

RESOLUTION APPROVING AND CONFIRMING CONTRACT AND LEASING PECATONICA RAIL LINE TO WISCONSIN & SOUTHERN RAILROAD

WHEREAS, the Pecatonica Rail Transit Commission (Commission) has acquired use and ownership of land and improvements of a rail line (Pecatonica line) running between Milepost 11.0 in Janesville, Wisconsin and Milepost 45.6 in Monroe on the former Milwaukee Road line; and may in the future assume jurisdiction over the line between Milepost 23.4 and Milepost 25.75 on the former Illinois Central Golf Railroad line in Monroe;

WHEREAS, the Commission pursuant to authority and approval of Green, Iowa, Lafayette and Rock Counties, Wisconsin, the four counties creating said Commission, contracted with the Wisconsin & Calumet Railroad (WICT) as a shortline railroad providing freight services;

WHEREAS, as of September 1997 the WICT operation has been assumed by the Wisconsin & Southern Railroad (WSOR), and the WICT has ceased to exist as an operating Railroad;

WHEREAS, since September 1997 the WSOR has been operating the Pecatonica Line an interim agreement;

WHEREAS, the Commission has negotiated a permanent agreement with WSOR subject, however, to approval by WDOT and by the County Boards of Green, Iowa, Lafayette and Rock Counties, Wisconsin;

WHEREAS, the proposal of the Commission to lease to and contract with the WSOR for the Operation of said property as a railroad has been submitted to this Board and discussed by this Board.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF IOWA COUNTY, WISCONSIN, AS FOLLOWS, TO-WIT:

1. This County Board hereby approves the leasing of the Pecatonica line to the Wisconsin & Southern Railroad Company, and the contracting with said railroad company to operate the facilities of the Pecatonica line as a railroad, and hereby authorizes and confirms such actions by the Commission including providing the temporary operations.
2. This authority authorizes the leasing to and contracting with Wisconsin & Southern Railroad Company for such time and upon and with such terms, provisions and conditions as determined by the Board of Commissioners of the Commission including any extensions, renewals, amendments or modifications thereof thereafter.
3. The County Clerk is hereby authorized and directed to certify to and furnish a copy or copies of this resolution to Commission.

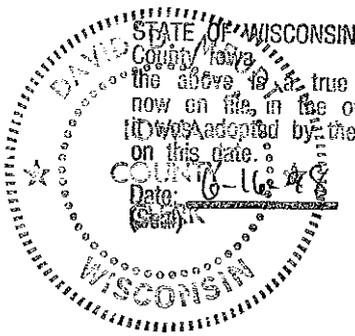
Dated this 16th day, of June, 19 98.

Signed:

*Richard M. Scullion*

Richard M. Scullion, Chairman

I, David D. Meudt  
do hereby certify that  
the above is a true and correct copy of the original  
now on file in the office of the County Clerk and that  
it was adopted by the Iowa County Board of Supervisors  
on this date:  
June 16, 1998  
*David D. Meudt*  
County Clerk



OPERATING AGREEMENT

BY AND BETWEEN

PECATONICA RAIL TRANSIT COMMISSION

AND

WISCONSIN & SOUTHERN RAILROAD COMPANY

AGREEMENT NO. 0490-40-28(f)

May 1998

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**AGREEMENT NO. 0490-40-28(f)**

This Agreement made and entered into this \_\_\_\_ day of \_\_\_\_\_, 1998, by and between Pecatonica Rail Transit Commission, a municipal corporation established in accordance with Sec. 66.30 Wis. Stats., ("Commission") and Wisconsin & Southern Railroad Comp., a railroad company organized and existing under the laws of the State of Wisconsin and fully empowered to act as a railroad company in Wisconsin, having its principal office at 5300 N. 33rd Street, City of Milwaukee, County of Milwaukee, State of Wisconsin ("Operator").

**WITNESSETH**

WHEREAS, the rail facilities formerly owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad (Milwaukee Road) between Janesville, Wisconsin and Mineral Point, Wisconsin were abandoned by said railroad; and

WHEREAS, the Wisconsin Department of Transportation ("WisDOT") has acquired ownership of the Principal Line Segments in the State of Wisconsin; and

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

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

WHEREAS, Operator is also operating over the tracks of the Wisconsin Rail Transit Commission d/b/a Wisconsin River Rail Transit Commission and East Wisconsin Counties Railroad Consortium under similar Shortline Railroad Operating Agreements; and

WHEREAS, South Central Rail Transit Commission and this Commission constructed an interchange between the two rail properties at Monroe, Wisconsin, so that the Operator could operate the two lines jointly; and

WHEREAS, the parties hereto have negotiated and agreed to a long-term operating agreement which is this instrument; and

WHEREAS, Operator has been furnished copies of and reviewed the Land Use and Lease Agreement by and between Commission and WisDOT dated August 4, 1982 and the Improved Railroad Property Acquisition Grant Agreement by and between Commission and WisDOT dated August 4, 1982 and the Grant Agreement for Railroad Rehabilitation by and between Commission and WisDOT dated 9 August 1985; and

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

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

## ARTICLE 1.0 - DEFINITIONS.

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

- a. "AREA" means American Railway Engineering Association.
- b. "Building" means any structure built to stand more or less permanently with columns or walls and designed to support a roof, and constructed as either an addition which increases the outside dimensions of another structure, or as a detached entity which is not physically connected to another structure and for which it was primarily intended and designed for human use, occupancy or the storage of goods and materials.
- c. "Commencement Date" means the date this Agreement is approved in writing by WisDOT.
- d. "Commission" means the Pecatonica Transit Commission.
- e. "Commuter Passenger Service" means mass transit by rail characterized by morning and evening weekday peak ridership period service and by multiple ride tickets.
- f. "Connector Agreement" means the agreement between the South Central Rail Transit Commission and the Pecatonica Rail Transit Commission for the construction of an interchange track to connect their respective properties in the vicinity of Monroe, Wisconsin.
- g. "CPR" means the CP Railway D/B/A the Soo Line Railroad Company and its successors, if any.
- h. "FRA" means the Federal Railroad Administration of the United States Department of Transportation.
- i. "Grant Agreement" means GRANT AGREEMENT - Improved Railroad Property Acquisition Grant Agreement By and Between Pecatonica Rail Transit Commission and the Wisconsin Department of Transportation, dated August 4, 1982 and any amendments thereto.

