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

Submitted via e-Filing Procedures

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

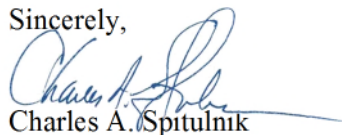
Dear Ms. Brown:

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

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

Please do not hesitate to contact me with any questions.

Sincerely,



Charles A. Spitulnik

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

Enclosures

BEFORE THE SURFACE TRANSPORTATION BOARD

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

VERIFIED PETITION FOR PRELIMINARY INJUNCTION

Finance Docket No. 36420

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Dated: July 21, 2020

BEFORE THE SURFACE TRANSPORTATION BOARD

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

VERIFIED PETITION FOR A PRELIMINARY INJUNCTION

Finance Docket No. 36420

The Commuter Rail Division of the Regional Transportation Authority, an Illinois unit of local government, d/b/a Metra (“Metra”) hereby requests that the Surface Transportation Board (“STB” or “Board”) issue a Preliminary Injunction enjoining Union Pacific Railroad Company (“UP”) from ceasing commuter rail passenger service, violating its common carrier obligation to provide service on the lines known as the UP North, UP West, and UP Northwest lines (“UP lines”) in Chicago, before the STB issues a decision on the issues raised in Metra’s Petition for Declaratory Order, filed concurrently with this document. UP is threatening to begin to reduce the scope of services it provides in conjunction with commuter rail passenger service. UP bases its threats on assertions that both are fundamentally wrong as a matter of law, and place Metra commuters in a precarious situation. The Board should grant the injunction requested here to prevent the irreparable harm to the Chicago commuting public that UP’s threatened action will cause.

I. Introduction

UP operates the three subject UP lines consistent with a Purchase of Service Agreement (“PSA”) with Metra. UP and its predecessor, the Chicago and North Western Railway Company

(“CNW”), have executed a series of PSAs with Metra for the operation of the subject UP lines since 1979, which include significant taxpayer-funded subsidies. During the most recent round of negotiations for a renewal of the PSA, UP asserted that it has no common carrier obligation to provide commuter rail passenger service in the event the PSA lapses. Metra disagreed, citing the 150-years of service during which UP/CNW have held themselves out to provide service on the subject UP lines. UP ultimately took the dispute over its common carrier obligation to the federal District Court. *Union Pac. R.R. Co. v. Commuter Rail Div. of the Reg’l Transp. Auth., d/b/a Metra*, No. 1:19-cv-07957 (N.D. Ill. Filed Dec. 5, 2019). Metra filed a Motion to Dismiss or Stay Based on Primary Jurisdiction, asking the Court to refer the matter to this Board, in response to UP’s Petition.

Although the District Court has not issued a decision on Metra’s Motion, UP has nevertheless informed Metra that, beginning August 31, 2020, it will begin dismantling the services provided on the subject UP lines despite the 89,000 daily trips on these lines (pre-COVID), which represents 35% of Metra’s total ridership. Metra has responded to that letter, asking UP to continue to fulfill its long-standing common carrier obligation to provide this commuter rail passenger service by continuing to maintain the coaches and rolling stock, and provide the other services currently under contract, until either: (1) the parties reach agreement to transfer those services from UP to Metra; or (2) UP elects to provide those services pursuant to its long-standing common carrier obligation to operate the commuter rail passenger service without the subsidy provided by a PSA.

Because the Board is best suited to resolve the common carrier dispute raised here, Metra has filed a Petition for Declaratory Order asking the Board to: (1) to declare that UP has a long-standing common carrier obligation to provide commuter rail passenger service on the subject UP

lines; and (2) affirm that the STB has the jurisdiction and the authority to enforce UP's common carrier obligation.

However, because UP has decided unilaterally to begin ceasing services that are essential elements of the transportation it provides on the subject UP lines beginning on August 31, 2020, Metra also seeks a Preliminary Injunction to enjoin UP from leaving tens of thousands of Chicago area commuters without daily transportation before the Board has time to address the issues raised in this matter. The public interest requires the Board protect commuters from the irreparable harm of a loss of commuter rail passenger service on the subject UP lines.

II. Statement of Facts

A. The Parties

Metra is one of the largest and most complex commuter rail systems in North America, serving Cook, DuPage, Will, Lake, Kane and McHenry counties in northeastern Illinois and the City of Kenosha in Wisconsin. Metra provides service to and from downtown Chicago with 242 stations over 11 routes totaling approximately 500 route miles and 1,200 miles of track. Prior to the COVID-19 pandemic, which resulted in a severe reduction in daily ridership,¹ Metra provided nearly 251,000 passenger trips² each weekday. As a fundamental part of the regional transportation network, Metra provides efficient commuter rail service that enhances the economic and environmental health of northeast Illinois.

