section.

ARTICLE XIII

Miscellaneous Provisions

13.01 Permitted Performance Variations. The failure of Railroad to perform, in whole or in part, any of the obligations of Railroad under this Agreement or any Contract, by reason of the occurrence of fire, flood, explosion, disaster, strike or labor work stoppage, materials unavailability or any other cause beyond the reasonable control of Railroad (herein called a "Force Majeure Occurrence") shall be excused for all purposes (including times of performance), provided that Railroad (i) shall promptly begin work when the materials become available and promptly

undertake and complete the repair, restoration, or replacement of any property which is necessary for the performance of the Railroad's obligations hereunder, and which is damaged or destroyed as a result of a Force Majeure Occurrence; and (ii) in any event shall resume normal performance of Railroad's obligations hereunder, as soon as reasonably possible following the cessation of, or the completion of repairs, restoration or replacement made necessary by, a Force Majeure Occurrence.

13.02 Third Parties. This Agreement is not intended to and shall not be construed or applied to create any rights in any person or entity not a party hereto.

13.03 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and assigns of Railroad and RTA. Any successor to Railroad's rights under this Agreement (except a successor resulting from a merger, consolidation, or sale or lease of all or substantially all of Railroad's railroad assets approved by the Interstate Commerce Commission) must be approved by RTA and any successor will be required to accede to all of the terms, conditions and requirements of this Agreement as a condition precedent to such succession.

13.04 Governing Law. This Agreement shall be governed by the laws of the State of Illinois.

13.05 Headings. The headings of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement.

13.06 Amendments. No modification, addition or amendment to this Agreement shall be effective unless and until such modification, addition or amendment shall be reduced to a writing executed by the authorized officers or agents of each party.

13.07 Notices. Except as otherwise specified in this Agreement, all requests, notices, demands, authorizations, directions, consents or waivers or other documents required or permitted under this Agreement shall be in writing and shall be delivered in person to, or deposited postage prepaid in the registered or certified mails of the United States addressed to RTA at:

REGIONAL TRANSPORTATION AUTHORITY
P.O. Box 3858
Chicago, Illinois 60654

Attn: Director of Transportation

or to Railroad at:

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY
400 West Madison Street
Chicago, Illinois 60606

Attn: Director of Commuter Services

or at such other address as either party may at any time or from time to time designate for itself in writing. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a party when received at its address set forth or designated as above provided. A copy of each notice to RTA shall be provided to: Jeremiah Marsh, Esq., Hopkins, Sutter, Mulroy, Davis & Cromartie, One First National Plaza, Chicago, Illinois 60603. A copy of each Notice to Railroad shall be provided to its Vice President-Law addressed to Railroad, as shown above, Attention: Vice President-Law.

13.08 Conflict of Interest. Railroad warrants and represents that it has not paid and agrees not to pay any bonus, commission, fee or gratuity to any employee or official of RTA for the purpose of obtaining this Agreement. In addition to the obligations imposed by Section 3 of "An Act to Prevent Fraudulent and Corrupt Practices in the Making or

Accepting of Official Appointments and Contracts by Public Officers," approved April 9, 1972, as amended (Ill. Rev. Stat. ch. 102, ¶3), no officer, director, employee or professional consultant or advisor of or to RTA shall be admitted by Railroad to any financial share of this Agreement or to any financial benefit arising therefrom. RTA warrants and represents that neither it nor any officer, director, or employee of RTA, nor (to RTA's knowledge or belief) any professional consultant or advisor of or to RTA has done any act or omission which is in violation of the Act identified in the preceding paragraph and which is in any way related to this Agreement.

13.09 Prohibited Interests. No member or delegate to the Congress of the United States, and no member of the Illinois General Assembly, shall be admitted to any share or part of this Agreement or any Contract or to any benefit arising therefrom.

13.10 Severability. The parties agree that if any provision of this Agreement is held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if such remainder would then continue to

conform to the purposes, terms and requirements of this Agreement and applicable law.

13.11 Performance Bonds. Railroad agrees to require that each subcontractor performing work on the Projects, shall furnish a performance bond in an amount equal to at least one hundred percent (100%) of the contract price as security for the faithful performance of the contract.

13.12 Cooperation in Connection with Inspection.

(a) In connection with any inspection under this Agreement, Railroad agrees to cooperate fully by making available reports of all prior inspections (including quality control and safety) and refurnishing such other reports as may be reasonably required by RTA, UMTA and IDOT. All such inspections shall be performed without disruption or interference with service provided or supported by this Agreement. The results or conclusions of such inspections, tests, and reports shall not be construed as altering in any way Railroad's responsibility to maintain and repair such facilities, maintain its work schedule, or any other obligation assumed by Railroad hereunder.

(b) RTA's authorized representatives shall have the right and privilege from time to time, or on a continuing basis, during normal business hours, to enter upon any or all lands and properties of Railroad on which the Projects are located, for the purpose of inspecting and examining the same. All such inspection conducted on or from locations open to the general public may be performed with or without advance notice to, or supervision by, Railroad. All other inspections shall be with advance notice to Railroad, and subject to the right of Railroad to require supervision where appropriate for safety reasons. Such supervision shall be provided promptly and shall not unreasonably delay, or interfere with, the initiation or conduct of the inspection.

(c) In the event any officer, employee, consultant, contractor or invitee of the RTA enters upon the property of Railroad in connection with the inspection provided herein, RTA shall indemnify and save harmless the Railroad against and from all liability, obligations, damage, penalties, claims, cost and expense, including attorneys' fees, arising as a result of any act or omission of said officers, employees, consultants or invitees (including employees and con-

sultants of UMTA and IDOT) of RTA while upon Railroad's property.

13.13 Indemnification and Insurance. (a) Railroad agrees to save harmless and indemnify RTA from any and all losses, expenses, damages (including loss of use), demands and claims resulting from injuries to persons and damage to property occurring as a result of this Agreement and any Contract, except as provided in the last paragraph of Section 13.12, and shall defend or provide for defense of any suit or action, whether at law or in equity, brought against RTA based on any such alleged injury (including death) or damage arising out of work or services performed under this Agreement or any Contract by an act or omission of Railroad's officers, employees, consultants, contractors or invitees, except as provided in the last paragraph of Section 13.12, and shall pay all damages, judgments, costs and expenses, including attorneys' fees, in connection with said demands and claims resulting therefrom, except this clause shall not apply in relation to acts of RTA, its Directors, agents and employees, of willful and wanton negligence or misconduct, or to criminal acts or omissions in the performance of their duties, or as to matters as to which they have not acted in

good faith, or in a manner they reasonably believe to be in, or not opposed to, the best interests of RTA.

(b) Railroad will use its best efforts to keep in full force and effect insurance coverage of the same type, character and coverage as that maintained by it as of June 30, 1975 with respect to its other railroad property, provided that Railroad may at its option and expense expand or improve such coverage or increase its deductible.

13.14 Non-Waiver. Railroad agrees that in no event shall any action, including the making by RTA of any payment under this Agreement or any Contract, constitute or be construed as a waiver by RTA of any breach or covenant or any default on the part of Railroad which may then exist and any action, including the making of any such payment by RTA, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to RTA in respect of such breach or default. The remedies available to RTA under this Agreement are cumulative and not exclusive. The waiver or exercise of any remedy shall not be construed as a waiver of any other remedy available hereunder or under general principles of law or equity.

IN WITNESS WHEREOF, Railroad and RTA have executed
this Agreement on the respective dates written below.

Michael J. B.

REGIONAL TRANSPORTATION AUTHORITY

By

Milton Pikarsky

Signed on this 13 day of January
1978

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

ATTEST:

By

Shane Fokla-Rausch

Signed on this 13th day of January
1978

PROJECT CONTRACT

This Project Contract, entered into this ____ day of _____, 197_, by and between the Regional Transportation Authority ("RTA") and the Chicago and North Western Transportation Company, a Delaware corporation, a rail carrier authorized to provide mass public transportation within the State of Illinois ("Railroad").

WHEREAS, RTA and Railroad entered into a Commuter Improvement Grant Agreement ("Grant Agreement") on _____, 1977, by which RTA agreed to cause to be funded in an amount not in excess of \$17,000,000, and Railroad agreed to perform, such of the improvement projects listed in Section 1.01 thereof as might subsequently be selected by subsequent agreement and incorporated in this, or one or more other, Project Contracts;

WHEREAS, funding for the Project has been made available through financial assistance provided by UMTA and/or IDOT pursuant to RTA's application (Project No. IL-03_____) to UMTA and RTA's application (Project No. CAP-__-__Fed) to IDOT;

WHEREAS, Railroad and RTA have selected in accordance with Section 1.02 of the Grant Agreement the work described in Section 1 hereof as a Project to be performed pursuant to the Grant Agreement;

NOW, THEREFORE, it is hereby agreed that:

1. The Project. The Project consists of the work generally described in Item No. _____ in Section 1.02 of the Grant Agreement, and more particularly described, together with an itemized estimate of costs, in Exhibit A hereto. Railroad shall perform, and RTA shall pay for Railroad's performance of, the Project, in accordance with Exhibit A, the Grant Agreement and this Project Contract, and the Project shall be completed not later than _____, 19__.

2. Definitions. All words defined in the Grant Agreement shall have the same meaning when used herein.

3. Design and Construction. Railroad shall prepare, or cause to be prepared, and shall submit to RTA for approval as soon as reasonably possible after the date of

this Agreement, the following documents: designs, surveys, plans, estimates (including manpower requirements), working drawings and specifications as needed for performance of the Project. RTA may require changes in such documents as a condition to granting its approval. These documents shall be the property of RTA upon receipt of them by RTA. Railroad shall perform the Project in accordance with designs, surveys, plans, estimates (including manpower requirements), working drawings and specifications approved by RTA under this Section.

4. Work Forces. (a) Subject to the provisions of this Section and to the provisions of the Grant Agreement, Railroad may use its own forces or hire one or more independent contractors to perform the Project. When Railroad elects to hire an independent contractor to perform any part of the Project, bidding procedures shall be followed when and as required by the Grant Agreement. When competitive bidding procedures are used, RTA may direct Railroad to reject any or all bids received and to take new bids, or may approve the award of a contract or contracts. No contract shall be awarded without the written approval of RTA.

(b) Every contract between Railroad and a subcontractor shall be executed in such form as RTA may approve, and shall comply in all respects with applicable government rules and regulations, including without limitation rules and regulations of UMTA and IDOT.

5. Materials. RTA may purchase all or part of the materials required to perform the Project. All such materials shall, as a minimum, comply with the most recent specifications for such materials (as of the date of purchase) issued by the American Railway Engineers Association and the Association of American Railroads, and shall be compatible with Railroad's existing plant and equipment. Railroad shall use such materials purchased by RTA to perform the Project. To the extent RTA does not purchase the materials required to perform the Project, Railroad shall purchase them and be reimbursed in accordance with the procedures contained in the Grant Agreement. If Railroad has sufficient inventory of a material to perform previously scheduled projects (including freight projects) and this Project, and if the lowest competitive bid price received by Railroad in response to a request for bids issued by Rail-

road exceeds Railroad's replacement cost of inventoried materials or supplies, all outside bids shall be rejected, such materials or supplies shall be used from Railroad's inventory, and RTA shall pay for such materials at Railroad's replacement cost for such materials or supplies.

6. Permits. Railroad shall obtain all permits, licenses, consents and other approvals required for the performance of the Project.

7. Payment. The estimated cost of the Project (including the cost of materials to be purchased by RTA) is \$ _____, and engineering costs of \$ _____, as shown in Exhibit A attached. RTA shall reimburse Railroad in accordance with the Grant Agreement. RTA and Railroad shall cooperate and use their best efforts to cause the Project to be performed at the lowest overall cost practicable.

8. Maintenance of Facilities. Except as may be otherwise provided by written agreement between the parties, Railroad shall maintain the Project Facilities, or cause them to be maintained, in a safe and operable condition in accordance with normal railroad industry procedures throughout their use by Railroad for Commuter Rail Service. This Section shall not be construed to affect any other obliga-

tions Railroad may have under any other agreement with RTA or otherwise with respect to maintenance of the Project Facilities.

9. Warranty of Construction, Material and Workmanship. For a period of one year from the date of completion of the Project, as evidenced by the date of final acceptance of the Project by RTA, Railroad warrants that the Project conforms to the requirements of this Project Contract and the Grant Agreement and is free of any defect of equipment, material or workmanship performed or furnished by Railroad or any of its subcontractors or suppliers. Railroad shall remedy at its own expense any such failure to conform to this warranty.

10. Equal Employment Opportunity. In connection with the execution and performance of this Agreement, Railroad shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Railroad shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such actions

shall include, but shall not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.

11. Air Pollution. Railroad and its subcontractors and suppliers must submit evidence to RTA that the governing air pollution criteria will be met. This evidence and related documents will be retained by RTA for on-site examination by UMTA.

12. Project Sign. Railroad shall erect and maintain signs satisfactory to UMTA, IDOT and RTA, identifying the Project and indicating Federal, State of Illinois and RTA participation. Such signs shall conform to the sign specifications in Exhibit B.

13. Minority Business Enterprise. In connection with the performance of this Project Contract, Railroad will cooperate with RTA in meeting its commitments and goals with regard to the maximum utilization of minority business enterprises and will use its best efforts to insure that

minority business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Project Contract.

14. Wage Rates. Minimum wages to be paid in performance of the Project, except with respect to employees whose wage rates are set by collective bargaining agreements entered into pursuant to the National Railway Labor Relations Act, have been established by the U.S. Department of Labor and are shown in Exhibit C. If any employees working at the site of the Work are covered by the wage rates shown in Exhibit C, such wage rates must be prominently posted at the site of the Project. In performance of the Project, Railroad shall comply with the provisions set forth in Exhibit D.

15. Assignment. This Project Contract shall be binding upon, and inure to the benefit of, the respective successors and assigns of the parties hereto, provided, however, that this Project Contract may only be assigned together with all other Project Contracts and the Grant Agreement.

16. Opinion of Counsel. Upon execution hereof by Railroad, Railroad has furnished the RTA with an opinion of Railroad's counsel, dated the date on which this Agreement is executed by Railroad and to the effect that (i) the execution, delivery and performance of this Project Contract by Railroad has been duly authorized by all requisite corporate action of Railroad; (ii) this Project Contract has been duly executed and delivered by Railroad in accordance with its terms; (iii) the compliance by Railroad with the terms and conditions of this Project Contract will not result in breach of, or default under, any judgment, decree, mortgage, indenture or other agreement applicable to Railroad known to such counsel; (iv) all approvals as may be required to permit the performance by Railroad of its obligations under this Project Contract have been obtained; and (v) except as previously disclosed to RTA in writing, such counsel has no knowledge of any litigation or proceeding pending or threatened against Railroad which could materially and adversely affect the performance by it of any of its obligations under this Project Contract.

17. Agreement Period. The term of this Project

Contract shall begin on the date hereof, and shall end on the completion of all obligations hereunder.

18. Incorporation of Grant Agreement Provisions.

The following Sections of the Grant Agreement are incorporated herein by reference and made a part hereof: 13.04, 13.05, 13.06, 13.07, 13.08, 13.10.

IN WITNESS WHEREOF, RTA and Railroad have caused this Agreement to be executed on the day and year first above written.

REGIONAL TRANSPORTATION AUTHORITY

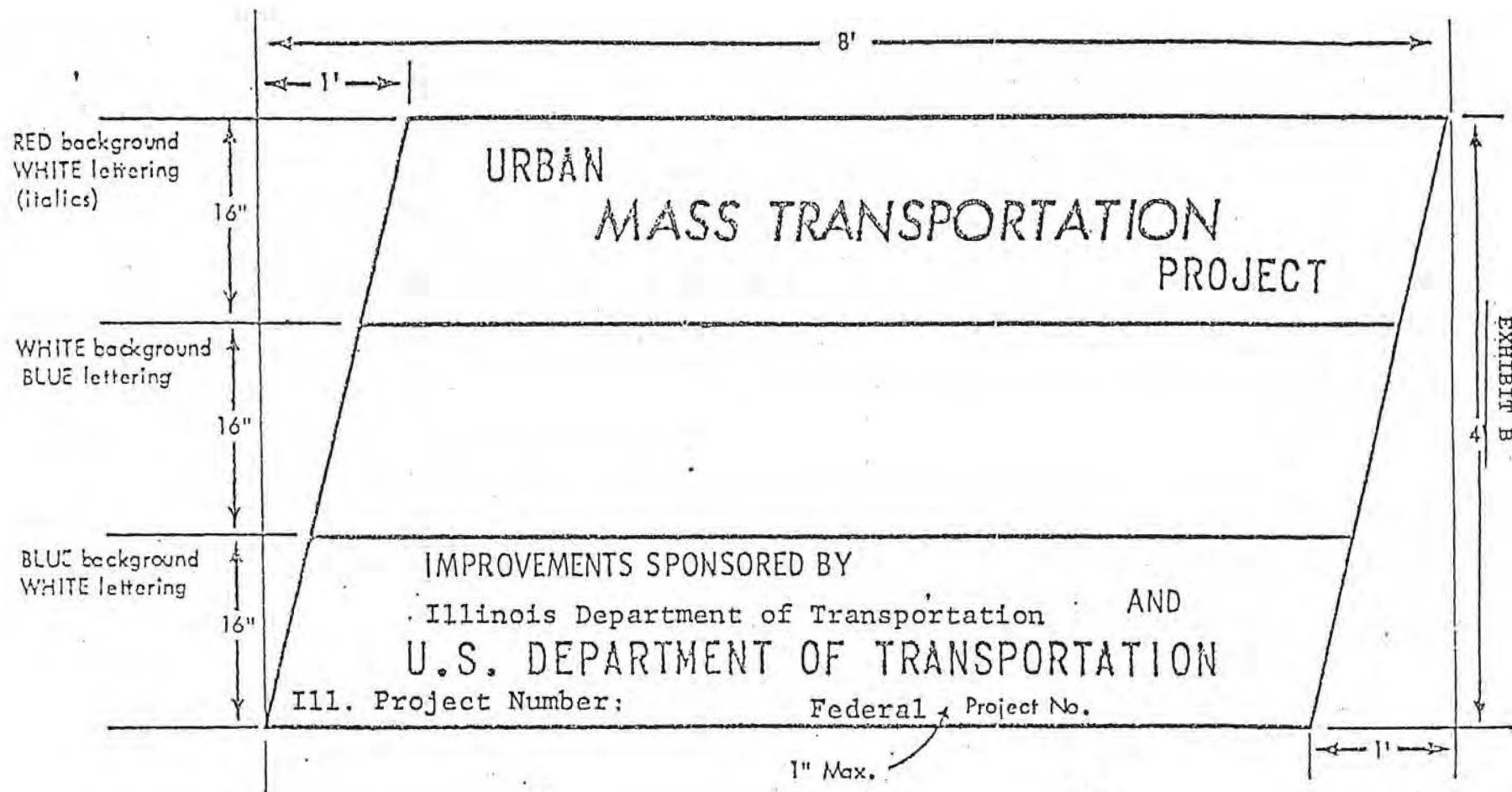
ATTEST:

By: _____
Chairman, Board of Directors

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

ATTEST:

By: _____



Lettering: Futura Bold Italic (top)
Futura Bold (center)
Futura Demi Bold (bottom)

EXHIBIT C

WAGE RATES

STATE: Illinois

COUNTY: Cook

DECISION NUMBER: IL76-2122

DATE: Date of Publication

Supersedes Decision No. IL76-2008, dated February 2, 1976, in 41 RR 5531

DESCRIPTION OF WORK: Building (Including Residential), Heavy and Highway Construction.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & V	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	\$11.51	.01	.72		.12
BOILERMAKERS	10.55	.65	1.00	.50	.03
BRICKLAYERS & STONEMASONS	10.20	.65	.70		.03
CARPENTERS:					
Building, Heavy & Highway					
Carpenters & Soft Floor Layers	10.55	.79	.80		.06
Millwrights & Piledriversmen	10.55	.78	.80		.06
CEMENT MASONS:					
Building	10.05	.82	.85		.05
Heavy & Highway	10.05	.82	.85		.05
ELECTRICIANS	10.75	8.364	8.264	.65	.964
ELEVATOR CONSTRUCTORS:					
Constructors	11.91	.545	.35	44+a+b	.02
Helpers	704JR	.545	.36	44+a+b	.03
Helpers (Prob.)	504JR				
GLAZIERS	9.57	.26	.59		.01
IRONWORKERS:					
Hot Metal Erector	8.10	.50	.575		.10
Structural & Reinforcing	11.25	1.09	1.13		.09
Ornamental	11.00	.65	.575		.10
Figgers & Machinery Movers	9.20	.50	1.225		.15
Red Book Fence Erector	7.95	.65	.575		.10
LATHERS	9.81	.58	.445		.015
LEAD BURNERS	9.25	.35			.01
LIKE CONSTRUCTION:					
Lineman	11.32	.51	.41	.01	.11
Groundmen	8.80	.51	.41	.01	.11
MARBLE SETTERS	10.52	.50		.60	
MARBLE SETTERS' HELPERS & POLISHERS	9.00	.62		.33	
PAINTERS:					
Brush, Decorators, Paperhangers & Tapers	9.15	.575	.45		.013
PLASTERERS	9.60	.60	.81		.045
PIPEFITTERS	11.50	.70	.05		.02
PLUMBERS	11.42	.70	.60		.10
POINTERS, CAULKERS & CLEANERS	10.60	.80	.05		
ROOFERS:					
Composition & Waterproofers	11.00	.96	.80		.02
Slate & Tile	11.09	.96	.50		.02
SHEET METAL WORKERS	11.45	.50	.59	.25	.05
SPRINKLER FITTERS	11.10	.75	.90		.15

DECISION NO IL76-2122

SURVEY CREW:

Layout Technician

Instrument Man

Rodman

TERRAZZO WORKERS

TILE SETTERS

TILE SETTERS' HELPERS

TRUCK DRIVERS:

Building & Residential

2-3 Axle Trucks

4-Axle Trucks

5-Axle Trucks

6-Axle Trucks

Heavy & Highway

2-3 Axle Trucks

4-Axle Trucks

5-Axle Trucks

6-Axle Trucks

WELL DRILLERS:

Driller, Pump Installer, Welder

& Mechanic

Tool Dresser, Halper

PAID HOLIDAYS: (WHERE APPLICABLE)

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day;

E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

- Six Paid Holidays A. through F.
- Employer contributes 4% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 2% of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years.
- Nine Paid holidays: A through F plus Washington's Birthday, Good Friday & calendar days prior to the Holiday, and the regular scheduled work days immediately preceding and following the Holiday.
- Per Week Per Employee.
- Per Day

DECISION NO. IL76-2122

LABORERS:CLASS 1Common Laborers, Plasterer
Laborers, Pumps for DeWater-
ing & other Unclassified
LaborersCLASS 2

Cement Gun Laborers

CLASS 3Scaffold Laborers & Chimney
Laborers over 40'CLASS 4Windlass & Cement Gun Nozzle
Laborers - GunniteCLASS 5

Stone Handlers & Derrickmen

CLASS 6

Jackhammermen

CLASS 7Concrete Vibrator, Plumbers
Laborer & Chain Saw OperatorCLASS 8Firebrick & Boiler Setters
LaborersCLASS 9Chimney Laborers on Firebrick,
Caisson Diggers & Well Point
System MenCLASS 10

Boiler Setter Plastic Laborers

CLASS 11

Jackhammer on Firebrick Only

UL-9-LAR-V-7-3

Basic Hourly Rates	Fringe Benefits Payments			
	H & V	Pensions	Vacation	Education and/or Appr. Yr.
\$7.80	.57	1.10		
7.875	.57	1.10		
7.90	.57	1.10		
7.95	.57	1.10		
8.00	.57	1.10		
8.025	.57	1.10		
8.05	.57	1.10		
8.125	.57	1.10		
8.15	.57	1.10		
8.25	.57	1.10		
8.375	.57	1.10		

DECISION NO. IL76-2122

UL-12-220-1

POWER EQUIPMENT OPERATORS:BUILDING & RESIDENTIAL CONSTRUCTIONCLASS ICLASS IICLASS IIICLASS IV

Basic Hourly Rates	Fringe Benefits Payments			
	H & V	Pensions	Vacation	App. Yr.
\$11.25	.65	.85	.40	.05
9.95	.65	.85	.40	.05
8.60	.65	.85	.40	.05
7.55	.65	.85	.40	.05

POWER EQUIPMENT OPERATORS:

CLASS I: Asphalt plant, asphalt spreader, auto-grad, batch plant, Benoto (requires two engineers), boiler & throttle valve, oninson rigs, central redi-mix plant, combination backhoe front end-loader machine, compressor & throttle valve, concrete breaker (truck mounted), conveyor, concrete paver, concrete placer, concrete tower, cranes (all), derricks (all), grader, elevating, grouting machines, highlift shovels or front endloader 2 1/2 yd. & over, hoists, one, two & three drum, hoists, two & three, drum, hoists, two tugger one floor, hydraulic boom trucks, loco-motives (all), mechanic, motor patrol, pile drivers & skid rig, post-hole digger, pre-stress machine, pump crates dual ram (requiring frequent lubrication & water), pumpcrates, squeeze crates, borow typed pumps, Gyom bulker & pump, rock drill (self-propelled), rock drill (truck mounted), scoopers - tractor drawn, slip form paver, straddle buggies, toumapull, tractor with boom & side boom, trunching machines

CLASS II: Boilers, bulldozers, broom all power propelled, concrete mixer (2 bag & over), conveyor portable, forklift truck greaser engine, highlift shovels or front endloaders under 2 1/2 yd., hoists, automatic, hoists, all elevators, hoists, tugger single drum, rollers, all, steam generators, stone crushers, tractors, all, winch trucks with "A" frame

CLASS III: Air compressor - small 150 & under (1) to 5 not to exceed a total of 300 ft., Air compressor - large over 150, combination - small equipment opr., generators under & over 50 kw, heaters, mechanical, pumps, over 3" (1 to 3 not to exceed a total of 300 ft.), pumps, well points, welding machines (2 through 5), winches, 1/2 small electric drill winches

CLASS IV: Oilers

NOTICES

DECISION NO. IL76-2122

ILL-10-PRO-2-3

POWER EQUIPMENT OPERATORS:
SEWER, HEAVY & HIGHWAY CONST.

