



Washington State Transportation
Commission

Statewide Rail Capacity and System Needs Study

Task 9 – Asset Management

technical

memorandum

prepared for

Washington State Transportation Commission

prepared by

Cambridge Systematics, Inc.

with

HDR, Inc.

technical memorandum

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Cambridge Systematics, Inc.
555 12th Street, Suite 1600
Oakland, California 94607

with

HDR, Inc.

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Task 9 – Asset Management

■ Introduction

As part of the Statewide Rail Capacity and System Needs Study, the Washington State Legislature requested that the Washington State Transportation Commission conduct a “study of state-owned rail assets, their management, and possible changes in governance and administration.” This technical memorandum addresses these topics in two parts. Part 1 provides a detailed outline of rail asset management issues in Washington State, making recommendations for a strategy to improve management of these assets; and Part 2 provides an asset management plan based on this framework that Washington State can use to manage its freight rail assets in the future.

■ Part 1 – Asset Management Strategy

The analysis begins by identifying the rail assets in which the State of Washington has an interest, either by virtue of ownership or because the assets were purchased with state funding. The technical memorandum then considers alternative approaches to asset management that may best apply to each asset group. The section concludes with recommendations for an asset management strategy.

Background

The deregulation of the railroads in the 1980s under the Staggers Rail Act made it much easier for railroads to abandon, sell, and purchase rail lines. The current rail system in Washington State is largely the result of these changes ushered in by the Staggers Rail Act.

Several trends became immediately apparent in the wake of the Staggers Rail Act. For example, in most states, the public became the owner of last resort. Generally, the rail carriers identified those segments of rail line or other infrastructure that did not meet their revenue goals and spun them off to be managed by a short line operator. In some cases, the purchasers were large national (and international) holding companies that were in the short line business. However, others devolved into much smaller operations. Some of these operations have prospered and grown, while others have stagnated and declined. Those lines that did not find a short line operator/owner were sometimes made a ward of the public, or in some cases were abandoned, when the private sector failed to take interest. In most cases, the public made an effort to determine the economic vitality of any line they considered acquiring. In others, political expediency brought about acquisition without undertaking a thorough study of the line.

The short lines today are critically dependent on their major carrier connections. As described in other technical memoranda prepared for the Washington Statewide Rail Capacity and System Needs Study, the lack of mainline capacity has caused Class I rail carriers to begin “rationing” their capacity and soliciting only traffic that has high revenue and/or low handling costs. Currently, intermodal traffic is generating high revenue for the carriers, and is a favored commodity. Unit trains and other high volume point-to-point services are also profitable. Many carload commodities in low density corridors, on the other hand, are, in some cases, having trouble attracting a major carrier. These are the markets that are often served by short lines in Washington State.

This change in freight rail operations occurred at the same time that passenger rail service in Washington State was changing. Studies in the early 1990s led to a determination that expanded rail passenger services along the I-5 corridor could generate substantial mobility benefits and augment the limited service supplied along the *Amtrak Cascades* corridor. Since the early 1990s, the State has invested approximately \$270 million in the intercity rail passenger program along the I-5 corridor, including purchase of passenger trains, upgrade of stations, and purchase of service agreements.

Methodology for Developing the Asset Management Strategy and Plan

An asset management plan is both a strategy and a process for managing any asset to the maximum long-term benefit of the owners. An asset management plan is expected to have the following components:

- A management strategy for achieving maximum value and performance over time, including the following:
 - Goals and objectives for assets; and
 - A decision process (usually cost-benefit or rate-of-return analysis) for evaluation and decisions on purchase, maintenance, operation and disposal of assets.
- Monitoring performance of the asset through performance measures that relate performance to management and financial decisions.
- Valuation of the asset, including investment, depreciation, and current value.
- Monitoring investment, operations and maintenance costs of the asset, usually through accounting and inventory systems.

In the case of Washington State’s rail assets, the owners are the citizens of Washington State and the value and performance objectives are not only the financial position of the State, but the public benefits generated through effective use of the asset.

Specific objectives for the analysis of rail asset management needs that was undertaken in this study include:

- Evaluate Washington State’s existing rail passenger and freight programs within an asset management and business case context, with particular attention to the short-line program. Each program and investment is classified by market and business purpose, so that budget and investment decisions can be interpreted in a business context.
- Compare Washington State’s approach to that of other states. Using available reports and papers, conduct a brief scan of other states, looking at models for managing state rail assets and making public investment decisions.
- Identify strategies for management of rail assets and investment in rail infrastructure that may be appropriate in the Washington State context. Alternative approaches should be considered, as appropriate.
- Based on strategic alternatives and direction of the Commission, develop a specific strategic direction for the short-line program, including vision, mission, and goals.
- Provide a business-based approach to financial sustainability and monitoring of the Washington State rail program that could be applied specifically to the short-line assets.

Existing Rail Assets and Asset Management Approaches

The first step in this analysis was to identify existing rail assets owned by the State of Washington. This survey and resultant list revealed that the State owns few rail assets. However, in addition to the assets owned by the State, the State has funded other rail assets for which it might also have applied asset management principles at the time of purchase. These assets are included in this discussion as well.

A summary of rail assets is presented below in Table 1.

Table 1. Summary of Washington State-Owned Rail Assets

	Acquisition Type	Funding Source	Acquisition Date	Purchase Price	Notes
Passenger					
Talgo train sets (3)					
Mt. Baker & Mt. Rainier	Purchase	Legislative appropriation	1999	\$20,000,000	Daily management by Amtrak
Mt. Adams		Legislative appropriation	2003	\$7,430,000	Daily management by Amtrak
Operating time slots					
Portland – Vancouver, BC	Purchase	Legislative appropriation	1993-2006	\$120,000,000	
Seattle Maintenance Facility		Legislative appropriation	2004	\$6,000,000	State does not actually own the facility
Freight					
Grain cars					
1 st set (36 cars)	Purchase	Stripper well		\$643,074	Managed by Columbia Basin RR
2 nd set (29 cars)		Retained earnings		\$693,000	Managed by PCC Railroad
3 rd set (18 cars)		Retained earnings		\$198,650	Managed by PCC Railroad
Rail Lines					
Royal Slope Railroad	Default				
Marshall to Pullman (76 miles)	Purchase	Legislative appropriation	2004	\$7,000,000	Includes Marshall to Pullman, Hooper
Hooper Junction to Pullman (70.6 miles)	Purchase	Legislative appropriation	2004		Junction to Pullman and Winnona to
Winnona to Thornton (21.2 miles)	Purchase	Legislative appropriation	2004		Thornton Lines
Cheney to Coulee City (108 miles)		Legislative appropriation			Purchase currently being regulated
Equipment					
Port of Columbia County					
Maintenance-of-way			1993		
2 locomotives			1993		Leased to Blue Mt. Railroad (WATCO)

Freight Assets

Rail Lines

The 26-mile long Royal Slope Railroad in central Washington State was acquired by the Port of Royal Slope through a loan, but the Port returned the line to the State. The line is currently inactive but there are indications an aggregate producer might ship over the line in the future.

There are a series of lines in Eastern Washington operated by the Palouse and Coulee City Railroad (WATCO Company). The estimated cost for these lines is \$7 million, plus the to-be-negotiated purchase of the Cheney to Coulee City line.

- **Marshall to Pullman (76 miles)** – Formerly Burlington Northern Railroad. Originally purchased by the PCC, but subsequently acquired by the State.
- **Hooper Junction to Pullman (70.6 miles)** – Formerly Union Pacific. Purchased by the State.
- **Winnona to Thornton (21.1 miles)** – Formerly Union Pacific. Purchased by the State.
- **Cheney to Coulee City (108 miles)** – Formerly Burlington Northern Railroad. This is currently owned by the PCC, but negotiations are currently underway to be purchased by the State.

Grain Cars

Washington State Department of Transportation (WSDOT) purchased 36 grain cars with “Stripper Well” overcharge money. The cars are based in the Palouse Region of the State. The purpose was to supply cars for short-haul grain movements between the Palouse and Puget Sound and Columbia River ports, a haul for which the major carriers were reluctant to provide the necessary equipment. The cars would also help to reduce highway damage on local roads during the spring freeze/thaw cycle.

The income from the lease of the cars was rolled back into maintenance of the existing fleet, along with purchasing additional cars. Currently, there are 83 state-owned cars in the program, plus an additional 18 cars owned by a local port district. Revenue will continue to be put into maintenance and possible additional acquisition.

The original 36 cars are managed by the Columbia Basin Railroad and operate mainly to ports on the lower Columbia River. The other cars are managed by the PCC and are included in a shuttle train that operates down to the Columbia River at Wallula. The State has paid about \$1.5 million for the cars, plus additional funds needed to bring them up to a state of good repair.

Equipment

The State purchased some maintenance-of-way equipment for the Port of Columbia County in Eastern Washington in order to help with their line's rehabilitation. The State also purchased two locomotives for the Port which, in turn, leased them to the Blue Mountain Railroad (a WATCO operation).

Right-of-Way

The State and many local governments purchased sections of the abandoned Milwaukee Road to be saved for future rail use or used for trails. The most visible is the Iron Horse Trail Park that extends from Cedar Falls on the west side of the Cascades to the Columbia River on the east side. The park is maintained by Washington State Parks.

Passenger Assets

Talgo Trains

Three Talgo train sets were purchased by a legislative appropriation and are in daily use in the Pacific Northwest Passenger Rail Corridor between Vancouver, BC and Eugene, Oregon. The cost of these 3 sets was \$27.4 million.

The equipment is maintained by Amtrak under contract to WSDOT. The contract is renewed on a regular basis to reflect operating scenarios and current costs. There is no sinking fund established to replace the equipment, assuming that a legislative appropriation will once again be necessary for the purchase of new equipment. While there have been discussions about the advisability of establishing a sinking fund for equipment replacement, there is no existing mechanism to protect these funds from use to meet other current general fund needs.

Track and Infrastructure

The State does not own outright any of the rail improvement in the passenger corridor. Instead it purchases service through improvements to the infrastructure necessary to accommodate the trains and not reduce freight capacity in the corridor. This is in line with the other West Coast states. The railroads then maintain the improvements with their own funds.

The service agreement on lines north of Seattle is for 25 years, while those south of Seattle have no expiration date. To date, the State has invested approximately \$120 million in infrastructure and capacity improvements, and has plans to spend double that amount in the immediate future. In addition, Sound Transit has spent millions in additional capacity in order to operate their commuter trains in the corridor.

Stations

The legislature has appropriated funds to the WSDOT for station improvements in the State. The money was mainly passed through funds with the local communities responsible for purchase and maintenance.

