

WISDOT  
Copy

**INTERCITY PASSENGER RAIL**

**OPERATING AGREEMENT**

**BY AND BETWEEN**

**WISCONSIN RIVER RAIL TRANSIT COMMISSION**

**AND**

**WISCONSIN & SOUTHERN RAILROAD COMPANY**

**AGREEMENT NO. 0490-40-48(e)**

**APRIL 2000**

**AGREEMENT NO. 0490-40-48(e)**

This Agreement made and entered into this \_\_\_\_\_ day of April 2000, by and between Wisconsin River Rail Transit Commission, a municipal corporation established in accordance with Sec. 66.30 Wis. Stats., ("Commission") and Wisconsin and Southern Railroad Company, a railroad company organized and existing under the laws of the State of Wisconsin and fully empowered to act as a railroad company in Wisconsin, having its principal office at 5300 N. 33rd Street, City of Milwaukee, County of Milwaukee, and State of Wisconsin ("Operator").

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

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

WHEREAS, the parties hereto have negotiated and agreed to an operating agreement which is this instrument for the purposes of providing intercity passenger service over certain segments of the rail line described herein; 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 and contractual commitments relating thereto which are hereinafter set forth in this Agreement; and

WHEREAS, Operator is currently operating over the rail line providing freight service;

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. "CPR" means the CP Rail System D/B/A the Soo Line Railroad Company and its successors, if any.

b. "IMRL" means the I & M Rail Link or its successors, if any.

c. "BNSF" means the Burlington Northern and Santa Fe Railroad Company or its successors, if any.

d. "STB" means the Surface Transportation Board or its successors, if any.

e. "WisDOT" means the Wisconsin Department of Transportation.

f. "FRA" means the Federal Railroad Administration of the United States Department of Transportation.

g. "Commission" means the Wisconsin River Transit Commission D/B/A the Wisconsin River Rail Transit Commission.

h. "Operator" means the Wisconsin and Southern Railroad Company.

i. "Land" means the real estate, generally 66 feet in width, the use of which is provided to Operator by Commission, upon which the trackage is located which is leased to Operator under this Agreement.

j. "Rail Line" means the Principal Line Segments in aggregate.

k. "Principal Line Segment" means one of the following as defined by their end points:

- (1) Division of ownership with METRA at Milepost 49.79 in Fox Lake, Illinois and the Wisconsin State Line.
- (2) Wisconsin State Line to division of ownership with IMRL, at Milepost 94.5 near Janesville, Wisconsin.
- (3) Division of ownership with IMRL at Milepost 11.02 to end of track in Monroe.
- (4) Bardwell Jct. to Elkhorn at Milepost 39.64, including leg(s) of the wye.
- (5) Milepost 101.51 near Janesville to Milepost 106.52 at Milton Jct.
- (6) Milepost 62.48 at Milton Jct. to Milepost 20.50 in Waukesha.
- (7) Milepost 20.50 in Waukesha to Milepost 19.56 in Waukesha.
- (8) Milepost 106.52 at Milton Jct. to Milepost 138.58 in Madison.

- (9) Milepost 138.58 in Madison to Milepost 146.7 in Middleton.
- (10) Milepost 146.72 in Middleton to division of ownership with BNSF at Milepost 233.75 at Crawford.
- (11) Division of ownership with BNSF at Milepost 235.80 in Prairie du Chien to division of ownership with Prairie Sand and Gravel.
- (12) Prairie du Sac to Mazomanie including both legs of the wye.

~~(13) Milepost 16.53 near Waukesha to Milepost 13.31 near Brookfield. This segment is a rail-banked line.~~



l. "Commuter passenger service" means short-haul passenger service operating in metropolitan and suburban areas, whether within or across the geographic boundaries of a state, usually characterized by reduced fare, multiple rides and commutation tickets and by morning and evening peak period operations.

m. "Intercity Passenger Service" means medium to long distance service to designated stations on a regular published schedule between major population centers with relatively few intermediate stops.

n. "Excursion Train" means a train or a dinner train operated for pleasure or recreation which carries passengers for a fee, or any other vehicle operated on rails for pleasure or recreation regardless of whether passengers are carried or a fee is charged. "Excursion Train" does not include customer specials, commuter trains or trains operated by the national railroad passenger corporation.