	Basic Monthly Rates	Flight Benefits Payment			
		H & V	Passent	Versity	PP-1
CLASS I	\$10.90	.65	.85	.40	.05
CLASS II	10.35	.65	.85	.40	.05
CLASS III	9.60	.65	.85	.40	.05
CLASS IV	8.50	.65	.85	.40	.05
CLASS V	7.50	.65	.85	.40	.05

POWER EQUIPMENT OPERATORS:

CLASS I Asphalt plant, asphalt heater & planer combination, asphalt spreader, autograde, belt loader, caisson rig, central redmix plant, concrete breaker (truck mounted), concrete conveyor, concrete paver over 27 1/2 cu. ft., concrete placer, concrete tube float, cranes, all attachments, cranes, Linden, Pece & machines of a like nature, derricks, traveling, dredges, euclid loader, elevating type, gradall, & machines of a like nature, derricks, all, derrick boats, derricks, travelling, dredges, euclid loader, elevating type, gradall, and machines of a like nature, grader, elevating hoists, 1, 2 & 3 drum, locomotives, all, mucking machine, 1 cu. yd. & over, mucking machine, under 1 cu. yd., piledrivers & skid rig, pre-stress machine, pump cotes dual ram (requiring frequent lubrication & water), rock drill crane type, slip form paver, straddle buggies, tractor w/boom, tractor w/ attachments, trenching machine, underground boring &/or, mining machine under 5 ft., wheel excavator widener (Apsco)

CLASS II Mechanic-welder, batch plant, bituminous mixer, bulldozer, combination backhoe front endloader machine, concrete breaker or hydro-hammer, concrete grinding machine, concrete mixer or paver 73 Series to & including 27 1/2 cu. ft., concrete spreader, concrete curing machine, burlap machine, bolting machine & sealing machine, finishing machine, concrete grader, motor patrol auto patrol, form grader, pull grader, subgrader, highlift shovels or front endloader, hydraulic boom trucks (all attachments), locomotives, dinky, pump cotes, Squeeze cotes, screw type pumps, gypsum bulker & pump, rock drill (self-propelled), roto-tiller, seaman, etc. self-propelled scoops; tractor drawn, self-propelled compactor, spreader, chipstone, etc., scraper, tank car heater, tractor, push, pulling sheeps foot, disc, compactor, etc. tug boats

DECISION NO. IL76-2122

POWER EQUIPMENT OPERATORS (CONT'D)

CLASS III Boilers, boiler & throttle valve, broom, all power propelled, cement supply tender, compressor & throttle valve, concrete mixer (2 bags & over) conveyor, portable, fireman on boiler, forklift trucks, greaser engine, grouting machine hoists, automatic hoists, all elevators, hoists, tugger, single drum, jeep diggers, pipe power saw, concrete, power-driven, pug mills, rollers, all, steam generators, stone crushers, stump machine, winch trucks with "A" frame, work boats, tamper, form motor driven

CLASS IV Air Compressors, all, generators, heaters, mechanical, light plants, all (1 through 5), pumps, all, pumps well joints, tractors, welding machines (2 through 6)

CLASS V Oilers

MODIFICATIONS P. 1

DECISION AL76-1011 - Mod. 1 5 (41 FR-4741 - January 30, 1976) Colbert and Lauderdale Counties, Alabama.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
<u>Change:</u>					
Bollermakers	9.50	.75	1.00		.01
Electricians	9.55	.40	11+.30		11
Cable splicers	9.80	.40	11+.30		11
DECISION AL76-1042 - Mod. 1 6 (41 FR-15239 - April 9, 1976) Madison County, Alabama					
<u>Change:</u>					
Electricians Linemen	9.55	.40	11+.30		11
DECISION AL76-1114 - Mod. 1 1 (41 FR-53239 - December 3, 1976) Lawrence, Linebstone, and Morgan Counties, Alabama.					
<u>Change:</u>					
Electricians	9.55	.40	11+.30		11
Electricians, linemen	9.80	.40	11+.30		11
Cable splicers	9.55	.40	11+.30		11
Groundmen					

MODIFICATIONS P. 2

DECISION AL76-2122 - Mod. #1 (41 FR 43576 - October 1, 1976) Cook County, Illinois	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
<u>CHANGE:</u>					
Bricklayers & Stonemasons	10.66	.70	.75		.03
Glaziers	10.03	.20	.69		.01
Marble Setters	11.50	.70			
Sheet Metal Workers	11.80	.55	.50	.25	.05
Truck Driver - 4-Axle Trucks	8.05	.60	.50		
Power Equipment Operators					
Building & Residential					
Class I	11.25	.75	.85	.40	.05
Class II	9.95	.75	.85	.40	.05
Class III	8.00	.75	.85	.40	.05
Class IV	7.55	.75	.85	.40	.05
Sever, Heavy & Highway					
Class I	10.90	.75	.85	.40	.05
Class II	10.35	.75	.85	.40	.05
Class III	9.60	.75	.85	.40	.05
Class IV	7.50	.75	.85	.40	.05
<u>ADD:</u>					
Wrecking Laborers					
General Laborers	6.47	.57	.85		
Wallmen, Wreckers, Burners	7.12	.57	.85		
& Air Hammer Men	7.47	.57	.85		
Spoke Stack or High Men					

MODIFICATIONS PLANNED

Decision # GA76-1119 - Mod. 1 (41 FA-45800 - October 15, 1976) Richmond County, Georgia	Base Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
<u>Changes:</u>					
Elevator constructors	8.52	.495	.32	41+a+b	.02
Elevator constructors helpers	5.96	.495	.32	41+a+b	.02
Elevator constructors helpers (Probationary)	4.26				
Glaziers	6.15	.30	.30		
Laborers:					
Unskilled	4.10	.15			.05
Air tool (jackhammer, vib.)	4.25	.15			.05
Mason tenders	4.25	.15			.05
Mortar mixers	4.25	.15			.05
Pipelayers (concrete, clay)	4.25	.15			.05
Plasterers tenders	4.25	.15			.05
Lathers	4.30				
Painters:					
Brush & roller	7.10	.30	.30		
Steel & spray	8.10	.30	.30		
Plumbers & Steamfitters	9.33	.50	.45		.03

MODIFICATIONS: P. 2

DECISION #1176-2122 - Mod. #2	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Yr.
41 FR 43576 - October 1, 1976 Cook County, Illinois					
<u>CHANGE:</u>					
Electricians	\$11.25	8.37%	17+6.93%	.80	.92%
Ironworkers:					
Metal Fence Erector	8.30	.50	.675		.10
Ornamental	10.90	.65	.675		.10
Red Book Fence Erector	8.05	.65	.675		.10
Truck Drivers:					
<u>Building & Residential</u>					
2-3 Axle Trucks	9.05	\$23.00	\$27.00		
4-Axle Trucks	9.20	\$23.00	\$27.00		
5-Axle Trucks	9.40	\$23.00	\$27.00		
6-Axle Trucks	9.60	\$23.00	\$27.00		
<u>Heavy & Highway</u>					
2-3 Axle Trucks	8.35	.675	.575		
4-Axle Trucks	8.80	.675	.575		
5-Axle Trucks	9.00	.675	.575		
6-Axle Trucks	9.20	.675	.575		
DECISION #1176-2123 - Mod. #2					
41 FR 44612 - October 8, 1976 DuPage, Grundy, Kane, Kendall, Lake, McHenry, & Will Counties, Illinois					
<u>CHANGE:</u>					
Electricians-DuPage County	\$11.75	4%	7%	8%	.5%
Sheet Metal Workers-DuPage Co	11.35	.40	.45	.20	
Truck Drivers:					
2-3 Axle Trucks	9.05	\$23.00	\$27.00		
4-Axle Trucks	9.20	\$23.00	\$27.00		
5-Axle Trucks	9.40	\$23.00	\$27.00		
6-Axle Trucks	9.60	\$23.00	\$27.00		

EXHIBIT D : LABOR PROVISIONS - CONSTRUCTION(1) Minimum Wages

- (i) All mechanics and laborers employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination of the Secretary of Labor applicable to the project, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination notification shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, nondiscrimination trade or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provision of 29 CFR 5.5(a)(4)(iv). Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.
- (ii) The contracting officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified conformably to the wage determination, and a report of the action taken shall be sent by DOT to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question shall, under the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.

(1) The contracting officer shall require, whenever the minimum wage was prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.

(2) The contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, or any bona fide fringe benefits not expressly listed in section 1(b)(2) of the Davis-Bacon Act, or otherwise not listed in the wage determination decisions of the Secretary of Labor which are incorporated in this contract, only when the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. Whenever practicable, the contractor should request the Secretary of Labor to make such findings before the making of the contract. In the case of unfunded plans and programs, the Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding

DOT may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee, employed or working on the site or the work, all or part of the wages required by the contract, DOT may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payments, advances, or guarantees of funds until such violations have ceased.

(3) Payrolls and Basic Records:

- (i) Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborers or mechanics include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.
- (ii) The contractor will submit weekly a copy of all payrolls to the Public Body for transmission to DOT. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform to the work he performed. A submission of the "Weekly Statement of Compliance" which is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR, Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any ruling by the Secretary of Labor under 29 CFR 5.5(a)(1)(iv) shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of DOT and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

(4) Apprentices and Trainees

- (a) Apprentices. Apprentices will be permitted to work as such only when they are registered individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program registered

with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subparagraph (B) of this paragraph or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The contractor or subcontractor will be required to furnish to the contracting officer written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, for the area of construction prior to using any apprentices on the contract work.

- (B) Trainees. Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and whose paragraph 4(C) of this section is applicable.

- (C) Apprentices and Trainees - Special Provisions. The following contract clauses shall be conditions of each Federal or Federally-assisted construction contract in excess of \$10,000 and the Public Body shall include the clauses, or provide for their inclusion, in each such contract.

(a) The contractor agrees:

- "(i) That he will make a diligent effort to hire for the performance of the contract a number of apprentices or trainees, or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the contract the applicable ratio as determined by the Secretary of Labor;
- (ii) That he will ensure that 25 percent of such apprentices or trainees in each occupation are in their first year of training, where feasible. Feasibility here involves a consideration of the availability of training opportunities for first year apprentices; the hazardous nature of the work for beginning workers; and excessive unemployment of apprentices in their second and subsequent years of training.

- (iii) That during the performance of the contract he will, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of subdivisions (i) and (ii) of this subparagraph.
- (2) The contractor agrees to maintain records of employment of the number of apprentices and trainees, by trade, apprentices and trainees by first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees and journeymen. The contractor agrees to make these records available for inspection upon request of the Department of Labor and the Department of Transportation.
- (3) The contractor who claims compliance based on the criterion stated in paragraph 1(b) of the "Criteria for Measuring Diligent Effort" (attached to this Contract) agrees to maintain records of employment, as described in paragraph 4(c) 2, of this section, on non-Federal and nonfederally assisted construction work done during the performance of this contract in the same labor market area. The contractor agrees to make these records available for inspection upon request of the Department of Labor and the Department of Transportation.
- (4) The contractor agrees to supply one copy of the written notices required in accordance with paragraph 1(c)(2) of the "Criteria for Measuring Diligent Effort" at the request of the Department of Transportation compliance officer. The contractor also agrees to supply at 3-month intervals during performance of the contract and after completion of contract performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen. One copy of the statement will be sent to the Department of Transportation, and one to the Secretary of Labor.
- (5) The contractor agrees to insert in any subcontract under this contract the requirements contained in this paragraph (109(g) 4(c) (1), (2), (3), and (4)). The attachment "Apprentices and Trainees - Implementation Guidelines - Criteria for Measuring Diligent Effort" shall also be attached to each such contract for the information of the contractor. The term "contractor" as used in such clauses in any subcontract shall mean the subcontractor."

- (4) The provisions of this Section (4(C)) shall not apply with regard to any contract, if the Department of Transportation finds it likely that making of the contract with the clauses contained in this section will prejudice the national security.
- (5) Compliance with Copeland Regulations (29 CFR Part 3). The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference.
- (6) Contract termination; default. A breach of clauses (1) through (5) may be grounds for termination of the contract, and for default as provided in 29 CFR 5.6.
- (7) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.
- (8) Violations; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (7), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in subparagraph (7), in the sum of \$15 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (7).
- (9) Withholding for liquidated damages. DOT may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in the clause set forth in subparagraph (8).

- (10) Final Labor Summary. The Contractor and each subcontractor shall furnish to the Public Body, upon the completion of the contract, a summary of all employment, including, for the completed project, the total hours worked and the total amount earned.
- (11) Final Certificate. Upon completion of the contract, the contractor shall submit to the Public Body with the voucher for final payment for any work performed under the contract a certificate concerning wages and classifications for laborers and mechanics, including apprentices and trainees employed on the project, in the following form:

The undersigned, contractor on

(Contract No.)

herby certifies that all laborers, mechanics, apprentices and trainees employed by him or by any subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by each such laborer, mechanic, apprentice or trainee conforms to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and Title _____

- (12) Notice to the Public Body of Labor Disputes. Whenever the contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Public Body.

(13) Disputes Clause.

(1) All disputes concerning the payment of prevailing wages rates or other questions shall be promptly reported to the Public Body for its referral to DOT for decision or, at the option of the Public Body, DOT referral to the Secretary of Labor. The decision of DOT or the Secretary of Labor at the last time, shall be final.

(2) All questions relating to the application or interpretation of the Copeland Act, the Contract Work Hours Standards Act, the Davis-Bacon Act, or Section 18 of the Act shall be sent to DOT for referral to the Secretary of Labor for ruling or interpretation, and such ruling or interpretation shall be final.

(14) Convict Labor. In connection with the performance of work under this contract the contractor agrees not to employ any person who is serving sentence of imprisonment as here laborer. This does not include convicts who are on parole or probation.

(15) Insertion in Subcontracts. The contractor shall insert all construction subcontracts the clauses set forth in sub sections (1) through (15) of this section so that all of the provisions of this section will be inserted in all construction subcontracts of any tier, and such other clauses as the Government may by appropriate instructions require.

EXHIBIT D : LABOR PROVISIONS - CONSTRUCTION(1) Minimum Wages

- (i) All mechanics and laborers employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor applicable to the Project, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics, subject to the provision of 29 CFR 5.5(a)(1)(iv). Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.
- (ii) The contracting officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified conformably to the wage determination, and a report of the action taken shall be sent by DOT to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.

(1) The contracting officer shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.

(2) The contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, or any bona fide fringe benefits not expressly listed in section 1(b)(2) of the Davis-Bacon Act, or otherwise not listed in the wage determination decisions of the Secretary of Labor which are incorporated in this contract, only when the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. Whenever practicable, the contractor should request the Secretary of Labor to take such findings before the making of the contract. In the case of unfunded plans and programs, the Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(3) Withholding

DOT may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee, employed or working on the site of the work, all or part of the wages required by the contract, DOT may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payments, advances, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records

- (i) Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b) (2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a) (1) (iv) that the wages of any laborers or mechanics include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b) (2) (B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.
- (ii) The contractor will submit weekly a copy of all payrolls to the Public Body for transmission to DOT. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform to the work he performed. A submission of the "Weekly Statement of Compliance" which is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR, Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 29 CFR 5.5(a) (1) (iv) shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of DOT and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

(4) Apprentices and trainees

- (a) Apprentices. Apprentices will be permitted to work as such only when they are registered individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program registered

with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subparagraph (B) of this paragraph or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, for the area of construction prior to using any apprentices on the contract work.

- (B) Trainees. Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and where paragraph 4(C) of this section is applicable.
- (C) Apprentices and Trainees - Special Provisions. The following contract clauses shall be conditions of each Federal or Federally-assisted construction contract in excess of \$10,000 and the Public Body shall include the clauses, or provide for their inclusion, in each such contract.

(1) The contractor agrees:

- "(i) That he will make a diligent effort to hire for the performance of the contract a number of apprentices or trainees, or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the contract the applicable ratio as determined by the Secretary of Labor;
- (ii) That he will assure that 25 percent of such apprentices or trainees in each occupation are in their first year of training, where feasible. Feasibility here involves a consideration of the availability of training opportunities for first year apprentices; the hazardous nature of the work for beginning workers; and excessive unemployment of apprentices in their second and subsequent years of training.

- (iii) That during the performance of the contract he will, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of subdivisions (i) and (ii) of this subparagraph.
- (2) The contractor agrees to maintain records of employment of the number of apprentices and trainees, by trade, apprentices and trainees by first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees and journeymen. The contractor agrees to make these records available for inspection upon request of the Department of Labor and the Department of Transportation.
- (3) The contractor who claims compliance based on the criterion stated in paragraph 1(b) of the "Criteria for Measuring Diligent Effort" (attached to this Contract) agrees to maintain records of employment, as described in paragraph 4(C) 2, of this section, in non-Federal and nonfederally assisted construction work done during the performance of this contract in the same labor market area. The contractor agrees to make these records available for inspection upon request of the Department of Labor and the Department of Transportation.
- (4) The contractor agrees to supply one copy of the written notices required in accordance with paragraph 1(c) (1) of the "Criteria for Measuring Diligent Effort" at the request of the Department of Transportation compliance officer. The contractor also agrees to supply at 3-month intervals during performance of the contract and after completion of contract performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen. One copy of the statement will be sent to the Department of Transportation, and one to the Secretary of Labor.
- (5) The contractor agrees to insert in any subcontract under this contract the requirements contained in this paragraph (109(g) 4(c) (1), (2), (3) and (4)). The attachment "Apprentices and Trainees - Implementation Guidelines - Criteria for Measuring Diligent Effort" shall also be attached to each such contract for the information of the contractor. The term "contractor" as used in such clauses in any subcontract shall mean the subcontractor."

- (6) The provisions of this section (4(C)) shall not apply with regard to any contract, if the Department of Transportation finds it likely that making of the contract with the clauses contained in this section will prejudice the national security.
- (5) Compliance with Copeland Regulations (29 CFR Part 3). The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference.
- (6) Contract termination; debarment. A breach of clauses (1) through (5) may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.
- (7) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.
- (8) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (7), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in subparagraph (7), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (7).
- (9) Withholding for liquidated damages. DOT may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in the clause set forth in subparagraph (8).

- (10) Final Labor Summary. The contractor and each subcontractor shall furnish to the Public Body, upon the completion of the contract, a summary of all employment, indicating, for the completed project, the total hours worked and the total amount earned.
- (11) Final Certificate. Upon completion of the contract, the contractor shall submit to the Public Body with the voucher for final payment for any work performed under the contract a certificate concerning wages and classifications for laborers and mechanics, including apprentices and trainees employed on the project, in the following form:

The undersigned, contractor on

(Contract No.)

hereby certifies that all laborers, mechanics, apprentices and trainees employed by him or by any subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and title _____

- (12) Notice to the Public Body of Labor Disputes. Whenever the contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Public Body.

(13) Disputes Clause.

(i) All disputes concerning the payment of prevailing wage rates or classifications shall be promptly reported to the Public Body for its referral to DOT for decision or, at the option of the Public Body, DOT referral to the Secretary of Labor. The decision of DOT or the Secretary of Labor as the case may be, shall be final.

(ii) All questions relating to the application or interpretation of the Copeland Act, the Contract Work Hours Standards Act, the Davis-Bacon Act, or Section 18 of the Act shall be sent to UMTA for referral to the Secretary of Labor for ruling or interpretation, and such ruling or interpretation shall be final.

(14) Convict Labor. In connection with the performance of work under this contract the contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor. This does not include convicts who are on parole or probation.

(15) Insertion in Subcontract Acts. The contractor shall insert all construction subcontracts the clauses set forth in subsections (i) through (15) of this section so that all of the provisions of this section will be inserted in all construction subcontracts of any tier, and such other clauses as the Government may, by appropriate instructions require.