Maintenance Facilities

The State has contributed \$6 million towards the construction of a maintenance facility in Seattle south of King Street Station. This is operated by Amtrak on behalf of Amtrak, WSDOT, and Sound Transit commuter trains. WSDOT does not take a direct ownership role, but has a purchase of service agreement that is similar to the track and infrastructure agreements with the railroads.

Current Asset Management Practices

Freight Branch Lines

These lines were not purchased with the intention that the State would maintain ownership and operation, but instead were turned over to short line railroads, overseen by port authorities or local agencies. Therefore, it would not be expected that the State would maintain most of the elements of an asset management system. However, the initial purchases of these lines were evaluated by a cost-benefit framework. To the extent that the State purchase of such freight lines is to achieve public benefits, the State may wish to maintain ownership of purchased lines in the future and arrange for a private operator. The operator could then maintain an asset management system that would be used to demonstrate that the rail line is being operated to meet specified performance objectives.

WATCO, the operator of the Palouse and Coulee City lines, appears to have made an attempt to carry out routine maintenance as long as the lines were economically viable, but as revenue opportunities declined, maintenance of the line appears to have been sacrificed. It does not appear that the State had a sufficient strategy to ensure ongoing operation, or to facilitate a transition to an alternative operation if the lines ceased to be economically viable under WATCO's ownership. As a result, the State has received the lines back in a more deteriorated condition than when they were originally purchased. Currently, the State is engaged in an evaluation of alternatives for operating, disposing of, or banking the lines.

Similar to the Palouse and Coulee City line example, the Port of Royal Slope trackage was returned to the State through default, and it appears there is no short-term approach to protect the asset or promote its future use. The rail lines in the Palouse are subject to legal proceedings between the State and the operating railroad as to ownership and asset protection.

Grain Cars – The grain cars are currently being operated by the Port of Walla Walla and do not appear to be subject to a formal asset management program. The cars are being

maintained and usage is being tracked only to the extent required to ensure that the State and the Port are obtaining car revenues. It is not clear how the cars are being used and whether they are accomplishing the original purpose of reducing wear on highways by providing an alternative to trucking.

Maintenance of Way Equipment – There does not appear to be any formal asset management program for this equipment. It was difficult to determine exactly what maintenance-of-way equipment was purchased for the Port of Columbia County and its current disposition. The current inventory of this equipment is not accurate enough to locate the equipment or describe its current condition.

Right-of-Way – Some documentation exists regarding the decision to purchase most of this right-of-way, and of contracts that turn it over to local agencies to manage. For most of this property, it is clear that there is no intention of ever returning it to rail service. Therefore, it is not considered to be a rail asset for the purposes of this study.

Passenger Assets

Passenger Trains – Good documentation exists about both the decision to purchase this equipment and of its current status. The trains are currently providing dedicated service to the *Amtrak Cascades* service. Therefore, asset management is being provided by Amtrak subject to state decisions to continue operating subsidies for the service. The passenger equipment is maintained through a detailed multipage contract between the State and Amtrak. This is updated on a regular basis reflecting changes in costs and usage of the train sets. There is no specific plan for replacing the train sets at the end of their useful life.

Track and Infrastructure Service Agreements – These agreements are important assets to the Washington State passenger rail program. Without the agreements, the *Amtrak Cascades* passenger services would not be possible. Agreements were obtained to support services described in the I-5 Rail Service Strategic Plan and are being used consistent with that strategy.

Rail Passenger Stations – This was a “pass through” program, and the State, therefore, has no specific obligation to maintain or manage the facilities. A key question for the State is whether the agreements under which funds for station improvements are provided are enforceable and whether or not stations are being used as intended.

Maintenance Facilities – Though the State provided assistance in the purchase and development of these facilities, it retains no direct ownership interest in them. It does, however, have a service agreement allowing use of the facilities for the Talgo trains.

Rail Asset Management Approaches by Other Public Jurisdictions

Every state has a different set of objectives and legal framework to guide their participation in rail programs and an associated framework for their asset management plans. However, some aspects of the management plans of other States may be of possible

application in Washington State. For example, Kansas uses the Federal Railroad Administration (FRA) cost-benefit methodology to guide public investment in rail branch lines; and North Carolina has a highly developed passenger rail system, including its own rolling stock. Oregon has purchased a number of rail lines, but requires that the actual ownership be by a local jurisdiction and not the State. In addition, the jurisdiction and impacted shippers must contribute financially to any purchase. This is also true in the provision of any rehabilitation funds.

Components of these State's strategies that should be considered by Washington State include the following:

- Cost-benefit analysis as a basis for state investment;
- A business plan for making the short lines or other operation successful;
- An agreement between the State and the short lines spelling out obligations and allowing for enforcement through liens or other conditions; and
- A clear specification of what happens to the asset if it ceases to be used in the rail program.

Many publicly owned railroads use some form of asset management software to manage track and bridge conditions, facilities, cars, locomotives, and other equipment. If the State were to become the active manager of its rail cars or rail lines, this type of software should be considered.

The study reviewed asset management practices of a number of states as described below.

North Carolina has a highly active intercity passenger rail operation, where the State owns all of the rolling stock. The State purchased its own equipment when Amtrak was not able to provide the necessary cars for increased levels of service. The State contracts out to a private firm for the maintenance of this rolling stock.

North Carolina also owns 317 miles of rail corridor connecting Morehead City on the Atlantic Coast to Charlotte in the western part of the State. The North Carolina Railroad (NCR) originally constructed the line 150 years ago, and it has remained in public ownership ever since. The line is leased to the Norfolk Southern (NS) Railroad. Capital improvements are a mixture of NS funds and dollars provided by the NCR and North Carolina DOT. The NCR returns some of the lease payments to undertake capital projects on the line itself.

Oregon has purchased a number of rail lines, but requires that the actual ownership be by a local jurisdiction and not the State. In addition, the jurisdiction and impacted shippers must contribute financially to any purchase. This is also true in the provision of any rehabilitation funds.

Oregon has purchased a total of about 250 miles of railroad. Though it retains ownership of the right-of-way for these 250 miles, it does not own any of the trackage. The private sector purchased trackage from the original owning railroad and has the operating authority from the Surface Transportation Board. The State does retain the ownership of any easements and retains the revenue from these easements to help meet the costs of property ownership. New easements are jointly agreed upon by the State and the railroad. The relationships between the State and the railroad are governed by contract.

Oklahoma owns about 850 miles of rail line that are owned by the State, but operated by the private sector. One line is actually leased from the State by the Union Pacific.

The State retained an outside firm that specialized in short line contracting to put together the relevant contract between the railroad and the State. This same firm also assisted the State to make sure that each railroad operated under a financially viable pro forma. As in other states, the relationship between the State and the private entities are governed by contract.

Pennsylvania acquired about 120 miles of lines upon the bankruptcy of the Penn Central Railroad and the creation of ConRail. The State moved quickly to find short line operators to provide service on these lines. The State spent \$5 million for line purchases, \$3.7 million in operating assistance, and \$22.5 million for rehabilitation/maintenance on the state-owned lines.

Several years ago, a decision was made to return these lines to the private sector. The State and the short line operators negotiated an agreement where the State divested all rail trackage ownership rights to the short line operators. The State is also responsible for maintaining an active rehabilitation grant/loan program open to all railroads.

Georgia owns 550 miles of railroad, but it is not the actual operator on any of the lines. There is a two-tiered lease arrangement in place with the short line operators, where there is a base lease and then a share of the profits are retained to provide a rehabilitation program and administer the ownership.

South Dakota owns just over 700 miles of rail line. Most of this trackage was acquired when the Milwaukee Road declared bankruptcy in the 1980s and abandoned their mainline. The State leases the lines to local rail authorities responsible for selecting the operators. Over 300 miles of trackage were also sold to the BNSF. The State itself does not operate any of the rail lines, nor does it own any railbanked lines.

Performance Measures

Performance measures should be used to manage all types of assets under State ownership. There are two different levels at which this can occur: 1) the program level, and 2) the project or individual asset level.

Some performance measures can be used to evaluate both programs and individual projects. An example of such a measure is Return On Investment (ROI). However, in

cases where the acquisition of the assets was because of abandonment by the railroad, it is assumed that the private sector could not justify the expenditure of funds to maintain the asset, and there may be little or no return on investment. In these cases, the decision will likely be made on the basis of achieving positive net public benefits, and this can be tracked in lieu of ROI.

Other performance measures are more suitable for program-level evaluation. An example of such a measure is the percentage of trackage being maintained in FRA Class II (or some other economically justifiable level) condition (as is the case in Oregon). Data is available through the observations of the regular track inspections conducted by the FRA and state track inspectors. The measure can be used to evaluate alternative maintenance and rehabilitation efforts and to gauge the impact of issues such as the ability of the trackage to accommodate 286,000-pound rail cars.

Performance measures may also be more appropriate for individual projects or assets. Example measures include car condition and annual utilization of grain cars. Both measures could be used to track whether the purchase is effectively generating the benefits that justified their acquisition.

Project goals for track purchases could include condition of track and level of maintenance and rehabilitation applied annually. These would typically be set by negotiation with the purchaser, and would help ensure that the goals of the sale were being met. In the case of annual maintenance expenditures, failure to meet the goal is an early warning that either the line is not earning the expected return, or that the operator is not performing as agreed. In either case, such early warnings allow intervention before a crisis develops.

Recommendations

The following approaches are recommended for each type of asset owned by Washington State. Whenever possible, the strategy emphasizes the State divesting ownership and management rights to a third party, such as a private short line operator. In cases where that is not possible, the strategy stipulates that a state entity, such as WSDOT, is granted responsibility for the management of the asset. The strategy also suggests a frequent inventory and assessment of condition for all of the state-owned assets. This should be done to ensure that the asset is being maintained and the State's investment is being protected.

Acquisition of Rail Lines

Alternate Approach to Acquisition of Rail Lines

- Several basic principles apply to the State’s involvement in the acquisition of a rail line. These include the following:
 - The State should be the owner of last resort.
 - Ownership of the line(s) should be vested in local governments or public port authorities with the financial involvement of shippers. This will ensure that economically efficient decisions are made rather than politically expedient ones.
 - It may be necessary to create a special rail district if no existing government entity can be found to be the owner.
 - The State should never pay more than the Net Liquidated Value for the property.

The remaining recommendations for acquisition and management of rail lines apply whether the State is successful in finding a purchaser or operator, or whether it owns and operates the line itself.