- j. "Gross Operating Revenues" means all income produced from operations on the rail line which shall include freight bill revenues from complete on-line hauls, freight bill revenues retained by Operator under a division of revenues with other rail lines, shipper contract charges, surcharges, net equipment per diem, demurrage, and equipment storage. Specifically excluded is income received from contract car repair, building of or scrapping of rail equipment, and excursion trains. Gross operating revenues shall be computed on an accrual basis.
- k. "ICG" means the Illinois Central Gulf Railroad.
- l. "Improved Property" means buildings and trackage located upon the Land of the Rail Line.
- m. "IMRL" means the Iowa Minnesota Rail Link.
- n. "Land" means the real estate, generally 66 feet in width, the use of which is provided to Operator by Commission, upon which the trackage which is leased to Operator under this Agreement is located and which is the subject of the Land Use Agreement.
- o. "Land Use Agreement" means the Land Use Agreement by and between the Pecatonica Rail Transit Commission and the Wisconsin Department of Transportation, dated August 4, 1982 and any amendments thereto.
- p. "Milwaukee Road - Trustee" means the Chicago, Milwaukee, St. Paul and Pacific Railroad - Richard B. Olgilvie, Trustee.
- q. "Milwaukee Road, Inc." means the successor operating company to the Chicago, Milwaukee, St. Paul and Pacific Railroad and its successors if any.
- r. "Monroe Connector" means the connection constructed by the South Central Rail Transit Commission and The Pecatonica Rail Transit Commission pursuant to the Connector Agreement.
- s. "Operator" means the Wisconsin & Southern Railroad Comp.
- t. "Pecatonica" means Pecatonica Rail Transit Commission.
- u. "Person" means an individual, a partnership, an association, or bodies politic or corporate.
- v. "Rail Line" means the former Milwaukee Road railroad line from Division of ownership with IMRL at Milepost 11.0 in Janesville, Wisconsin to Milepost 45.6 near Monroe, Wisconsin, and following the execution of an agreement between the Commission and the South Central Wisconsin Rail Transit Commission to such affect, shall also mean the former ICG railroad line from the Monroe Connection near Bethel Road (M.P. 23.4) to CTH DR(M.P. 25.75) in Monroe, Wisconsin.

- w. "Rehabilitation Agreement" means the agreement for rehabilitation of the Rail Line by and between the Wisconsin Department of Transportation and the Pecatonica Rail Transit Commission dated 9 August 1985, as amended.
- x. "South Central" means South Central Wisconsin Rail Transit Commission.
- y. "STB" means the Surface Transportation Board or its successors, if any.
- z. "Trackage" means the rails, ties, ballast, track material, bridges, switches, culverts, signals, and all other non-Land property acquired by WisDOT and provided under grant to the Commission subject to certain express conditions and limitations. This term does not include Land.
- aa. "UP" means the Union Pacific Railroad.
- ab. "WisDOT" means the Wisconsin Department of Transportation.

## **ARTICLE 2.0 - LEASE, LICENSE, TERM AND RESERVATION.**

### **Section 2.1 - Lease, License and Term.**

(a) Commission hereby leases to Operator the Improved Property and grants to Operator an exclusive right and license to use the Land for the purpose of providing rail service and for all other purposes necessary to the foregoing, subject, however, to the uses and reservations identified in Section 2.2 and Section 4.5 hereafter and subject to the uses and reservations set forth in the governing Land use and grant agreements. Further, the Commission hereby grants to Operator an exclusive right and license to use the Monroe Connector for the term of this Agreement (including any renewals thereof), and subject however to the uses and reservations in Section 2.2 and 4.5 hereafter, the Monroe Connection Agreement and the concurrence of South Central. Operator agrees to cooperate with Commission to allow supplemental freight rail service to be provided by Commission in situations where Operator cannot justify and is unable to provide a desired level of freight rail service, provided that Commission indemnifies Operator in all respects under this Agreement and that Commission and WisDOT release in writing Operator from any obligation or liability which would be incurred if Operator were performing the service provided by Commission. The written release shall specify the terms and conditions under which the release is issued.

(b) This Agreement is to be executed upon authorization of the Board of Commissioners of the Commission, and the Corporate Board of WSOR. The insertion of the Commencement Date shall be upon the written approval of WisDOT, which shall be requested following approval of WSOR as the Operator by the County Boards of Green, Iowa, La Fayette, and Rock Counties, and each of them and shall end at 12:01 A.M. December 31, 2047; provided, however, that either party may terminate this Agreement under Article 7.0. Failure of Pecatonica to receive approval of WSOR as Operator from all of the counties shall terminate this Agreement. It is agreed by all parties hereto that the Commencement Date will be inserted after the execution of this Agreement. Such insertion will be initialed by the Chairman of Pecatonica and the President of Operator.

(c) Provided Operator is not in default, Operator shall have the right to renew this Agreement for successive additional ten (10) year periods. Each option to renew shall be for a period of ten (10) years and shall be exercised at least one (1) year but no more than two (2) years prior to the expiration of the then current term, said renewal notice to be exercised in writing to the Commission with a copy of the notice to WisDOT. All terms and conditions of this Agreement shall apply to the renewal periods unless amended by mutual agreement.