APPENDIX B

Intentionally Omitted

Appendix C
"Costs"

COMMUTER IMPROVEMENT GRANT AGREEMENT

(i) The cost of directly assigned Railroad work forces, including additives applied in accordance with subparagraph (vi), below, and including foremen, project engineers, and supervisors, assigned to the project.

(ii) The cost of Railroad-furnished materials and supplies, including additives applied in accordance with subparagraph (vi), below.

(iii) The cost of renting any equipment, necessary for the Work, from owners other than the Railroad.

(iv) The cost of any independent contractors hired in accordance with this Agreement for performance of the Work.

(v) Reasonable equipment rental fees for each item of Railroad-owned equipment, but excluding small tools, used in the performance of the Work of Railroad, the same to be measured by the formula contained in the General Manager's Association of Chicago Circular G.M.A.-2636-E, and such supplements or reissues thereof as may be adopted pursuant thereto.

(vi) To the actual cost of labor, materials and supplies furnished by Railroad and to the actual cost of materials and supplies furnished by the Authority, additives shall be applied in accordance with rates and rules set forth by the General Manager's Association of Chicago, in its Circular 2710-D, or by any subsequent or successor publication comparable thereto if the aforesaid document is no longer in existence, except that there shall be substituted for the G.M.A. additives for transportation of welded rail, 5% of the actual cost of the rail plus a special rail train service charge from the welding plant to the site of installation in accordance with the applicable tariffs.

(vii) The direct cost of obtaining any necessary building or construction permits.

(viii) The cost of recording instruments of ownership at the Authority's request.

(ix) Sales, use or excise taxes required to be paid by Railroad on Railroad-furnished materials or supplies.

(x) Any costs not specifically listed above which are reasonably incurred by Railroad relative to the said Fixed Facilities and approved by the Authority, provided however that the Authority's approval shall not be required where such cost is less than \$1,000 and the aggregate of all such costs is less than \$10,000.

Pre-Bid Approval

Railroad shall, prior to advertising for any bids for any work to be performed under Section 7.01, submit one copy each of the proposed contract plans, specifications, proposed advertisement for bids, and all related bidding documents to RTA for approval.

Post-Bid Approval

Railroad shall obtain RTA approval prior to making any award, including instances in which Railroad determines that the low bid is not responsive, or that the low bidder is not responsible or should be disqualified for other reasons. To obtain approval, Railroad shall submit to RTA the following items:

1. Certified copy of the advertisement for bids;
2. A tabulation of bids;
3. If Railroad recommends an award to a bidder other than the low bidder, a full statement of the reasons for not making an award to the low bidder, together with any supporting documentation; and
4. An opinion of Railroad's attorney with respect to the legality, under State and local law, of the proposed award.

Post-Bid Requirements

Within thirty (30) days after award of any contract under Section 7.01, Railroad shall submit one copy each of the following to RTA except as specifically waived by the RTA:

1. The executed contract between Railroad and the contractor;
2. The itemized bid proposal (if not included in the contract);
3. Assurance that Performance Bonds, if required, will be provided;
4. Waivers of liens, when applicable.

Before performance under any such contract commences, Railroad shall submit to the RTA any requested Certificate of Insurance.

EXHIBIT B

AMENDED AND RESTATED
PURCHASE OF SERVICE AGREEMENT
BETWEEN
THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION
AUTHORITY
AND
THE UNION PACIFIC RAILROAD COMPANY
January 1, 2010 – December 31, 2016

THIS AMENDED AND RESTATED AGREEMENT entered into this 28th day of January 2010, by and between the COMMUTER RAIL DIVISION (“**CRD**”) created by Article III, Section 3B.01 of the Regional Transportation Authority Act, as amended, and the UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (“**Railroad**”) shall amend and restate the Original Agreement, as defined in Article I. This Amended and Restated Agreement shall be effective January 1, 2010.

Preliminary Statement

Railroad is a Transportation Agency which provides Public Transportation Services by rail in the Metropolitan Region in the northeastern area of the State of Illinois. The Regional Transportation Authority (“**Authority**”) was established pursuant to the Regional Transportation Authority Act (“**Act**”), as amended, for the purposes of (a) providing for, aiding and assisting public transportation in the Metropolitan Region, without impairing the overall quality of existing public transportation, and (b) providing and facilitating public transportation which is attractive and economical to users, comprehensive and coordinated among its various elements, and economical, safe, efficient and coordinated with area and State plans. The Authority and Railroad entered into previous Purchase of Service Agreements, the most recent of which was for the period ending on December 31, 1998. On November 9, 1983, the Act was amended to provide for the establishment of the Commuter Rail Division of the Authority. The CRD is the operating division of the Authority responsible for providing public transportation by commuter rail and for the negotiation and administration of Purchase of Service Agreements.

ARTICLE I

Definitions

In this Agreement, the following terms shall have the following meanings:

Act -- the Regional Transportation Authority Act, Public Act 78-5, 3rd Sp. Sess. (70 ILCS 3615/1.01 et seq.) as in effect on the date hereof and as hereafter amended.

Accounting Change Notice (ACN) – the meaning thereof in Article 6.02.

Accounting Change Request (ACR) -- the meaning thereof in Article 6.02.

Agreement -- this Amended and Restated Purchase of Service Agreement and all exhibits hereto as amended from time to time.

Additional Compensation -- the meaning thereof in Article 6.06.

Agreement Term -- the term of this Agreement as provided in Article 11.01.

Allocation Statistics Report -- the meaning thereof in Article 7.01.

Approved Budget -- the budget for a Budget Period approved in accordance with Article 6.03.

Authority -- the Regional Transportation Authority.

Billing Number -- a unique number assigned to record and allocate expenses for maintenance of way and engineering for track segments, buildings and other purposes.

Board of Directors -- Directors of the CRD.

Budget Limits -- the meaning thereof in Article 6.02.

Budget Objection -- the meaning thereof in Article 6.03.

Budget Period -- the meaning thereof in Article 6.03.

Calendar Year -- the 12-month period beginning January 1 and ending December 31.

Capital Expenditure -- the cost of acquisition, construction, modification, replacement, installation or permanent improvement of the kinds of tangible property listed in Property Account Nos. 1-20, 22, 26-52, 54, 57, 58, 59 and 90 of the Uniform System of Accounts, 49CFR, 1200-1219, revised as of October 1, 1997.

Capital Needs -- a list of any items proposed for acquisition, construction, modification, replacement, installation or permanent improvements of tangible property that is eligible for federal, state, or local funding.

Chargeable Cost Centers -- the Cost Centers defined in Exhibit 6-A.

Claim -- the meaning thereof set forth in Article 10.01.

Commencement Date -- the date on which Contract Services are first performed in accordance with a Service Change.

Common Expense -- the expense of an activity attributable to both Contract Services and Railroad's other operations.

Compensation -- the meaning thereof in Article 6.04.

Consist -- the number and type of cars and locomotive units making up a particular train.

Contract Security Services -- the meaning thereof set forth in Article 6.13.

Contract Services -- (a) with respect to the Agreement Term, the Public Transportation Services by rail to be provided by Railroad, acting as an independent contractor for the benefit of the CRD, pursuant to this Agreement, and the performance by Railroad of its

other obligations under this Agreement, and (b) with respect to the term of the Prior Agreement, Contract Services (as that term is defined in the Prior Agreement) rendered under the Prior Agreement.

Contract Services Property -- the meaning thereof in Article 3.01.

Contract Services Revenue -- the meaning thereof in Article 6.01.

Cost Center -- the unique identifying number to which expenses are charged as set forth in the Subsidiary Accounting System.

Cost Code -- a description of an expense as set forth in the Subsidiary Accounting System.

CRD -- the Commuter Rail Division of the Regional Transportation Authority.

Emergency Services Manager -- the meaning thereof in Article 2.07.

Estimated Compensation -- the meaning thereof in Article 6.04.

Estimated Surplus -- the meaning thereof in Article 6.04.

Fair Market Rental -- a periodic rental payment based on the Fair Market Value determined in accordance with Exhibit 2-AB and the appraisal criteria as provided in Exhibit 2-AC.

Fair Market Value -- the meaning as determined by the procedure set out in Exhibit 2-AB.

Fare Change: Fare Change Notice -- the meaning thereof in Article 5.02.

Function Cost Report -- the meaning thereof in Article 7.01.

Government Requirements -- federal, state, and local statutes, codes, regulations, ordinances, rules, orders and other requirements.

Labor -- the meaning thereof in Article 2.03.

Metropolitan Region -- all territory which is included within the territory of the Authority and CRD pursuant to the Act.

Monthly Expense Reports -- the meaning thereof in Article 7.01, including actual expenses for the Primary Cost Centers, Secondary-Engineering Centers, and the Secondary-Other Centers.

Monthly Payment -- the meaning thereof in Article 6.04.

Parties -- CRD and Railroad.

Peak Periods -- the meaning thereof in Article 2.04.

Primary Cost Centers -- the meaning thereof set forth in Exhibit 6-A.

Prior Agreement -- the Purchase of Service Agreement as amended between the Authority and Railroad for the period beginning January 1, 2004 and ending December 31, 2008 with a one year extension to December 31, 2009 and an additional extension to January 31, 2010.

Property -- the meaning thereof in Article 2.02.

Proposed Budget -- the meaning thereof in Article 6.03.

Proposed Budget Amendment -- the meaning thereof in Article 2.04.

Public Transportation Services -- the transportation or conveyance of persons within the Metropolitan Region by means available to the general public, including groups of the general public with special needs, except for transportation by automobile not used for conveyance of the general public as passengers and except any portion of any service provided by, or pursuant to an agreement with, National Railroad Passenger Corporation.

Railroad -- Union Pacific Railroad Company, a Delaware corporation.

Reimbursable Expenses -- the meaning thereof in Article 6.02.

Secondary-Engineering Centers -- the meaning thereof set forth in Exhibit 6-A.

Secondary-Other Centers -- the meaning thereof set forth in Exhibit 6-A.

Service Change: Service Change Notice -- the meanings thereof set forth in Article 2.04.

Service Emergencies -- the meaning thereof set forth in Article 2.07.

Service Plan -- the plan describing the Contract Services Railroad is to provide during a Calendar Year as provided in Article 6.03.

Standards -- the standards specified in Exhibit 2-C.

Stations -- specific locations identified in Article 2.02 and listed in Exhibit 2-AA.

Subsidiary Accounting System -- the specific system of accounting detailing cost codes, billing numbers, cost centers and allocation techniques by which costs are recorded, reported and allocated to CRD as set forth in Exhibits 6A, 6B, 6C, 6D, 6G and 6H.

Summary Variance Report -- the meaning thereof in Article 7.01.

Transportation Agency -- the meaning thereof set forth in the Act.

Uniform System of Accounts -- the Uniform System of Accounts for Railroad Companies, as set forth in Title 49 of the Code of Federal Regulations, Part 1201, revised as of October 1, 1997.

Weather Emergency Plan -- the meaning thereof set forth in Article 2.08.

Work Order -- a five digit number that is management's authority for the capital expenditure (old AFE) of funds for project work to be done or the retirement (old AFR) of existing property.

ARTICLE II

Services to be Provided by Railroad

2.01 Basic Scope of Services. Railroad hereby agrees that throughout the Agreement Term, Railroad, acting as an independent contractor for the benefit of the CRD, will provide Public Transportation Services by rail. Except as otherwise expressly permitted under this Agreement, Railroad shall (a) operate in accordance with the schedules listed and described in Exhibit 2-A and the Consists listed and described in Exhibit 2-B; (b) comply with the Standards specified in Exhibit 2-C; and (c) provide the maintenance services specified in Exhibit 2-D, and all accommodations and other services as are reasonably necessary for commuter comfort, convenience, and safety.

2.02 Property To Be Used. Railroad shall, except as otherwise provided in this Agreement, provide such of the real and personal property, rights and privileges of Railroad ("**Property**") as are necessary for the provision by Railroad of the Contract Services including, but not limited to: stations, platforms, offices, parking lots and other real estate and facilities, the cars and locomotives listed in Exhibit 2-E, trackage, ways and structures; rights of Railroad under contracts, leases, joint operating agreements and patents; other intangible property; and materials (except locomotive fuel and other inventory provided by the CRD upon mutual agreement of the Parties) supplies and parts. The purchase of fuel by the CRD, and its delivery and withdrawal from storage will comply with the terms contained in Exhibit 2-G. Locomotive fuel oil supplied by either party hereto shall comply with Locomotive Fuel Specifications contained in Exhibit 2-H.

With regard to station buildings, platforms, parking lots and the real estate they are located upon, as well as any other real estate, the terms and conditions that Railroad provides these facilities are as follows:

1. Stations (a) The current buildings and/or canopies, the platforms and ingress/egress to the parking lots and public ways will be provided by the Railroad. The current stations are listed in Exhibit 2-AA and will be provided under this Agreement on the same terms and conditions as the Railroad provided them under the Prior Agreement.

(b) Railroad has leased some station buildings, but not the platforms and usually not the canopies, to the municipality where the station is located, with CRD approval, as shown on Exhibit 2-AA. Any revenues generated by the station are paid to the municipality to offset the building maintenance, janitorial cost and any utility costs the municipality assumes under the

lease. All maintenance, janitorial and utility costs of the unleased stations are Reimbursable Expenses, and all maintenance, janitorial and utility costs of a leased station, not assumed by the municipality, are Reimbursable Expenses. Neither CRD nor the municipalities shall pay Railroad rent or any other compensation not included in Article VI of this Agreement for the use of the station buildings, canopies or platforms.

(c) In the event that CRD or any municipality wants to (i) increase the size of a current station or platform and it will occupy additional Railroad real estate, (ii) relocate the station building, canopies or platform to another location on Railroad's real estate and the relocation of either the station building or canopies or platforms occupy additional Railroad real estate, which is more than what the current station building, canopy or platform being vacated now occupies, or (iii) construct a station where a stop does not now exist on Railroad's schedule in Exhibit 2-A, then CRD (or the municipality) will either purchase or lease the additional or newly occupied real estate from the Railroad at Fair Market Value. The Fair Market Value will be determined by the procedure set out in Exhibit 2-AB. The appraisal criteria will be determined as provided in Exhibit 2-AC.

2. Parking Lots (a) Current parking lots are adjacent to the Stations listed in Exhibit 2-AA.

(b) Improved (paved) parking lots are leased to the municipalities, who perform the maintenance, snow removal, collect the parking revenue, prosecute the non-payers, and assume other costs specified in the individual lease agreements. Currently, most municipalities charge between \$1.00 and \$1.50 per day or issue monthly or quarterly permits at a comparable cost. Unless capital costs are being refunded under the lease, the municipality pays Railroad one-third of the revenue generated from the parking lots for the use of Railroad's real estate. This revenue, which is below Fair Market Value, is not Contract Services Revenue. The current parking lots under lease, and the amount of space occupied, are listed in Exhibit 2-AD. When leases expire on the current sized parking lot, it will be renewed by Railroad on substantially the same terms and conditions of the prior lease, (including the amortization of required Capital Expenditures approved by Railroad), with lease rental below Fair Market Value.

(c) Unimproved parking lots, as well as stations where no parking exists on Railroad real estate, are listed on Exhibit 2-AE. The Railroad maintains the unimproved parking lots on its real estate. Since commuters are not charged for using these parking lots, no revenue is generated. Railroad shall provide these lots under this Agreement under the same terms and conditions as the Prior Agreement.

(d) In the event that CRD or any municipality wants to (i) increase the size of a current parking lot and it will occupy additional railroad real estate, or (ii) relocate the parking lot to another location on Railroad's real estate and the relocation of the parking lot occupies additional Railroad real estate, which is more than what the current parking lot being vacated now occupies, or (iii) a parking lot is needed at a station which does not now exist on Railroad's schedules in Exhibit 2-A, then CRD (or the municipality) will either purchase or lease the additional or newly occupied real estate required from the Railroad at Fair Market Value. The Fair Market Value will be determined by the procedure set out in Exhibit 2-AB. The appraisal criteria will be determined as provided in Exhibit 2-AC. With regard to the additional or newly

occupied real estate, Railroad will not waive Fair Market Rental or the purchase of the real estate at Fair Market Value to amortize any capital expenditures that need to be made to the Parking Lot. However, if CRD or a municipality elects to lease Railroad's real estate at Fair Market Value, the value of the Capital Expenditures, not paid for by the Railroad, will not be included in the Fair Market Rental.

3. Other Real Estate. Revenue generated at station buildings and on or near the platforms at the Stations listed in Exhibit 2-AA, and as set forth in Article 6.01 or listed on Exhibit 2-AF is Contract Services Revenue. All other revenue not listed on Exhibit 2-AF and generated by Railroad's real estate is not Contract Services Revenue; provided, however, that re-branding or adding sponsor names to the commuter lines shall be seen as Contract Service Revenue, if CRD is able to generate such underwriting contributions.

2.03 Labor To Be Provided. Except as otherwise provided in this Agreement, Railroad shall provide and furnish all labor, administrative, professional and supervisory services ("**Labor**") necessary for the provision by Railroad of the Contract Services.

2.04 Service Changes. (a) The CRD may, at any time or from time to time, during the Agreement Term, direct changes in Contract Services, Property, Labor or Standards (including, without limitation, changing the claims administration function so that it is performed in whole or in part directly by the CRD or by any person designated by the CRD ("**Service Change**").

(b) The CRD shall initiate a Service Change by delivery to Railroad of a written notice ("**Service Change Notice**") stating the proposed Service Change and its Commencement Date. Within 30 days (or such other period as may be agreed to by the Parties in a particular case) after delivery of the Service Change Notice, Railroad shall either (1) state in writing to the CRD that it will not implement the Service Change for one or more of the reasons set forth in subsection 2.04 (d) and specify such reasons, or (2) prepare and submit to the CRD a proposed budget amendment with respect to the Service Change ("**Proposed Budget Amendment**"). The Proposed Budget Amendment shall set forth the changes in the Budget Limits and the estimated changes in Contract Services Revenue and Reimbursable Expenses (including necessary Capital Expenditures) for the Budget Period resulting from such Service Change, and shall set forth the estimated adjustment resulting from such Service Change to the monthly payments to be made by the CRD or Railroad in accordance with Article 6.04.

(c) If the CRD does not object in writing to the Proposed Budget Amendment within 30 days after delivery of the Proposed Budget Amendment, the Service Change shall become effective on the Commencement Date. If the CRD objects to the Proposed Budget Amendment, the Parties shall negotiate in good faith with respect to the Budget Amendment. Subject to Subsection (d) of this Article, if on the Commencement Date of the Service Change the Parties have not agreed, Railroad shall commence the Service Change and the Approved Budget shall be amended and the monthly payments to be made by the CRD or Railroad under Article 6.04 shall be adjusted in accordance with the Proposed Budget Amendment as modified by the CRD's objections to it.

(d) Railroad shall implement a Service Change on the Commencement Date unless such Service Change:

- (1) is unsafe, illegal or impossible to implement with prudent, economical and efficient use by Railroad of amounts which are Reimbursable Expenses,
- (2) would require Railroad to use real property which was not used by Railroad in providing Public Transportation Services by rail during the Agreement Term or during the term of the Prior Agreement,
- (3) will require or authorize the operation of any facility or service on terms or in a manner which unreasonably interferes with the ability of Railroad to provide efficient freight or inter-city passenger service, or
- (4) would result in increased Reimbursable Expenses, provided, however, that this exception shall be effective only during any period in which the CRD is in arrears in its payments, excluding disputed amounts, to Railroad Under this Agreement for a period in excess of 30 days.

(e) For purposes of subsection (d) of this Article, the Parties agree that a Service Change shall not be deemed to require or authorize the operation of any facility or service on terms or in a manner which unreasonably interferes with the ability of Railroad to provide efficient freight or inter-city passenger service to the extent that:

- (1) such Service Change changes schedules, Consists, or frequency of trains operated on one or more of Monday, Tuesday, Wednesday, Thursday or Friday, which depart from their originating stations between the following times ("**Peak Periods**"):
 - (a) On the West Line, between 6:10 AM and 9:00 AM, or between 4:00 PM and 7:20 PM;
 - (b) On the Northwest Line, between 6:30 AM and 9:30 AM, or between 4:00 PM and 7:30 PM;
 - (c) On the North Line between the Chicago Passenger Terminal and the Lake Bluff Interlocking plant (but not including the Lake Bluff Interlocking plant), between 5:30 AM and 9:30 AM, or between 3:30 PM and 7:30 PM;
 - (d) On the North Line between the Lake Bluff Interlocking Plant (including the Lake Bluff Interlocking plant) and the Illinois State Line, between 6:30 AM and 9:00 AM, or between 4:00 PM and 7:00 PM.
- (2) such Service Change does not require origination of trains used in providing Contract Services at intervals of less than one hour in each direction on each of the three Suburban Lines (West, Northwest and North) during periods other than Peak Periods, except to the extent that

Exhibit 2-A shows service at other than Peak Periods at intervals of less than one hour;

(f) At any time prior to commencement of a Service Change, the CRD may rescind the Service Change Notice, in which event Railroad shall not commence such Service Change. Any expense reasonably incurred by Railroad in preparation for commencement of the Service Change so rescinded (other than costs incurred in objecting to the Service Change) is a Reimbursable Expense, subject to subsequent audit by the CRD.

(g) Subject to the provisions of subsection 2.04 (d), if Railroad does not commence a Service Change in accordance with the Service Change Notice, the CRD may seek to compel compliance with the Service Change Notice and this Agreement through the institution of appropriate proceedings in the Circuit Court of Cook County.

(h) The CRD may, without limitation of the generality of any other provision of this Article 2.04, make the following Service Changes: (1) change the paint scheme and insignia of cars and locomotives owned by the Authority or CRD, and of other cars and locomotives with the prior consent in writing of the owners or lessors thereof, (2) change the names, paint scheme and insignia of equipment owned by Railroad and primarily used in providing Contract Services other than cars and locomotives, (3) subject to any required governmental approvals, change the names, paint scheme and insignia of stations, provided that the cost to Railroad's freight operations of changing the names of stations which are listed in Exhibit 5-C shall be Reimbursable Expenses, (4) change the color, style and insignia of uniforms of personnel, (5) change the design of tickets, transfers and public timetables, and (6) add the name or insignia of the Authority or CRD or any advertisement or sponsor's name to any of the foregoing (with the prior consent in writing of the owners or lessors in the case of cars and locomotives not owned by the CRD, Authority or Railroad).

(i) Subject to the provisions of subsection 2.04 (d), the CRD may require immediate commencement of a Service Change, and may require temporary Service Changes.

2.05 Permitted Performance Variations. With the prior approval of the CRD, and after having given reasonable advance notice to users of the Contract Services of any disruptions which will result therefrom, Railroad may make reasonable temporary adjustments in schedules or Consists to minimize interference with the performance of track and roadbed maintenance or construction work or with construction of public utilities, State or other public highways or public works crossing the routes of Railroad, or for any other purpose.

2.06 Force Majeure Occurrences. (a) The failure of Railroad or CRD to perform, in whole or in part, any of the Contract Services, by reason of the occurrence of fire, flood, explosion, disaster, strike or labor work stoppage, or any other cause beyond the reasonable control of Railroad or CRD, to the extent such failure is beyond the reasonable control of Railroad or CRD ("**Force Majeure Occurrence**"), is excused for all purposes.