- If the line has a current operator, any ties with this operator should be severed. The purchase of the line by the public should create a new operating environment and not just perpetuate the existing situation. However, the current operator should be able to reapply to be the line operator under an independent selection process.
- The State should seek outside assistance in preparing a benefit/cost analysis of the situation. Some of the questions that need to be answered should include the following:
 - What has driven the movement towards public ownership?
 - Are the economics going to change?
 - What is in the public interest in moving forward?¹
 - What are the short-term costs?
 - What are the long-term costs?
 - How much and what is the cost of any rehabilitation?

¹ In some cases, the overwhelming public interest case is reducing local highway impacts. Some caution is suggested since reducing highway impacts seldom enters the economics of the selling carrier. They assume that it is a public obligation to handle the highway end of things. It may be that addressing highway impacts is cheaper than acquisition of the rail line. Highway impact funding probably comes out of different funding sources than the purchase and subsidy of a rail line. Thus, there may be no real tradeoff between the two actions at the lowest levels.

- Develop an alternative to actual public ownership of a rail line. A system’s approach should be taken to determine if establishing a reload center near or on the mainline might be a more attractive option to line purchase.
- Subject any rehabilitation program to a simple benefit/cost (B/C) model. The B/C analysis required by the FRA under their Local Rail Service Assistance Program should be a bare minimum. Make sure that the line is not being over-rehabilitated in relation to short- and long-term traffic levels.
- Use an available software package to determine a pro forma operating plan for the rail line. Establish reasonable goals for annual maintenance activities on the line, such as the number of ties that need to be installed each year to keep ahead of asset cannibalization. Meet with the operator on a regular basis to see if these goals are being achieved; and if not, make any appropriate adjustments.

Grain Car Fleet

The State should engage an outside firm to determine if the car fleet is being managed properly. The firm should also present ideas as to how to maximize the public’s investment and, at the same time, adhere to the original purpose of the program.

It might be advantageous to install Geographic Positioning System (GPS) transmitters on the cars to monitor their movement. Firms are available that can supply the complete package, including daily tracking and regular reports on the velocity of the equipment.

Miscellaneous Rail Equipment

The State should undertake a study of the current disposition of any equipment supplied under a rehabilitation program. Regular tracking is, thus, possible once the basic data base has been established. This could also be outsourced to the private sector.

Passenger Rail Equipment

Currently, passenger rail equipment is subject to a very detailed contract between the State, Amtrak and Talgo. An outside audit should be conducted to see if this contract is in the best interest of the State. A rational plan should be developed to pay for the replacement of the existing equipment when its useful life has ended.

Elements of a Proposed Asset Management Plan for Rail Line Investment

An asset management plan for rail line purchases should include the following elements:

- A set of program-level goals should be established for assisting branch lines. It appears there are two primary objectives in acquiring and assisting lines. First, to generate local and regional economic benefits. Second, to reduce highway wear and tear from additional truck traffic. There should be program-level performance measures to monitor the impacts. These measures should include: 1) direct

employment supported by the rail line and rail activities, 2) equivalent truck trips carried on rail, and 3) condition of the lines in terms of the FRA track classification.

- A benefit/cost formula to inform the decision to purchase or otherwise acquire interest in the property. The FRA branchline formula is a good starting point. Some states, such as Kansas, use this methodology to manage its rail assistance program that makes loans for line improvements to short line operators.
- An inventory system should be set up to track precise ownership, condition, and all investment in the line, including any donated materials, equipment, or other assets.
- For each line, contract with the owner or operator, if different from the State, should clarify obligations for maintenance, operation and disposal of the line in the event that the contract objectives are not met. Oklahoma uses such a contract which could serve as a model for this program.
- There should be a specific decision process established for maintenance, operation, and additional investments in the line. It should not be possible for the State to purchase a line, turn it over to a local operator, and then have the operator change the basis of maintenance and operation without knowledge of the State and without reference to the agreed terms of the contract.
- Project-level performance measures should be established and tracked for each line assisted by the State. For instance, if a line is turned over to a local authority to operate, then performance measures related to agreed objectives should be established. They would parallel program-level performance measures in tracking condition of the asset, usage, economic impacts, and any other objective specific to the project.
- Finally, the plan must include a specific timetable for asset review. At the program level this should be annual. At a project level, the review would probably be a quarterly for the first two years of any project, and an annual review thereafter.

■ Part 2 – Asset Management Plan

This asset management plan is recommended to WSDOT as a framework for managing rail freight assets. As described in Part 1, the State currently owns or manages three types of assets that should be covered in the asset management plan:

1. Locomotives and maintenance equipment;
2. Grain cars; and
3. Rail lines.

For each asset category, this plan includes the following:

- Goals;
- The decision framework for purchase and disposal of assets;
- Contracting requirements for leasing assets or other mechanisms to make them available to public or private parties;
- Inventory requirements; and
- Performance measures.

Wherever possible, this plan populates each of the elements of the asset management plan. In some cases, such as the setting of goals and selection of program-level performance measures, this document makes assumptions about what the contents should be. These should be regarded as recommendations on which the State can build. In some cases, information to build out the plan was not readily available within the scope and schedule of the Washington State Rail Capacity and System Needs Study. In these cases, the plan describes what information should be put in the plan and how it should be collected.

Ideally, an attempt should be made to develop institutional knowledge of the condition of equipment and track either within WSDOT or in collaboration with outside assistance. Assessing the existing condition of track and equipment will be more meaningful if it can be compared to past conditions. In addition, over time it will be possible to draw conclusions about the average lifespan and usefulness of the equipment owned by the State. Having a long-range, institutional knowledge will be of tremendous benefit to the State as it engages in long-range planning of its capital and maintenance budgets.

Assets Under State Control

Freight Railroad

The purpose of this element is to ensure that these items are included in WSDOT's asset listings and given appropriate identification that it is a state-owned asset. The State must inspect all equipment on at least an annual basis and make notes as to its use and location. This is in much the same manner as inspection requirements of the Federal Transit Administration (FTA) for publicly-purchased transit vehicles. Repair records should be sought and added to the file. The State should be copied on any FRA or operator locomotive inspection reports and follow up corrective action taken.

Goals for Locomotives and Maintenance-of-Way Equipment

- Improve track condition of the railroads for which equipment is made available; and
- Improve the financial position of the line to which the equipment is loaned.

The Decision to Purchase and Dispose of Equipment

The following procedures are to be followed in making a decision to purchase equipment for use by freight railroads:

1. Determine that the equipment is essential to the financial viability of the railroad.
2. Calculate ROI from the point of view of the State to ensure that the taxpayers are benefiting from owning the equipment. The state ROI calculation should compare cost of equipment purchase to lease revenue from the railroad and economic benefits to the State.
3. Calculate the ROI from the point of view of the railroad. The railroad ROI calculation should compare lease costs (if any), maintenance costs and operating costs to reduction in costs, reduction in deferred maintenance, and improvement in net operating revenue.

All three conditions should be met before equipment is purchased for use on short line railroads.

Likewise there should be a documented process to decide when to dispose of equipment. If the performance measures in 1.5 below are not met in any year this should trigger a review of the purchase decision to determine if the three conditions are still being met. If not, the equipment should be sold or reallocated to other operations. This evaluation of performance measures should occur on an annual basis.

Contracting Requirements

Equipment Owned by Local Jurisdictions

When the State is purchasing equipment for local jurisdictions, it should have a specific contract or intergovernmental agreement for how the equipment is to be used, maintained, and disposed of. The format for this agreement can draw on those produced for the use of State and Federal-purchased transit vehicles.

Equipment Leased or Loaned to Local Jurisdictions

In all likelihood, a different agreement would need to be developed when the jurisdiction does not take ownership of the equipment. As before, the terms must be clear as to the responsibilities of each of the parties as to the use, maintenance, and disposal of the equipment.

Equipment Leased or Loaned to Private Operators

Equipment leased or loaned to private operators will need to pass a test as to what is legally permissible under the State's constitution. A variation of the agreement needed in the circumstances listed above would need to be developed if such an activity is permitted.

Inventory Requirements for Equipment

Inventory Contents

An inventory system is necessary in order to provide long-term tracking of assets. A sample inventory form is provided in the Appendix A of this report.

Signing to indicate state ownership should be posted in a conspicuous place in the operator's area of the equipment. This signing should include a functioning contact number where more information can be obtained.

Inspection Requirements and Schedules

At minimum, the equipment should be inspected on an annual basis. However, more frequent inspections might be stated in any contract by the owner of the equipment.

Performance Measures

Program-Level Measures

These measures apply to all purchases of rail freight equipment and should be evaluated annually for the entire rail freight assistance program:

- Usage of the state-owned equipment in hours per year.
- Condition of improved line for railroads using state equipment measured in percent of line falling below Track Class 2. The goal would be determined through the pro-forma process with the operator.
- Percentage of excepted track.

Performance for Specific Equipment or Purchase Groups As Determined At Time of Inspection

- For each piece of equipment there must be:
 - Hours of service and whether or not it is meeting the target hours; and
 - Condition of equipment and whether or not condition it is consistent with maintenance agreement.
- For the railroad to which the equipment is loaned:
 - Miles of track at or above Class 2 standards;
 - Miles of excepted track;
 - Annual maintenance and rehabilitation expenditures per mile; and
 - Revenue cars per mile.

Current Performance Status

Virtually no information exists on locomotives and maintenance equipment owned by the State. From anecdotal evidence acquired in the course of this study, we believe that the State will find that the equipment is underutilized; however, this is impossible to quantify. In addition, it is likely that the equipment had an initial value in terms of track improvement that is no longer being achieved.

Grain Cars

Goals for Grain Cars

- Improved ability of local and regional shippers to move their products in a timely manner; and
- Improved highway conditions resulting from reduced truck volumes.

The Decision to Purchase and Dispose of Grain Cars

Purchasing. There needs to be a clear and consistent decision-making process that dictates when car acquisition is necessary. The decision should include the following:

- A finding that the cars are essential to meeting the goals of the car purchase program; and
- An ROI calculation for the State comparing the cost of the purchase and upkeep on the cars to car lease revenue and economic benefits to the State.

Disposal. Cars should be sold when revenue and/or usage no longer meet targets.

Contracting requirements

Standard railroad equipment leasing and contracting forms should be followed as closely as possible. The forms should be consistent with those in place between parties under the Association of American Railroads and the Short Line and Regional Railroad Association. These contracts might be tailored to different sets of situations:

- Cars owned by local jurisdictions;
- Cars leased or loaned to local jurisdictions; and
- Cars leased or loaned to private operators.

Cars that will be utilized by private operators will need to follow permissible practices under the Washington State Constitution.

Inventory Requirements for Grain Cars

The State should develop an inventory form for grain cars similar to that in place for locomotives and maintenance-of-way equipment.