o. "Trackage" means the rails, ties, ballast, track material, bridges, switches, culverts, signals, and all other nonland property acquired by WisDOT and provided under grant to the Commission subject to certain express conditions and limitations. This term does not include land.

p. "Improved property" means buildings and trackage located upon the land of the rail line.

q. "Person" means an individual, a partnership, an association, or bodies politic or corporate.

r. "UP" means the Union Pacific Railroad or its successors, if any.

s. "WisDOT" means Wisconsin Department of Transportation.

t. "Operating Agreement" means Operating Agreement No. 0490-40-48(d) by and between the Commission and Operator dated September 1, 1997, including all attachments, appendices and amendments thereto.

u. "Counties" means Iowa, Grant, Crawford, Sauk, Dane, Rock, Walworth and Waukesha Counties.

#### **ARTICLE 2.0 - 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 intercity passenger service and for all other purposes necessary to the foregoing. For the purpose of providing intercity passenger service, Operator may contract with another provider of intercity passenger service, upon prior review and approval of such contract by Commission and WisDOT.

(b) This Agreement shall be for a period of fifteen (15) years effective March 1, 2000, (herein referred to as "Commencement Date") and ending February 28, 2015; provided, however, that either party may terminate this Agreement under Article 6.0.

(c) If Operator wishes to extend this Agreement, Operator shall advise the Commission and WisDOT of its intention to seek an extension no later than February 28, 2014. Notice shall be in writing and the parties may proceed to negotiate an extension of this Agreement or a successor agreement thereto.

#### **ARTICLE 3.0 - RENT**

Operator and Commission hereby agree that the following additional fees or charges will be assessed against the Operator by the Commission in connection with intercity passenger service during the term of this agreement:

- (a) Each loaded freight car used in connection with intercity passenger trains shall be counted as one car.
- (b) Every three (3) loaded roadrailer cars used in connection with intercity passenger trains shall be counted as one car.
- (c) Passenger cars shall be excluded from fees.

The fees charged per car under this Article shall be equal to the fees charged per loaded car under Appendix B of the Operating Agreement.

## **ARTICLE 4.0 – INTERCITY PASSENGER RAILROAD OPERATIONS.**

### **Section 4.1 - Authority to Operate.**

(a) Operator shall obtain any requisite operating authority 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 this rail line as an intercity passenger railroad providing exclusive originating and terminating rail service on this rail line. In such operation, Operator shall have the power and authority to exclusively control, manage, staff and plan for the provision of intercity passenger 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 project 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, other applicable agreements or by law.

### **Section 4.2 - Agreement of Operator to Operate and Agreements and Covenants as to Operator.**

Operator hereby agrees to provide intercity passenger rail service on all or a portion of 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 things required and to perform in the manner required under Section 5.2 of the Operating Agreement:

## **ARTICLE 5.0 - LIABILITY AND INSURANCE.**

### **Section 5.1 - Hold Harmless.**

Operator shall save and hold Commission, Counties 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 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. In the event Operator contracts with another provider of intercity passenger service as permitted under Article 2.0(a), the contract with any such provider shall require that the provider also execute a hold harmless and indemnification agreement in substantially the same form as this section for the benefit of the Commission, Counties and WisDOT.

Section 5.2 - 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 an endorsement specifically covering intercity passenger rail service with limits of not less than \$10,000,000 per occurrence, or other form approved by WisDOT. WisDOT and Commission and the Counties 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 insurances shall cover Commission, Counties and WisDOT to the extent of the ownership of both or any of them 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 purchases 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 day 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 monthly, 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 County, 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.

## ARTICLE 6.0 - TERMINATION OR SUSPENSION.

### Section 6.1 - 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 5.2 of this Agreement or any amendment thereto, (3) when Operator files for protection under any bankruptcy statute, or (4) when the Operating Agreement is terminated, amended, or revoked or when a default exists under the Operating Agreement.

(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 11.2 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 6.2 - Termination for Default.

In the event of any default described in Section 6.1 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 6.3 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 6.3 - 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 6.4 - Contractual Obligations Upon Termination.