(b) In the event of a Force Majeure Occurrence, Railroad or CRD shall provide such modified or adjusted Contract Services as are practicable. Such adjustment or modifications

shall be made only with the prior approval of the CRD. Railroad's costs which are required for adjustments or modifications in accordance with this subsection and which exceed Budget limits in the Approved Budget are Reimbursable Expenses.

2.07 Service Emergencies. (a) The Executive Director or his designee may declare a Service Emergency when he determines that the Contract Services are substantially impaired as a result of any cause other than a strike or other labor-related work stoppage. If the declaration is oral, it shall immediately be confirmed in writing. A Service Emergency shall terminate at the time specified in the notice, but not more than 120 hours after such a declaration, unless the Board of Directors extends its period.

(b) After declaration of a Service Emergency, the Executive Director or his designee may appoint an Emergency Services Manager with whom the Contract Services Manager shall consult during the Service Emergency. Subject to subsection 2.08(c), the Contract Services Manager shall implement the Weather Emergency Plan if requested to do so by the Emergency Services Manager, and shall implement any other recommendations of the Emergency Services Manager pertaining to the operation of trains in Exhibit 2-A which are scheduled to depart from their originating stations or arrive at their terminating stations during Peak Periods.

2.08 Weather Emergency Plan. (a) On or before October 1 of each year during the Agreement Term, Railroad shall prepare and submit to the CRD a proposed weather emergency plan ("**Weather Emergency Plan**") which is designed to re-establish Contract Services during and after a weather event causing a Service Emergency. The Weather Emergency Plan shall include programs for (1) resumption of normal service, (2) prompt dissemination of correct information to riders regarding schedules and the condition of service, (3) emergency deployment of manpower and equipment, and (4) changes in Contract Services necessary to provide for a substantial number of additional temporary riders. The Weather Emergency Plan shall include an emergency budget, specifying maximum labor positions and estimated expenses, which shall take effect with the Weather Emergency Plan. For the period during which the Weather Emergency Plan is in effect, actual costs of quantities in the emergency budget are Reimbursable Expenses. Within 60 days after the submission of a proposed Weather Emergency Plan, the CRD shall approve it, or return it to Railroad for modification. The CRD and Railroad shall cooperate with respect to preparation of the Weather Emergency Plan. Subject to Article 2.08(c), final decisions with respect to such Plan shall be made by the CRD.

(b) The Weather Emergency Plan prepared by Railroad shall contain no provision the implementation of which (1) would be unsafe, illegal or impossible, or (2) would unreasonably interfere with the ability of Railroad to provide freight or intercity passenger service. Railroad may object to inclusion of any Weather Emergency Plan provision not prepared by Railroad on these grounds within 15 days after Railroad first receives a request for modification of the Weather Emergency Plan from the CRD containing such provision.

(c) The Weather Emergency Plan shall be implemented at the direction of the CRD for such period as the CRD may from time to time direct. Railroad shall not object to implementation of any Weather Emergency Plan provision which Railroad prepared or of any

provision which could have been objected to in accordance with Subsection 2.08(b). Railroad shall not be required to implement any other provision of Weather Emergency Plan, or any modification thereof, to the extent that such implementation (1) would be unsafe, illegal or impossible, or (2) would unreasonably interfere with the ability of Railroad to provide freight or intercity passenger service.

ARTICLE III

Property

3.01 Property Dispositions. (a) Railroad agrees that (1) it will not sell, lease, abandon, scrap, or otherwise dispose of any of the properties described in Subsection 3.01(b) below ("**Contract Services Property**"), if such disposition will impair the performance by Railroad of the Contract Services which are required to be provided at the time of such disposition or at any time during the term of this Agreement; and (2) in any case not within clause (1) above, it will not sell, lease, mortgage, abandon, scrap, or otherwise dispose of or encumber any Contract Services Property unless, not less than 45 days prior to the earlier of the date of such sale, lease, mortgage, abandonment, scrapping or other disposition or the entering into by Railroad of any agreement therefore, written notice thereof is given by Railroad to the CRD, which notice shall set forth a description of the property to be disposed of, and the price and other terms and conditions of such proposed disposition. The requirements of clause (2) above shall not apply to a disposition of property to a party having eminent domain power or for public or quasi-public utility purposes or to property leased if the lease is cancelable upon not more than 90-day notice. With respect to Contract Services Property which is used primarily for Contract Services, Railroad shall offer in such notice, with the exception of notices of mortgages, to transfer such property to the CRD at a price and on other terms and conditions not less favorable than those of the proposed disposition. If the CRD does not accept such offer within such 45 days, the offer shall be deemed to be rejected.

(b) The provisions of this Article apply to all of Railroad's rights, privileges, power and title in, to or over all property which is hereinafter described and which was used and useful at any time during the term of the Prior Agreement or the Agreement Term in the provision of Contract Services:

(1) Real property (including easements, leaseholds, and all buildings, improvements, appurtenances and fixtures thereon), platforms and parking lots but excluding air rights at and above a horizontal plane at such elevation as to provide 23 feet vertical clearance above top of rail, plus land for reasonable supports and foundations at such locations, which may affect the Contract Services;

(2) Trackage (including, but not limited to, rails, ties, ballast, switches, turnouts, wyes, signals, interlocking, crossovers, and yards) and structures or improvements (including, but not limited to, bridges, culverts, fills, cuts, tunnels, and grade crossings), which are essential to the convenient use of trackage;

(3) Passenger train cars and locomotives listed and described in Exhibit 2-E and all equipment permanently installed in or on such cars and locomotives;

(4) Equipment and machinery used for maintenance of such passenger train cars and locomotives, except equipment or machinery which

(A) has a normal replacement cycle of less than three years; or

(B) has a reproduction cost of less than \$10,000.00; or

(C) is not kind of property which is depreciated for federal income tax purposes in the regular and normal course of business of Railroad;

(5) Items of personal property with a reproduction cost new of greater than \$10,000.00; and

(6) Items of property which have been specially constructed or modified for or by Railroad for use in whole or in part in the provision of Contract Services by rail (including, for example, specialized test equipment, signal equipment, data processing equipment, fare-collection equipment, switch parts, and repair parts for communication systems or for equipment in service).

(c) Contract Services Property does not include system machinery or tools not primarily used in connection with Contract Services, small tools, supplies, property regularly consumed and replaced not less frequently than annually, office equipment and furniture, highway vehicles, any items of property hereafter from time to time specifically designated in writing by the CRD as excluded from the definition of Contract Services Property and any other item of personal property with a reproduction cost new of less than \$10,000.00.

3.02 Use of Certain Property. Railroad shall not, without the written consent of the CRD, use equipment, cyber property, software and electronics owned by the CRD or Authority for any purpose other than provision of Contract Services.

3.03 Ogilvie Transportation Center. CRD owns the Ogilvie Transportation Center ("OTC") and CRD has entered into various agreements with MetraMarket of Chicago LLC, and related affiliates, for the leasing, maintenance, and parking operation of various aspects of OTC, which are primarily located below track level. From time-to-time, however, CRD may desire Railroad to operate and maintain the suburban concourse, sidewalks, any utility, parking facilities, or any door or HVAC unit at OTC because of its relation to Contract Services. Consequently, Railroad shall, during the term of this Agreement or any extension thereof, to the extent requested by CRD in writing and agreed to by Railroad in writing, operate and maintain such aforementioned OTC facilities to provide Contract Services or Public Transportation Services in the same manner and subject to the same terms of this Agreement as Railroad operates and maintains its property described in Article 2.02 hereof, or in accordance with such other standards as the parties may agree to in writing. CRD has an agreement with the owners of CitiCorp Center (Atrium) for commuter access, a ticket office, and office space and the Railroad shall, during the term of this Agreement, continue to operate and maintain this space to provide Contract Services or Public Transportation Services in the manner set forth in the CRD agreements covering the Atrium. Office space in CitiCorp will be expiring on or about 2012. Railroad will reasonably cooperate with CRD or its designated real estate broker in negotiating

and determining office space needs at CitiCorp Center or any other building located within the immediate area.

3.04 Elburn Extension. In 2006, Contract Services and Contract Service Property were extended from Geneva to Elburn, Illinois and CRD acquired additional property to accommodate improvements desired by Railroad for this extension. Railroad is authorized to use such real property owned by CRD between Geneva and Elburn as shown on the attached Exhibit 3-A, including the property needed for the Elburn Commuter Storage Yard Facility, for the provision of Contract Services and freight train operation, with the understanding that the Elburn Commuter Storage Yard Facility shall not be used by Railroad for the provision of freight service.

As part of the extension, CRD has constructed two new station facilities, at LaFox and Elburn, upon a portion of Railroad property. Railroad agrees to operate and maintain the LaFox station and platform facilities in accordance with the Agreement and CRD shall operate and maintain the Elburn station with the exception of the platform, stairwells and ramps which shall be operated and maintained by Railroad in accordance with this Agreement.

ARTICLE IV

Railroad's Responsibility to Manage

4.01 Managerial Control. Railroad is an independent contractor for, and not an agent of, the CRD. Railroad shall have managerial control with respect to the Contract Services. Except as provided in Article 2.07, all operating and other personnel of Railroad involved in any aspect of providing Contract Services shall be subject to the direction, supervision and control of Railroad and not the CRD. With the written approval of the CRD, and subject to such terms and conditions as the CRD prescribes in writing, Railroad may subcontract for the performance of work or the provision of equipment or facilities required to be provided by Railroad under this Agreement.

4.02 Contract Services Manager. Railroad agrees that throughout the Agreement Term one of its employees will be designated Contract Services Manager who shall (a) devote such portion of his time to the performance of his responsibilities as may reasonably be required for the effective performance thereof, (b) have as one of his responsibilities the performance by Railroad of Contract Services, (c) be available at reasonable times to consult with representatives of the CRD with respect to matters relating to the Contract Services, and (d) perform the duties required of him by Subsection 2.07(b) of this Agreement during Service Emergencies.

4.03 Employees and Agents. Railroad acknowledges that, and agrees to advise its officers, such of its management personnel within the Metropolitan Region as have responsibilities directly relating to the provision of Contract Services, and such of its employees and agents as are primarily engaged in providing Contract Services, that none of Railroad's officers, employees or agents is, or is authorized to hold himself out or claim to be, an officer, employee or agent of the CRD. No officer, employee or agent of Railroad shall be permitted by Railroad, by reason of this Agreement, to make any claim, demand or application to or for any right or privilege to which any officer, employee or agent of the CRD may, by reason of such position, be entitled, including, but not limited to, rights and privileges concerning workmen's

compensation and occupational disease coverage, claims under the Federal Employers Liability Act (45 U.S.C. §51 et seq.) unemployment compensation benefits, social security coverage or retirement system membership or credit.

ARTICLE V

Fares and Tickets

5.01 Customer Fares and Charges. (a) Except as changed under Article 5.02, the fares and charges made to the public by Railroad for the Contract Services shall be those specified in Exhibit 5-A. Railroad may continue the pass policies described in Exhibit 5-B, but shall not otherwise cause or allow the use of Contract Services except in accordance with this Article.

(b) Refunds of fares and charges shall not be made by Railroad except in accordance with Railroad's written policy as approved by the CRD.

5.02 Fare Changes. (a) Railroad will change any or all of its fares or charges ("**Fare Change**"), and will honor or sell transfers for interconnections with other Transportation Agencies, all as directed from time to time by the CRD. The CRD shall provide Railroad and the public, and Railroad shall provide its employees and agents, with reasonable notice of a Fare Change before the effective date of the Fare Change.

(b) The CRD shall initiate a Fare Change by delivery to Railroad of a written notice ("**Fare Change Notice**") which shall specify (1) the proposed Fare Change, (2) an estimate of the changes in Contract Services Revenue, Reimbursable Expenses and monthly payments to be made by the CRD or Railroad in accordance with Article 6.04 as a result of the Fare Change, and (3) the effective date of the Fare Change. Within 45 days after delivery of the Fare Change Notice, Railroad shall notify the CRD in writing if it objects to item (2) of the Fare Change Notice, in which event the CRD and Railroad shall negotiate in good faith. If the Parties are unable to agree prior to the effective date of the Fare Change, the Approved Budget shall be amended and the monthly payments by the CRD or Railroad in accordance with Article 6.04 shall be adjusted in accordance with the Fare Change Notice.

(c) At any time prior to implementation of a Fare Change, the CRD may rescind the Fare Change Notice, in which event Railroad shall not implement the Fare Change. Any expense reasonably incurred by Railroad in preparation for implementation of the Fare Change so rescinded (other than costs incurred in objecting to the Fare Change or any part of the Fare Change Notice) is a Reimbursable Expense, subject to subsequent audit by the CRD.

5.03 Transfers and Interconnections. The CRD may, at any time, or from time to time, during the Agreement Term, direct implementation of, or alterations or modifications in such terms as the CRD may provide for (a) transfers or interconnections of passengers between Transportation Agencies, and (b) fares and charges for such transfers or interconnections. If an action directed by the CRD under this Article provides for sale of tickets for Railroad's Public Transportation Services by any seller other than Railroad, such action shall provide procedures under which Railroad will receive all revenues due it for such Public Transportation Services within 30 days after the last day of the month of receipt of such revenues by the seller of the

ticket. If Railroad sells tickets for Public Transportation Services provided by any other Transportation Agency, Railroad will remit to such Transportation Agency all revenues due it within 30 days after the last day of the month of receipt of such revenues by Railroad unless otherwise agreed to by the Parties hereto. Actions authorized by this Article shall be proposed, objected to and implemented in accordance with Article 2.04 of this Agreement.

5.04 Ticket Sales. (a) Railroad shall sell tickets for the Contract Services at the locations and times specified in Exhibit 5-C. Railroad shall continue collection of cash fares by on-train personnel and the sale of tickets by mail in accordance with past practices of Railroad. At the request of the CRD, Railroad shall change its practices or procedures for selling tickets for the Contract Services, shall sell tickets for transportation provided by the CRD or by other Transportation Agencies and shall use the forms for tickets, ticket accounting and reporting provided by the CRD. In the event CRD decides to implement a partial or complete automatic fare collection system, Railroad agrees to cooperate with CRD in the implementation of the system. Changes in the forms for tickets, ticket accounting and reporting shall be proposed, objected to and implemented in accordance with Article 2.04 of this Agreement. Revenue handling procedures covering the sale of Monthly Tickets and 10-Ride Tickets by Internet, and the acceptance of credit cards for all tickets is specified in Exhibits 5-D and 5-E

(b) In the event of loss of Contract Services Revenue due to theft or fraud by Railroad employees, Railroad shall immediately notify CRD upon the discovery of a theft or at the time any special agents of Railroad or other law enforcement personnel are assigned to investigate possible theft or fraud by Railroad employees related to Contract Services Revenue.

(c) Revenue handling procedures covering the sale of monthly tickets and ten-ride tickets by internet, and acceptance of credit cards for all tickets shall be as specified in Exhibit 5D and 5E as revised from time-to-time by the Parties.

5.05 Validity of Tickets. At the expiration of the Agreement Term, with respect to any ticket for Contract Services sold during the Agreement Term and for which Railroad has been paid during the Agreement Term, Railroad shall, at the CRD's discretion, either (a) honor such ticket until the expiration of such ticket according to the terms in effect at the time of sale, (b) provide a full refund for the unused portion of such ticket, or (c) provide a full refund for the unused portion of such ticket against the price of any new ticket sold for Public Transportation Services by rail provided by Railroad after the Agreement Term. The CRD shall reimburse Railroad for such refunds made pursuant to the procedures described in clauses (b) and (c) of this Article, and Railroad shall be entitled to retain any revenues received by it pursuant to the procedures described in clause (a) of this Article. Railroad shall honor tickets sold during the term of the Prior Agreement.

ARTICLE VI

Revenues and Compensation

6.01 Revenue Collection. (a) Railroad shall collect the fares specified in Article V for each and every passenger carried during the Agreement Term, and shall collect all other revenues of whatever kind or nature (including, but not limited to, revenues from station leases, Link-Up Bus and Plus Bus tickets as referenced in Exhibit 6-1, concessions, vending-style

machines and advertising) generated by, related to or attributable to the Contract Services during the Agreement Term, regardless of when actually collected ("**Contract Services Revenue**"). Contract Services Revenues include, without limitation, revenue recordable in Accounts 102, 103 and 110 of the Uniform System of Accounts.

(b) Railroad has entered into an Advertising License Agreement with Clear Channel Outdoor, Inc., dated March 17, 2008, (Clear Channel Agreement) for the exclusive license for advertising signs along and adjacent to passenger loading platforms at the stations identified in the Clear Channel Agreement, and advertising signs attached to commuter cars. The revenue from the Clear Channel Agreement is considered Contract Service Revenue. At the end of the term of the Clear Channel Agreement (or if it is terminated earlier), Railroad shall, in good faith, attempt to enter into new agreements with the same parties that CRD has entered into for similar advertising on CRD property. The revenue from any new agreement will be Contract Service Revenue.

(c) Contract Service Revenue includes the opportunity of re-naming or re-branding any or all of the three Railroad commuter service lines with sponsors' names (other than the name of any other railroad), and Railroad shall not unreasonably reject the re-painting of any bridge which crosses a highway in the Contract Service Property with the service line name, as long as such re-naming is consistent with applicable laws, does not interfere with Railroad's advertising revenue, and is at CRD's sole cost and expense.

6.02 Reimbursable Expenses. (a) Except as excluded below, Reimbursable Expenses are the actual expenses to Railroad which satisfy each of the following requirements: (1) they are both incurred during, and attributable to, the Agreement Term or the term of the Prior Agreement as recorded in Railroad's accounts in accordance with Generally Accepted Accounting Principles ("GAAP"), consistently applied; and they are charged to the correct Cost Center/Cost Code combinations to reflect that the expense has an identifiable relationship to Contract Services (commuter operations); (2) either (A) they are Claims, or (B) they are properly chargeable to the Cost Centers and Cost Codes presented in Exhibit 6-A when the direct expenses have a 100% relationship to Contract Services (commuter operations) and allocated expenses have an identifiable relationship to Contract Services (commuter operations) (which will be reviewed by mutual agreement of Railroad and CRD on a quarterly basis) or the Cost Codes or other categories of expense presented in Exhibit 6-C, as amended from time to time in accordance with Article 6.04; and (3) either (A) for Primary Cost Centers only, they are attributable to not more than the maximum number of labor positions set forth as budget limits in the Approved Budget ("**Budget Limits**"), or (B) they are actual expenses reasonably incurred by Railroad for quantities of materials, labor, fuel or equipment rentals authorized by the Emergency Services Manager under Article 2.07 or authorized under the Weather Emergency Plan. Direct expenses for maintenance of way, bridge and building maintenance and signal maintenance shall be charged to Billing Numbers as described in Exhibit 6-G. The allocation of expenses to the CRD shall be as prescribed in the Exhibits to this Article, as amended from time to time in accordance with Article 6.04. Where allocation of expenses is based on a fraction of total expenses, the fraction shall be rounded to the sixth decimal place. For purposes of overhead expense allocation, any expense attributable to intercity passenger service will be treated as though directly related to freight service. Notwithstanding the allocation principles of Exhibits 6-

CRD & UPRR PSA AGREEMENT

A, 6-B, 6-C, and Generally Accepted Accounting Principles, solely for the purposes of this Agreement the following costs shall be treated in the following manner:

(1) Lease payments for rolling stock which are solely-related to the Contract Services shall be treated as Reimbursable Expenses, without regard to whether or not such leases are capitalized for other purposes;

(2) For the period beginning January 1, 2010, and throughout the Agreement Term, depreciation, at the annual flat rate of \$2,241,000.00 and without adjustment during the term of this Agreement, which, on a monthly basis, equals \$186,750.00, shall, except as limited by Article 6.02(b)(16), be treated as Reimbursable Expenses.

(3) The actual expenses incurred by Railroad in the performance of actions directed by the Emergency Services Manager during a Service Emergency shall be treated as Reimbursable Expenses;

(4) Expenses and Capital Expenditures reasonably incurred by Railroad in complying, in accordance with Articles 8.01 and 8.08, with valid and applicable Government Requirements except such local Government Requirements as may be preempted by the CRD, shall be treated as Reimbursable Expenses to the extent not treated as Reimbursable Expenses under another provision of this Agreement; and

(5) Railroad follows GAAP in pricing second-hand reusable material. The price is set at the lower of market value or depreciated ledger value. In most cases, depreciated ledger value is the lower price. This includes ties, rail and other track material. If second-hand material is purchased from a vendor, then it is priced at invoice cost. This methodology shall be used as the basis for charging second-hand reusable material expenses allocable to Contract Services.

(b) Reimbursable Expenses do not include:

(1) Expenses charged to Primary Cost Centers attributable to labor positions or other defined quantities in excess of the Budget Limits;

(2) Expenses that are improperly charged to the Cost Centers or Cost Codes presented in Exhibit 6-A or 6-C, respectively;

(3) The portion of any Common Expense which is properly allocable to Railroad in accordance with the principles of Exhibits 6-A, 6-B and 6-C;

(4) Capital Expenditures, unless specifically authorized by a Service Change, permitted by Subsection 6.02(a)(4), permitted by Subsection 6.02(b)(19) hereof, or otherwise authorized in writing by the CRD's Executive Director or his designee.

(5) Costs of, and liability for, property damage or personal injury caused by Railroad's willful or wanton act, by Railroad's criminal act, or by breach of this Agreement by Railroad, provided, however, that where a Claim results in a loss of less than \$5,000, it shall be conclusively presumed that such loss was not caused by Railroad's willful or wanton act or criminal act;

(6) Expenses resulting from any third party agreement affecting only Contract Services, which are based on purchase prices that are unreasonably above the lowest available market prices of products or services which meet the pertinent technical specifications at the time of purchase provided, however, that the lowest reasonable available price of such product or service shall be reimbursable;

(7) Costs, expenses, or penalties, of whatever kind or nature, incurred in breach of this Agreement or resulting from Railroad's failure to comply with applicable Government Requirements, including, without limitation, any claim against Railroad with respect to which Railroad has not complied with Article X.

It is mutually agreed and understood by Railroad and CRD that the "costs, expenses, or penalties" which result "from Railroad's failure to comply with applicable Government Requirements" referred to in this Article 6.02(b)(7) is limited to fines or similar penalties imposed by Federal, State, or local governmental entities, including but not limited to those levied by the Illinois Commerce Commission and the Federal Railroad Administration, and the costs and expenses related thereto. Such fines, penalties, and related costs are not Reimbursable Expenses under the Agreement.

It is further understood, however, that railroads are a highly regulated industry and that virtually every personal injury or property Claim brought against Railroad will typically present allegations of a violation of Government Requirements. Therefore, it is further agreed by CRD and Railroad that said Article 6.02(b)(7) does not exclude as Reimbursable Expenses payments made in disposition of personal injury or property damage claims or in satisfaction of judgments rendered in regard to such Claims, even though the claimant(s) may allege that a violation of applicable Government Requirement(s) was a cause of his/her injury or loss. The resolution of all such personal injury or property damage Claims shall be considered as Reimbursable Expenses unless otherwise excluded by other terms or conditions of this Agreement, including, without limitation, cases in which Railroad's violation of or non-compliance with the relevant Government Requirements is determined to be willful and wanton, or a criminal act as provided by Article 6.02(b)(5) of this Agreement.