It is recommended that the State identify all grain cars that fall under the grain car program and include them in the department's general asset listings. The State should track the maintenance records of the cars to make sure that the equipment is being adequately maintained and to identify any cars with chronic problems. Spot checks should be made as to the use of the cars to make sure that they meet the original goals of the program adequately.

Performance measures

- Program-level measures:
 - Total annual car revenue to the State.
 - Utilization in days per car.
- Per car performance:
 - Utilization in days.
 - Days out of service.

The monitoring of the equipment could be undertaken by either the State itself or contract with a private sector firm specializing in rail car management.

It is suggested that the State perform an independent study that tracks the current use of the cars, provides suggestions for potential improvements in usage, and sets up a program of regular monitoring reports. The initial evaluation of performance may find that car revenue is sufficient to retain ownership of the cars, but that utilization is low.

Rail Lines

Goals for Purchase of Lines

- Keep the lines in service;
- Save transportation costs for shippers currently using the line(s); and
- Transfer the lines to private operators or local jurisdictions.

Specific goals for purchase of rail lines should be established in order to clarify why the purchase is necessary. For example, is the purchase of rail lines being proposed in order to preserve a local rail system? Or is it in response to a broader goal, such as the State's mission to provide transportation options to support and diversify the Washington State economy?

The legal basis for establishing local rail districts should be in place to facilitate this activity. It also needs to include the ability of a variety of public jurisdictions (from state to local) to operate rail lines in and out of their normal boundaries, including vital segments that might exist in adjacent states.

The Decision to Purchase, Dispose of, or Invest in Rail Lines

Purchase or Disposal of a line. The following conditions should be met before the State purchases a line:

- Technical Memorandum #7 lays out a decision-making process that could be used to help quantify public benefit of the action. Another suggested process is the 1992 the FRA B/C model for the acquisition, abandonment and rehabilitation of rail lines. A summary of this process is shown in Appendix B.
- A specific plan should be in place to transfer ownership to a local jurisdiction or private operator.
- Specific goals for the line should be established in agreement between the State and the entity to which the line will be transferred.

Each purchase needs to be preceded by a detailed background study. One framework for evaluating the public benefit of an action is outlined in Technical Memorandum #7. Several case studies to illustrate this public benefit evaluation method are provided in Technical Memorandum 8. The FRA's benefit/cost analysis was consulted during the creation of this memorandum.

The specialized nature of branch and short lines should require that a process similar to the FRA process be applied to each potential line purchase, abandonment or rehabilitation program. The benefit cost analysis needs to take into consideration that investment in a railroad line is normally a long-term event and costs and benefits need to be assessed over this timeframe.

It is of particular importance to understand the economic trends of the area, and the attendant need for rail service in this changing environment. For example, it might be more economically beneficial to provide alternatives to direct rail service. In some cases, it has been shown that shippers merely use the provision of rail service to hold back truck and barge rates. However, the Federal Surface Transportation Board does not normally consider this to be a major factor in their denial of a line's abandonment.

Disposal of a line. In the event that the State cannot transfer ownership of a line to a local jurisdiction or private operator the following steps should be taken to dispose of the line:

- Perform a benefit cost analysis to determine public benefits of retaining ownership;
- Seek another operator;
- Determine if the line is a candidate for rail banking; and

- If there are no potential operators or public jurisdictions wishing to bank the line it should be sold as real estate.

Investing in a Rail Line

An operational goal should be established to maintain the track to a particular FRA standard. A specific standard (i.e., the FRA’s Class 2 track standard, which stipulates 25 mph operating speeds and track capable of handling 286,000-pound cars) should be established based on the output of a benefit/cost analysis and consideration of the service needs of the underlying traffic base. The benefit/cost analysis methodology could be employed prior to investing in rail infrastructure in order to determine that there will be a positive economic benefit to the State as a result of infrastructure improvements. If the benefit/cost analysis reveals a low economic benefit to the State, it is possible that the infrastructure could be maintained at a lower FRA class standard. A negative result to the benefit/cost analysis likely indicates that the State should not participate in the infrastructure improvement.

Contracting Requirements

The type of contract will vary depending on what type of action occurred (i.e., if the action was an acquisition, a rehabilitation, or some other form of capital or financial assistance). Contracts for state rehabilitation assistance are included in the Federal Local Rail Service Assistance program, and are an excellent guide for those contracts that do not involve Federal assistance.

A sample contract for a state-owned line that is leased to the private sector is included in Appendix C. A sample contract for a line leased to a local jurisdiction is shown in Appendix D. A line acquired by a local jurisdiction or the State is normally covered by a contract negotiated between the seller and the buyer and varies depending on the railroads/jurisdictions involved.

The State should develop, either internally or through outside assistance, a mutually agreed upon pro-forma operating plan with the operator of any state-owned line. This pro-forma needs to be as transparent as possible so that it is possible for all stakeholders to track the progress of the operation throughout the year.

Inventory Requirements for Rail Lines

Inventory Contents

The State should inspect all of its assets on a regular basis and be provided copies of all FRA/state track inspection reports, along with the corrective action taken. WSDOT should ensure that it keeps a current log of the most recent track charts for all of the asset types.

WSDOT should also ensure that there is an up-to-date bridge inspection for each line. A program of suggested bridge repairs is a required part of the operating railroad’s pro-

forma. The inspection should include a detailed description of the rail, tie, ballast, and drainage conditions along the length of every bridge.

The operating railroad and the State should meet on a regular basis to develop a maintenance plan that ensures that the State's assets are not being downgraded. This plan should be monitored at least annually.

The State should have access to the operating railroad's maintenance-of-way budget and plan. This should include a list of maintenance-of-way material expenditures and copies of track inspector reports. In addition, the State should have access to all FRA/state track inspection records and any follow-up courses of action that occurred.

Performance Measures for Rail Lines

Program-Level Measures

Sample program-level measures include: 1) the mileage of line in Class 1 or excepted condition; and 2) the annual rate of expenditures on track maintenance as portion of gross revenue. These two measures will provide a baseline average over a number of different operating properties.

Project-Level Measures for Lines Owned Or Receiving Assistance from the State

Sample program-level measures include: 1) miles and percent of miles in track Class 1 or excepted condition; 2) annual expenditures on track maintenance and rehabilitation per mile; and 3) revenue cars per mile.

Summary

The management of state-owned rail assets will benefit from attention to detail and careful record keeping of all of the State's rail assets. An adopted asset management plan should also clearly state the purpose of the rail infrastructure, as well as the system goals and objectives over each section. This will ensure that the correct performance measures and standards are assigned to each asset, as well as enable easier monitoring of the system assets. Monitoring of the assets should occur on an annual basis. Those assets that are not performing as to their assigned goals and standards should be carefully analyzed, and, if necessary, have corrective action performed on them.

Acquisition of rail assets may benefit by being governed more at the local, as opposed to the state level. Certainly, no rail acquisition should be considered unless there is a financial commitment on the part of both the State and the potential users of the infrastructure. The State should contribute financially when it can be shown that the public benefit outweighs the public expenditure of funds. The State can also play an important negotiator role in any rail acquisition project, ensuring that all transactions between the public and the private sector are as transparent as possible. Public involvement should not be considered without a carefully worded contract that defines the

responsibilities of each party, their role in the transaction, and methods by which to deal with any problems that arise.

Appendix A. Rail Equipment Inventory Form

RAIL EQUIPMENT INVENTORY FORM

Description of equipment:		
State Identification Number:		
When Purchased:		
Reason for Purchase:		
Source of Funds:		
Condition at Time of Acquisition:		
Current Location:		
Engine hour meter (if available):		
Overall current condition and use (include any significant repairs made since last inspection):		
is current use consistent with reason for purchase? If not, explain change(s)		
Attachments:	Yes	No
Photos		
FRA Inspection Reports		
Railroad FRA Repairs		

Inspected by: _____
Date: _____

Appendix B. Federal Railroad Administration Benefit/Cost Methodology Summary

This methodology is to be used for calculating the benefit-cost ratios for all projects for which assistance is requested to acquire, rehabilitate or construct rail facilities.

Null alternative: The null alternative represents the best estimate as to what will happen if the project is not undertaken.

Time Horizon: 10 years.

Evaluation of Costs: Cost of acquiring or rehabilitate the line, including the present value of any future work to keep the line operating.

Evaluation of Benefits: The FRA differentiates between two types of benefits: efficiency benefits and secondary benefits.

Efficiency benefits result from the impact that the project has on the reduction of transportation costs to the shipper and the increase on profits derived from the incremental traffic, which is the additional traffic that occurs due to service improvement. Secondary benefits are an indirect consequence of the project, such as the avoidance of relocation costs of shippers or other businesses, creation of new jobs or retention of current jobs, reduction of both highway maintenance costs, and pollution emissions due to traffic diverted from trucks to rail. The salvage value of the facilities is also included.

Table B.1 FRA Measurement of Benefits

Benefits Description	Benefit Calculation
Efficiency Benefits	
Reduced transportation costs to shippers on base traffic	Difference between rates charged by alternate mode and rail on base traffic (traffic that occurs independently of the project)
Profits earned by the shipper in producing, shipping and selling incremental traffic	Profits provided by the shipper derived from incremental traffic
Secondary Benefits	
Prevention of relocation costs of shippers/businesses	Data provided by the shippers/businesses. These include costs of moving equipment and inventory, employees, and breaking the lease
Avoidance of jobs loss	Value of the wages earned for the length time that workers would have been unemployed if the project was not undertaken
Reduction in highway maintenance costs	No measure provided
Reduction in pollution emissions	No measure provided
Salvage value	No measure provided

Source: Federal Rail Administration, Benefit-Cost Methodology for Local Rail Freight Assistance Program, 1990.

Additional Criteria: No additional criteria are contemplated.

Appendix C. State Department of Transportation and Private Short Line Railroad Lease Agreement

Appendix starts on following page.

STATE Department of Transportation

and

Private Short Line Railroad

Final Lease Agreement

This Lease Agreement (the "Lease" or "Agreement"), dated this ____day of _____, 2005, by and between Private Short Line Railroad, hereinafter referred to as "Lessee," and the State Department of Transportation, an agency of the State of _____, hereinafter referred to as "Lessor" or "Department."

WHEREAS, Lessor has certain rights, title, and interest in and to certain real property located in _____ Counties, State, which property is used for railroad freight transportation service to the public;

WHEREAS, under Section xx-x-x of the Official Code of State Annotated, the Department is authorized to participate in such an undertaking;

WHEREAS, Lessor is agreeable to lease to Lessee the aforesaid interests for Lessee's provision of railroad freight transportation service to the public upon the terms and conditions herein contained;

NOW, THEREFORE, in consideration of the covenants and payments set forth herein, the parties agree as follows:

SECTION 1. Leased Property.