## **Section 2.2 - Reservation.**

The Land and Improved Property involved in this Agreement is the Land and Improved Property obtained by Commission from WisDOT through the agreements defined in Article 1.0(1) and (o) herein. Future operations may show WisDOT that portions of the Land or Improved Property are not needed for railroad use or are of sufficient width to allow other uses as co-uses.

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

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

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

WisDOT sale or lease of Land and Improved Property within 33 feet of the center line of the main track when the Land and Improved Property are subject to a lease and are occupied by a permanent structure legally existing on the date of the Grant Agreement, or if the sale or lease is for utility or communication use provided that the lessee or purchaser agrees in writing to indemnify Operator against loss or disruption to Operator's business caused by such lessee's or purchaser's use of the Land or Improved Property so acquired.

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

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

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

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

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

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

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

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

(j) It is understood that no lease money or sale receipts are to accrue to Operator in the event of any sales or leases of Land or Improved Property.

(k) If Operator proposes to operate or allow the operation of any train over any portion of the Rail Line which is to carry any person paying a fee for carriage, Operator shall first apply for and receive a written permit from WisDOT in accordance with TRANS 31. WisDOT in consultation with Commission may grant or deny a permit based solely upon any of the following: adequacy of liability insurance coverage, terms and amount as set forth in Section 6.2 below; trackage condition; proposed speed of operation; preparations for crowd control, parking and clean-up; and sufficiency of consumer protection assurances associated with each use by Operator of any portion of the Rail Line subject to this Agreement to be operated over by Operator or by an affiliate, subcontractor or lessee of Operator.

## **ARTICLE 3.0 - RENT.**

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

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

## **ARTICLE 4.0 - REVENUE DIVISIONS, TRACKAGE RIGHTS, INTERCHANGES AND COORDINATION WITH OTHER LINES.**

### **Section 4.1 - Division of Revenues.**

Operator has represented to Commission that it has made necessary and satisfactory arrangements for divisions of revenues with all connecting railroads. Operator obligates itself to make arrangements for division of revenues as are needed if there are other interchange points needed for proper operation of this Rail Line and to furnish Commission documented evidence of such divisions after being obtained.

### **Section 4.2 - Trackage Rights.**

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

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

- i. CPR property in Janesville.
- ii. IMRL property, Milepost 9.46 (= Milepost 46.06 = Milepost 98.69) to Milepost 11.02 in Janesville;
- iii. Such other railroad property as is or as may become necessary to operate the Rail Line.

### **Section 4.3 - Interchange Agreements.**

It is recognized Operator may enter into interchange agreements with the CPR and UP at Janesville. Operator agrees to supply Commission with documented evidence of the interchange agreements and any amendments thereto after obtaining the same.

#### **Section 4.4 - Interline Divisions.**

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

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

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

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

##### Subsection 4.5(a) - Division of Freight Revenues.

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

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

- (3) When both Carriers A and B only bridge the same revenue traffic with neither originating nor terminating it, the revenue attributed to their combined services shall be allotted in an amount equal to 10% to each of them with the balance of the revenue prorated to each carrier on the basis of a proration of the rate utilizing Class 100 rate factors most recently published in the Western Trunk Line 1000 class tariff or its successor publication performing a like purpose. Traffic moving in this manner on

combination rates shall, between themselves, be treated by Class II and Class III railroads operating over state assisted lines as traffic moving on a through rate and subject to the provisions of either Sections 4.5(a)(1) or 4.5(a)(2).

- (4) Revenue derived from surcharges imposed by any carrier subject to the revenue division formulas set forth in Sections 4.5(a)(1), 4.5(a)(2), or 4.5(a)(3) above shall not be included in the computation or settling of divisions covered under those paragraphs.

Subsection 4.5(b) - Switching Charges.

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

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

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

Subsection 4.5(c) - Trackage Rights.

- (1) Trackage rights shall be allowed for motive power, system cars, system equipment and revenue freight movement between any two segments of a commonly controlled or commonly managed or commonly owned Class II or Class III carrier operating over state assisted lines by any other Class II or Class III carrier operating over state assisted lines under the terms of Section 4.5(c)(2) or 4.5(c)(3).
- (2) Engines, system equipment, and freight moved between two track segments commonly owned, managed, or controlled by a Class II or Class III carrier operating over state assisted lines shall be moved at the rate of \$5.00 per train mile for trains of 5 cars or less, excluding caboose, plus \$0.25 per car mile for each car in excess of 5 cars in each train beginning with the sixth car. These fees shall be adjusted annually and take effect upon the first day of January each year. Adjustments shall be determined by multiplying the fee amounts in effect for the year ending December 31 by the sum of the Cost

Recovery Tariff percentage increases allowed through the year ending December 31. (Example: first quarter 1982, 2%; second quarter 1982, 0.5%; third quarter 1982, 1%; fourth quarter 1982, 1.5%; sum of increases for 1982, 4%; adjusted rates for calendar 1983 equal \$5.20 and 26 cents). Adjusted rates shall be rounded to the nearest whole cent. General Managers Association of Chicago rules then current shall apply to any other joint facility agreement.

- (3) Maintenance of a line is the responsibility of the carrier managing or controlling the line and shall be performed such that the trackage on which trackage rights fees are collected is maintained at the FRA Track Safety Standard Class level it met at the time the trackage rights agreement was signed, or such other level as may be agreed to by the parties to the trackage rights agreement.
- (4) Any Class II or Class III carrier operating over state assisted lines as well as owning, managing or controlling a line segment between two line segments of a carrier as described in Section 4.5(c)(1) may, with respect to revenue freight movements, elect either of the following two methods for handling such revenue freight:
  - i. Participate in a joint rate, including such intervening mileage, and receive a freight revenue division in accordance with Section 4.5(a).
  - ii. Forego all participation in joint rates for such mileage and traffic movement and grant trackage rights permitting revenue freight bridging operations in accordance with the fees established under Section 4.5(c)(2) of this subsection.
- (1) Either carrier involved in an unresolved issue controlled by Section 4.5 may request binding arbitration of the dispute.
- (2) The arbitration committee shall consist of three members, one member each selected by the disputants from Class II or Class III railroads operating in Wisconsin and the third member selected by the first two who shall also serve as chairman of the committee. In the event a third member cannot be agreed upon, the arbitration selection provisions of Section 788.04, Wis. Stats., will apply.
- (3) The form and method of conduct of the arbitration effort shall be determined by the arbitration committee.
- (4) All expenses of arbitration shall be shared equally between the railroad carriers involved.