It is also understood and agreed that the foregoing clarification relates only to "Government Requirements." Notwithstanding the foregoing clarification, costs, expenses, or penalties incurred in breach of the Agreement, including, without limitation, any claim arising from a failure of Railroad to comply with Article X of this Agreement, are not Reimbursable Expenses hereunder.

- (8) Federal or state income taxes, deferred or payable, and franchise taxes;
- (9) Expenses for maintenance resulting from Railroad's failure to perform work in a workmanlike manner or with ordinary care;
- (10) Expenses resulting solely from changes in Railroad's operations (but not changes resulting from normal fluctuations in Railroad's freight business), organizational structure or Railroad's accounting system since January 1, 2010 which, without prior approval from the CRD, burden the CRD with a greater amount of expenses than would otherwise be assigned or allocated to the CRD;
- (11) Expenses, other than expenses under equipment obligations (including leases), specifically allocated to Railroad in any other agreement or in any other provision of this Agreement;
- (12) Expenses attributable to fraudulent acts by any Railroad employee;
- (13) Expenses attributable to service beyond the scope of the Service Plan or Weather Emergency Plan, except expenses incurred in performance of actions directed by the Emergency Service Manager during a Service Emergency;
- (14) Expenses which were reimbursed, or with reasonable efforts of Railroad were reimbursable, by any entity other than the CRD including, but not limited to, expenses for construction or maintenance of stations or grade crossings;
- (15) Expenses (including wages and fringe benefit costs) attributable to the establishment, without the prior written approval of the Executive Director or his designee, of new Labor positions in non-primary responsibility areas which will be substantially chargeable to a Cost Code or Cost Codes which by definition are one hundred percent allocable to Contract Services;
- (16) Depreciation attributable to capitalized equipment leases for which the CRD is reimbursing lease payments as Reimbursable Expenses;
- (17) Expenses incurred during, attributable to, or accrued for any period outside the Agreement Term or the term of the Prior Agreement;
- (18) Expenses for the revision (other than routine revisions made in the ordinary course of business) or redevelopment of the Subsidiary Accounting System other than at the specific request of the CRD;
- (19) Expenses chargeable to a Work Order under the Railroad's accounting system as in effect on January 1, 2010, unless such expenditure has the prior written approval of the CRD, provided, however, Work Order expenses

are Reimbursable Expenses to the extent that expenses charged to each Work Order do not exceed \$10,000 per Work Order and that the accumulation of such Work Order expenses incurred without CRD approval does not exceed \$50,000 in any Calendar Year and;

(20) The cost of fuel supplied by the CRD to Railroad and used for other than Contract Services, or which is lost, stolen or otherwise not accounted for by Railroad as having been used in its provision of Contract Services;

(21) Expenses incurred by Railroad due to ticket agent or conductor loss or theft, if Railroad has not used its best efforts in response to such loss or theft under collective bargaining agreements with the employee and the organizations representing the ticket agent or conductor. The Parties appreciate that revenue collection is extremely important and a serious issue that must be resolved. Best efforts include taking all disciplinary action necessary and commensurate with the infraction, including steps up to dismissal of such employee, if warranted for reporting less revenue than records indicate should have been collected. It is understood that if the same employee has a second violation for the same infraction, that the Railroad has not met its best efforts standard. It is also understood that labor boards, under collective bargaining agreements, or courts can reverse Railroad's disciplinary action.

(c) If a Chargeable Cost Center is charged with expenses in a Cost Code for which no allocation technique is prescribed in Exhibits 6-A, an Accounting Change Notification ("ACN") should be filed by UP explaining the nature of the change and its applicability to CRD. Those expenses shall be temporarily assigned or allocated to the CRD based on allocation code ALMC (as defined in Exhibit 6-B). Such assignments or allocations will be denoted by an asterisk (*) in the Monthly Expense Reports: Actual for Primary Cost Centers, Actual for Secondary-Engineering Cost Centers and Actual for Secondary Other-Cost Centers and may be disallowed in accordance with this Article, or, in accordance with Subsections 6.02 (d) or 6.02 (f), may be reassigned or reallocated based on a more appropriate allocation technique as agreed to during the quarterly review outlined in 6.02(a)(2)(B). The ACN will not require a separate approval by CRD, however, the ACN is subject to review and audit by CRD.

(d) If an error is discovered in, or an expense is disallowed from, a report for a prior month, Railroad shall make an appropriate accounting adjustment that shall be reflected in the earliest possible month. Railroad shall maintain reasonable documentation for any such adjustment.

(e) If insignificant passenger-related activities are performed in a non-Chargeable Cost Center, for purposes of recording passenger-related expenses and with the prior approval of CRD, those charges directly related or allocable to passenger service as described in Exhibits 6-A and 6-C may be transferred into a Chargeable Cost Center.

(f) Modifications of the Subsidiary Accounting System may be made from time to time upon written agreement with an Accounting Change Request ("ACR" in the form of Exhibit 6-H) between Railroad's Contract Service Manager and the CRD's Chief Financial

Officer. Instances constituting a change for which an ACR is required under this Article are those relating to subsequent changes in operations or if the existing responsibility accounting system is at variance with the operations on the ground or with the intent of the contract service agreement resulting in incorrect charges to CRD. If a change in the Subsidiary Accounting System made in accordance with this Article results in a change in the Reimbursable Expenses, an adjustment will be made retroactively to January 1 of the Calendar Year in which the change takes place. If the annualized effect of the adjustment exceeds \$10,000, such adjustment also shall be made with respect to the Calendar Year preceding such change. An ACR will be accepted or rejected within sixty (60) days of the date of submission. If the ACR is not approved or rejected ninety (90) days after the date of submission, CRD's Director of Audit and the Railroad's Contract Service Manager will have an additional thirty (30) days to resolve the ACR. If the ACR is not accepted or rejected after that period, CRD's Deputy Executive Director (Corporate Affairs) and Railroad's Vice President-Planning & Analysis in its Finance Department will resolve the ACR within the next thirty (30) days. If agreement cannot be reached after participation by CRD's Deputy Executive Director and Railroad's Vice President, either Party may submit such disputed matters to arbitration as set forth under Article 13.16 herein. Annual updates to allocation techniques in Exhibit 6-B are allowed under the Agreement and do not require an ACR. The update should be transmitted on an ACN and is subject to review and audit by CRD.

(g) Railroad agrees that at both the corporate and Cost Center levels the payment of Reimbursable Expenses by the CRD shall be treated as revenue and shall not be treated as a reduction of expense or as a reinstatement or reimbursement of budgeted amounts.

(h) Notwithstanding the foregoing, the cost, calculated on a FIFO basis, of fuel supplied to Railroad by the CRD shall constitute a Reimbursable Expense upon delivery of such fuel to a Contract Services locomotive.

6.03 Annual Budget. (a) Prior to May 1 of each year during the Agreement Term, the CRD shall prepare and submit to Railroad a Service Plan ("**Service Plan**") for the next Calendar Year ("**Budget Period**"). The Service Plan shall describe the Contract Services Railroad is to provide during the next Calendar Year. The Service Plan may contain one or more material changes from the Contract Services then required to be provided by Railroad. Such changes shall be treated as if such changes were Service Changes and shall be proposed, objected to and implemented in accordance with the procedures set forth in Article 2.04. The CRD shall include a Service Change Notice for such changes as part of the Service Plan.

(b) On or before June 15, of each year during the Agreement Term, Railroad shall submit to CRD an estimate of the budget requirements for the next calendar year, which shall be based on the CRD service plan. The estimated budget shall be prepared in two (2) formats:

1. In the format of the regular monthly statements as defined in this Agreement.

2. In a format similar to Exhibit 6-E, showing labor, material, and other totals only for M of W, M of E, transportation, and general and administrative expenses.

(c) At or around September 15 of each Calendar Year during the Agreement Term, CRD shall advise Railroad of the total amount approved by the Regional Transportation Authority (RTA) for Railroad's budget for the Budget Period. Prior to October 31 of each Calendar year during the Agreement term, Railroad shall prepare and submit to the CRD a budget ("**Proposed Budget**") in the form of Exhibit 6-F for the Budget Period. The Proposed Budget shall (1) be consistent with the Service Plan, and (2) specify budgeted labor positions for each Primary Cost Center and specify estimated expenses for each Chargeable Primary Cost Center, (3) include Railroad's best estimate of the total of other Reimbursable Expenses that are not flat-rated and Estimated Contract Services Revenue for the Budget Period, (4) include additional needs for the Service Plan, and (5) will identify areas where the Proposed Budget exceeds the RTA Approved Budget, including Railroad's justification.

(d) The Proposed Budget shall reflect actual operations and levels of service during the immediately preceding Calendar Year except as modified by the Service Plan or Service Changes.

(e) Within 30 days after delivery to the CRD of the Proposed Budget, the CRD shall (1) approve the Proposed Budget, or (2) deliver to Railroad a written notice ("**Budget Objection**") containing Primary Cost Center Budget Limits and objections (if any) to one or more specific items in the Proposed Budget.

(f) The CRD and Railroad agree to promptly negotiate (within thirty (30) days) with respect to any items set forth in a Budget Objection, and the Proposed Budget shall be amended to reflect any changes agreed on by the CRD and Railroad. To the extent that the CRD and Railroad do not agree on items in the Proposed Budget before the commencement of the Budget Period, the Approved Budget for the previous Calendar Year for those items shall be the Approved Budget for the Budget Period; provided, however, that said items shall be adjusted to reflect changes in the Index of Railroad Materials Prices, Wage Rates and Supplements, or revisions thereof, published by the Association of American Railroads, or, where appropriate, changes in rates of pay or other costs mandated by collective bargaining or other agreements. The Parties may at any time thereafter amend the Approved Budget in accordance with Articles 2.04, 5.02 and 6.04, or by the mutual agreement in writing.

(g) By February 15, Railroad shall deliver to the CRD a revision of the Approved Budget (in the form of Exhibit 6-F) which provides (1) the detail by Cost Code of expenses allocated by Cost Center for Chargeable Cost Centers, and (2) summary of expenses not allocated by Cost Centers, including flat-rated items. Such revision shall replace Railroad's best estimate of the total of these expenses provided under Subsection 6.03(c), but shall not alter the Approved Budget for expenses allocated by Cost Center for Primary Cost Centers, except to the extent necessary to correct errors that may have occurred in the preparation of the Approved Budget.

(h) Modifications of the Approved Budget may be made from time to time upon written agreement (including a description of such modification) between Railroad's Contract Services Manager and the CRD's Executive Director or his designee.

6.04 Compensation for Contract Services. (a) The CRD agrees to pay to Railroad, as provided in this Article, and Railroad agrees to accept in full payment for providing the Contract Services, an amount ("**Compensation**") equal to the amount by which the sum of Reimbursable Expenses for each Budget Period exceeds the sum of the Contract Services Revenues, if any, and the cost of fuel used in Contract Services which was supplied to the Railroad by the CRD for such Budget Period. If, for a Budget Period, the sum of Contract Services Revenue and the CRD's cost of fuel used in Contract Services which was supplied to Railroad by the CRD exceeds Reimbursable Expenses, Railroad agrees to pay to the CRD the amount ("**Surplus**") of such excess, provided that the CRD is not in arrears on any payment owed to Railroad for services under this Agreement, disputed amounts excepted.

In any event, the inventory of fuel supplied by CRD will remain the property of the CRD until returned, used in Contract Services or purchased by Railroad. All fuel gallonage lost or used, other than amounts reflected in Railroad's records as used for Contract Services, is chargeable to Railroad's freight operations subject to the tolerance range set forth in Exhibit 2-G.

(b) On the 15th day of each month, the CRD shall pay to Railroad an amount ("**Monthly Payment**"), if any, equal to (1) the estimate of Compensation in the Approved Budget as amended from time to time ("**Estimated Compensation**"), less the sum of the Monthly Payments previously made during the Budget Period, divided by (2) the number of full calendar months, including the month of payment, remaining in the Budget Period. If, in the Approved Budget for a Budget Period, Contract Services Revenue exceeds the sum of Reimbursable Expenses for that Budget Period, Railroad shall pay to the CRD on the 15th day of each month an amount equal to (1) the amount of such excess in the Approved Budget as amended from time to time ("**Estimated Surplus**") less the sum of such payments previously made by Railroad during the Budget Period divided by (2) the number of full calendar months, including the month of payment, remaining in the Budget Period, provided that the CRD is not in arrears on any payment owed to Railroad for services under this Agreement, disputed amounts excepted. The amount of Estimated Compensation or Estimated Surplus shall be adjusted from time to time in accordance with Articles 2.04, 5.02 and this Article 6.04.

(c) Within 30 days after the end of each calendar month (45 days in the case of April and December), or sooner if possible, Railroad shall submit to the CRD a Summary Expense Report in the form of Exhibit 7-B for Contract Services performed during that month, and a statement of the actual Contract Services Revenue and other credits for that month as shown on Exhibit 6-F. The difference between expenses for that month shown on the Summary Expense Report and the actual Contract Services Revenue for that month, shall be the "Net Amount" for that month. The difference between the amount paid by Railroad or the CRD for a month and the actual Net Amount for that month shall be adjusted on the 15th day of the month following the month in which the Summary Expense Report is received by the CRD either as a credit or payment to the CRD or Railroad, provided, however, that no additional payment shall

be made to Railroad to the extent Railroad has exceeded the Budget Limits. All monthly payments shall be subject to subsequent audit by the CRD.

(d) (1) Within 45 days after the end of each Calendar Year, the Parties shall determine actual Contract Services Revenue, Reimbursable Expenses and Compensation or Surplus for that Calendar Year. With the next scheduled monthly payment, the CRD or Railroad shall pay or credit the other the net amount shown thereby to be due. Any such determination shall be subject to subsequent audit by the CRD. The scope of any such audit may include evaluation of financial performance relative to the Approved Budget, evaluation of operating performance relative to the Service Plan and an evaluation of Railroad's accounting controls, practices and procedures. Railroad will cooperate with the CRD in performing audits and will provide reasonable office space to the CRD's auditors during performance of any audit. CRD auditors shall advise Railroad, at the earliest possible date, of any expense item they intend to take exception to or they intend to disallow. In the event that the CRD audits revenues and expenses of Railroad with respect to a period within the Agreement Term or the term of the Prior Agreement and all adjustments determined thereby are made, the period so audited shall be considered closed and no subsequent adjustments with respect to such period shall be made. Railroad and CRD further agree to memorialize the "closed" audit period in a letter agreement that summarizes the audit issues for the period under consideration and recapitulates the individual line items on a separate schedule attached as an exhibit. The letter agreement shall be executed by Railroad's Contract Services Manager and CRD's Director of Audit.

(2) It is expressly understood and agreed that the language in this Article 6.04(d) is not intended to preclude recording in subsequent periods of inventory adjustments applicable to an audited period, adjustments of joint facility, personal injury, labor rate/wage adjustments and other accruals contained in the accounts for an audited period, nor the recording of delayed vendor invoices, if any, applicable to an audited period. In addition, as long as audits under this Agreement and the Prior Agreement do not coincide with audits relating to separately funded Capital Needs, it is further agreed the language in this Article 6.04(d) is not intended to preclude recording in subsequent periods amounts mistakenly charged against the Capital Needs project and subsequently disallowed under the audit of that program, which were legitimately chargeable under this Agreement or the Prior Agreement applicable to a "closed" audited period. It is further agreed that such adjustments recorded in subsequent periods, applicable to "closed" audited periods, are subject to audit in the period in which they are recorded.

(e) Railroad shall notify the CRD in writing promptly if a change in Railroad's accounting system results in an addition to, deletion from, or modification of the scope of any of the Chargeable Cost Centers or Cost Codes presented in Exhibit 6-A or 6-C, and shall include in such notification its best estimate of the impact of any such modification on Reimbursable Expenses. The CRD may at any time request in writing an addition to or deletion from the Cost Centers or Cost Codes presented in Exhibits 6-A or 6-C. Either Party may at any time request a modification of any of the expense allocation techniques presented in Exhibits 6-A, 6-B, or 6-C, or a redesignation of Primary Cost Centers or non-Primary Cost Centers. Either Party may at any time request a change in Estimated Compensation or Estimated Surplus. CRD and Railroad agree to promptly negotiate in good faith with respect to any such modification or request, and agree

that the Chargeable Cost Centers and Cost Codes, the cost allocation techniques, and the Approved Budget shall be amended to reflect any changes agreed on by the CRD and Railroad.

6.05 Penalty for Failure to Collect Fares. (a) Subject to the provisions of Subsection 6.05(b), in each case in which the CRD demonstrates that Railroad failed to collect a cash fare or punch or collect a ticket, as the case may be, Railroad shall pay to the CRD five times the one-way fare between Railroad's downtown Chicago station and the station in the Metropolitan Region farthest from Chicago served by the train on which said failure occurred. Such payment is not a Reimbursable Expense.

(b) Railroad shall not be liable to the CRD for the payment set forth in Article 6.05(a) in any case in which Railroad demonstrates that its failure to collect a cash fare or punch or collect a ticket, as the case may be, was the result of severe weather conditions, unusually heavy ridership on the train on which the failure occurred, or an emergency requiring the attention of one or more members of the train crew.

(c) In each case in which Railroad has made the payment set forth in Article 6.05(a) to the CRD, the CRD shall provide such assistance as Railroad reasonable shall request in any proceedings to discipline members of Railroad's train crews whose failure to collect a cash fare or punch or collect a ticket resulted in such payment.

6.06 Additional Compensation. (a) In addition to compensation, Railroad shall receive for each month during the Agreement Term additional compensation ("**Additional Compensation**"). Such payment shall be payable on the 15th day of each month.

For the period beginning January 1, 2010, the Additional Compensation for each month shall be \$166,416.66 for an annual total of \$1,997,000.

For the period beginning January 1, 2011, the Additional Compensation for each month shall be \$171,250.00 for an annual total of \$2,055,000.

For the period beginning January 1, 2012, the Additional Compensation for each month shall be \$176,250.00 for an annual total of \$2,115,000.

For the period beginning January 1, 2013, the Additional Compensation for each month shall be \$181,333.33 for an annual total of \$2,176,000.

For the period beginning January 1, 2014, the Additional Compensation for each month shall be \$186,583.33 for an annual total of \$2,239,000.

For the period beginning January 1, 2015, the Additional Compensation for each month shall be \$192,000.00 for an annual total of \$2,304,000.

For the period beginning January 1, 2016, the Additional Compensation for each month shall be \$197,583.33 for an annual total of \$2,371,000.

(b) The Parties agree to enter into a Benefit Sharing Program ("**BSP**") which provides for the implementation of new programs and procedures designed to promote cost savings in the provision of commuter rail service. The Parties further agree to share at a rate of 80% for Railroad and 20% for CRD all first-year savings and for the following two years to share equally savings incurred from the implementation of a BSP program originating with the Railroad. Upon 30 days written notice with supporting documentation, CRD shall consider and respond in writing within 15 days. If CRD initiates a BSP, it will realize the full savings and not

have to make any payments to the Railroad. No program will be implemented without the express written consent of both Parties.

6.07 Accounting Method. The method of accounting for charges to be reimbursed under this Agreement shall be the accrual method of accounting (except for deferred Claims of \$25,000 or over and contract labor wage increases that are accrued before the labor contracts are signed). Amounts due to Railroad by CRD under labor contracts shall only be reimbursed for the period for which backup documentation exists. Amounts due for Claims will be paid by CRD 10 days and amounts due under labor contracts will be paid by CRD 30 days after Railroad submits an invoice when they are due and payable in accordance with Generally Accepted Accounting Principles, provided, however, that Railroad shall not make any change in its current method of accounting to conform to Generally Accepted Accounting Principles when such change would have the effect of altering the timing of recognition of expenses or revenues. Notwithstanding any other provision of this Agreement, Railroad shall not implement a change in its method of accounting which would have the effect of recognizing expenses during the Agreement Term which were, or should have been, previously charged during any period prior to the Agreement Term or the term of the Prior Agreement.

6.08 Capital Expenditures. Except as otherwise provided by Articles 6.02(a) (4), 6.02 (b) (5), 6.02 (b) (7), neither the CRD nor Railroad shall be obligated under this Agreement to make any Capital Expenditure. A failure of Railroad to perform any part of the Contract Services because such performance has been made impossible solely by the failure of either party to make a Capital Expenditure, to the extent such failure is beyond the reasonable control of Railroad, shall be excused hereunder, provided, however, that:

(1) Railroad continues to perform the Contract Services to the extent then possible; and

(2) The necessity of such Capital Expenditure was not caused by Railroad's prior disposition during the Agreement Term of property comparable to the property which would have been the subject of such Capital Expenditure if it had been made.

6.09 Overdue Payments. Except as otherwise specifically provided in this Agreement, unpaid sums of money due and payable on a particular date pursuant to this Agreement by one party hereto to the other party shall accrue interest at the rate equal to the greater of six percent (6%) per annum or the Prime Rate plus two (2) interest percentage points based on the Prime Rate as published in the Money Rates section of the Wall Street Journal on the date the Bill or Invoice was originally issued. Interest shall not accrue with respect to any sums due as compensation adjustments made pursuant to this Agreement or the Prior Agreement until 30 days after the date on which payment of such sums is requested in writing.

6.10 General Office Expense/Corporate Overhead Expenses. (a) (1) Railroad will receive a flat-rate amount to compensate it for the General Office/Corporate Overhead expenses related to and in support of the Chicago commuter operation ("**Contract Services**"). During the Prior Agreement, and up until the conversion from the Chicago and North Western

Transportation Company's ("CNW") responsibility accounting system to Railroad's accounting system, these costs and expenses were allocated under CNW'S Responsibility Areas 00501 through 00999 and other General Office/Corporate Overhead areas reflecting allocated expenses to CRD.

Except for specific cost areas agreed to otherwise by the parties, the flat-rate shall be all inclusive and encompass future expenses of the General Office/Corporate Overhead nature including, but not limited to, incentive compensation, bonuses and other compensation that is in addition to the annual salary of Railroad's non-agreement (non-union) employees.

The General Office/Corporate Overhead expenses identified as covered by the flat-rate (CNW's Responsibility Areas 00501 through 00999 and other General Office/Corporate Overhead cost areas allocated expenses to CRD) shall not be charged to Cost Centers or Cost Codes included in Exhibit 6-A.

(2) For the period beginning January 1, 2010, Railroad shall receive an annual flat-rate of \$10,640,000.00 ("**Base Amount**"), which on a monthly basis equals \$886,666.66. The Base Amount shall increase 2.9% annually as follows:

For the period beginning January 1, 2011, Railroad shall receive an annual flat rate of \$10,949,000.00, which on a monthly basis equals \$912,416.66.

For the period beginning January 1, 2012, Railroad shall receive an annual flat rate of \$11,266,000.00, which on a monthly basis equals \$938,833.33.