1.01 The Leased Property consists of Lessor's real property described as follows:

All of the right-of-way and real property owned by the lessor, described here and in more detail in ATTACHMENT I hereto, which is incorporated herein by reference, and all improvements or fixtures affixed thereto, including, without limitation, tracks, rails, ties, ballast, other track materials, switches, crossings, bridges, bridge abutments, culverts, buildings, crossing warning devices, communications lines and poles and radio masts, all being located within the State of _____ (the "Leased Property"), and specifically excluding all items of personal property not affixed to the land, including, without limitation, railroad rolling stock, locomotives, motor vehicles and equipment, machinery, office and computer equipment, radios, furniture, tools, inventories, materials, and supplies.

1.02 Lessee shall take the Leased Property subject to: (a) reservations or exceptions of record of minerals or mineral rights; public utility easements and easements and rights of ways, howsoever created, for crossings, roads, streets, and highways; (b) existing and future building, zoning, subdivisions and other applicable federal, state, county, municipal and local laws, ordinances and regulations; (c) encroachments or other conditions that may be revealed by a survey, title search or inspection of the Leased Property; (d) all existing ways, alleys, party walls, privileges, rights, appurtenances, and servitudes, however created; (e) the Lessor's exclusive right to grant any and all easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the Leased Property, or any portion of it, for the purposes of construction, erection, installation, operations, use, maintenance, repair, replacement, relocation, reconstruction, reinstallation, and renewal of transportation specifically including transportation of passengers by rail, and transmission systems for all types of fluids, solid materials, gases, energy, communication or commerce by whatever means, including without limitation, track,

highway, roadway, pipeline, telephone, microwave, radio, radar, laser transmission, wire, fiber-optic, utility pole and all conduits or other similar devices, together with all related supporting devices, appliances, fixtures and appurtenances, and all culverts, ramps and cuts, which may be constructed, erected, installed, operated or used in, on, under, through, above, across, or along the Leased Property, or any portion of it; provided, however, that the rights herein excepted and reserved by Lessor shall not (i) be used to grant any other party the right to conduct common or contract carrier freight railroad operations on the Leased Property, or any portion of it, or (ii) unreasonably interfere with or increase the cost of Lessee's operations without Lessee's prior written consent; provided, however, that such consent not be unreasonably withheld by Lessee.

Section 2. Terms and Conditions.

2.01 The term of this Agreement shall commence as of the date first written above (the "Commencement Date") and shall be for an initial term of twenty (20) years subject to renewal at 5, 10, and 15 years (within the initial term of twenty (20) years). Renewal will be automatic unless either party gives the other party hereto notice of intent not to renew no fewer than six (6) months prior to the end of the term or unless the Lease is sooner terminated as hereinafter provided.

2.02 Termination by Election – Lessor and Lessee shall not have the right to terminate the Lease by election, except in accordance with Section 2.01.

2.03 Termination by Breach – In the event Lessee breaches any of the material terms and conditions of this Lease and Lessee ceases to provide rail service on the Leased Property by embargo, abandonment or otherwise, Lessor shall give written notice of that fact in accordance with Section 20. If within thirty (30) days of receipt of such notice, Lessee has not cured such breach, or if Lessee has not taken all reasonable steps toward effecting such cure, and Lessee has not reinstated rail

service, then Lessor shall have the right, but not the obligation, to take possession of the Leased Property and this Agreement will terminate.

2.04 It is the understanding and agreement of the parties hereto that this is a net lease; and that, as between the parties hereto, irrespective of law or custom, Lessee shall have and hereby assumes all duties and obligations with relation to the use, repair, maintenance, existence, and operation of the Leased Property for Lessee's purposes, including all improvements and fixtures hereafter located thereon, except matters, responsibilities and obligations assumed by Lessor as provided for in this Agreement. Lessee shall forever protect, indemnify and hold harmless Lessor from and against any expense, cost, liability, or obligation whatsoever, which arises from or is connected with the Leased Property during the term of this Lease, including all improvements or fixtures hereafter located thereon, except those duties, matters, responsibilities and obligations expressly assumed by Lessor in this Lease, or caused solely by Lessor's willful or negligent act or omission during the term of this Lease. Lessee shall be responsible for any taxes, which can be attributed to any of the reserved interests of Lessor including, but not limited to, those reserved under Paragraph 1.02(e).

2.05 Lessee agrees to obtain and hold operating authority as required by the Surface Transportation Board or any other governmental or regulatory authority for the Leased Property and will provide rail freight service to all parties seeking to ship or receive freight over the Leased Property during the term of this Lease.

Section 3. Rental.

3.01 Lessee shall pay annually to Lessor a base annual rental equal to twenty thousand and No/100 dollars (\$20,000). Said base annual rental shall be payable by Lessee to Lessor on or before January 31st of each calendar year with the first payment due January 31, 2006 (for calendar year 2005). In calendar year 2006, the

base annual rental will escalate 4 percent (4%) and will escalate this same percentage amount each year thereafter for the duration of the Lease.

3.02 Lessee shall also pay additional rent annually to Lessor equal to twenty-five percent (25%) of the gross revenues in excess of Five Hundred Thousand and No/100 dollars (\$500,000.00), received by Lessee from operation of the Leased Property. The additional annual rental due under this section will be determined by an Annual Revenue Report for the operation of the Leased Property submitted by Lessee to Lessor, certified as to accuracy by the Chief Financial Officer of the Lessee. The certified Annual Revenue Report shall be submitted no later than sixty (60) days after the end of the calendar year. Upon receipt of the annual revenue report, Lessor will notify Lessee in writing of its acceptance of the annual revenue report and payment will be due no later than thirty (30) days after receipt of written acceptance.

3.03 Rents paid by Lessee to Lessor pursuant to Sections 3.01 and 3.02 will be deposited by Lessor into a Rehabilitation and Cycle Maintenance Account (RCM Account) created and administered by Lessor. The RCM Account will be used for capital expenditures specified in the Rehabilitation and Cycle Maintenance Program established in accordance with Section 10.03 hereof.

Section 4. Business Development Plan.

4.01 Lessee will prepare and produce a plan to develop business to utilize railroad service provided over the Leased Property; utilizing the Lessor, State Department of Industry, Trade and Tourism, Regional Development Centers, County and Municipal governments, Economic Development Authorities, local Chambers of Commerce, and existing and potential businesses in the area served by the Leased Property to develop and implement the Business Development Plan.

Section 5. Utilities.

5.01 Lessee, at no cost or expense to Lessor, shall arrange for, obtain and pay all bills, charges and assessments in connection with any heat, water, electricity, sewer and other utility services required for Lessee's use of the Leased Property.

Section 6. Third Party Agreement, Easements and Licenses.

6.01 Lessee will assume, agree to perform, and be bound by all the terms, conditions and obligations of third party agreements, easements and licenses related to the real property leased to Lessee hereunder, and to receive the benefits thereof, which may be in existence now and in the future as a result of Lessor's exercise of its rights under Sections 1.02 and 6.0-2.. Lessor agrees to make available copies of such third party agreements, easements and licenses to Lessee.

6.02 Lessor will retain the right to enter into and terminate agreements, easements and licenses with third parties; provided, however, that consent to such agreements, easements, and licenses will not unreasonably interfere with or increase the cost of Lessee's operations, and that Lessor will obtain prior written consent from Lessee; provided that such consent will not be unreasonably withheld by Lessee.

6.03 Lessee will not have the right to enter into or terminate third party agreements, easements and licenses.

Section 7. Road Crossing and Warning Device Maintenance.

7.01 Lessee shall be responsible for any necessary maintenance of public grade crossings, grade separation structures and warning devices to permit the safe and reasonable passage of public traffic in accordance with Section 32-6-197(c), Section 32-6-190, *et. seq.*, of the Official Code of State , Annotated.

Section 8. Interchange Agreement.

8.01 If required, Lessee will execute an interchange agreement with the appropriate connecting railroad(s), which shall govern the interchange of traffic between the parties during the term of the Lease. Lessee will provide Lessor with a copy of the executed Interchange Agreement.

Section 9. Use.

9.01 Lessee will use the Leased Property only for railroad purposes and purposes ancillary thereto, unless Lessee obtains written consent of Lessor to use the Leased Property or any portion of it for any other purposes.

9.02 The management and operation of the Leased Property shall comply with the provisions of the Federal Safety Appliance Act, as amended, and any other federal, state, and local laws, ordinances, regulations, and rules and any other requirements, whether or not governmental, respecting the operation, condition, inspection and safety of trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are being operated on the Leased Property.

Section 10. Maintenance and Rehabilitation.

10.01 Lessee agrees that it will, at all times during the term of the Lease, keep and maintain all buildings, structures and appurtenances of the Leased Property, including facilities added to the property in a reasonably safe condition for the use intended.

10.02 The Lessee agrees that the track facilities of the Leased Property will be maintained to FRA Class 2 Track Standards. Routine maintenance of the Leased Property necessary to maintain the appropriate FRA Track Standards will be at the sole cost and expense of the Lessee. Routine maintenance in this part means: weekly track inspections, annual weed/brush control, and any spot tie replacement, adjustment, joint tightening/adjustment, signal maintenance, grade crossing repair, and other routine track maintenance required to maintain the track facilities to FRA Class 2 Track Standards.

10.03 Lessor and Lessee will mutually establish a Rehabilitation Program or Cycle Maintenance Program for the Leased Property to be financed from funds accumulated in the RCM Account described in Section 3.01. Lessee shall comply with the Rehabilitation Program or Cycle Maintenance Program; provided, however, that Lessee's obligation under this provision of the Lease will be limited to those funds that are available in the RCM Account under Section 3.03 hereof, or other funds that may be available.

10.04 Lessee will provide written Quarterly Reports to Lessor detailing all maintenance work activities occurring during the period of the Quarter.

Section 11. Inspection.

11.01 The Lessee shall allow inspection of the Leased Property by representatives of the Lessor upon request at reasonable times. Upon and during inspection, Lessor (and/or their representatives) will be required to abide by Lessee's safety and operating rules and regulations. Prior to the inspection, Lessee will be required to thoroughly review with Lessor (and/or their representatives) Lessee's safety and operating rules and regulations.

Section 12. Traffic Reports.

12.01 Lessee shall provide Lessor with a Quarterly Statement of Traffic Originating and Terminating on the rail line. The Statements shall contain, at a minimum, the following information: month, number of car loads originated, number of car loads terminated, standard commodity code for each carload, description of commodity, origins and destinations

Section 13. No Warranties of Covenants.