Subsection 4.5(e) - Use as Interim Agreement.

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

## **ARTICLE 5.0 - RAILROAD OPERATIONS.**

### **Section 5.1 - Authority to Operate.**

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

(b) Commission hereby as a part of this Agreement grants Operator the right to operate over the Rail Line as a common carrier railroad providing exclusive originating and terminating rail service on this Rail Line, including line-haul and switching services to shippers on the Principal Line Segments over which it is operating as a rail freight carrier. In such operation, Operator shall have the power and authority to exclusively control, manage, staff and plan for the provision of freight rail service on the Principal Line Segments over which it is operating as a rail freight carrier. As a part of its operation, Operator shall have power to effect such additions, changes, betterments, and repairs to the Improved Property as Operator may, in its judgment, deem necessary, expedient or proper to assist or improve rail service over the Rail Line, subject to the approval of Commission if approval is otherwise required by other provisions in this Agreement, the Land Use or Grant Agreement, other applicable agreements or by law. Commission grants Operator the right to adopt and promulgate rules governing access to, use of, and operation of the Land and Improved Property, provided any such rules affecting freight rail service which differ from the General Code of Operating Rules adopted by Atchison, Topeka and Santa Fe Railway Company, Burlington Northern Railroad Company, Chicago & North Western Transportation Company, CP Rail System Heavy Haul - US, Southern Pacific Lines, and Union Pacific Railroad, effective April 10, 1994 or as subsequently revised, shall be lawful under Federal and state statutes and regulations governing such service and shall have been approved by WisDOT within 180 days of the issuance of the order adopting or promulgating such rules and provided any such rules are consistent with this Agreement.

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

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

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

under Section 7.10 shall at Commission's option subject Operator to termination for default as hereinafter provided

(b) Maintenance. Operator shall perform or cause to be performed all maintenance of the Rail Line including trackage, crossings at grade, bridges, buildings, drainage ways and structures, fences, other appurtenances, and any other portion of the Land or Improved Property reasonably necessary for the safe operation of freight rail service or any other service provided by it to no less than the minimum standards set forth in Attachment A hereto. In the event of a dispute between Operator and WisDOT as to the condition of the trackage following the inspection referred to above, Operator and WisDOT shall jointly request FRA to determine the FRA track safety classification. Operator may be declared in default, as hereinafter provided, or in the case of buildings, may lose the right of possession and occupancy, if a deviation from the applicable maintenance standards in Attachment A remains uncorrected for more than ninety (90) days after notification of the deviation as hereinafter provided or if Operator has not diligently commenced to correct such deviation within the 90 day period. Operator is prohibited from using trackage located inside tracks, sidings or other location as maintenance material unless prior written permission to do so is requested from and first granted by WisDOT. Compensation to WisDOT from Operator for materials used with or without permission may be required by Commission and WisDOT. Any costs of trackage installed on or funds expended for maintenance of any portion or component of the Rail Line under the jurisdiction of Commission by grant from WisDOT that is not approved by WisDOT as part of a rehabilitation project shall not be eligible for reimbursement by Commission or WisDOT upon sale of the Rail Line or transfer of operating rights over the trackage to another agency or operator.

(c) Safety and Other Inspections. Operator agrees to facilitate the inspection of the Rail Line facilities as required by governmental agencies. Operator agrees to inform WisDOT and Commission of the time and place of any inspection requested by a federal or insurance inspector. Operator shall permit representatives of WisDOT authorized by the Secretary or Director of Bureau of Railroads and Harbors of WisDOT and representatives of Commission authorized by Commission chairman to accompany the inspector. Operator is required and hereby agrees to provide access to all documents related to any inspection by any governmental or insurance agency. Operator agrees upon reasonable notice during normal business hours to permit inspection of the Rail Line, the rolling stock and maintenance equipment, and the operating and maintenance practices of Operator and Operator's affiliates performing work on the Rail Line, by Commission or WisDOT or their agents. Operator covenants and agrees to furnish Commission and WisDOT with copies of all inspection reports from federal agencies or insurance agencies and safety orders from federal agencies or insurance agencies and to furnish Commission any like reports and orders from WisDOT or the Wisconsin Office of the Commissioner of Railroads.

(d) Equipment. Operator agrees to provide and maintain at its own expense all suitable locomotives, cars and other rail equipment as are necessary in the operation of this freight rail service. Operator shall be solely responsible for and agrees to provide all tools and other equipment necessary to properly maintain the operating equipment, Improved Property and Land on the Rail Line.

(e) Operating Personnel. Operator agrees to obtain and maintain the necessary personnel for operation and management of its operations over the Rail Line. Said personnel shall be under the sole control and direction of Operator. It is understood and agreed that no personnel of Operator are agents, employees, servants or subcontractors of Commission or WisDOT. All such personnel shall be qualified and properly trained for such service, but this shall be the sole responsibility of Operator.

(f) Accounting Services. Operator agrees to establish and perform all necessary accounting services appropriate to conducting business as a railroad and to comply with this Agreement. Operator is required and hereby agrees to permit access by WisDOT and Commission and their agents to all documents related to the business operation of Operator including, but not limited to, agreements for leases loans, revenue divisions and records of rail traffic, receipts and expenditures.