For the period beginning January 1, 2013, Railroad shall receive an annual flat rate of \$11,593,000.00, which on a monthly basis equals \$966,083.33.

For the period beginning January 1, 2014, Railroad shall receive an annual flat rate of \$11,929,000.00, which on a monthly basis equals \$994,083.33.

For the period beginning January 1, 2015, Railroad shall receive an annual flat rate of \$12,275,000.00, which on a monthly basis equals \$1,022,916.66.

For the period beginning January 1, 2016, Railroad shall receive an annual flat rate of \$12,631,000.00, which on a monthly basis equals \$1,052,583.33.

Except for expenses identified in Exhibit 6-C, and in Article 6.11 hereof, this amount reflects Railroad's entire reimbursement for General Office/Corporate Overhead expenses identified the in Prior Agreement, including additives.

6.11 Train Dispatching Costs. (a) Railroad's train dispatching costs will be charged to CRD based on actual labor charges of those employees working on the CRD train dispatching positions. Exhibit 6-C shows the calculations of estimated dispatching costs. The 50% factor is an estimate of the time spent dispatching CRD versus Railroad's freight trains. The total dispatching amount will change based on the following: 1) changes in labor rates; 2) changes in the number of dispatchers on these positions; or 3) changes in the time spent on dispatching CRD trains. The direct costs of dispatching CRD trains shall be a reimbursable expense.

(b) Crew Calling and Timekeeping. Railroad's train crew calling and timekeeping costs will be based on actual labor charges of those employees working on CRD crew calling and

CRD timekeeping positions. Exhibit 6-C shows the calculation of estimated crew calling and timekeeping costs. The total crew calling and timekeeping amount will change based on the following: 1) changes in labor rates; 2) changes in the number of crew callers or timekeepers on these positions; or 3) changes in the time spent in crew calling or timekeeping for CRD trains. The direct costs of crew calling and timekeeping shall be a reimbursable expense.

Taxi expense to take CRD crews to where their assigned train starts, in the event labor agreements do not provide for them starting there, will be identified with an appropriate commuter notation, and will be charged to CM399, and shall be a reimbursable expense.

6.12 Training Expenses. CRD's share of Railroad's cost to hire, train and certify new trainmen, engineers and yard personnel will be billed to CRD at the following flat rate amounts:

For the period beginning January 1, 2010, Railroad shall receive an annual flat rate of \$500,000.00, which on a monthly basis equals \$41,666.66.

For the period beginning January 1, 2011, Railroad shall receive an annual flat rate of \$750,000.00, which on a monthly basis equals \$62,500.00.

For the period beginning January 1, 2012, Railroad shall receive an annual flat rate of \$750,000.00, which on a monthly basis equals \$62,500.00.

For the period beginning January 1, 2013, Railroad shall receive an annual flat rate of \$1,000,000.00, which on a monthly basis equals \$83,333.33.

For the period beginning January 1, 2014, Railroad shall receive an annual flat rate of \$1,000,000.00, which on a monthly basis equals \$83,333.33.

For the period beginning January 1, 2015, Railroad shall receive an annual flat rate of \$1,029,000.00, which on a monthly basis equals \$85,750.00.

For the period beginning January 1, 2016, Railroad shall receive an annual flat rate of \$1,059,000.00, which on a monthly basis equals \$88,250.00.

6.13 Other Expenses. Security expenses for Contract Services will be split between Railroad police force expense and Contracted Security. Contracted Security Services will continue to be billed to CRD under Exhibit 6-A. Charges to CRD for Railroad police force expense and management will be billed to CRD at the following flat rate amounts and in accordance with Exhibit 6-C:

For the period beginning January 1, 2010, Railroad shall receive an annual flat rate of \$1,515,000.00, which on a monthly basis equals \$126,250.00.

For the period beginning January 1, 2011, Railroad shall receive an annual flat rate of \$1,590,000.00, which on a monthly basis equals \$132,500.00.

For the period beginning January 1, 2012, Railroad shall receive an annual flat rate of \$1,640,000.00, which on a monthly basis equals \$136,666.66.

For the period beginning January 1, 2013, Railroad shall receive an annual flat rate of \$1,690,000.00, which on a monthly basis equals \$140,833.33.

For the period beginning January 1, 2014, Railroad shall receive an annual flat rate of \$1,765,000.00, which on a monthly basis equals \$147,083.33.

For the period beginning January 1, 2015, Railroad shall receive an annual flat rate of \$1,775,000.00, which on a monthly basis equals \$147,916.66.

For the period beginning January 1, 2016, Railroad shall receive an annual flat rate of \$1,825,000.00, which on a monthly basis equals \$152,083.33.

ARTICLE VII

Reports and Access to Information

7.01 Weekly Reports. (a) Within three (3) working days after the end of each calendar week, included in the Agreement Term, Railroad shall deliver to the CRD a train ridership report in the form of Exhibit 7-D.

Monthly Reports. (b) Within 30 days after the end of each calendar month (45 days in the case of December) included in the Agreement Term, except the report specified in subparagraph 7.01(b) (6) hereof, which will be provided 45 days after end of each calendar month (unless constraints are imposed by Railroad's systems department), Railroad shall deliver to the CRD:

(1) a statement signed by Railroad's Contract Services Manager or his designee (A) setting forth variations during such calendar month from the schedules set forth in Exhibit 2-A, from Standards set forth in Exhibit 2-C and from the maintenance service set forth in Exhibit 2-D and the reasons thereof, and (B) a summary of major maintenance performed during such calendar month with respect to ways and structures and equipment used in providing Contract Services, in a format agreeable to the Parties. Currently the Budget (Exhibit 6-F), the Monthly Expense Reports: Actual Expenses for the Primary Cost Centers, Secondary-Engineering Centers, and the Secondary-Other Centers (Exhibit 7-A) are being provided to CRD to fulfill this Subsection (B).

(2) a Function Cost Report, (in electronic format, using Excel, Access or other CRD acceptable data base), which presents each Cost Code charged (excluding Work Orders) to each Chargeable Cost Center, unallocated. Railroad will provide a paper copy of this report when specifically requested by CRD.

(3) Monthly Expense Reports: actual expenses for the Primary Cost Centers, Secondary-Engineering Centers, and the Secondary-Other Centers (Forms 17127, 17128 and 17129), in the form of Exhibit 7-A, which presents "Labor," "Materials" and "Other" expense components of both primary and Secondary Expenses which were assigned or allocated by Cost Center.

(4) a Summary Variance Report (Form 17325), in the form of Exhibit 7-B, which presents those totals for expenses which were assigned or allocated by Cost Center, for each Chargeable Cost Center.

(5) an Allocation Statistics Report in the form of Exhibit 7-C which presents "applied" and "budgeted" allocation statistics or predetermined percentages for each Chargeable Cost Center by allocation technique code. This report will be provided in April and November only, unless specific pages are requested by CRD for other months.

(6) a statement setting forth Reimbursable Expenses in the format set forth in Exhibit 7-I.

(7) a report of labor positions for Primary areas, detailing the number of positions authorized in each Cost Code and the number of positions open, with an indication of how long of a time that the position has been open. On a quarterly basis, in addition to the information provided in the monthly report, information will be provided regarding position title, position number, union code, pay rate and any special comments.

(8) a report detailing reports that Railroad has made to the Federal Railroad Administration (FRA) on Form 6180-55a (PT), Form 6180-57 (Crossings) and Form 6180-54 (Rail Equipment/Derailment) relating to Railroad's Chicago commuter operation.

(9) a Claims report in two formats. One will be in a financial format that includes all cases accrued at \$25,000 and over, and the other in the Risk Management format, which includes all CRD cases, regardless of the accrual level.

(10) Budget Variance Report for Commuter Operations Primary Areas and Commuter Operations Engineering Secondary Areas, which will compare actual monthly performance to budget and actual year-to-date performance to budget in the format of Exhibit 7-F.

(11) a summary of operational testing results performed on Contract Services trains, including but not limited to Efficiency Testing in the format of Exhibit 7-L.

7.02 Quarterly Reports. Within 45 days after the end of each calendar quarter included in the Agreement Term, Railroad shall cause to be prepared and delivered to the CRD each of the following:

(a) a statement listing any changes during such calendar quarter in the assignment of any person who was a superintendent or trainmaster and a material part of whose work was the provision of the Contract Services, as well as a statement signed by the Railroad's Contract Services Manager, or his designee, setting forth variations during the calendar quarter from the Consists set forth in Exhibit 2-B.

(b) a statement listing any discontinuance of use, or retirement or replacement, of any of the cars and locomotives listed in Exhibit 2-E;

(c) a statement setting forth, with respect to the Contract Services provided by Railroad during such calendar quarter, the number of revenue passengers, revenue passenger miles, gross ton miles, train miles, locomotive unit miles, train hours, yard switching hours, car miles and gallons of diesel fuel carried, operated or consumed by Railroad;

(d) copies of Form RE&I (Quarterly Report of Revenues, Expenses and Income, Class 1 Line Haul Railroads) and Form CBS (Quarterly Condensed Balance Sheet for Class 1 Line Haul Railroads) as filed with the Surface Transportation Board.

(e) a report detailing personal injury incidents as reported on the daily incident reports filed by Railroad's Commuter Operations Department.

7.03 Annual Reports. Within 120 days after the end of each Calendar Year any part of which is included in the Agreement Term, Railroad shall deliver to the CRD the following:

(a) an audited Statement of Consolidated Financial Position of Railroad as of the end of such Calendar Year and audited Statement of Consolidated Income, Statement of Changes in Common Stockholders' Equity and Statement of Consolidated Cash Flows of Railroad for such Calendar Year. Such financial statements shall be consolidated if Railroad has any subsidiaries and shall be accompanied by the audit report with respect thereto of Railroad's independent public accountants; and

(b) a copy of the Annual Reports on Forms R-1 and 10-K as filed with the Surface Transportation Board and the Securities and Exchange Commission, respectively.

7.04 Event Reports. After the occurrence of any of the following events, Railroad shall cause the CRD to be notified as specified below:

(a) Upon the occurrence of death or serious bodily injury to any person arising in connection with the Contract Services, or of damage or destruction exceeding \$5,000 to property used in providing the Contract Services, Railroad will provide notice thereof to the CRD on the format set forth in Exhibit 7-J. At the request of CRD, Railroad shall promptly deliver to the CRD a written report of said occurrence containing estimates of costs and substantial detail.

(b) Upon the occurrence of the service upon Railroad by any federal, state or local government or government agency of a petition, complaint or notice which asserts that Railroad, in the provision of Contract Services, is in violation of any law or regulation, Railroad shall supply a copy of such document to the CRD by the earliest of: (1) 10 days after such service; (2) 48 hours before such petition, complaint or notice is scheduled to become effective; or (3) 48 hours before expiration of Railroad's time to respond to such petition, complaint or notice.

(c) Forms 1,2 or 3 that Railroad files with the Illinois Commerce Commission regarding changes to signalization at crossings in the Chicago commuter territory.

(d) a listing of any red signal violations which are made by an engineer of a CRD train and the discipline issued. Railroad's Upgrade Policy (UP General Rules for Administering Discipline Effectively), or its successor will govern Railroad's handling of employee discipline.

7.05 Duplicate Report. Within 10 days after Railroad shall, (a) file with the Securities and Exchange Commission any 10-K, 10-Q or 8-K report or any report in place

thereof subsequently required by the SEC, (b) file with the Surface Transportation Board, the Illinois Commerce Commission, the United States Department of Transportation, the Illinois Department of Transportation, or any division or agency of these agencies, any document, report, or statement relating to the Contract Services, or requesting the abandonment or discontinuance of any trackage within the Metropolitan Region, or seeking consent or approval for the disposition of any property located in the Metropolitan Region, or (c) send any written report, statement, or communication to any class of its public shareholders, Railroad shall deliver a copy thereof to the CRD.

7.06 Access to Records and Additional Information. (a) Railroad shall provide to the CRD such further information relating to the Contract Services as may reasonably be requested by the CRD. In January 2009, Railroad changed its accounting system to the SAP ERP system. Access to SAP, auditable data and other information to be provided to CRD for the audit of 2009 and subsequent years are listed in Exhibit 7-K. Access to the legacy system to audit financials prior to 2009 will be maintained by Railroad until the open audit years are closed.

(b) Either Party shall have the right to inspect and, except with respect to working papers, obtain copies of the books, records, or any other written or otherwise recorded information of the other Party relating to the Contract Services. Unless agreed otherwise, such inspections shall be during normal business hours and at the place where such information is normally kept. The inspecting party may supervise the making of any copies of documents it requests.

(c) This Article shall not be applied or construed to: (1) limit any right either Party may have under law to have counsel or to conduct audits or inspections, or to obtain information or access to records; (2) authorize either Party to demand, inspect or copy information unrelated to this Agreement; (3) waive or diminish any privilege of non-disclosure under Illinois or Federal law; (4) require disclosure of any communication with, by or prepared at the request of an attorney and relating to a matter in which the attorney is serving or being consulted in this capacity as an attorney; (5) require disclosure of any communication concerning preparation for anticipated negotiations or concerning actual negotiations with the other Party; or (6) except as provided in Article 7.08 below, disclose any internal projections or forecasts of Railroad's budget, cash flow or income.

7.07 Form of Reports. All reports to the CRD with respect to income and expenses derived or incurred by Railroad in connection with Contract Services shall be prepared in accordance with Exhibits 7-A and 7-B.

7.08 Estimated Capital Needs Projections. During each year of the Agreement Term or on any date thereafter as specified by the CRD, Railroad shall prepare and deliver to the CRD a projection in the form set forth in Exhibit 7-E of Capital Needs, ranked by priority, deemed necessary or advisable by Railroad with respect to the provision of Contract Services during the next Calendar Year. The Five Year Capital Improvement Program which Railroad prepares annually, if substantially in the form prepared by Railroad in Calendar Year 2010, shall satisfy the requirements of this Article.

7.09 Inspection. (a) The CRD shall provide Railroad with a list of not more than ten persons, or job titles, which persons or the holders of which job titles shall be the CRD's authorized representatives for purposes of this Article. The CRD's authorized representatives shall be familiar with the safety rules of Railroad and the Federal Railroad Administration. The CRD's authorized representatives shall have the right and privilege at any time, from time to time or on a continuing basis, to enter upon any or all lands and properties of Railroad which are related to Contract Services for the purpose of inspecting the same. Such inspections may be conducted without advance notice to, or supervision by, Railroad, provided, however, that the CRD's authorized representatives shall identify themselves to Railroad's supervisory employees, if any, at the time of entering upon lands or property of Railroad for inspection purposes. In the course of any inspection, the CRD shall have the right to obtain information directly from the employees of Railroad, provided, however, that Railroad shall have the right to have the Contract Services Manager or his designated representative present when such information is sought.

(b) In the event of an emergency with regard to Contract Services, CRD police shall have the unencumbered right to enter upon any or all land and/or property of the Railroad for the purpose of assessing the scope of the Contract Services emergency and determining the impact of the emergency upon the operation of Public Transportation Services. CRD's police may also enter upon Railroad's land and/or property to assist a passenger or to assist Railroad's employees in the performance of Public Transportation Services.

(c) The CRD hereby assumes liability for and agrees to hold harmless, defend and indemnify Railroad and Railroad's successors, assigns, officers, directors, employees, agents and servants from and against any and all liabilities, obligations, losses, damages, penalties, judgments, settlements claims, actions, suits, proceedings, costs, expenses and disbursements, including legal fees and expenses, of whatever kind and nature, imposed on, incurred by or asserted against Railroad or any of Railroad's successors, assigns, officers, directors, employees, agents or servants, in any way relating to or arising out of any injury to any person, loss of life or damage to property of any person, arising out of the presence of, act of, or omission to act of any of the CRD's authorized representatives occurring while any such authorized representative is on lands or properties of Railroad which are related to Contract Services, other than such lands or properties which are open to the general public, and irrespective of any negligence or fault of Railroad, its officers, directors, employees, agents or servants.

7.10 Retention of Records. Railroad shall maintain and preserve supporting accounting, operating, engineering, maintenance and mechanical department records necessary to substantiate Reimbursable Expenses. Such documentation includes, but is not limited to, (1) the documentation described in Exhibit 7-K and (2) details of train Consists, locomotives and cars serviced, inspected, cleaned and dispatched, locomotives and cars repaired, work orders, material listings, material charge out documents, timetables, labor summaries, and timecards separating labor between Contract Services and other Railroad activities, to the extent such separation was made in Railroad's records on the date of execution of this Agreement. All such records shall include the CRD designated locomotive and passenger car number, and shall be maintained and accumulated on a location by location basis. Such records shall be retained for a period of not less than 36 months or the period of time required by STB record retention rules

(49 C.F.R. Articles 1220-1239) whichever is greater and shall be available to the CRD or its representatives for review and audit during regular business hours at the location where the record is retained.

7.11 Customer Complaints. Railroad shall have a procedure for the receipt and recording by the Contract Services Manager or his office of customer complaints received in person, in writing or by telephone with respect to the Contract Services. Railroad shall use its best efforts to respond to each complaint within 72 hours of its receipt or sooner if warranted by the circumstances. Within 15 days after the end of each calendar month included in the Agreement Term, Railroad shall deliver to the CRD a statement showing the number of such complaints received, in the form which Railroad provided to the Authority during the term of the Prior Agreement. Railroad shall make available for inspection by the CRD all written complaints received, and the records of Railroad upon which the statement required by this Article was based.

7.12 Additional Reporting Requirements. (a) The CRD may at any time, or from time to time, during the Agreement Term, direct reasonable changes in the content or form of any report required under this Article.

(b) The Illinois Freedom of Information Act (5 ILCS 140/1 et. Seq., the “FOIA Act” is a law in the State of Illinois that allows for requests of public records and as such it is anticipated that at some time during the term of this Agreement certain public records in the possession of CRD may be requested under this FOIA Act. If CRD requests Railroad to produce public records of CRD that Railroad possesses, Railroad agrees to cooperate with its obligations, if any, under the FOIA Act to produce to CRD such records Railroad agrees are public records within the definition of that term under the FOIA Act so long as Railroad has not previously provided said records to CRD or if CRD has its own copy of same. Railroad is under no obligation to produce records Railroad considers non-public records and Railroad will defend CRD, indemnify, and hold CRD harmless during the defense of Railroad’s position that the records are non-public or not subject to the FOIA Act. Railroad is under no other obligation under this Agreement to search, find and produce records that Railroad has already produced to CRD or which CRD produced to Railroad as said documents are equally accessible to CRD, a public entity to whom the FOIA Act applies; provided, however, that Railroad will use reasonable efforts, at Metra’s cost, to provide a second copy of records subject to this Agreement that may have been previously provided to Metra. Railroad, of course, agrees to fulfill its obligations under the law.

7.13 Substitute Reports. Railroad may satisfy any requirement of this Article by delivery to the CRD at the time and in the form required herein of a document containing the required information, even if such document is prepared for another purpose or contains additional information not required herein.

7.14 Accounting. The Railroad shall keep and maintain proper books of account regarding its Public Transportation Service in accordance with this Agreement and otherwise in accordance with Generally Accepted Accounting Principles of the railroad industry, consistently applied.

ARTICLE VIII

Additional Covenants, Warranties and Agreements of Railroad

8.01 Compliance With Laws. (a) Unless otherwise agreed by the CRD, Railroad will, in the provision of Contract Services comply with valid and applicable Government Requirements except such local Government Requirements as may be preempted by the CRD.

(b) Railroad will give prompt notice to the CRD of any proceedings which might result in its incurring any Capital Expenditures or expenses not provided for in an Approved Budget, the necessity for which expense or Capital Expenditure is caused by a newly instituted Government Requirement or enforcement of a Government Requirement which theretofore had not been enforced, and shall timely offer to the CRD the opportunity to contest the validity and applicability of such Government Requirement.

8.02 Opinion of Counsel. When this Agreement is executed by Railroad, Railroad will furnish the CRD with an opinion of Railroad's counsel, dated the date on which this Agreement is executed by Railroad and to the effect that (1) Railroad is a corporation duly organized and existing and in good standing under the laws of its jurisdiction of incorporation, and has full corporate power to carry on its business as and where then conducted; (2) Railroad is qualified to engage in the business of providing Public Transportation Services by rail in, and is in good standing under laws of, the State of Illinois; (3) the execution, delivery and performance of this Agreement by Railroad has been duly authorized by all requisite corporate action of Railroad; (4) this Agreement has been duly executed and delivered by Railroad and constitutes the valid and binding obligation of Railroad in accordance with its terms; (5) the compliance by Railroad with the terms and conditions of this Agreement will not result in a breach of, or default under, any judgment, decree, mortgage, indenture or other agreement applicable to Railroad known to such counsel; (6) all approvals as may be required to permit the performance by Railroad of its obligations under this Agreement have been obtained; and (7) except as previously disclosed to the CRD in writing, such counsel has no knowledge of any litigation or proceeding pending or threatened against Railroad which could materially and adversely affect the provision by it of Contract Services under this Agreement.

8.03 Maintenance of Insurance. (a) CRD will use its best reasonable efforts to keep in full force and effect insurance coverage of the same type, character and coverage as that maintained by it as of February 9, 2010, or at subsequent renewals, with respect to Contract Services. Coverage at the time of execution of this Agreement is set out in Exhibit 8-A. CRD shall use its best reasonable efforts to cause the Railroad to be named as an additional named insured, as its interests may appear, under all of such insurance, and shall notify the Railroad promptly of any material change in the insurance required by this Article. CRD represents to the Railroad that such insurance covers Railroad's liability for personal injury, death, and damage to or destruction of property of others, and damage to or destruction of property of Railroad and pollution liability.

In the event of an unexpected loss that substantially erodes the RTA Policy in place, or if it uses its commutation provisions that allow it to terminate coverage for a given year

or period, CRD will undertake its best reasonable efforts to reimplement limits or to purchase alternative insurance.

(b) At each renewal and in the event of a material change in insurance which reduces the coverage or limits, the CRD shall provide 90 days' written notice to Railroad. Railroad shall have 60 days from the date of said notice to review the contract of insurance proposed by the CRD or its insurer and, by written notice to the CRD, approve or disapprove such insurance. Failure by Railroad to so notify the CRD within 60 days shall constitute approval. Upon disapproval by Railroad, Railroad shall purchase insurance in accordance with its specifications, and the premiums therefore shall be a Reimbursable Expense.

(c) If the CRD decides not to continue in force any insurance which it purchased pursuant to this Article 8.03, the CRD shall give Railroad at least 90 days' written notice of cancellation or termination of any insurance policy then in force, so that Railroad may procure such insurance, and the premiums therefore shall be a Reimbursable Expense. In addition, the CRD shall provide Railroad with copies of all application data supplied by the CRD to its insurers, and shall notify its insurers that the CRD has terminated its efforts to purchase insurance for the Railroad.

(d) It is the intention of the Parties hereto that (except for retentions not to exceed \$5,000,000 million per occurrence) insurance obtained under this section covers Railroad for all liabilities related to Claims which are caused by or arise, in whole or in part, from the provision of Contract Services under Article X of this Agreement. However, CRD's insurance coverage does not limit its obligation to reimburse Railroad for Claims arising under this Agreement. CRD and Railroad agree to reopen this Agreement to discuss the level of insurance to be carried by CRD for liability claims arising out of commuter train service each time Congress may modify, alter or change the cap on liability claims involving commuter train service.