UP is a Class I interstate rail carrier, subject to the Board's jurisdiction under 49 U.S.C. § 10501. UP provides common carrier freight service in twenty-three states and over

¹ Mary Wisniewski, *Clean cars, fewer mystery spills, and plenty of open seats greet riders as they slowly return to mass transit*, Chicago Tribune, June 11, 2020, <https://www.chicagotribune.com/business/transportation/ct-biz-public-transit-return-cta-metra-pace-20200610-w5b734yqbrb4xhbxvzent7rtfxa-story.html> (Noting initial Metra ridership decline of 97% at the start of the COVID-19 pandemic).

² Federal Transit Administration, Transit Agency Profile: Northeast Illinois Regional Commuter Railroad Corporation (2018).

32,000 miles in the United States. UP operates three lines that are part of the Metra service. These three routes run between the Ogilvie Transportation Center in Chicago and, respectively, Kenosha, Wisconsin (“UP North Line”); Harvard and McHenry, Illinois (“UP Northwest Line”); and Elburn, Illinois (“UP West Line”) (collectively, the “UP lines”).

B. UP Service on the UP Lines³

Commuter rail passenger service on the subject UP lines began between 1855 and 1864. The services, eventually acquired by the CNW, fostered the growth of the Chicago metropolitan region. Population centers developed along the lines, taking advantage of the affordable and efficient commuter service to and from downtown Chicago. UP acquired the CNW in 1995. *Union Pac. Corp., Union Pac. R.R. Co. and Mo. Pac. R.R. Co.—Control—Chi. and N. W. Transp. Co. and Chi. and N. W. Ry. Co.*, ICC Finance Docket No. 32133 (Service Date March 7, 1995). Upon UP’s acquisition of CNW, UP, as the surviving entity, succeeded to CNW’s ownership of and long-standing common carrier obligation on the UP North, UP West, and UP Northwest lines and continued to provide commuter rail passenger service. Since 1995, UP has continuously provided this service pursuant to three successive PSAs negotiated with Metra.

The most recent PSA, attached as **Exhibit A**, was negotiated in 2010. Under that PSA, UP employees operate the trains, maintain all three commuter lines, and perform various administrative functions. **Exhibit A**, Article 2. UP owns and maintains the track, bridges and signal systems, which are also used for freight operations. Metra retains overall authority over fares, owns the rolling stock used on the subject UP lines and will continue providing that rolling stock in the event the PSA between Metra and UP expires. **Exhibit A**, Article 2.02.

³ A thorough discussion of the evolution of ownership and operation of the service on the subject UP lines is set forth in detail in the Petition for Declaratory Order, concurrently filed with this Petition.

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

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

UP direct expenses to run service:	\$199 Million
Ticket revenues:	- <u>\$138 Million</u>
UP Operating Deficit:	\$ 61 Million
Metra purchased materials to support service: (Diesel fuel, mechanical parts, rent, utilities, uniforms)	+ <u>\$ 37 Million</u>
Total Metra/taxpayer contribution:	\$98 Million

In addition to the annual operating payments and in-kind subsidies under the current PSA that totaled approximately \$98 Million in 2019 alone, the State of Illinois and the Federal Transit Administration have invested \$1.2 Billion in capital improvements on these lines. These federal and state investments benefit both the commuting public and the fluidity of UP's operation of the interstate freight services that have continued unabated on these lines during all of the years that commuter service has operated on them.

Metra and UP's 2010 PSA was extended by agreement through December 31, 2019. Meanwhile, in the summer of 2019, UP requested that Metra take over the commuter rail passenger service on the subject UP lines. Metra and UP continued negotiations but UP would only agree to

60-day extensions of the PSA beyond December 31, 2019. The latest extension provided an expiration date of August 31, 2020.

During negotiations for the new agreement, the parties disagreed on the question of whether UP has an obligation to provide commuter rail passenger service if the parties cannot negotiate new terms. Metra asserts, based on the long history of UP's predecessor's operation of commuter rail passenger service on the subject UP lines, that UP has a long-standing common carrier obligation, independent of the terms of the PSA. UP responded that it has no obligation to continue operating commuter rail passenger service after the expiration of the PSA.