13.01 Lessee accepts the Leased Property "AS IS, WHERE IS" with all faults and defects in its condition as of the date of this Lease. Lessee acknowledges that Lessor has made and will make no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Leased Property, the condition of it, or its merchantability or suitability for any use or purpose whatsoever including the state of the title to the real estate that is subject to the Lease Agreement, other than as may be explicitly set forth herein. If a pre-existing hazardous waste or material is discovered, the Lessor will use its right of recourse, as prescribed by Federal Law, against the former owners to remedy the condition and resolve claims.

Section 14. Assignment.

14.01 This Agreement may be assigned by Lessee only with the written consent of Lessor, signed by an authorized official. To obtain Lessor's consent to such an assignment, Lessee will provide written notice to Lessor of its desire to assign this Agreement, including a letter signed by an authorized officer of the intended assignee stating that the assignee agrees to such assignment and agrees to be bound by all the terms of such assignment and the approvals and evidences required by this Agreement. This Agreement will be binding upon and inure to the benefit of successors and assigns of Lessor and successors and permitted assigns of Lessee.

Section 15. Liability.

15.01 Lessee hereby acknowledges that all activities arising out of or in any way connected with the use of the Leased Property are solely for its benefit and Lessee hereby releases Lessor, its successors and assigns, officers, agents, and employees from all liability, whether arising from suits, actions, causes of action, claims or demands of any character whatsoever.

15.02 Lessee shall indemnify, protect and hold harmless Lessor, its successors and assigns, its officers, agents and employees, from and against all liability, cost, claims, suits, causes, causes of action, judgments or any expense whatsoever for any personal injury or property damage, however and to whomever caused, arising out of or in connection with the use of the Leased Property by anyone other than Lessor during the term of the Lease; provided, however, in case of conflict with the liability provisions of the interchange agreement, the provisions of the interchange agreement shall control; provided, however, that Lessee's indemnity obligations under this Section 15.02 and Sections 16 and 26 hereof will be limited as follows: (i) with respect to personal injury liability, to the limitations applicable to Lessor pursuant to the provisions of the State Tort Claims Act, O.C.G.A. 50-21-20, et seq., and (ii) with respect to property liability, to the sum of Five Million dollars (\$5,000,000.00) per occurrence and to such other limitations as are set forth in Sections 16 and 26 hereof.

Section 16. Insurance.

16.01 Lessee, at no cost or expense to Lessor, to comply with its indemnity obligations under Section 15.02, shall procure or cause to be procured and maintain

or cause to be maintained, during the term of this Lease, railroad operating and liability insurance covering liability assumed by Lessee under this Lease with a limit of not less than Five Million Dollars (\$5,000,000.00) for a single limit for personal injury per occurrence and for a limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence for a single limit for property damage; such limits to be reviewed by Lessor every five (5) years during the term of this Lease or any extensions of it. At five (5) year intervals, Lessor and Lessee shall meet and confer in good faith to determine whether modifications should be made to the insurance requirement. Lessee shall furnish to Lessor certificates of insurance evidencing the above coverage in the form of a policy (or policies) at the time of execution of this Lease. Such insurance shall contain a contractual liability endorsement, which will cover the obligations assumed under this Lease and an endorsement naming Lessor as "additional insured". In addition, such insurance shall contain notification provisions under which the insurance company agrees to give thirty (30) days' written notice to the Lessor of any change in or cancellation of the policy. These endorsements and notice provisions shall be stated on the certificate of insurance provided to Lessor.

Section 17. STB Approvals.

17.01 Prior to initiation of rail freight service as specified in Section 2.05, Lessee hereby warrants and represents to Lessor that Lessee has applied or will apply to the Surface Transportation Board (STB) and to all other appropriate governmental or regulatory authorities for all necessary orders approving or authorizing Lessee to enter into this Lease and to conduct railroad operations on the Leased Property according to the terms and provisions hereof, or exempting Lessee from the requirement of obtaining such approval and authorization. The parties understand and agree that the entry of an order of the STB approving and authorizing or exempting this transaction and the railroad operations of Lessee according to the terms and conditions hereof is a condition precedent to the obligations of either party hereunder.

17.02 Lessee will not seek authority to abandon or discontinue rail service from the Surface Transportation Board or other governmental or regulatory authority without the prior written approval of the Lessor.

Section 18. Termination

18.01 Except for track related improvements to the track and track structure, Lessee, upon termination of this Lease, shall have six (6) months to remove all improvements, and/or equipment placed by it on the Leased Property as required by, and at the sole discretion of, the Department. If Lessee fails to so remove such buildings, materials, improvements, and/or equipment within the time allotted, Lessor may remove such remaining improvements and/or equipment at Lessee's sole cost and expense and Lessor shall retain any salvage proceeds received by it.

18.02 Termination of the Lease shall not release any party hereto from any obligation under this Lease arising prior to said termination.

Section 19. Taxes and Assessment.

19.01 It is understood and agreed that the Leased Property will be used by the Lessee in its rail operations and will be a part of Lessee's operation property. Lessee shall pay all taxes and assessments, general, special or otherwise, which may be levied, assessed or imposed upon the Leased Property and attributed to the Lease term. Lessee shall report and file all returns as required by state or federal law for its use of the Leased Property. Lessee shall pay such taxes and assessments directly to the taxing authorities on or before the date due and, upon Lessor's request, shall produce tax receipts to Lessor within twenty (20) days after payment thereof; provided, however, that nothing herein shall require Lessee to make any such payments so long as Lessee, in good faith and by appropriate proceeding, contests its obligation to do so and a reserve, as required by generally accepted accounting

principles, is made therefore. If any such taxes or assessments are charged, billed or in any fashion imposed on Lessor, Lessee shall pay Lessor for such taxes or assessments within twenty (20) days after Lessor renders the bill to Lessee. Lessor shall apply all such amounts received from Lessee to the taxes or assessments due.

Section 20. Notices.

20.01 All notices given under this Lease shall be in writing and sent by express, registered, or certified mail, postage prepaid, to the parties at the respective addresses set forth below, or such other addresses as may be specified by written notice and delivered in accordance herewith, and all such notices shall be deemed so delivered when deposited in the United States Mail.

If to the Lessor:

State Department of Transportation
Street Address
City, State, Zip

If to the Lessee:

Private Short Line Railroad
Street Address
City, State, Zip

Section 21. Events Constituting Default

21.01 Any of the following events shall constitute a default hereunder:

- (a) The non-payment by Lessee of rental by January 31 of each calendar year as specified in Section 3.

- (b) The non-performance by Lessee of any other material term, covenant or condition of this Lease which is not cured within thirty (30) days after written notice of it from Lessor.
- (c) Any affirmative act of insolvency by Lessee, or the filing by Lessee of any petition under any bankruptcy, reorganization, insolvency, or moratorium law, or any law for the relief of, or relating to, debtors.
- (d) The filing of any involuntary petition under any bankruptcy statute against Lessee, or the appointment of any receiver or trustee to take possession of the property of the Lessee in which petition or appointment is not successfully contested by Lessee and dismissed within 30 days of the filing.
- (e) The suspension or revocation of Lessee's federal, state or local regulatory authority to operate rail freight service on the line in which suspension or revocation is not promptly contested by Lessee, and successfully removed within 30 days of the filing of the suspension or revocation.
- (f) Lessee's committing waste or allowing the attachment of any lien on the Leased Property which is not cured within ninety (90) days; provided, however, if Lessee in good faith contests a lien, it shall have such additional time to cure as is reasonable under the circumstances.
- (g) Any notice, petition or application by Lessee to the Surface Transportation Board (STB) or other governmental or regulatory authority without prior written approval of Lessor; provided, however, that such approval shall be deemed to be given if neither written approval nor disapproval has been received by Lessor within thirty (30) days after notice is provided to Lessor under the provisions of Section 20 hereof.

Section 22. Lessor's Rights on Default

22.01 On the occurrence of any of the events of default listed in Section 21, Lessor may terminate the Lease by written notice to Lessee and, in addition, take any other action or exercise any remedy available to Lessor at law or equity.

Section 23. Obligations of Lessee Upon Termination.

23.01 In case of termination by Lessor pursuant to Section 21, such termination shall be according to the provisions of Sections 2.03 and 18 hereof.

Section 24. Acceptance of Partial Payment.

24.01 In the event Lessee is in default hereunder due to non-performance, acceptance by Lessor of partial payment of performance shall not waive the default. Lessor's right to terminate shall not be prevented except by full performance by Lessee prior to its receiving written notice of termination. This Lease shall not be reinstated after termination except by written agreement with Lessor.

Section 25. Amendment.

25.01 No term or provision of this Lease may be changed, waived, or discharged or terminated except by an instrument in writing signed by both parties hereto.

Section 26. Hazardous Materials.

26.01 At no time during the term of this Lease shall Lessee without the prior written consent of Lessor maintain, treat, dispose of, store or have on the Leased Property, or permit any other party to have, maintain, treat, dispose of, or store on the Leased Property, any material which is classified by federal, state or local authorities as a hazardous material or hazardous waste or which requires a permit for the storage,

treatment, disposal, handling or maintenance of it from any government authority. As used herein, "storage" includes the keeping of material within any building on the premises, in the open on the premises, or in a truck or other vehicle (other than a rail car for inbound or outbound movement) on the premises.

26.02 Lessee further agrees to indemnify and hold Lessor harmless from all costs, expenses, liabilities, demands, claims, causes of action at law or in equity whatsoever arising from any treatment, disposal, storage, maintenance or handling of any hazardous material or hazardous waste on the premises, including, but not limited to, the cost of clean-up, environmental damage assessments, defense and reasonable attorney's fees. The parties acknowledge that the inclusion of this indemnification and hold harmless provisions shall in no manner whatsoever evidence a waiver, consent or permission by Lessor for Lessee to violate the provisions of Section 26.01.

Section 27. Rate Surcharges.

27.01 Lessee shall not publish, apply, or request a rate surcharge pursuant to 49 U.S.C. 1705a and 49 CFR Part 1140 for any commodity originating or terminating on the Leased Property without the prior written approval of Lessor.

Section 28. Antidiscrimination.

28.01 Lessee shall comply with the regulations for compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et.seq) and 23 CFR 710.405(b). Failure to fully comply may result in termination of this Lease.

Section 29. Entire Agreement.

29.01 This Lease constitutes the entire agreement between the Lessee and Lessor and no other representation, warranties or agreements, either oral or written will be binding upon the Lessee and Lessor.

Section 30. Governing Law.

30.01 This Lease shall be deemed to have been executed in _____ County, State , and all questions, interpretations and construction shall be governed by the Laws of the State of _____.

Section 31. Compliance With Applicable Laws.

