

LAND USE AGREEMENT

BY AND BETWEEN

WISCONSIN RIVER RAIL TRANSIT COMMISSION

AND

WISCONSIN DEPARTMENT OF TRANSPORTATION

MARCH 1987

DUPLICATE

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

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

W I T N E S S E T H:

WHEREAS, the Wisconsin Legislature finds that rail service continuation has public interest and support, and is significant towards the preservation of a sound economic base and in the maintenance of a balanced transportation system, and that private capital and local government financial capabilities are insufficient to prevent further erosion of rail service, and that a public benefit is derived by state acquisition of abandoned private railroad property for continued railroad purposes;

WHEREAS, WisDOT has the authority under Sections 84.09, 85.08, 85.09, and 85.15, Wis. Stats., to acquire, improve, preserve and maintain land and interests therein necessary for transportation, such as restoration of railroad services;

WHEREAS, the Commission was created pursuant to Section 66.30, Wis. Stats., to establish, acquire, maintain and operate a railroad transportation system for the purposes of transporting freight;

WHEREAS, WisDOT has acquired for transportation purposes by quit claim deeds, which have been recorded in Register of Deed offices in appropriate counties, certain railroad property (hereinafter called Land) formerly owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Richard B. Ogilvie, Trustee, or CMC Real Estate Corporation as Successor;

WHEREAS, Commission desires to establish, develop, maintain and operate railroad service on, over and across WisDOT Land;

NOW, THEREFORE, WisDOT and Commission do hereby agree as follows:

ARTICLE 1.0 Operating Right.

Commission shall establish, develop, maintain and operate a railroad on, over and across the Land for railroad purposes, and shall have use of and access to the Land for such purposes, subject to the conditions contained herein or in the Grant Agreement - Improved Railroad Property Acquisition Grant Agreement (Number 0490-40-48(b)(1)) by and between Wisconsin River Rail Transit Commission and the Wisconsin Department of Transportation, dated March 20, 1987 and any amendments thereto (hereinafter called Grant Agreement).

ARTICLE 2.0 Land Use Grant.

Section 2.1 Land Description. The description of the Land granted to Commission for its use for the purposes of developing, maintaining and

operating railroad service shall be attached as Appendix A within 90 days of execution of this Agreement.

Section 2.2 Term. The term of this Agreement shall run for so long as Commission provides railroad service over the Land. Provision of railroad service shall be construed in accordance with the Grant Agreement.

Section 2.3 Amount. In consideration of the sum of one dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Commission may use the Land described in Appendix A for the provision of freight rail service for the terms set forth above.

Section 2.4 Superseded Agreement. This Agreement supersedes and is controlling in all matters set forth in Agreement # 0490-40-48(a), Land Use and Lease Agreement, dated June 29, 1982, by and between WisDOT and Commission.

ARTICLE 3.0 Use of the Land.

Section 3.1 Scope of Use.

- (a) Commission shall have full use of all the Land described in Appendix A of this Agreement.
- (b) In the event it becomes desirable to construct buildings or other structures on the Land, they may be constructed by Commission at its expense, subject to receiving WisDOT's prior written approval.

(c) Commission has no authority to enter into easements, permits, licenses, or leases affecting the Land, nor may it sublet any of the Land, whether under the use of Commission or outside the use of Commission, without specific prior written approval provided by WisDOT to Commission.

Section 3.2 Use of Land as Collateral. The Land shall not be used by Commission or its Operator in any form or amount as equity, security or collateral for any borrowing or other means of raising capital by Commission or its Operator or as collateral for any other purpose.

Section 3.3 Sale or Transfer of Land. WisDOT shall retain complete and final authority regarding sale or disposal of the Land except as may otherwise be provided in the Grant Agreement.

ARTICLE 4.0 Maintenance of Fixtures on the Land.

Section 4.1 Bridges. Commission shall assume responsibility for the inspection, repair, maintenance, rehabilitation or replacement of all culverts, trestles and bridge structures, thereby insuring the unrestricted flow of waters and the preservation of the necessary drainage systems.

Section 4.2 Private Crossings. Commission may, according to applicable statutory provisions, abrogate any private crossing established by agreement which interferes substantially with the operation of railroad services. Commission shall obtain authorization from WisDOT, and if necessary, from the

Office of the Commissioner of Transportation, prior to permitting any additional private crossings.

Section 4.3 Public Highway Crossings. Commission assumes responsibility on the Land for the maintenance of all trackage, warning devices and railroad highway crossings whenever crossing maintenance is required by law, except as provided in Section 5.2(b), Grant Agreement. Commission shall notify WisDOT in writing of plans to install or redesign a public crossing, and shall submit crossing designs and plans to WisDOT for WisDOT's prior approval.

Section 4.4 Fencing. Commission assumes such responsibility as may exist to third parties for providing the fencing required under Chapter 90, Wis. Stats., local ordinance, or contract. Fences rebuilt or reconstructed shall be along the Land boundaries.

Section 4.5 Vegetation Control. Commission assumes responsibility as may exist for the eradication, control and removal of vegetation on the Land required by applicable state law or local ordinance.

ARTICLE 5.0 Public Order and Trespass.

Commission assumes full responsibility for preserving public order upon the Land and for resolving matters concerning trespass upon or from the Land adjacent to private lands. Commission may adopt or allow its Operator to adopt and enforce any necessary rules in order to protect the Land. Commission shall have the right to post the signs and erect the barricades

necessary to delineate the Land as railroad property, and to prevent entrance upon the Land by unauthorized vehicles or individuals.