C. The District Court Proceeding Related to Union Pacific's Common Carrier Obligation

On December 5, 2019, UP asked the U.S. District Court for the Northern District of Illinois to declare that UP has no common carrier obligation to operate commuter rail passenger service on its lines after the expiration of the PSA. On March 3, 2020, Metra filed a Motion to Dismiss or Stay Based on Primary Jurisdiction asking the Court to dismiss the Complaint without prejudice because this Board has primary jurisdiction over matters related to determination and enforcement of a rail carrier's common carrier obligation, or, in the alternative, refer the matter to this Board and stay the matter pending the outcome of this Board's consideration of the issue. The District Court has not issued a decision in response to UP's Petition or Metra's Motion to Dismiss.

D. UP's Cessation of Service Notification

On June 30, 2020, Cynthia M. Sanborn, UP Vice President for Network Planning and Operations, notified Metra, via letter attached as **Exhibit B**, that despite the pending action in the District Court, UP intends to halt the provision of certain services associated with the subject UP lines, on a piecemeal basis, over the coming months. UP provided the following schedule for its cessation of service on the subject UP lines:

Services Transfer Date (To Occur On or Before)	Services Transfer
July 31, 2020	Revenue Accounting ⁴
August 31, 2020	Law and Claims – For Passenger and Collection Claims
September 30, 2020	TCU Passenger Ticket Agents
October 31, 2020	Mechanical car
October 31, 2020	Mechanical locomotive
November 30, 2020	Engineering (minimal services only not train and engine operating personnel)
November 30, 2020	Communications and Telecommunications

UP's letter states that the above functions do not involve "Public Transportation Services," as that term is defined in the PSA. **Exhibit B**, p. 2. However, the issue before this Board is not a question of what the contract requires. Instead, the issue focuses on UP's obligation under federal law. The services UP wants to terminate each play an integral role in the "transportation" offered on the subject UP lines as that term is defined in 49 U.S.C. § 10102(9). UP's assertion that the above listed functions are not transportation subject to the Board's jurisdiction is wrong. Without these services, the commuter rail passenger service on the subject UP lines cannot run. Indeed, locomotive and car maintenance are subject to federal regulation under 49 C.F.R. Parts 229 and 238 which require daily inspection and periodic maintenance. Operation of rolling stock without federally required inspection and maintenance is both unsafe and a violation of federal law. Nevertheless, UP attempts to circumvent this Board's jurisdiction by characterizing these services as matters governed solely by contract to create the false illusion that the operation is outside this

⁴ Revenue accounting services are already handled by Metra, therefore the first transfer of services scheduled for July 31, 2020 will not result in any changes to the current operations of either party. Material changes will begin when UP ceases law and claims services on August 31, 2020.

Board's authority to resolve. UP has no authority to cease providing the commuter rail passenger service or any of the various functions that are essential elements of this transportation service. UP cannot scale back services one at a time over the next four months. It may not dismantle, piece-meal, a long-standing commuter rail passenger service that comprised (pre-COVID) one-third, approximately 89,000, of Metra's daily passenger trips and is now relied upon by first responders and workers on the front line of the COVID-19 recovery efforts. This proposed action violates UP's long-standing obligation as a common carrier to provide this commuter rail passenger service upon reasonable request. The Board can and should enforce UP's common carrier obligation. The reduction of services that are fundamental to the core operation of the subject UP lines is a blatant attempt to skirt UP's obligations under the law.

UP has asserted it has no common carrier obligation to provide commuter rail passenger service on the subject UP lines and it intends to eliminate services essential to commuter transportation on the lines regardless of the outcome of the District Court or STB proceedings. In response to UP's letter, and in order to avoid a potentially devastating lapse in service, Metra has asked UP to continue to fulfill its long-standing common carrier obligation to provide this commuter rail passenger service by maintaining the coaches and locomotives, and providing the other services currently under contract, until either: (1) the parties reach agreement to transfer those services; or (2) UP elects to provide those services pursuant to its long-standing common carrier obligation to operate the commuter rail passenger service without the subsidy provided by a PSA. A copy of that letter is attached as **Exhibit C**.

If the UP begins taking the actions outlined in its June 30 letter, it will effectively terminate the commuter rail passenger service required to fulfill its long-standing common carrier obligation, Metra commuters face a transportation crisis that comes on the heels of an economic downturn

caused by the COVID-19 pandemic. Even if UP does not begin dismantling the services on August 31, it could effectively shut down the service by letting the existing PSA lapse. Simply put, if there is no PSA, there is no service on the subject UP lines. UP has made its intent to cease commuter rail passenger service clear and it has set out two avenues to do so. Either way, UP would leave tens of thousands of Chicago commuters deserted. The STB must prevent UP from ceasing service and protect Metra commuters and the Chicago economy from the irreparable harm that would result. This Board must issue an injunction requiring UP to continue fulfilling that common carrier obligation.