(g) Use of Property. Operator shall have use of all the Land and Improved Property under the ownership or control of Commission, including buildings which are reasonably required for the operation of the Rail Line. This shall not, however, negate any reservations held or any actions taken by Commission or WisDOT under the reservations set forth in Section 2.2 or Section 4.5 of this Agreement. Operator covenants and agrees to provide maintenance and upkeep for any such buildings. In the event it becomes desirable to construct buildings or other structures on the Land, the same may be constructed by Operator at its expense, subject to Commission's and WisDOT's approval. Operator has no authority to enter into easements, permits, licenses or leases affecting the Land whether under the use of Operator or outside the use of Operator. Commission is under contract with WisDOT as to leases of Land and Improved Property, and any such lease income shall be income to WisDOT or Commission. Commission agrees, however, to cooperate with Operator in providing leases to businesses or users who would benefit the rail business through the operation of any such leases. Operator understands that any agreement for leasing Land is subject to the Grant Agreement or Land Use Agreement as to securing authority and approval from WisDOT and as to the division of rents.

(h) Promotion of Business. Operator covenants and agrees to use its best efforts to promote the use of freight rail services by customers located along the Rail Line and in the immediate vicinity and agrees to diligently seek new rail freight business and customers for such services.

(i) Use of Land or Trackage as Collateral. Neither the Land for which a lease and license to use is granted nor the Improved Property leased under this Agreement shall be used by Operator in any form or amount as equity, security, or collateral for any borrowing or other means of raising capital by Operator or as collateral for any other purpose.

(j) Public Order. Operator hereby assumes full responsibility for preserving public order upon the subject property and for resolving matters concerning trespass upon or from the Rail Line Land and Improved Property adjacent to private lands. Operator may adopt and enforce any necessary rules in accordance with Section 5.1 in order to protect the Rail Line. Operator shall have the right to post signs and erect barricades necessary to delineate the Rail Line as railroad property and to prevent entrance upon the subject Rail Line by unauthorized vehicles or individuals.

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

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

(m) Crossing over Waters and Drainage Systems. Operator assumes full responsibility for the ordinary repair and maintenance of all culverts, trestles and bridge structures on the Rail Line.

(n) Highways and Streets. Operator assumes full responsibility on the Rail Line for the maintenance of ~~tr~~ackage, warning devices, and railroad highway crossings whenever crossing maintenance is required by law from Operator.

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

(p) Maintenance Plan. Operator agrees to prepare an annual maintenance plan for the Rail Line. This plan shall be combined with like plans for any and all other Rail Lines provided to Operator by any other rail transit commission chartered in Wisconsin. The plan shall be prepared in consultation with WisDOT and shall be fully completed and delivered by Operator to WisDOT for WisDOT review and reasonable approval not later than February 1 of each year. The plan required to be submitted shall include the quantities of materials to be installed during the year in which the plan is submitted, the numbers and types of personnel to be employed for the proposed maintenance, the numbers and types of machines to be utilized for performing the proposed maintenance, the location of the proposed maintenance and the schedule for performing the proposed maintenance. Estimated prices for materials, labor and machines shall be included as well as the projected rates of production.

(q) Liens Against Rail Line. Operator shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Land or Improved Property or any interest therein. Operator will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

(r) The obligation of Operator under this and other sections of this Agreement shall not apply to Principal Line Segments classified as rail banked lines.

## **ARTICLE 6.0 - LIABILITY AND INSURANCE.**

### **Section 6.1 - Hold Harmless.**

Except to the extent that the same arises from or is related to co-uses permitted by Commission or WisDOT pursuant to Section 2.2(g) above, Operator shall save and hold Commission and WisDOT harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation of Operator, or its agents, servants, subcontractors, officers or employees, including, without limiting the applicability of the foregoing: all liabilities, damages, losses, claims, demands and actions on account of personal injury death or property loss to WisDOT, its officers, employees, agents, subcontractors or frequenters, or to Commission, its officers, employees, agents, subcontractors or frequenters, or to any other person whether based upon, or claimed to be based upon, contract, tort, or having its basis in worker's compensation (except worker's compensation claims by employees or agents of Commission or WisDOT) under Federal or state statutes or having any other code or statutory basis, or based upon administrative laws or other

provisions. Without limiting the applicability of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever. Operator shall at its own expense investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claim, demand or action.

## **Section 6.2 - Insurance.**

(a) Required Coverage. During the term of this Agreement, Operator shall maintain, at its own cost and expense, a Comprehensive Railroad Liability Policy with limits of not less than \$10,000,000 per occurrence, or other form approved by WisDOT. WisDOT and Commission and their officers, employees, and agents shall be named as additional insureds under such policies. Operator agrees to maintain and keep in force worker's compensation and employer's liability insurance as applicable under the Federal Employer's Liability Act to the extent, if any, that it is not covered under the Comprehensive Railroad Liability Policy. Further, Operator shall carry Wisconsin Worker's Compensation Insurance to the extent that it is necessary over and above federal employer's liability coverage and for the covering of any employees, if any, who are not covered under the Federal Employer's Liability Act. Operator further agrees to carry fire and extended coverage for any buildings and structures subject to damage in an amount not less than \$5,000,000. All such insurance shall cover Commission and WisDOT to the extent of the ownership of both or either in any of said properties and to include under such coverage buildings, and trackage owned by Commission and leased to Operator hereunder, even though some of said buildings or structures might not be included in the property used by the Operator, except that coverage need not be maintained on improvements sold, leased, licensed or otherwise disposed of by WisDOT or Commission to any third party. Items of coverage for Commission may be waived by letter from Commission to the Operator.