(e) Subrogation. Railroad shall exercise its best judgment and provide reasonable efforts to identify subrogation opportunities and actively pursue recovery against responsible third parties, for costs incurred by Railroad to repair damages to equipment or property, which would otherwise be recovered or reasonably sought to be recovered by Railroad, in the absence of subrogation, under the Agreement. Costs incurred to pursue recovery from responsible parties shall be submitted for reimbursement under the Agreement. Recoveries from responsible parties and expenses incurred will be allocated between CRD and Railroad based upon the share each Party contributed to the original asset that was damaged or destroyed and then further allocated upon each Party's share of the total gross ton miles at that location for track related components and using train counts for signal related components. Railroad recovery efforts shall include notifying the Illinois Secretary of State of those instances where the damage is attributable to uninsured drivers and/or owners.

Railroad will retain sufficient details of cost and materials to identify the amounts involved. Railroad will allow CRD to conduct an audit of expenses submitted under the Agreement each six (6) months so CRD can determine if additional subrogation measures are reasonably warranted. If Railroad disagrees with CRD regarding whether subrogation efforts should proceed or disagrees to the level of subrogation efforts warranted, Railroad will not unreasonably

CRD & UPRR PSA AGREEMENT

withhold permission from CRD for CRD to pursue subrogation itself in the name of Railroad to recover said damages CRD wishes to pursue.

Under circumstances where the Railroad agrees to permit CRD to pursue subrogation efforts directly and independently of Railroad, the Parties will mutually agree on the selection of counsel. No direct and independent subrogation efforts by CRD or counsel will be done without the permission of Railroad.

Railroad shall not forego or suspend subrogation opportunities without written notice to CRD's Risk Management. CRD and Railroad are to mutually agree to the selection of counsel if suit is filed against a responsible party, whether Railroad is pursuing subrogation or CRD is pursuing subrogation directly with Railroad's permission. CRD will receive a status report regarding any subrogation files being pursued by CRD which are assigned to counsel as requested by CRD, or beginning ninety days following counsel's assignment to matters being pursued by Railroad and each ninety day period thereafter.

Railroad will also identify any instances involving vehicles assigned or loaned to Railroad, including road licensed vehicles and trailers, where an accident occurs with potential subrogation. Railroad agrees to notify CRD of the occurrence and when appropriate, pursue recovery from the adverse owner or driver for the repair

8.04 Report of Compliance. On or before the date on which this Agreement becomes binding on Railroad and the CRD, Railroad will deliver to the CRD a Report on Compliance with this Agreement confirming that to the best of Railroad's Officers knowledge in the exercise of due diligence none of the reports, summaries, financial statements or other written information furnished by Railroad to the CRD in connection with or pertaining to this Agreement contains any untrue statement or misrepresentation of a material fact, or omits to state or represent any material fact necessary to make the statements or representations made, in light of the circumstances under which they were made, not misleading in any material respect. This Report on Compliance will be in the format of Exhibit 8-B.

8.05 Compliance With Agreements. Railroad will comply with the provisions of existing leases, contracts and agreements to which it is a party and which are material to the provision by it of the Contract Services. Railroad shall not, without the prior written approval of the CRD, enter into, renew, fail to renew, modify or terminate any such contracts, leases or agreements if such entry, renewal, failure to renew, modification or termination will impair the performance by Railroad of the Contract Services or result in any material increase in Reimbursable Expenses or material reduction in Contract Services Revenues.

8.06 Representations and Warranties. Railroad hereby represents and warrants to the CRD that: (a) none of the reports, summaries, financial statements or other written information heretofore furnished by Railroad to the CRD in connection with or pertaining to this Agreement or the Prior Agreement and none of the reports, summaries, financial statements or other written information hereafter furnished by Railroad to the CRD pursuant to the provisions of this Agreement or the Prior Agreement, contains or will contain any untrue statement or misrepresentation of a material fact or omits or will omit to state or represent any material fact

necessary to make the statements or representations made, in the light of the circumstances under which they were made, not misleading in any material respect; and (b) Railroad has complied with and will comply with, has fully performed and will fully perform, all of its obligations under the Prior Agreement in all material respects.

8.07 Labor Law Compliance. Railroad agrees that, with respect to the Contract Services, it will comply with all the applicable requirements of federal and Illinois labor laws, including without limitation applicable requirements of federal and Illinois law with regard to the minimum wages to be paid to its employees, limitations upon the employment of minors, minimum fair wage standards for minors, the payment of wages due employees and all regulations established according to law to protect the health and safety of its employees.

8.08 Compliance with Environmental Protection and Safety Laws. Railroad agrees that, with respect to the Contract Services, it will comply with all applicable Government Requirements enacted or adopted according to law relating to the protection of the environment. Railroad agrees that it will comply with the provisions of general or special orders, rules or regulations issued by the Illinois Commerce Commission, which pertain to public transportation and to public transportation facilities.

8.09 Equal Employment Opportunity and Fair Employment Practices. (a) As to all of Railroad's Public Transportation Services, Railroad agrees that it will comply with all Government Requirements (including those of the CRD) relating to equal employment opportunity, fair employment practices and minority business enterprises, including but not limited to, the provisions of Title VII of the United States Civil Rights Act of 1964 (P.L. 88-352, 78 Stat. 253, 42 U.S.C. 2000 (e)), as the same may be amended, the Illinois Human Rights Act (775 ILCS 5/1-10 et seq.) as the same may be amended, Article 2.02(d) of the Act as the same may be amended, and Authority Ordinance No. 80-51, as the same may be amended.

(b) Railroad shall furnish the CRD with proof that it has filed with the Illinois Human Rights Commission or its successor agency an affirmative action program for employment by it with regard to the Public Transportation Services provided by Railroad in the Metropolitan Region. Such program shall insure that applicants are employed and that employees are treated during employment without unlawful discrimination, and such affirmative action program shall include provisions relating to hiring, upgrading, demotion, transfer, recruitment, recruitment advertising, selection for training and rates of pay or other forms of compensation. No unlawful discrimination, as defined and prohibited by any applicable law shall be made in any term or aspect of employment, and discrimination based upon political reasons or factors shall be prohibited. Railroad hereby agrees that throughout the Agreement Term it will fully comply with such program and shall provide the CRD with all information reasonably requested by it pursuant to the requirements of the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.), as the same may be amended.

ARTICLE IX

Labor Protection

9.01 Labor Protection and Labor Protection Costs. (a) Pursuant to Sections 2.15 and 2.16 of the Act the CRD agrees that it will have financial responsibility for, and that

Railroad will have no financial responsibility for, the fair and equitable protection of employees of Railroad who are adversely affected by action(s) initiated by or taken at the direction of the CRD pursuant to this Agreement in the event such action(s) of the CRD cause claims which are allowed under the terms of existing agreements covering employees of Railroad negotiated pursuant to Section 13(c) of the Urban Mass Transportation Act of 1969, as amended [49 U.S.C. Section 1609(c)] and/or Section 405(b) of the Rail Passenger Service Act of 1970, as amended [45 U.S.C. Section 565(b)] or any existing agreement covering employees of Railroad or agreement required to be entered into pursuant to said existing agreement. The CRD will pay all claims allowed pursuant to said labor protection agreements under the aforementioned circumstances in accordance with the principles of Section 2.04. Nothing in this paragraph shall be construed to limit the CRD's other duties, obligations or financial responsibilities under Sections 2.15 or 2.16 of the Act.

(b) Railroad will, pursuant to Section 2.16(b) of the Act, either on behalf of or jointly with the CRD, negotiate with the accredited representatives of the employees of Railroad authorized to act for them such labor protective arrangements as are required by the Act in the event existing agreement(s) are not or cannot be utilized pursuant to paragraph 9.0 1(a) hereof. Said labor protection agreements shall cover employees of Railroad who may be adversely affected by action of the CRD specified in paragraph 9.0 1(a). The CRD and Railroad shall have the same financial responsibilities as provided in paragraph 9.01(a). Nothing in this paragraph shall be construed to limit CRD's other duties, obligations or financial responsibilities under Sections 2.15 or 2.16 of the Act. The Railroad shall, to the fullest extent feasible, cooperate with the CRD in the administration and implementation of any labor protection agreement arising from the application of this Article. Reasonable additional costs of administration and implementation shall be compensated by the CRD in accordance with the principles of Article 2.04. The Railroad further agrees that, pursuant to Section 2.16(b) of the Act, if agreement cannot be reached on the terms of such protective arrangement, any party may submit any matter in dispute to arbitration. In such arbitration, each party shall have the right to select one nonvoting arbitration board member. An impartial arbitrator will be selected by the American Arbitration Association and appointed from a current listing of the membership of the National Academy of Arbitrators, upon request of any party. Unless otherwise specified by the Parties, the following procedure in interest arbitration shall be followed:

The party requesting arbitration shall name its arbitrator at the time the request for arbitrations is made. Within five working days after receipt of such request, the other party shall name its arbitrator. Within seven working days thereafter, the two arbitrators or their representatives shall meet to select the impartial chairman of the Board of Arbitration. Should the two arbitrators be unable to agree upon the appointment of a third arbitrator within ten working days after the second of the arbitrators was named, then either party to the arbitration may request the American Arbitration Association to furnish a list of five arbitrators who are currently available to serve from which the third member shall be selected to serve as Chairman. The list requested shall be composed of arbitrators who are experienced in interest arbitration in the transportation industry. Within seven days after the receipt of the list, the arbitrator shall be selected from the panel by each party alternately striking a name until only one name remains. The order of striking shall be determined by the toss of a coin.

The impartial arbitrator's decision shall be final and binding on all Parties. Each party shall pay an equal share of the impartial arbitrator's fees and expenses.

(c) In the event an adversely affected employee of Railroad makes a claim and elects to take protection more favorable or other than any allowed under any existing agreement made or entered into pursuant to paragraphs 9.01(a) and 9.01(b) hereof, and pursuant to an agreement entered into by Railroad without the CRD's participation or approval which agreement or claim does not arise from action(s) initiated by or taken at the direction of CRD, the CRD shall have no financial responsibility for said claim.

(d) In the event an employee of Railroad who is adversely affected by action(s) initiated by or taken at the direction of the CRD makes a claim electing to take protection more favorable or other than any allowed under any existing agreement made or entered into pursuant to paragraphs 9.01(a) and 9.01(b) hereof, and pursuant to an agreement entered into by Railroad without the CRD's participation or approval which agreement did not arise from action(s) initiated by or taken at the direction of the CRD, then the CRD will have financial responsibility for such portion of the fair and equitable protection of employees as CRD would have paid under existing agreements made and entered into pursuant to paragraphs 9.01(a) and 9.01(b) hereof.

9.02 Non-Interference with Labor Agreements. Nothing in this Agreement shall be applied or construed to authorize or require conduct which violates any of Railroad's labor agreements or, except to the extent Railroad is reimbursed therefore, which requires payment by Railroad of any penalty or payment pursuant to such agreements; provided, however, that Railroad will not directly or indirectly propose any new provision or change in any existing provision, in such agreements which would, as compared with such agreements in effect December 31, 1998, increase any prohibition against conduct that may be undertaken or required by the CRD pursuant to this Agreement. If the CRD proposes a Service Change or a Fare Change, implementation of which would violate any of Railroad's labor agreements, Railroad will use good faith efforts in informal negotiations (but without any obligation to institute procedures under Section VI of the Railway Labor Act) to obtain a modification or waiver of the applicable provisions of such agreements to permit such change to be implemented in accordance with this Article.

ARTICLE X

Notice, Defense of Claims, and Allocation of Claims Expenses

10.01 Notice. Railroad shall, promptly after gaining knowledge thereof, notify the CRD of the assertion against Railroad or the CRD by any person or entity of any claim or liability arising out of the provision of the Contract Services and the expense for which Railroad intends to seek reimbursement pursuant to Article 6.02 hereof ("**Claim**"). The CRD shall, promptly after gaining knowledge thereof, notify the Railroad of the assertion against Railroad by any person or entity of any claim arising out of the Contract Services operations.

10.02 Allocation of Claims - Generally. Except as provided in Article 10.03 and 7.09(b), Claims shall be Reimbursable Expenses when the cause of the Claim is solely-related (as between Railroad and CRD) to Contract Services equipment or employees, but shall not be Reimbursable Expenses when the cause of the claim is solely-related (as between Railroad and

CRD) and to non-Contract Services equipment or employees. Except as provided in Article 10.03 below, in all cases: (a) in which it is not determinable that the cause of the Claim is solely-related (as between Railroad and CRD) to either Contract Services equipment or employees or non-Contract Services equipment or employees, or (b) the cause of the Claim is related to both Contract Services equipment or employees and non-Contract Services equipment or employees, the expense of the Claim shall be allocated to Reimbursable Expenses and to Railroad in accordance with the allocation principles set forth in Exhibit 6-A or 6-C governing the work, property or activity which caused or gave rise to the Claim.

Notwithstanding the provisions of this Article 10.02 (a) and (b) and the following Article 10.03, if the Claim involves or is caused by train operations and the only train(s) involved relates to Contract Services, the Claim shall be a Reimbursable Expense, regardless of the negligence of any party to this Agreement. Notwithstanding the foregoing, the CRD shall not be obligated to pay any cost or expense which is not a Reimbursable Expense in accordance with Article 6.02 (b)(5) or (7) of this Agreement, and costs of a Claim shall not include any liability or expense to the extent that Railroad is reimbursed by an insurance carrier or other third party.

Conversely, notwithstanding the provisions of this Article 10.02 (a) and (b) and the following Article 10.03, if the Claim involves or is caused by train operations and the only train(s) involved relates to non-Contract Services, the Claim shall not be a Reimbursable Expense, regardless of the negligence of any party to this Agreement. Notwithstanding the foregoing, the CRD shall not be obligated to pay any cost or expense which is not a Reimbursable Expense in accordance with Article 6.02 (b) (5) or (7) of this Agreement, and costs of a Claim shall not include any liability or expense to the extent that Railroad is reimbursed by an insurance carrier or other third party.

10.03 Allocation of Claims Caused by non-Contract Services and Contract Services Train Collisions. Notwithstanding the provisions of Article 10.02, in the event of damage to property of Railroad or others or personal injury or death resulting from the collision of a non- Contract Services train operated by Railroad and a Contract Services train that was caused by:

- (i) negligence or other fault of the Contract Services train crew, the costs of the claim thereby caused shall be borne by the CRD;
- (ii) negligence or other fault of the non-Contract Services train crew, the costs of the Claim thereby caused shall be borne by Railroad;
- (iii) negligence or other fault of employees of Railroad having duties relating to both Contract Services and non-Contract Services operations, or negligence of one or more employees of Railroad having duties relating solely to the Contract Services and negligence of one or more employees of Railroad having duties relating solely to Railroad's non-Contract Services operations, or the cause cannot be ascertained, the costs of the Claim thereby caused shall be borne equally by Railroad and CRD.

10.04 Definition of Claims Expense. In addition to the amounts of settlements and judgments, the cost of a Claim includes direct expenses of investigating the facts, and fees of attorneys and experts necessary to the defense of a Claim, provided, however, that Railroad shall obtain the prior written approval, or at CRD's discretion, oral approval for any litigation expense item which may reasonably be expected to exceed \$10,000 with respect to any one claim or incident, provided further, however, that such \$10,000 limitation shall not apply to salaries of Railroad's employee-attorneys and employee-claims personnel. Notwithstanding the foregoing, the CRD shall not be obligated to pay any cost or expense which is not a Reimbursable Expense in accordance with Article 6.02(b)(5), (7) or (12) of this Agreement and the costs of a Claim shall not include any liability or expense to the extent that Railroad is reimbursed therefore by an insurance carrier or other third party.

10.05 Defense of Claims. (a) Railroad shall investigate and dispose of all Claims, provided that the CRD also may investigate any such Claim, at its election, and Railroad shall cooperate with the CRD in each such investigation. Railroad shall not settle or compromise any Claim involving payment by the CRD of any amount in excess of \$25,000, without in each case the prior written consent of the CRD; provided, however, Railroad can settle or compromise Claims involving the payment by CRD of an amount up to and including \$100,000 as long as CRD receives the prior written concurrence of Mr. Thomas W. Cushing while he is employed by Railroad or by such party acceptable to CRD. CRD reserves the right to adjust this level of authority if significant changes occur within the Railroad's Law and/or Claim departments in terms of staffing or personnel. The CRD shall have the right to join as an additional party in any proceeding with respect to a Claim. Railroad shall give prompt notice to the CRD of the assertion of each Claim and thereafter shall provide to the CRD such documents and information as the CRD reasonably may request in the circumstances. At such time as an attorney's lien or a lawsuit is filed with respect to any claim the majority of the expense of which is allocable to the CRD, Railroad shall tender defense thereof to the CRD upon its request.

(b) In the event of serious personal injury or death Claim(s) which will likely result in extraordinary defense costs, Railroad may request that the defense costs associated with the Claim(s) be allocated on a direct expense basis, rather than through the Corporate Overhead itemized on Exhibit 6-B. CRD, in its sole discretion, may approve such allocation, such approval shall not be unreasonably withheld.

ARTICLE XI

Agreement Term

11.01 Duration. The term of this Agreement ("Agreement Term") shall be retroactive to January 1, 2010, and shall end on whichever of the following dates is the earlier:

(a) December 31, 2016, or

(b) the date, if any, as of which this Agreement is terminated by the CRD or Railroad pursuant to Article XII below.

11.02 Effect of Termination. Upon the termination of the Agreement Term, all rights and privileges of Railroad and the CRD under this Agreement shall cease, and neither Railroad nor the CRD shall have any further obligations to the other under this Agreement, provided that such termination shall not affect, impair or discharge any claims, indemnifications,

benefits or rights of Railroad or the CRD which shall have accrued, or which are based upon acts, omissions to act or events which shall have occurred, during the Agreement Term.

ARTICLE XII

Termination

12.01 Rights to Terminate. (a) The CRD may, by written notice to Railroad terminate this Agreement in the event the overall level, safety or quality of the Contract Services is materially impaired as a result of the breach or failure of compliance by Railroad of or with any of the provisions of this Agreement and Railroad fails to cure such impairment within 60 days after written notice thereof by the CRD and stating its intention to terminate. Termination pursuant to this Article shall not become effective during the pendency of proceedings involving issues underlying the CRD's asserted right to terminate in a particular case.

(b) In the event the CRD is in arrears in its payments to Railroad under this Agreement for a period of three (3) months or more, disputed items excepted, Railroad shall have the right to terminate this Agreement by written notice to the CRD.

12.02 Non-Waiver and Pursuit of Other Remedies. Article 12.01 above is not intended to waive or limit any other remedy available to either Party under this Agreement. The failure of either Party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy provided for in this Agreement, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

ARTICLE XIII

Miscellaneous Provisions

13.01 Prior Agreements Between the Parties. Nothing in this Agreement shall be deemed to restrict or impair the exercise by either Party of any of the rights, powers and privileges conferred upon it by any other written agreement between Railroad and the Authority or CRD and pertaining to periods before the effective date of this Agreement.

13.02 Subordination. (a) All obligations of the CRD which may, from time to time, be incurred by it under provisions of the Act which authorized secured, unsecured short term, long term, equipment trust certificate or other borrowing shall be superior to and have priority over any and all obligations of the CRD under this Agreement.

(b) Any locomotives, cars, equipment or other property furnished or used or to be furnished or used by Railroad under this Agreement shall be subject to all existing liens and superior rights, including, but not limited to, real estate or chattel mortgages, equipment liens pursuant to equipment trusts agreements, conditional sale agreements, leases, or otherwise, and all obligations or rights of the Parties shall be subject and subordinate to the provisions of any existing leases, licenses, joint facility agreements, joint terminal agreements, union depot agreements, track agreements, or easements or other encumbrances pertaining to any of the real or personal property used or occupied in connection with the performance of the Agreement.

13.03 Limitation of Rights. The CRD shall have no obligation or duty to any person to make any of the inspections, audits or examinations which the CRD may have the right to make under this Agreement or otherwise. Such rights are for the sole benefit of the CRD and neither Railroad nor any other person shall rely on the CRD's exercise of, or failure to exercise, any of such rights. Except for labor protection obligations pursuant to Article IX, this Agreement is not intended to and shall not be construed or applied to create any rights in any person or entity not a party hereto.

13.04 Non-Waiver. In no event shall the payment or receipt of any money under this Agreement by the CRD or Railroad constitute or be construed as a waiver by the CRD or Railroad of any breach of covenant or of any default on the part of the other under this Agreement which may then exist, and the making or receipt of any payment under this Agreement while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available in respect of such breach or default. Neither the CRD or the Railroad shall be deemed to have waived any right under this Agreement unless such waiver is in a writing signed by one of its respective authorized officers. No delay or omission in exercising any right under this Agreement shall operate as a waiver of such right or other right. All the rights and remedies of the CRD and Railroad under this Agreement shall be cumulative and not exclusive and may be exercised singly or concurrently. The waiver or exercise of any remedy shall not be construed as a waiver of any other remedy available hereunder or under general principles of law or equity.

13.05 Non-Collusion. Railroad warrants and represents that it has not paid and agrees not to pay any bonus, commission, fee or gratuity to any employee or official of the CRD for the purposes of obtaining this Agreement. No officer or employee of the CRD shall be admitted to any financial share of this Agreement or to any direct or indirect financial benefit arising therefrom.

13.06 Successors and Assigns. All covenants, agreements, representations and warranties in this Agreement made by or on behalf of Railroad or its subsidiaries or by or on behalf of the CRD shall bind and inure to the benefit of the respective successors and assigns of such party hereto.

13.07 Notices. Any written notice required or permitted by this Agreement may be delivered by depositing it in the United States Mail, postage prepaid, addressed to the CRD at Commuter Rail Division of the Regional Transportation Authority, 547 West Jackson Boulevard, Chicago, Illinois 60661, to the General Counsel and Director, Office of Real Estate & Contract Management and to Railroad at 101 North Wacker, Suite 1910, Chicago, Illinois 60606, to the attention of Assistant Vice President, Government Affairs - Central Region, or at such other address or person as either party may designate in writing.

13.08 Governing Law. This Agreement shall be construed in accordance with and be governed by the laws of the State of Illinois.

13.09 Assignment. Railroad agrees that this Agreement shall not be assigned or transferred without the written consent of the CRD, unless the transaction is (1) specifically

authorized under a federal law, or (2) a merger, consolidation, sale or lease of all or substantially all of Railroad's assets approved in a State or federal administrative or judicial proceeding in which the CRD has had a reasonable opportunity to appear. Railroad agrees that no such transaction shall occur unless any successor to Railroad's rights under this Agreement agrees to accede to all of the terms, conditions and requirements of this Agreement as a condition precedent to such succession. Railroad agrees that any purported assignment of this Agreement, except in accordance with this Article, without the consent of the CRD is null and void.

13.10 Amendment. The Parties agree that no change or modification to this Agreement shall be of any force or effect unless the amendment is dated and is reduced to a writing executed by both Parties.