III. Metra’s Petition for Preliminary Injunction Meets the *Holiday Tours* Standard for Relief and Comports with the Board’s Precedent of Issuing Stays in order to Allow for Full Consideration of Issues Presented

“Under 49 U.S.C. § 1321(b)(4), the Board may issue an appropriate order, such as a preliminary injunction, when necessary to prevent irreparable harm. A party seeking a preliminary injunction must establish that: (1) there is a likelihood that it will prevail on the merits of any challenge to the action sought to be preliminarily enjoined; (2) it will suffer irreparable harm in the absence of a preliminary injunction; (3) other interested parties will not be substantially harmed by a preliminary injunction; and (4) the public interest supports the granting of the preliminary injunction.” *Cent. Valley Ag Grinding, Inc. and Cent. Valley Ag Transp. Inc. v. Modesto and Empire Traction Co.*, STB Docket No. NOR 42159, slip op. at 4 (Service Date June 12, 2018) (citing *Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc.* (“*Holiday Tours*”), 559 F. 2d 841, 843 (D.C. Cir. 1977); *Va. Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958); *N. Coast R.R. Auth. & N.W. Pac. R.R. v. Sonoma-Marin Area Rail Transit Dist.*, STB Docket No. NOR 42148, slip op. at 3 (Service Date Oct. 21, 2016); *Am. Chemistry Council v. Ala. Gulf Coast Ry.*, STB Docket No. NOR 42129, slip op. at 4 (Service Date May 4,

2012)). “An injunction is an extraordinary remedy and will generally not be granted unless the requesting party can show that it faces unredressable actual and imminent harm that would be prevented by an injunction.” *Am. Chemistry Council*, STB Docket No. NOR 42129, slip op. at 4. The circumstances presented here satisfy the requirements for the injunctive relief that Metra requests.

In order to avoid a transportation crisis in Chicago and its surrounding suburbs, the STB should order UP to continue to provide the commuter rail passenger service that fulfills its long-standing common carrier obligation on the UP North, UP West, and UP Northwest Lines, as it has done for the last twenty-five years. Additionally, the Board should ensure that UP continues to provide the support functions necessary for these three services, which it has been providing for the last twenty-five years as well, including legal and claims management, ticketing, mechanical, engineering, and communications services, all of which comprise essential elements of the “transportation” that UP currently provides. The public interest requires that the Board protect Chicago-area commuters who rely on the subject UP lines in and out of downtown Chicago to maintain their livelihoods.

As addressed fully in the paragraphs below, Metra’s request for this order meets the four criteria for relief under the standard set forth in *Holiday Tours*.

A. Metra is Likely to Succeed on the Merits of the Petition for Declaratory Order

Metra is likely to prevail on the merits of the question presented in its concurrently filed Petition for Declaratory Order. As set forth in particular detail in that Petition, UP inherited a long-standing common carrier obligation to provide commuter rail passenger service on the UP North, UP West, and UP Northwest lines when it acquired CNW in 1995. There is no question that obligation continues. Neither CNW nor UP ever sought or received authority to cease this

service. Indeed, UP has continued operating the commuter rail passenger service since 1995, asking continuously for agreements with Metra for funds to subsidize that service. In these circumstances, the Board has authority to enforce UP’s compliance with its long-standing common carrier obligation on the subject UP lines.

The common carrier obligation of 49 U.S.C. § 11101(a) requires railroads subject to the STB’s jurisdiction to provide transportation upon reasonable request. Understanding the scope of that obligation begins with the definition of “transportation” in the statute. “Transportation”:. . . includes—

(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the *movement of passengers or property*, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property. . .

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

The STB “retains jurisdiction over rail properties until abandonment authority has been sought, granted, and exercised.” *Angeles A. Zorzi, Trustee of the Angeles A. Zorzi Living Trust, and Antonio Aja, Jr. and Virginia D. Aja, Trustees of the Antonio Aja, Jr. Trust and the Virginia D. Aja Trust—Petition for Declaratory Order*, STB Finance Docket No. 36016, slip op. at 3 (Service Date Jan. 31, 2017).