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

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

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

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

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

- (A) Commission or WisDOT may require Operator to expend up to a fixed percentage of Operator's gross revenue, as determined under Sections 6.2(f)(i)(B) and 6.2(f)(i)(C) herein, to purchase comprehensive railroad liability insurance covering the liability as is required and naming the additional insureds as is required under paragraph (a). Operator's decision to obtain insurance beyond that which is required under paragraph (a) covering the liability that arises out of Operator's actions, omissions, presence or operations on the Land or the Improved Property or over the Rail Line and naming Commission and WisDOT, their officers, employees, and agents, as additional insureds, shall not result in Operator purchasing any less insurance coverage for these purposes under paragraph (a) than would otherwise be required if Operator did not purchase the additional insurance coverage beyond that required for these purposes under paragraph (a).
- (B) A base percentage of gross revenue expended for the purchase of comprehensive railroad liability insurance is established for the duration of this Agreement at 4% of Operator's gross revenue for the Operator's most recent fiscal year, as determined by independent audit. Commission or WisDOT may require Operator to expend up to an amount equal to 150% of the base percentage, which amount is 6% of gross revenues, for comprehensive railroad liability insurance. The amount of liability insurance coverage purchased by this sum shall be maintained in force by Operator until next modified under the terms of this section.

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

- (C) The amount of the increase, if any, in the Operator's expenditure for liability insurance required by Commission or WisDOT may be used to adjust coverage limits or self-insured retention limits or both and shall only be required upon the approval of the increase by two of the following three entities: Commission, Operator, and WisDOT. In the event one of these three entities takes a position on the approval of the required increase contrary to the other two, the entity holding the minority position may require the required increase to be subject to arbitration through the use of the American Arbitration Association and its procedures. The arbitrator shall determine what liability insurance coverage is sufficient for (1) the reasonable and full compensation of the public and persons who may be injured or damaged, (2) the protection of the interests of the Commission, WisDOT, and Operator, and their officers, employees, and agents, including their interests as indemnities and for contribution, in the event of property damage, personal injury, or other loss that may occur, and (3) the availability of that coverage to the Operator in the insurance market place pursuant to the limitations established under Section 6.2(f)(i)(B). The arbitrator shall then determine the amount of expenditure increase that is reasonably necessary to acquire the liability insurance coverage the arbitrator has so determined to be sufficient. In determining the amount of expenditure increase, the arbitrator is limited to the expenditure level increase required by the majority of the three entities, or the one proposed by the minority entity, neither

of which shall exceed the increase allowed under Section 6.2(f)(i)(B). The arbitrator's determination shall be final and binding on Commission, WisDOT, and Operator as to the amount of the expenditure increase required. The arbitrator shall render a decision within 30 days of being assigned the arbitration case. An arbitrator, if used, shall be assigned the case no less than 50 days prior to the expiration of the insurance coverage then in effect. The cost of arbitration shall be paid equally by Commission, Operator, and WisDOT.

- (D) (1) Operator shall at a minimum expend such amounts as may be required to maintain liability insurance coverage limits no less than that in force at the time of review.
  - (2) Commission, WisDOT, and Operator shall establish the coverage level to be obtained by Operator and shall amend this and companion agreements in accordance thereto in the event insurance coverage limits in effect at the time of the review cannot be maintained due to the refusal by insurance carriers to issue a policy of insurance at that coverage limit to Operator.
  - (3) In the event the three entities are unable to reach a common position on the amount of insurance coverage to be obtained, under Section 6.2(f)(i)(D)(2) above, any one of them may require arbitration in accordance with Section 6.2(f)(i)(C) to determine the required amount of insurance coverage.
- (E) Notwithstanding any other provision regarding insurance contained herein. Operator shall at a minimum obtain and maintain liability insurance coverage and limits no less than that required now or in the future by the laws of the State of Wisconsin and no less than that required now or in the future by the laws or regulations of the federal government or its agencies, naming WisDOT and Commission and their officers, employees, and agents as additional insureds.

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

## **ARTICLE 7.0 - TERMINATION OR SUSPENSION.**

### **Section 7.1 - Declaration of Default.**

(a) Default. A condition of default exists (1) when either party to this Agreement fails to abide by or perform in a material respect any one or more of its terms and conditions, (2) when Operator's insurance coverage lapses, is suspended, is canceled, or fails to satisfy all the terms and conditions of Section 6.2 of this Agreement or any amendment thereto, (3) when Operator files for protection under

any bankruptcy statute, or (4) in the option of Operator, when the Land Use Agreement or the Grant Agreement between Commission and WisDOT expires, or is terminated, amended, or revoked without Operator approval.

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

### **Section 7.2 - Termination for Default.**

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

### **Section 7.3 - Ability to Cure Default.**

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

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

### **Section 7.4 - Contractual Obligations Upon Termination.**

Except as otherwise agreed to by the parties in writing, the obligations of Operator to Commission to provide freight rail service and to maintain the Land and Improved Property under this Agreement shall cease on the effective date of the termination hereof except as provided for in the following Section 7.9, but all other obligations of the parties shall remain in full force and effect until all operations of Operator hereunder have ceased. Both parties agree to make reasonable efforts to satisfy

their surviving obligations promptly after termination. Upon termination, however, Operator's rights as a lessee of the Improved Property and its lease and license to use the Land and Improved Property shall cease immediately subject to Section 7.8.

### **Section 7.5 - Termination Approvals.**

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

### **Section 7.6 - Bankruptcy of Operator.**

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

### **Section 7.7 - Return of Property Upon Bankruptcy Default.**

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

## **Section 7.8 - Vacating the Rail Property.**

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

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

Operator hereby agrees in the event of termination that it will mitigate the expenses of termination to the greatest extent possible. If there is any unused material in the hands of Operator at the time of termination belonging to Commission or in which Commission has an interest arising out of a rehabilitation program where funds of Commission or WisDOT have been expended to pay for materials or materials otherwise have been paid for by Commission or partially paid for by Commission from its funds or from funds secured from WisDOT, Operator shall set such material property aside on property belonging to Commission. In addition to all other obligations in the event of termination, Operator is obligated to remove all cars from the Rail Line of Commission within 10 days following its receipt of a notice to vacate and to deliver all cars to or from shippers on the Rail Line which are in transit to or from any source.