Except as otherwise agreed to by the parties in writing, the obligations of Operator to Commission to provide intercity passenger 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 6.9, 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 6.8.

#### Section 6.5 - 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 6.6 - 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 6.7 - Return of Property Upon Bankruptcy Default.

If this Agreement shall terminate pursuant to Section 6.6, Operator shall forthwith deliver possession of the rail line land and improved property to Commission. Rail line land and improved property so delivered shall be in the same or better operating order, repair, and condition as when originally delivered to 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 6.8 - 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 delivery 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 6.9 - 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 5.2 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 6.10 - Force Majeure.

The parties hereto will be excused from performance of any of their respective obligations hereunder, for the duration of any interruption occasioned by any event beyond their

respective control (not due to their own fault or actions), which shall include without limitation, except the unavailability of insurance coverage in full accordance with Section 5.2 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 5.2 but may be declared in default for non-compliance with Section 5.2.

**ARTICLE 7.0 - REPRESENTATIONS, WARRANTIES AND COVENANTS.**

**Section 7.1 - 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 interim passenger 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.

**Section 7.2 - 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 Agreement and to carry out the functions which it has obligated itself to undertake in this Agreement. This Agreement has been authorized and approved by the Board of Commissioners of Commission.

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

## **ARTICLE 8.0 - 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 this 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, Counties and WisDOT harmless from, indemnify against and defend all claims and liabilities with regard thereto.

## **ARTICLE 9.0 - OTHER COMMITMENTS**

The commitments identified in Article 10.0 of the Operating Agreement are incorporated herein by reference as if full set forth herein. Operator agrees to be bound by such requirements in providing intercity passenger rail service to the same extent Operator is bound by such requirements in providing freight rail service.

## **ARTICLE 10.0 - GENERAL PROVISIONS.**

### **Section 10.1 - 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 10.2 - Notice.**

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

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

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

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

Section 10.3 - 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 10.4 - Assignment.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their assigns. 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 as provided in Article 2.0(a). In the event Operator assigns its rights hereunder, all terms and conditions of this Agreement shall be deemed incorporated in such assignment. No assignment shall operate to relieve Operator of any of its obligations under this Agreement or the Operating Agreement.

Section 10.5 - Severability.

If any term, covenant, condition or provision (or part thereof) of this Agreement, or the application thereof to any part 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 10.6 - 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 10.7 - 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 10.8 - Specific Performance.

Operator and Commission shall have the right, as provided by law, to require specific performance by 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 10.9 - 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 10.10 - 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 10.11 - Entire Agreement.

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

**IN WITNESS WHEREOF**, the Wisconsin River Rail Transit Commission, by its Board of Commissioners, has caused this Agreement to be signed by Richard Scullion, its Chairman, and William Agnew, its Secretary, this 14th day of April, 2000.

WITNESS:

Kenneth Zucht

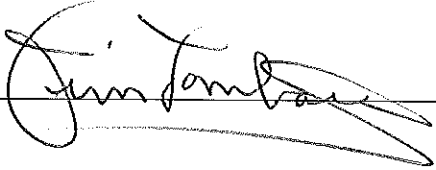
WISCONSIN RIVER RAIL TRANSIT  
COMMISSION

Richard Scullion  
Richard Scullion, Chairman


William Agnew  
for William Agnew, Secretary

IN WITNESS WHEREOF, the Wisconsin and Southern Railroad Company, by its Board of Directors, has caused this Agreement to be signed by William E. Gardner, its President, and Lucy Stone Gardner, its Secretary, this 17th day of April, 2000.

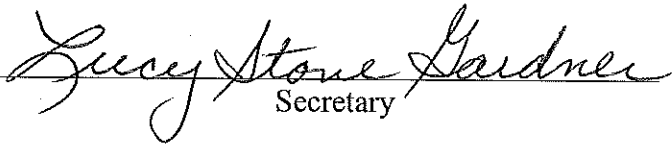
WITNESS:

  
\_\_\_\_\_

WISCONSIN AND SOUTHERN RAILROAD  
COMPANY

  
\_\_\_\_\_

William E. Gardner, President

  
\_\_\_\_\_

Secretary