13.11 Severability. The Parties agree that if any provision of this Agreement shall be held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if such remaining provisions could then continue to conform with the purposes of this Agreement and the terms and requirements of applicable law. If such a holding of invalidity deprives Railroad of the Compensation provided hereunder, Railroad may by written notice to the CRD elect to terminate this Agreement.

13.12 Titles and Precedent. The Parties agree that the titles of the Articles and Sections of this Agreement are inserted for convenience only and shall not be considered for any other purpose. This Agreement or anything done in connection herewith shall not be considered precedent for any future agreement which may be entered into between the Parties.

13.13 Documents Forming This Agreement. The Parties agree that this Agreement, including Exhibits attached hereto, constitutes the entire agreement between the Parties pertaining to the subject matter hereof, that there are no agreements or understandings, implied or expressed, except as set forth specifically in this Agreement and that all prior and contemporaneous agreements and understandings in this connection are merged into and contained in this Agreement. No covenant or condition not expressed in this Agreement shall effect or be effective to interpret, change or restrict this Agreement.

13.14 Powers of Eminent Domain. Nothing in this Agreement shall in any way preclude the CRD from exercising any of its powers of eminent domain. Railroad hereby agrees that in the event any of the property used in providing the commuter rail service is taken or acquired by eminent domain by the CRD, for the purpose of determining the award due to Railroad with respect to such property, no effect shall be given to any amounts paid or payable to Railroad under this Agreement or any payment or grant made or to be made by the Authority to Railroad.

13.15 Review of Operations. The Parties understand that one of the inducements for CRD to enter into this amended and restated PSA with Railroad is to include a provision where the Parties will review current Contract Services provided by Railroad to determine if any of them can be transferred during the term of this Agreement over to CRD's operating affiliate, the Northeast Illinois Regional Commuter Railroad Corporation. During the term of the Agreement, the Parties will investigate the practicality of transferring some or all aspects of

various Contract Services to CRD, including, but not limited to: maintenance of equipment, training of personnel, and the employment and management of employees, such as: ticket and accounting clerks, conductors, engineers, trainmen, and coach cleaners. As part of that investigation, the Parties will analyze what further changes to this underlying Agreement would be necessary to address financial equitable adjustments, including credits and/or additional charges to CRD should it decide to accept the transfer of operations and the Parties must reach agreement on mutually acceptable terms and conditions associated with any such transfer of operations. The Parties also understand that such transfer be performed under a realistic time frame and should address related personal and real property.

13.16 Article VI Exhibits: The Parties intend that the Exhibits conform to the body of the amended Agreement and the intention of the Parties. Exhibits 6-A, 6-B (Kedzie only), and 6-G to this Agreement have not been completely reviewed and approved by CRD's Audit Department. During the process of incorporating the changes from Railroad's prior mainframe accounting system into its new SAP system, Railroad has used its best efforts to not change the scope and financial impact of these above-designated Exhibits. Subsequent to signing this Agreement, if during CRD Audit's review it determines that the Exhibits do not comply with the body of the Agreement, the Parties will use best efforts to resolve the matter consistent with the ACR process, which ultimately requires the participation of CRD's Deputy Executive Director (Corporate Affairs) and Railroad's Vice President-Planning & Analysis in its Finance Department. If agreement cannot be reached on the terms of the remaining exhibits after participation by the Deputy Executive Director and Railroad's Vice President, any Party may submit such matters in dispute to arbitration. In such arbitration, each Party shall have the right to select one nonvoting arbitration board member. An impartial arbitrator will be selected by the American Arbitration Association and appointed from a current listing of the membership of the National Academy of Arbitrators, upon request of any Party. Unless otherwise specified by the Parties, the following procedure in interest arbitration shall be followed:

The party requesting arbitration shall name its arbitrator at the time the request for arbitrations is made. Within five working days after receipt of such request, the other party shall name its arbitrator. Within seven working days thereafter, the two arbitrators or their representatives shall meet to select the impartial chairman of the Board of Arbitration. Should the two arbitrators be unable to agree upon the appointment of a third arbitrator within ten working days after the second of the arbitrators was named, then either party to the arbitration may request the American Arbitration Association to furnish a list of five arbitrators who are currently available to serve from which the third member shall be selected to serve as Chairman. The list requested shall be composed of arbitrators who are experienced in interest arbitration in the transportation industry. Within seven days after the receipt of the list, the arbitrator shall be selected from the panel by each party alternately striking a name until only one name remains. The order of striking shall be determined by the toss of a coin.

The impartial arbitrator's decision shall be final and binding on all Parties. Each Party shall pay an equal share of the impartial arbitrator's fees and expenses.

13.17 Effective Date. This Agreement is effective as of January 1, 2010.

CRD & UPRR PSA AGREEMENT

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be made effective and executed as of the date first above mentioned by their respective duly authorized officials.

ATTEST:

By: Alfred M. Ellison

COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION
AUTHORITY

By: Philip A. Pagano
Philip A. Pagano, Executive Director

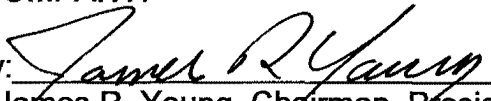
(Signature continued on next page).

CRD & UPRR PSA AGREEMENT

ATTEST:

By: 
Assistant Secretary

THE UNION PACIFIC RAILROAD
COMPANY:

By: 
James R. Young, Chairman, President
and Chief Executive Officer

SUMMARY OF EXHIBITS

1.	Exhibit 2-A	Schedules
2.	Exhibit 2-B	Train Consists
3.	Exhibit 2-C	Standards of Performance
4.	Exhibit 2-D	Maintenance of Equipment
5.	Exhibit 2-E	List of Cars and Locomotives
6.	Exhibit 2-F	Reserved
7.	Exhibit 2-G	Fuel
8.	Exhibit 2-H	Fuel Specifications
9.	Exhibit 2-I	Reserved
10.	Exhibit 2-AA	Suburban Station Status
11.	Exhibit 2-AB	Fair Market Value
12.	Exhibit 2-AC	Appraisal Criteria
13.	Exhibit 2-AD	Parking Lots Covered by Leases
14.	Exhibit 2-AE	Parking Lots With No Lease
15.	Exhibit 2-AF	Station/Coach Contract Service Revenue
16.	Exhibit 3-A	Use of CRD Owned Property for Elburn Extension
16.	Exhibit 5-A	Fares
17.	Exhibit 5-B	Pass Policy
18.	Exhibit 5-C	Ticket Offices and Hours
19.	Exhibit 5-D	Procedure for Sales of Tickets by Internet
20.	Exhibit 5-E	Procedures for sales of Tickets by Credit Card
19.	Exhibit 6-A	Expenses Assigned or Allocated by Responsibility Area (This Exhibit is subject to Article 13.16)
20.	Exhibit 6-B	Expense Allocation Techniques for Expenses to be Assigned or Allocated by Responsibility Area or Special Study (Kedzie dispatchers shall be subject to Article 13.16)
21.	Exhibit 6-C	Expenses Not Assigned or Allocated by Responsibility Accounting System
22.	Exhibit 6-D	Functions to be Excluded from Automated Processing in the Subsidiary Accounting System
23.	Exhibit 6-E	June 15 Budget (Format)
24.	Exhibit 6-F	Budget (Format)
25.	Exhibit 6-G	Billing Number Maps (This Exhibit is subject to Article 13.16)
26.	Exhibit 6-H	Accounting Change Request (Format)
27.	Exhibit 6-I	Link-UP Bus Tickets
28.	Exhibit 6-J	Reserved
29.	Exhibit 7-A	Monthly Expense Report (Format)
30.	Exhibit 7-B	Summary Variance Report (Format)
31.	Exhibit 7-C	Allocation Statistics Report (Format)
32.	Exhibit 7-D	Train Ridership Report
33.	Exhibit 7-E	Capital Expenditure Plan (Format)
34.	Exhibit 7-F	Budget Variance Report (Format)
35.	Exhibit 7-G	Work Order Format
36.	Exhibit 7-H	Reserved
37.	Exhibit 7-I	Reimbursable Expenses Alternative Format (Format)
38.	Exhibit 7-J	Personal Injury, Property Damage and Grade Crossing Report (Format)

CIRD & UPRR PSA AGREEMENT

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|-----|-------------|----------------------------------|
| 39. | Exhibit 7-K | List of Computer Tapes for Audit |
| 40. | Exhibit 7-L | Summary of Efficiency Reporting |
| 41. | Exhibit 8-A | Insurance |
| 42. | Exhibit 8-B | Report on Compliance |

EXHIBIT C



BUILDING AMERICA®

June 30, 2020

Via email to: JDerwinski@METRARR.COM

James M. Derwinski
CEO/Executive Director
Metra
547 W. Jackson Blvd., 13th Floor
Chicago, IL 60661

Re: Union Pacific's Notice to Metra of Its Intent to Transfer Services

Dear Mr. Derwinski,

Nearly one year ago, in August 2019, Union Pacific in conjunction with Purchase Service Agreement ("PSA") renewal negotiations, formally notified Metra of Union Pacific's intent to discontinue providing Union Pacific employees to operate Metra's trains, provide mechanical maintenance and perform other PSA services ("Services To Be Transferred"). As a result, Metra would assume responsibility for directly operating its own commuter trains on Union Pacific's lines. At the onset and throughout our negotiations, Union Pacific has affirmed its commitment to provide uninterrupted track access as well as to retain responsibility for right-of-way maintenance and dispatching ("Services To Be Retained").

Negotiations have continued to the present time. Despite both parties' efforts, little progress has been achieved toward reaching an orderly and defined schedule covering the Services To Be Transferred and providing for reasonable, future compensation to Union Pacific for the Services To Be Retained as well as market-value compensation for Metra's continuing use of Union Pacific's property.

Most recently, on June 15, 2020, Union Pacific provided a comprehensive proposal to Metra that, among other things, laid out a clear schedule for the orderly transition of the Services To Be Transferred. Metra's June 24, 2020 response identified a large number of action items that Metra believes would have to be achieved before the relevant services could be transferred, including "satisfactory financial arrangements" as a repeated precondition. It is evident that Union Pacific and Metra remain very far apart in our respective understandings of reasonable financial terms.

In addition, among the reasons for our lack of progress in the negotiations was, and is, a substantial disagreement between the parties about whether Union Pacific has a common carrier obligation to operate commuter trains on its lines for Metra after expiration of the current PSA. Union Pacific rejects there is any such obligation. Metra disagrees. Therefore, on December 5, 2019 Union Pacific filed a lawsuit to assist the parties in resolving their differences.

The lawsuit remains pending. Union Pacific understands the Court will need time to address the legal questions before it, and nothing in this letter intends to anticipate or prejudge the Court's ultimate ruling. Even so, there can be no dispute that a number of the services included in the Services To Be Transferred do not involve "Public Transportation Services," as that term is defined in the PSA and which describe the core function of transporting or conveying passengers by rail. These services, unrelated to Public Transportation Services, include the provision of legal, claims, accounting, clerical, and mechanical (equipment repair) services and the like.

Therefore, by this letter, Union Pacific is providing advance notice to Metra that the services listed in the attachment will be discontinued on the corresponding listed dates. The sequence of the services being discontinued and the corresponding dates have been carefully selected to minimize impacts on Metra, limit transition complexity, and provide Metra with abundant time to plan, adjust, and execute the assumption of responsibility for the specified services while maintaining seamless commuter rail service for Metra's customers. If Metra has any concerns or feedback about any specific service or date, Union Pacific will of course discuss those concerns and make any reasonable adjustments, while preserving our commitment to move forward at a deliberate pace with a transfer of services that have no relation to Public Transportation Services or the lawsuit.

With respect to the remaining Services To Be Transferred, Union Pacific also is providing Metra with notice by this letter that such services will be discontinued 90 days following any final court ruling in the lawsuit determining that Union Pacific does not have a common carrier obligation to operate commuter trains on its lines for Metra. While the Court may rule otherwise, Union Pacific believes it is reasonable and prudent for the parties to begin planning now for the contingency that the Court will find there is no common carrier obligation. Metra's commuters and customers deserve nothing less than advance, orderly

and diligent planning for that contingency and for the discontinuance of the relevant services by Union Pacific after the Court's ruling.

Throughout the transition, Metra will be expected to carry out its obligations under the PSA, including payment for the gradually reducing services being provided by Union Pacific, as well as the provision of the crucial liability and insurance protections set out in the PSA.

Union Pacific has the deepest respect for our relationships with the numerous communities in our service territory. Those communities have been important stakeholders throughout the years we have operated passenger service in Chicago – and they will continue to be. We also appreciate and respect our longstanding relationship with Metra. While that relationship is now entering a new and exciting chapter, some things will not change: among them, the steadfast commitment of our two organizations to work together to ensure safe and high-quality commuter rail service for Metra's customers.

Union Pacific looks forward to working diligently and collaboratively with Metra to facilitate a seamless, effective, and efficient transition as set out above.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cyn M. Sanborn", with a stylized flourish at the end.

Cynthia M. Sanborn
Vice President
Network Planning & Ops

Attachment
Services Transfer Schedule*

Services Transfer Date (To Occur On or Before)	Services Transfer
July 31, 2020	Revenue Accounting
August 31, 2020	Law and Claims – For Passenger and Collection Claims
September 30, 2020	TCU Passenger Ticket Agents
October 31, 2020	Mechanical Car
October 31, 2020	Mechanical Locomotive
November 30, 2020	Engineering (minimal services only not personnel)
November 30, 2020	Communication and Telecommunications
Reasonable Time (90 Days) Following Court’s Final Ruling**	Train, Engine and Yard Employees
After TE&Y Services Transfer	Timekeeping (services only not personnel)
After TE&Y Services Transfer	Crew Management (services only not personnel)
After TE&Y Services Transfer	Law and Claims – Remaining Claim Types

*For almost a year, Metra and Union Pacific have discussed a phased transition of Contract Services to be transferred from Union Pacific to Metra. The above services transfer schedule is submitted in an effort to assist with ongoing negotiations and commence the services transfer.

** Reasonable time (90 days) following any final court ruling in the lawsuit that Union Pacific does not have a common carrier obligation to provide services to Metra.

EXHIBIT D



July 17, 2020

Ms. Cynthia M. Sanborn
Vice President - Network Planning & Ops
Union Pacific Railroad Company
1400 Douglas Street, MS 1110
Omaha, Nebraska 68179

RE: Union Pacific's Notice to Metra of Its Intent to Transfer Services

Dear Ms. Sanborn:

Thank you for Union Pacific's (UP) letter dated June 30, 2020, with the title above. The letter sets out a schedule defining when UP intends to cease providing certain functions necessary for UP's commuter service. While there are many issues raised in UP's letter, this response will be limited to the two most critical.

The first issue is financial. UP's letter notes that we "remain very far part in our respective understandings of reasonable financial terms." This is unfortunately accurate. Metra's position is that over the years the compensation in the purchase of service agreement has been negotiated six times and is a fair payment to UP. UP's position seems to be that the compensation is wholly inadequate and, excluding adjustments for direct costs Metra would be assuming, Metra must pay more dollars in absolute terms even while UP performs fewer services.

The second issue is the challenge of transferring approximately 850 unionized employees from UP to Metra. UP's proposed schedule does not take into consideration that there are seven collective bargaining agreements (CBAs) governing UP's unionized employees. Each CBA must be negotiated and finalized with the respective unions before the employees can be transferred to Metra. While Metra is in good faith negotiations with those unions, the process is governed by federal law and is not in Metra's control. Given that, and UP's own intimate knowledge of the lengthy CBA negotiation process, it is not reasonable for UP to unilaterally set such an accelerated schedule to stop providing services necessary for the commuter operation.

Particularly troubling is UP's stated intention to stop maintaining coaches and locomotives as of October 31, 2020, in little more than three months. As UP is well aware, the coaches and locomotives cannot be operated if they are not being maintained. Without coaches and locomotives, there is no commuter service.

While UP has been clear that it wishes to transfer the commuter service to Metra, UP has also explicitly stated its commitment to a seamless transition. To assure the commuting public that service will not

Cindy Sanborn
July 17, 2020
Page 2

be interrupted, Metra is requesting that UP continue to maintain the coaches and locomotives, and provide the other services currently under contract, until either: (1) the parties reach agreement to transfer those services; or (2) UP elects to provide those services pursuant to its common carrier obligation to operate the commuter service without the subsidy provided by Metra. Please confirm that UP will continue to provide those services until one of those events occurs.

The transfer of approximately 850 unionized employees engaged in the complex provision of commuter service does not happen as easily as throwing a railroad switch. On June 23, 2020, Metra sent UP a detailed three-page list of the major tasks to be accomplished before UP can responsibly transfer segments of the service to Metra. That list was discussed with UP line by line on June 24, 2020. The list is attached again for your convenience. Metra is asking UP to cooperate in good faith to work through both that list and the other issues dividing the parties.

Metra continues to look forward to working through these issues and coming up with a fair negotiated solution. Metra believes this will be an exciting new chapter in our relationship.

Sincerely,



James M. Derwinski
CEO/Executive Director

DRAFT: LIST SUBJECT TO CHANGE

Services Transfer Date (as stated by UP)	Services Transfer	What needs to happen before transfer can occur?
		<i>When does Metra take on additional police work? Hiring of additional admin personnel as needed</i>
7/1/2020	Revenue Accounting <i>Work only, no personnel</i>	Bank accounts set up Order deposit slips, stamps, money bags Instructions distributed to agents Resources distributed to agents Supply contracts transferred/ procured AX set up to handle UP revenue Abolish PAD positions
8/31/2020	Law and Claims <i>Passenger and Collection Claims Train Strikes</i>	Clearly defined process, procedures, designated point people Ongoing access to sites, documents, and employees, as needed Satisfactory financial arrangements
9/30/2020	Ticket Agents	Preparation (title preparation, negotiation, surveys, etc) and transfer of UP stations/parking lots Arrangement for station maintenance Labor agreements Transferring employee lists (contract and non-contract) Hire/train crew calling staff How will Stations FFA projects be handled? Need to reach agreement Receive and enter employee data into HR systems Station leases for any UP Engr to remain Receive and review all applicable training and work records Employee drug tests/physicals, background checks?? HR plan for ethics/ state-mandated training Any shared IT? Any necessary easements for IT/Comm installation Metra phones, other necessary equipment installed Purchase and place AEDs, first aid kits, at manned stations Wi-fi installation Satisfactory financial arrangements Manager cell phone distribution
10/31/2020	Mechanical <i>Car and Locomotive</i>	Labor agreements Preparation and transfer of UP property at Cal Ave, M19-A, outlying yards, and associated yard tracks Satisfactory financial arrangements Define equipment and machinery ownership Define equipment and machinery to transfer Inventory taken and entered into AX Rolling stock records entered into Maximo Post-lease rolling stock inspection

DRAFT: LIST SUBJECT TO CHANGE

Services Transfer Date (as stated by UP)	Services Transfer	What needs to happen before transfer can occur?
		<i>When does Metra take on additional police work? Hiring of additional admin personnel as needed</i>
7/1/2020	Revenue Accounting <i>Work only, no personnel</i>	Bank accounts set up Order deposit slips, stamps, money bags Instructions distributed to agents Resources distributed to agents Supply contracts transferred/ procured AX set up to handle UP revenue Abolish PAD positions
8/31/2020	Law and Claims <i>Passenger and Collection Claims Train Strikes</i>	Clearly defined process, procedures, designated point people Ongoing access to sites, documents, and employees, as needed Satisfactory financial arrangements
9/30/2020	Ticket Agents	Preparation (title preparation, negotiation, surveys, etc) and transfer of UP stations/parking lots Arrangement for station maintenance Labor agreements Transferring employee lists (contract and non-contract) Hire/train crew calling staff How will Stations FFA projects be handled? Need to reach agreement Receive and enter employee data into HR systems Station leases for any UP Engr to remain Receive and review all applicable training and work records Employee drug tests/physicals, background checks?? HR plan for ethics/ state-mandated training Any shared IT? Any necessary easements for IT/Comm installation Metra phones, other necessary equipment installed Purchase and place AEDs, first aid kits, at manned stations Wi-fi installation Satisfactory financial arrangements Manager cell phone distribution
10/31/2020	Mechanical <i>Car and Locomotive</i>	Labor agreements Preparation and transfer of UP property at Cal Ave, M19-A, outlying yards, and associated yard tracks Satisfactory financial arrangements Define equipment and machinery ownership Define equipment and machinery to transfer Inventory taken and entered into AX Rolling stock records entered into Maximo Post-lease rolling stock inspection

DRAFT: LIST SUBJECT TO CHANGE

Services Transfer Date (as stated by UP)	Services Transfer	What needs to happen before transfer can occur?
		PTC interoperability Terminate FFA Receive and review all applicable training and work records Transferring employee lists (contract and non-contract) Receive and enter employee data into HR systems Employee drug tests/physicals, background checks?? HR plan for ethics/ state-mandated training Any shared IT? Metra phones and computers installed Procure program licenses for all new employees Wi-fi installation Any necessary easements for IT/Comm installation Manager cell phone distribution Hire/train timekeeper Supply contracts transferred/ procured Purchase and install timeclocks Hire/train new trainers
11/30/2020	Engineering <i>Minimal services, "no personnel"</i>	Need to identify work scope at each site Labor needs to be hired Labor needs to be trained Satisfactory financial arrangements Preparation and transfer of any property used for maintenance purposes Define equipment and machinery to transfer How will Engr/Yard Track FFA projects be handled? Resolution of shared headquarter issues Self-flagging agreement Process for reasonable and timely Form B approval Hire/train timekeeper FRA notification of transferring work Supply contracts transferred/ procured Purchase and install timeclocks Procure program licenses for all new employees Receive and enter employee data into HR systems (TCU janitors) Employee drug tests/physicals, background checks?? HR plan for ethics/ state-mandated training Procure program licenses for all new employees
11/30/2020	Communication and Telecom	Need to identify work scope at each site Satisfactory financial arrangements Labor needs to be assessed/hired/trained Any shared IT? Supply contracts transferred/ procured Procure program licenses for all new employees

DRAFT: LIST SUBJECT TO CHANGE

Services Transfer Date (as stated by UP)	Services Transfer	What needs to happen before transfer can occur?
Reasonable Time following court ruling (90 Days)	Train, Engine, and Yard Employees	Labor agreements Preparation and transfer of any property necessary for TE&Y employees not already owned Satisfactory financial arrangements Receive and review all applicable training and work records Metra management to become rules qualified Hire/train crew calling staff Hire/train new trainers Hire/train timekeeper Receive and enter employee data into HR systems Employee drug tests/physicals, background checks?? HR plan for ethics/ state-mandated training Procure program licenses for all new employees Access to UP DOBs provided- if agents will relay, need to be rules qualified Cell phone distribution Define equipment and machinery to transfer Process to transfer HOS data Notification to FRA Supply contracts transferred/ procured iPads purchased and distributed
AS NEEDED	Timekeeping	(services only, not personnel)
AS NEEDED	Crew Management	(services only, not personnel)
After TE&Y Transfer	Law and Claims <i>Remaining Claims Types</i>	(See list above)