ARTICLE 6.0 Utility Permits.

WisDOT shall retain the authority to require and issue or deny permits allowing public and privately owned utilities the right to construct, place, operate, repair or replace any power or communications line, gas or other pipeline, water main or sewers or any other utility facility of any sort over, across, upon or within the Land.

ARTICLE 7.0 Other Use.

Except where authority rests with the Office of the Commissioner of Transportation, WisDOT shall retain authority for approving all applications for other uses of the Land, including the setting of design and specification requirements, and shall coordinate with Commission on matters pertaining to an application.

ARTICLE 8.0 Inspections.

WisDOT employees shall have the right to enter upon the Land at any time for the purpose of making inspections or to discharge their official duties.

ARTICLE 9.0 Liability and Insurance.

Commission agrees to be bound under this Agreement by the same terms and conditions regarding hold harmless and insurance as are set forth in Sections 7.1 and 7.2 of the Grant Agreement.

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 Administrative Rule. Any administrative rule promulgated under Sections 85.08 or 85.09, Wis. Stats., subsequent to the date of this Agreement, which is inconsistent with this Agreement, shall supersede the terms herein and shall be effective immediately as a part of this Agreement upon approval and appropriate publication of the rule.

Section 10.3 Notice. Any notice required or permitted under this Agreement shall be personally served on or mailed by certified United States mail, return receipt requested, postage prepaid, to the following addressed

persons at the following addresses and to such other persons and addresses as the following persons shall direct by notice pursuant to this Section:

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

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

Section 10.4 Status of Commission and its Operator. Commission and its Operator (including officers, directors, employees, agents or representatives thereof) are independent contractors, and in no way shall either or both be deemed an affiliate, partner, joint venturer, or associated in any manner whatsoever with WisDOT.

Section 10.5 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto. This Agreement is personal to the Commission and shall not pass to its successors or assigns. Commission's rights hereunder shall not be assignable whether by way of assignment, sublease or otherwise, directly or indirectly, without WisDOT's prior written approval. Upon request, however, WisDOT may allow a successor to obtain an identical agreement as the one held by its predecessor. This Agreement shall not create rights of any sort in Commission to assign, sublease or transfer, in any fashion whatsoever, its rights under this Agreement to any other person, firm or corporation, including any affiliated corporation, firm or person. Commission shall not obtain any interest or estate of any kind or extent whatsoever in the Land by reason of this Agreement.

Section 10.6 Severability. If any 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 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 provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 10.7 Vacating the Land. Commission agrees to be bound under this Agreement by the same terms and conditions regarding vacating the Land as are set forth in Sections 8.7 and 8.8 of the Grant Agreement.

Section 10.8 Amendments, Consents and Approvals. No provision of this Agreement, or any of its attachments to which Commission is a party, may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by both parties to this Agreement. Consents and approvals required under this Agreement and interpretations of this Agreement 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 10.9 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 10.10 Specific Performance. WisDOT and Commission shall have the right, as provided by law, to require specific performance by the other

party of the other party's obligations under this Agreement. This right may be asserted at any time after thirty (30) days from the time WisDOT or Commission has first notified the other party of the other party's obligation to perform.

Section 10.11 Cancellation. This Agreement may be terminated by either party upon failure of the other party to perform according to the terms and conditions set forth herein or in any other agreements between the Commission and WisDOT.

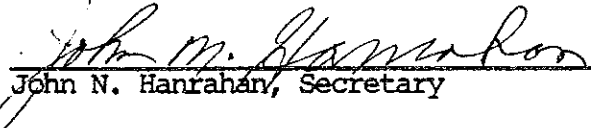
Section 10.12 Inclusion. This Agreement is by reference hereby made a part of and subject to the terms and conditions of the Grant Agreement.

Section 10.13 Entire Agreement. This Agreement together with those documents referred to herein contains the agreement of the parties and together with the Grant Agreement supersedes any and all prior agreements, draft agreements, and oral understandings between the parties.

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

WISCONSIN RIVER RAIL TRANSIT COMMISSION


Richard Scullion, Chairman


John N. Hanrahan, Secretary

THE WISCONSIN DEPARTMENT OF TRANSPORTATION


Ronald R. Fiedler, Secretary

DUPLICATE

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This document was drafted by the Wisconsin Department of Transportation.

STATE OF WISCONSIN)
) s.s.
Dane COUNTY)

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

Richard E. Black
Richard E. Black
Notary Public, State of Wisconsin
My Commission Expires Mardi 26, 1989

DUPLICATE

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

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

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

APPENDIX A

Preliminary Description of Land Granted to
Wisconsin River Rail Transit Commission

1. Milepost 138.57 in Madison to Milepost 101.35 in Janesville;
2. Milepost 39.64 in Elkhorn to Milepost 53.0 at Bardwell Junction;
3. Milepost 94.49 in Janesville to Milepost 49.76 in Fox Lake, Illinois;
4. Milepost 146.72 in Middleton to Milepost 237.40 in Prairie du Chien (excluding Milepost 233.75 to Milepost 235.59);
5. Milepost 183.04 (= Milepost 0.26) in Lone Rock to Milepost 16.14 in Richland Center;
6. Milepost 0.07 in Mazomanie to Milepost 13.07 in Prairie du Sac; and
7. Milepost 20.5 near Waukesha to Milepost 61.5 near Milton Junction.