## **Section 7.10 - Service Failure.**

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

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

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

Principal Line Segment(s) shall not constitute a failure by Operator to provide freight rail service as defined in this section.

### **Section 7.11 - Immediate Suspension of Rail Operations.**

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

### **Section 7.12 - Force Majeure.**

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

### **Section 7.13 - New Improved Property.**

Commission or Operator, or their designees (collectively "Owner"), may acquire or install, at its own expense, additional facilities deemed necessary for railroad service. Installation shall be permitted only after prior receipt of written approval of the installation proposal and plan by Commission and by WisDOT, which approval shall not be unreasonably withheld. In the event of liquidation or transfer of ownership to anyone other than Operator, WisDOT shall first determine, within 180 days, if any of these additional facilities are needed for the provision of freight rail service on this or any other line in the State. If WisDOT determines that they are not needed for such purpose, the owner of the additional facilities may dispose of the facilities in any manner it sees fit at its own expense and shall restore any trackage and Land to the condition it was in prior to the installation of the additional facilities. If WisDOT determines that any of the additional facilities are needed, Commission shall arrange for WisDOT, or the subsequent user of the facilities, to pay, or assume the obligation to

pay, if assignable, the fair market value of the needed additional facilities to the owner prior to taking possession of the facility. Should owner produce an executed agreement for such facility from a bona fide purchaser, it shall notify WisDOT, and WisDOT or its nominee shall have the right of first refusal to purchase under the same terms and conditions, but such right must be exercised within forty-five (45) days, and such purchase must be completed within six (6) months of notice by Owner. Property covered under this section does not include property used in maintenance or betterment or replacement of property granted to Commission to be installed by government order or regulation. Property covered under this Section shall include but not be limited to new buildings, new sidings, spurs, or passing tracks. The powers above given to WisDOT are made a part of this Agreement as conditions imposed by WisDOT in its agreement with Commission. Any obligation imposed by WisDOT on Commission relating to performance or to the handling of property or relating to additions to property by Commission or Operator are to be performed and adhered to by Operator, and evidence of such obligations is supplied by incorporation of said agreement herein by reference or by attachment. If the agreements between Commission and WisDOT require approval from WisDOT before improvements are made thereon or extended thereto, then such approval shall be obtained before Operator erects or constructs a building or buildings or other improvements, and Commission hereby agrees to use its best efforts to obtain such approval.

## **ARTICLE 8.0 - REPRESENTATIONS, WARRANTIES AND COVENANTS.**

### **Section 8.1 - Operator.**

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

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

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

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

### **Section 8.2 - Commission.**

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

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

Operating Agreement. This Operating Agreement has been authorized and approved by the Board of Commissioners of Commission.

(b) To the best knowledge of Commission and its Commissioners, the entering into and performance of this Agreement on the part of Commission does not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency, governmental body, or any other agreement.

(c) In possession of Operator, and hereby made a part of this Agreement by reference, are true and correct copies of the Land Use Agreement and the Grant Agreement, in effect on the date of this Agreement, and the same have not been further amended, terminated or revoked. It is the intention of Commission not to provide for or to agree to any act or procedure or extend any right not permitted to Commission in any of the agreements with WisDOT. To the best knowledge of Commission after due inquiry, nothing in this Agreement conflicts with or is prohibited by the Land Use Agreement or Grant Agreement between Commission and WisDOT as of the date of the execution of this Agreement. Notwithstanding the previous sentence, to the extent that either or both the Land Use Agreement and the Grant Agreement conflict with any provision of this Agreement, Commission shall on or before December 31, 1997, attempt to conform such other agreement or agreements with the provisions of this Agreement, and Operator hereby consents to any amendments required to achieve conformance.

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

## **ARTICLE 9.0 - REPORTS AND ACCOUNTS.**

### **Section 9.1 - Reports.**

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

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

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

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

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

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

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

(ii) A certificate of insurance submitted on or before each insurance coverage renewal date appropriately showing that all the terms and conditions of Section 6.2 of this Agreement are fully met; and

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

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

### **Section 9.2 - Accounts.**

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

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

### **ARTICLE 10.0 - TAXES.**

As of the date of this Agreement, unless waived or abated, Operator shall be responsible for and pay when due, all taxes due as a result of its possession and use of the Rail Line or its assets including possession of real and personal property as well as for all taxes due on property owned by Operator together with taxes, if any, levied or assessed on Commission for Land owned by or in the possession of Commission. Operator agrees to hold Commission and WisDOT harmless from, indemnify against and defend all claims and liabilities with regard thereto.

## **ARTICLE 11.0 - OTHER COMMITMENTS.**

### **Section 11.1 - Handicapped.**

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

### **Section 11.2 - Environmental Protection.**

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

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

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

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

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

### **Section 11.3 - Prohibited Interest in the Proceeds of Operations.**

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

(b) No member of or delegate to Congress or the Wisconsin Legislature shall be admitted to any share of any benefit that may arise from this Agreement, but this provision shall not restrict the making of any contract with a corporation for the general benefit of such corporation.

## **Section 11.4 - Nondiscrimination.**

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

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

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

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

## **ARTICLE 12.0 - GENERAL PROVISIONS.**

### ***Section 12.1 - Choice of Law.***

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

### **Section 12.2 - Notice.**

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

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

Chairman  
Pecatonica Rail Transit Commission  
426 Karmann Library  
1 University Plaza  
Platteville, Wisconsin 53818

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

### **Section 12.3 - Status of Operator.**

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

### **Section 12.4 - Assignment.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto. Operator's rights hereunder shall not be assignable whether by way of assignment, sublease or otherwise, directly or indirectly, without Commission's prior written consent and without WisDOT's prior written approval. This Agreement shall not create rights of any sort in Operator to assign, sublease or transfer, in any fashion whatsoever, its rights under this Agreement to any other person, firm or corporation, including any affiliated corporation, firm or person.