31.01 Lessee shall comply with all statutes, laws, and ordinances of all federal, state and local governments or other governmental authorities, regulatory authorities and commissions, foreseen and unforeseen, ordinary as well as extraordinary, for the entire period of the Lease.

Section 32. Warranty of Signature.

31.02 Lessor warrants to Lessee that the person executing this Lease Agreement for Lessor is fully authorized to sign this Lease for Lessor and to bind Lessor to the terms of this Agreement. Lessee warrants to Lessor that the person executing this Lease Agreement for Lessee is fully authorized to sign this Lease for Lessee and to bind Lessee to the terms of this Agreement.

Section 33. Force Majeure

33.01 No party hereto shall be held responsible or liable, either directly or indirectly, or be deemed to be in default or breach of this Agreement for any loss, damage, injury, delay, failure or inability to meet all or any portion of its commitments hereunder caused by or arising from any cause which is unavoidable or beyond its reasonable control, including, without limitation, war hostilities, invasion, insurrection, riot, the order of any competent civil or military government, explosion, fire, American Association of Railroads (AAR) service orders, actions of other carriers which materially affect Lessee's operations, acts of God, including storms or other adverse weather conditions, and perils of water such as floods and ice, and physical damage such as washouts, or other causes of a similar nature which prevent the parties or one of them from carrying out the terms of this Agreement; provided that the party experiencing such force majeure promptly gives written notice to the other party, of the type and expected duration of the force majeure, and the disabling effect of the same shall be eliminated as soon as, and to the extent reasonably, possible. In the event that one party's performance is suspended by force majeure, the other party's obligations to perform hereunder shall be suspended or commensurably reduced for the duration of the difficulty and such additional reasonable period as may be required because of the existence of the problem.

[The rest of this page has been intentionally left blank]

IN WITNESS WHEREOF, said parties hereto have caused this Lease to be duly executed under seal by their duly authorized representatives.

DEPARTMENT OF TRANSPORTATION

PRIVATE SHORT LINE RAILROAD

RECOMMENDED:

RECOMMENDED:

Administrator, Intermodal Programs

Private Short Line Railroad

State Right-of-Way Administrator

[Corporate Resolution]

By:

Commissioner

I attest that the Officer of this Corporation executing this Document does, in fact occupy the official position indicated and is duly authorized to execute such Document on behalf of this Corporation

ATTEST:

ATTEST:

Treasurer

Corporate Secretary

Reviewed as to Legal Form:

Legal (Date)

Notary Public

Federal Employer Identification Number:

ATTACHMENT I

Description of Leased Property

- (1) The Leased Property consists of all of the right-of-way and real property situated, lying and being between:

Appendix D. State Department of Transportation and Regional Railroad Authority

Appendix starts on following page.

**LEASE AGREEMENT BETWEEN
XXXXX REGIONAL RAILROAD AUTHORITY
AND THE STATE OF _____**

THIS LEASE AGREEMENT made and entered into this ___ day of _____, 2006 (hereinafter "Lease Agreement"), by and between the XXXXX Regional Railroad Authority, hereinafter called "AUTHORITY", and the _____ State Railroad Board, acting by and through the _____ Department of Transportation, Local Transportation Program, hereinafter called "STATE".

WITNESSETH:

WHEREAS, the STATE is owner of the Rail Facilities more fully described in Appendix 1 hereto attached and made a part hereof; and

WHEREAS, the parties entered into a Lease Agreement on August 8, 2002, which was amended on November 22, 2005, and which Lease Agreement, as amended, was extended by oral agreement; and

WHEREAS, the parties desire to enter into a new Lease Agreement as of the date hereof;

NOW, THEREFORE, AUTHORITY and STATE do hereby mutually agree as follows:

1. Facility Description. The STATE shall permit the AUTHORITY to use the Rail Facilities described in Appendix 1 attached hereto as described herein.

It is understood and agreed that the Rail Facilities are leased in an "as is" condition. STATE shall have no responsibility to make any improvements, modifications, rehabilitation, maintenance, or other change to the Rail Facilities.

2. Operating Rights. The STATE hereby permits AUTHORITY to use any and all of the STATE's rights and licenses in and to the Rail Facilities as may be necessary for the purpose of providing rail freight service. The rights granted AUTHORITY herein relate solely to the provision of rail service on the Rail Facilities and AUTHORITY may not use the Rail Facilities for any other purpose without the prior written authorization of the STATE. AUTHORITY shall have use of the yyyy Storage Shed and appropriate station grounds for maintenance and operational requirements subject to approval from the STATE, Local Transportation Program.

AUTHORITY shall have the exclusive right to provide rail freight service on/over the entire Rail Facilities for any freight traffic that originates or terminates at any point along the _____ portion of the Rail Facilities. AUTHORITY shall have a non-exclusive right to provide rail freight service on/over entire Rail Facilities for any freight traffic that originates or terminates at any point along the

xxx portion of the Rail Facilities. AUTHORITY shall have a non-exclusive right to provide rail freight service on/over entire Rail Facilities for any freight traffic that does not originate or terminate at any point along the entire Rail Facilities.

It is further understood that STATE may grant unrestricted trackage rights on/over entire Rail Facilities to a third party carrier for any freight traffic that does not originate or terminate at any point along the entire Rail Facilities.

It is further understood that AUTHORITY or a third-party carrier appointed by STATE may utilize STATE's interchange/trackage rights via xx, _____ and xxxxxx, if any, for furtherance of said rail freight traffic beyond the Rail Facilities. AUTHORITY or said third-party rail carrier may not exceed or otherwise violate the terms of STATE's interchange/trackage rights.

Any rail traffic moving via any segment of the _____ Owned Rail System or the zzz Railroad, using the ccc Line Junction Gateway as access to the ccc Rail System or as access to the xxx Railway Company shall have terms and conditions negotiated between the _____ Department of Transportation (Local Transportation Program) and the Carriers involved for those movements covering rates, routes and divisions. Additionally, an appropriate and commercially reasonable joint trackage rights agreement will be negotiated between the AUTHORITY's OPERATOR(S), AUTHORITY, _____ Department of Transportation (Local Transportation Program) and any third party carrier granted trackage rights on all or any portion of the Rail facilities covering, among other items, joint line definition, per train-mile payment to OPERATOR(S) and/or AUTHORITY, operations, maintenance, derailment expenses, liability allocation and claim and damage settlement.

AUTHORITY and/or third party carrier shall have the non-exclusive authority to establish and publish rates subject to any legal requirements of the STB or other regulatory requirements, and shall bill and collect its own charges for all rail transportation over the Rail Facilities.

AUTHORITY OR AUTHORITY'S OPERATOR(S) shall provide cars for any freight traffic that originates or terminates at any point along the xx portion of the Rail Facilities. AUTHORITY OR AUTHORITY'S OPERATOR(S) shall provide cars for any freight traffic that AUTHORITY OR AUTHORITY'S OPERATOR(S) originates or terminates at any point along the xx portion of the Rail Facilities.

This Lease Agreement is subject to the prior consent of the _____ State Railroad Board, or its designee.

3. Maintenance. The AUTHORITY OR AUTHORITY'S OPERATOR(S) shall be responsible for any and all maintenance and repairs necessary for maintenance of

the Rail Facilities to a minimum Federal Railroad Administration Class 1 Track Safety Standard. In the event STATE upgrades the Rail Facilities to a Federal Railroad Administration Class 2 Track Safety Standard, the AUTHORITY OR AUTHORITY'S OPERATOR(S) shall be responsible for any and all maintenance and repairs necessary for maintenance of the Rail Facilities to a minimum Federal Railroad Administration Class 2 Track Safety Standard. The STATE shall have no obligation or responsibility to perform any maintenance or repairs on the Rail Facilities. The AUTHORITY OR AUTHORITY'S OPERATOR(S) shall be responsible for the normal and regular work required to keep the Rail Facilities in a condition necessary to enable safe operations and shall include, but not limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, spikes, brush cutting, highway-rail grade crossing signal systems repairs, upgrades and maintenance, cross buck repairs, maintenance and replacement, on-track weed control, off track weed control for the entire length and width of right-of-way of Rail Facilities (including applicable station grounds) as required by applicable State statute or local ordinances, highway-rail grade crossing maintenance, renewal or replacement and other necessary repairs and work. The AUTHORITY OR AUTHORITY'S OPERATOR(S) shall not use any materials or equipment belonging to the STATE without prior express written consent of the STATE.

The STATE shall have no obligation or responsibility for upgrading or rehabilitating the Rail Facilities.

4. Government Approval. AUTHORITY OR AUTHORITY'S OPERATOR(S), at their sole expense, shall prepare and file such documents as may be required to secure operational approval from the Surface Transportation Board (STB) for operation of the Rail Facilities. AUTHORITY OR AUTHORITY'S OPERATOR(S) shall permit STATE to review prior to filing all documents proposed by AUTHORITY OR AUTHORITY'S OPERATOR(S) to be filed with the STB or any court to secure legal approval for operating approval.
5. Common Carrier Obligations. AUTHORITY OR AUTHORITY'S OPERATOR(S) shall assume all common carrier obligations related to the operation of the Rail Facilities for the term of this Lease Agreement upon the effective date of this Lease Agreement.
6. Administration of Rail Facilities. Notwithstanding any provision of this Lease Agreement, STATE shall retain sole responsibility for the management of State-owned Rail Facilities and equipment not required for rail freight service.
7. Representations and Warranties. AUTHORITY OR AUTHORITY'S OPERATOR(S) accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Lease Agreement, AUTHORITY OR AUTHORITY'S OPERATOR(S) acknowledges that AUTHORITY OR AUTHORITY'S OPERATOR(S) has inspected the Rail Facilities, including all

improvements and structures thereon. AUTHORITY OR AUTHORITY'S OPERATOR(S) further acknowledge that no representations have been made by STATE concerning the state or condition of the Rail Facilities or age of the improvements thereon.

- 8. Inspection. The STATE or its duly authorized representative, upon reasonable notice to AUTHORITY, shall have the right to inspect any and all Rail Facilities for the purpose of verifying AUTHORITY'S compliance with the terms and conditions of this Lease Agreement and the agreement executed between the AUTHORITY and the OPERATOR(S).

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

- 9. Additions and/or Betterments to Rail Facilities. The STATE hereby grants to the AUTHORITY OR AUTHORITY'S OPERATOR(S) the right to make such additions and/or betterments to the Rail Facilities as AUTHORITY OR AUTHORITY'S OPERATOR(S) may require to permit rail freight service, at AUTHORITY OR AUTHORITY'S OPERATOR(S)' sole expense. The term "additions and/or betterment(s)" as used herein shall mean capital improvements that are in addition to the Rail Facilities. AUTHORITY OR AUTHORITY'S OPERATOR(S) shall own and have the right to remove any of said additions and/or betterments which have been installed by AUTHORITY or AUTHORITY'S OPERATOR(S) and which can be removed without causing the Rail Facilities to be less serviceable than before said addition was made. Those additions and/or betterments which cannot be removed without causing the Rail Facilities to be less serviceable than before said addition was made shall become the property of the STATE, the ultimate owner of said Rail Facilities, namely, the State of _____.

- 10. Payment. AUTHORITY hereby agrees to make annual payments to the STATE based on traffic for each calendar year thereafter, for any freight traffic or rail car storage that originates or terminates at any point along the xx and/or xxx portion of the Rail Facilities, as follows:

Number of rail cars shipped/year Aggregated Annual Lease Payments

- | | | |
|----|---------------------|---|
| a. | 750 cars or less | \$1.00 per car |
| b. | 751 to 1,500 cars | plus \$2.50 per car for all cars over 750 |
| c. | 1,501 to 3,000 cars | plus \$5.00 per car for all cars over 1,500 |
| d. | 3,001 or above | plus \$7.50 per car for all cars over 3,000 |

Further, STATE and AUTHORITY agree that the STATE reserves the right to renegotiate the lease fee on this Lease Agreement on or before the effective annual anniversary date of this Lease Agreement as before written of each year that this Lease Agreement is in effect by giving AUTHORITY notice, in writing, at least thirty (30) days prior to the annual anniversary date of each year that the STATE intends to renegotiate the lease fee herein.

Liability of Authority. The AUTHORITY shall indemnify, hold harmless, and protect the STATE, its individual members, their representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage or deaths received or sustained by any person, persons, or property, including STATE or AUTHORITY owned property, on account of any act, omission, neglect or misconduct of the AUTHORITY, its representatives, officers, employees, invitees, permittees, or agents.

11. Insurance. AUTHORITY OR AUTHORITY’S OPERATOR(S) shall maintain a Commercial General form of insurance covering liability in connection with any activities or operations on or near the Rail Facilities and the trackage encompassed by the STATE’s interchange/trackage rights (including, but not limited to, the trackage between Milepost x and Milepost x of the x Railway Company’s (“x”) x Subdivision and between Milepost xx and Milepost of x’s main line), including but not limited to Public Liability, Personal Injury and Property Damage, Federal Employers Liability Act Liability (or, if Worker’s Compensation applies, Worker’s Compensation coverage as required, or as optional, under applicable state law; which insurance must contain a specific waiver of the insurance company’s subrogation rights against the STATE, x and xx Line, Inc.), Bill of Lading and Foreign Rolling Stock Liability, and Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as STATE may agree are satisfactory, provided however, that: (i) such limits shall not be less than \$5 million per occurrence and \$10 million in the aggregate; and (ii) policy terms shall not exclude or limit coverage where activities or operations are on or near railroad tracks. STATE, xx Line, Inc. and x shall be named as an additional insured on such liability insurance policy. Any coverage afforded to STATE, x and xx Line, Inc., as an additional insured, shall apply as primary insurance of STATE, and shall not be deemed to be excess to any insurance issued in the name of STATE, x and xx Line, Inc. Such liability

insurance must be purchased from an insurance company licensed to do business in _____, North Dakota and Minnesota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

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

AUTHORITY OR AUTHORITY'S OPERATOR(S) shall provide STATE with evidence of the liability insurance coverage required by this Lease Agreement before AUTHORITY OR AUTHORITY'S OPERATOR(S) operates along the RAIL FACILITIES and OPERATOR(S) shall supply STATE with copies of its insurance policies and any amendments, as soon as they are available, and with evidence of continued insurance coverage on January 1 of each year. AUTHORITY AND AUTHORITY'S OPERATOR(S)'S failure to provide such evidence, within 7 days of any request therefore, shall entitle STATE, to immediately terminate this Lease Agreement without notice and without opportunity to cure such default. AUTHORITY OR AUTHORITY'S OPERATOR(S) acknowledges that the purchase of insurance as required by this Paragraph shall not in any way limit the liability of AUTHORITY OR AUTHORITY'S OPERATOR(S) or any lessee or other operator to STATE, x, or xx Line, Inc. as set forth herein.

12. Personal Liability of Public Officials. In carrying out any of the provisions of this Lease Agreement, or in exercising any power or authority granted to AUTHORITY by or within the scope of this Lease Agreement, there shall be no liability upon any member of the STATE, or their authorized representatives, either personally or as officials of the STATE, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of _____.
13. Laws to be observed. The AUTHORITY and its OPERATOR(S) shall keep fully informed of all Federal and State laws, all local laws, ordinances and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Lease Agreement, including without limitation any laws, ordinances, regulations, orders,

or decrees, identified herein. The AUTHORITY and its OPERATOR(S) shall at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and shall protect, hold harmless and indemnify the STATE and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree, whether by the AUTHORITY or its OPERATOR(S).

14. Assignment. AUTHORITY shall not assign its rights or delegate its duties under this Lease Agreement or any part thereof, without prior written consent of the STATE. An approved assignment, including assignments occurring by operator contracts, will not relieve the AUTHORITY of its primary responsibility to the STATE. Subject to STATE's prior written consent, AUTHORITY may contract with multiple OPERATORS for operations on the Rail Facilities.
15. Amendment. No term or provision of this Lease Agreement may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided however, that when an emergency situation arises, changes in this Lease Agreement may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.
16. Term. This Lease Agreement shall continue in full force and effect for a period of three (3) years from and after the date first above written. This Lease Agreement shall automatically renew for successive 3-year periods unless either party provides written notice of its intent to terminate the Lease Agreement upon expiration of the current 3-year period. Such written notice shall be provided at least 60 days prior to the expiration of the existing 3-year time period. Upon termination of this Lease Agreement, Rail Facilities shall be returned to the STATE in the same general condition, less normal wear and tear, as existed on the effective date of this Lease Agreement.
17. Termination for Fault. Should either AUTHORITY OR AUTHORITY'S OPERATOR(S) substantially fail to perform its obligations under this Lease Agreement, and continue in such default for a period of ninety (90) days, the party not in default shall have the right, at its option, after first giving thirty (30) days written notice thereof by certified mail to the party in default, and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Lease Agreement.

It is further agreed that inadequate or substandard performance by the AUTHORITY or AUTHORITY's OPERATOR(S) which persists in excess of one hundred twenty (120) days after the AUTHORITY has been made aware of the inadequate or substandard conduct, shall constitute a basis upon which the STATE may terminate this Lease Agreement under this paragraph.

18. Notice. Except as expressly provided otherwise, all notices or other communications hereunder shall be in writing and shall be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first class, postage prepaid to the person specified herein as entitled to receive such notice, or to their duly authorized representative unless notice of a change of address is given pursuant to the terms of this provision.

For the STATE Program Manager, Local Transportation Programs
 _____Department of Transportation
 Street Address
 City, State, Zip

For the AUTHORITY: XXXXXX Regional Railroad Authority
 Attn: XXXXXXXX
 Street Address
 City, State, Zip

19. Complaint Resolution Procedure. In the event the _____ State Railroad Board or _____ Office of Local Transportation Programs receives a written complaint regarding the conduct of operations on the facilities described herein, the _____ State Railroad Board (Board) may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing shall be provided to all interested parties, including, but not limited to, the party filing the complaint, the Program Manager of the Office of Local Transportation Programs, the AUTHORITY, and the AUTHORITY's OPERATOR(S), or any other railroad conducting operations on the facilities pursuant to a sublease agreement with the AUTHORITY. Any hearing held pursuant to this provision shall be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties shall be allowed to present oral and written information to the Board. After considering all information presented, the Board shall issue a written decision, which shall be binding to this Lease Agreement as if incorporated as a provision herein. The decision of the _____ State Railroad Board shall be final and no party hereto shall be entitled to any right of appeal from its decision.

This complaint resolution procedure paragraph shall be included in any sublease agreement that the AUTHORITY may issue to any OPERATOR(S) while this lease is in effect.

21. Donation Agreement Amendment.

(a) That certain Donation Agreement Amendment dated November 22, 2005, ("Donation Agreement Amendment") by and between the STATE and x is

attached hereto and incorporated by reference herein, and AUTHORITY hereby agrees to be bound by the terms of said Donation Agreement Amendment.

- (b) AUTHORITY shall indemnify, hold harmless, and defend STATE against any breach by AUTHORITY or its OPERATOR(S) of any obligations set forth in the Donation Agreement Amendment.
- (c) STATE and AUTHORITY hereby designate x as a third-party beneficiary of this Section 21 with rights to enforce the terms of this Section 21 as against AUTHORITY in the event of any breach of the terms thereof by AUTHORITY.
- (d) AUTHORITY shall cause a clause substantially similar to this Section 21 to be incorporated in any Sublease Agreement with respect to the Rail Facilities, so that AUTHORITY's sublessee/OPERATOR(S) shall agree to be bound by the terms of the Donation Agreement Amendment.

22. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein shall be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination, declaration or adjudication shall in no manner affect the other sections, paragraphs, sentences, clauses or phrases of this Lease Agreement, which shall remain in full force and effect as if the section, paragraph, sentence, clause or phrase declared, determined or adjudged, invalid, illegal, unconstitutional or otherwise unenforceable was not originally a part thereof.

22. Entire Lease Agreement. This Lease Agreement and the Appendix attached hereto represent the entire Lease Agreement between the parties, and all previous communications, understandings or agreements between the parties are hereby abrogated and withdrawn except as provided herein.

The parties hereto have caused this Lease Agreement to be executed and notarized by their duly authorized officers on the date and year first above written.

xxxx REGIONAL
RAILROAD AUTHORITY

Chairman

STATE OF _____

XXXXXXXXXXXXXXXXXX, Secretary
Department of Transportation

ACKNOWLEDGED

STATE OF _____)
: SS
COUNTY OF _____)

On this ___ day of _____, 2006, before me, a Notary Public within and for said County and State, personally appeared _____, known to me to be the person who executed the above document and acknowledged to me that he did sign the foregoing document for the purposes herein stated.

(S E A L)

NOTARY PUBLIC
My Commission Expires: _____

ACKNOWLEDGED

STATE OF _____)
: SS
COUNTY OF _____)

On this ___ day of _____, 2006, before me, a Notary Public within and for said County and State, personally appeared XXXXXXXXXXXXXXXX, Secretary, Department of Transportation, known to me to be the person who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same freely.

(S E A L)

NOTARY PUBLIC
My Commission Expires: _____