### **Section 12.5 - Severability.**

If any term, covenant, condition or provision (or part thereof) of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision, or remainder thereof, to parties or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

## **Section 12.6 - Amendments, Consents, and Approvals.**

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

## **Section 12.7 - Captions.**

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

## **Section 12.8 - Compliance by Operator with Agreement.**

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

## **Section 12.9 - Additions or Extension to Present Track.**

Additions or extensions to the present Improved Property may be desired by either of the parties hereto or by a user. In that event, such extension or addition shall be constructed at the option and cost of Operator. However, if Commission desires such an extension or addition and this is not concurred in by Operator, then Operator agrees to make such addition or extension but at the cost of Commission. Permits for and disposition of such extensions shall be in compliance with Section 7.13.

## **Section 12.10 - Additions, Remodeling or Replacement of Buildings.**

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

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

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

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

## **Section 12.12 - Rehabilitation.**

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

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

### **Section 12.13 - Specific Performance.**

Operator and Commission shall have the right, as provided by law, to require specific performance by the other party of the other party's obligations under this Agreement. This right may be asserted at any time after thirty (30) days from the time Operator or Commission has first notified the other party of the other party's obligation to perform.

### **Section 12.14 - Approval by WisDOT.**

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

### **Section 12.15 - Execution.**

This instrument shall be fully executed in triplicate with a copy being delivered to each party and to WisDOT and in such further counterparts as may be desired by the parties.

### **Section 12.16 - Entire Agreement.**

This Agreement together with those documents referred to herein contains the entire agreement of the parties and supersedes any and all prior agreements and draft agreements, or oral understandings between the parties.

**Signatures**

IN WITNESS WHEREOF, the Pecatonica Rail Transit Commission, by its Board of Commissioners, has caused this Agreement to be signed by Bob Hoesly, its Chairman, and Clyde Mullen, its Secretary, this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

WITNESS:

PECATONICA RAIL TRANSIT COMMISSION

\_\_\_\_\_

\_\_\_\_\_  
Bob Hoesly, Chairman

\_\_\_\_\_

\_\_\_\_\_  
, Secretary

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

WITNESS:

WISCONSIN & SOUTHERN RAILROAD COMPANY

\_\_\_\_\_

\_\_\_\_\_  
William E. Gardner, President

## **Attachment 1 - Land Use Agreement**

## Land Use Agreement

Land Use Agreement and Lease Agreement By and Between Pecatonica Rail Transit Commission and Wisconsin Department of Transportation dated 4 August 1982.

and no amendments as of October 17, 1997.

## **Attachment 2 - Grant Agreement**

## Grant Agreement

**GRANT AGREEMENT** for Improved Railroad Property Acquisition By and Between Pecatonica Rail Transit Commission and Wisconsin Department of Transportation dated 4 August 1982.

**AMENDMENT ONE** dated 26 June 1990; and  
no others as of October 17, 1997.

## **Attachment 3 - Rehabilitation Agreement**

## Rehabilitation Agreement

Grant Agreement for Railroad Rehabilitation By and Between Pecatonica Rail Transit Commission and Wisconsin Department of Transportation dated August 9, 1985.

AMENDMENT ONE dated 2 July 1986;  
AMENDMENT TWO dated 15 April 1987;  
AMENDMENT THREE dated 29 July 1987;  
AMENDMENT FOUR dated 3 September 1987; and

no other amendments as of October 17, 1997.

## **Appendix A - Maintenance Standards**

## Appendix B - Rental

Operator hereby covenants, agrees and binds itself to pay Commission an annual rental of \$12,000. Operator further agrees to pay 2% of gross operating revenues for all gross operating revenues in any one year in excess of \$600,000 gross operating revenue provided however that such payment not exceed 100% of Operator's of Operator's federal pretax income, based on a mileage prorate. Said rental shall commence with the County Board's Approval Date as set forth in **Section 2.1** of this Agreement. The \$12,000 annual rent is due and payable on such County Board's Approval Date and approval by WisDOT under **Section 3.3** and subsequent annual rentals of \$12,000 shall be due and payable on each anniversary date thereof. Thereby the \$12,000 annual payment is an advance rent for the year, subject to proration in the event of early termination of this Agreement for any reason by either party. The additional 2% of gross operating revenue shall be payable 75 days after the anniversary date each year. If Operator desires to pay this on a calendar year basis, the first payment can be apportioned for the part of the year from the County Board's Approval Date through December 31 with a like proportion to be applied to determining the amount of gross operating revenue upon which the additional payment is to be computed. In the event the Commission applies for and is the beneficiary of a rehabilitation grant, and the Operator contributes a portion or all the local match required under such a grant, then the Operator is entitled to offset the amount due the Commission under the 2% gross revenue provision by the amount of its contribution. Such contribution by the Operator shall apply for offset only for the period of the grant agreement and shall not be cumulative.

Commission and Operator recognize and agree to abide by the action of the Commission taken November 21, 1997, to reduce Operator's rental obligation for 1996, 1997, 1998 and 1999 to Three Thousand Dollars (\$3,000) each year. Such agreement shall be in effect until December 31, 1999, at which time the \$12,000 annual rent payment will be reviewed and may be reduced or increased by mutual agreement of Commission and Operator. Annual rental payments shall be adjusted by the same percentage as the rail cost recovery increases authorized by the STB or other method agreed upon by the parties.

Rental payments for 1996 and 1997 have been paid in full in accordance with the commission's November 21, 1997 action.

Operator agrees that rental payments for 1998 and 1999 shall be paid by March 1, 1998.

Rental payments for periods beginning January 1, 2000 shall be made on a quarterly basis and shall be due and payable the first business day of each calendar quarter commencing January 1, 2000.