The STB retains jurisdiction over passenger rail service. *DesertXpress Enters., LLC—Petition for Declaratory Order*, STB Finance Docket No. 34914, slip op. at 14, 17 (Service Date May 7, 2010), and this includes any un-abandoned, non-discontinued common carrier obligation to provide such service that has not otherwise been removed from this Board’s jurisdiction. UP’s

obligation to provide service, including commuter rail passenger service, on these three subject lines remains in effect.

Throughout the 1970s and 1980s, a series of legislative actions relieved nearly all freight railroads of the obligation to hold themselves out to provide common carrier passenger service. However, no legislation and no decision by the Interstate Commerce Commission (before 1995) or this Board (since 1996) has relieved either CNW before it, or UP, of the long-standing obligation to provide commuter rail passenger service on the subject UP lines. As Metra explains more fully in its Petition for a Declaratory Order, CNW acknowledged contractually that its common carrier obligation continued even after it began receiving subsidies from the Regional Transportation Authority to provide that service.

The STB's rulemaking history reflects that it anticipated it might face unique circumstances under which a commuter rail passenger railroad subject to its authority sought its assistance. *See Removal of Obsolete Regulations Concerning Rail Passenger Fare Increases*, STB Docket No. Ex Parte 624, slip op. at 2-3 (Service Date June 18, 1997) (Final Rule) (discussing that elimination of STB regulations requiring filings of passenger fare increases would not prevent any passenger service regulated by the STB from being required to disclose fares under its general existing regulations). This case presents the unusual scenario in which the Board retains jurisdiction to enforce a long-existing common carrier obligation to provide commuter rail passenger service despite ICCTA's repeal of separate passenger discontinuance authority.

In the Petition for Declaratory Order, Metra has demonstrated that UP has a common carrier obligation to provide commuter rail passenger service on the subject UP lines, and that the Board has the authority to enforce that obligation. Metra is likely to succeed on the merits in this case. UP's unilateral decision to terminate this long-standing service violates its obligation to

provide commuter passenger rail service on reasonable request. Accordingly, the Board should assure the continuation of that service to protect the public interest while it resolves the issues raised in Metra's Petition for Declaratory Order.

B. Metra and Metra Commuters Face Irreparable Harm if the Injunction is not Granted

"To show irreparable harm, the requesting party must demonstrate both the imminence and the irreparable nature of any purported harm." *Cent. Valley Ag Grinding*, STB Docket No. NOR 42159 slip op. at 5.

UP's June 30 letter demonstrates the imminence of the harm that Metra and its commuters face under UP's current plan. UP intends to begin dismantling the UP North, UP West, and UP Northwest services on August 31, leaving tens of thousands of area commuters without daily transportation. If UP ceases service on the subject UP lines without adequate notice, or begins dismantling the structure of commuter rail passenger service it provides in support of the operation on these three lines, tens of thousands of Illinois and Wisconsin commuters could be left without transportation, causing irreparable harm to Chicago-area commuters who rely on these services to get to and from work each day and to the Chicago-area businesses that rely on those commuters. A service stoppage would irreparably harm the regional economy, at a time when local business and residents attempt to rebuild after the COVID-19 pandemic forced unprecedented closures.

UP's effort to reduce the scope of the commuter rail passenger service it provides on the grounds they are not integral public transportation services has no basis in law, *see*, 49 U.S.C. §10102(9), and it places Metra commuters in a precarious situation. For example, UP's planned reduction of mechanical car and locomotive services is slated for October 31, 2020. Without proper mechanical service, Metra, which has not provided these services at any time in the 150-year history of the lines, will not be able to inspect and periodically maintain or repair

equipment as needed. And, as discussed above, the operation of that rolling stock would be in violation of federal law.

UP appears to view these services as distinct from its statutory common carrier duty to provide commuter rail passenger service. UP is wrong. Section 10102(9) includes a broad statement of what constitutes “transportation” provided by a rail common carrier. Another section of the statute, 49 U.S.C. § 11121, requires that “a rail carrier providing transportation subject to the jurisdiction of the Board . . . furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service.” Mechanical car and locomotive services are fundamental to the service provided on the subject UP lines. Federal rules governing passenger equipment and safety mandate inspections and maintenance on specified cycles. *See generally* 49 C.F.R. Part 238, “Passenger Equipment Safety Standards” *and* 49 C.F.R. Part 229 “Railroad Locomotive Safety Standards.” Without adequate car service, daily inspections, and maintenance, the commuter rail passenger service cannot run.

All of the elements of the service UP has announced that it will cease providing are essential to the successful operation of the commuter rail passenger service. Metra’s commuters who rely on these services are “completely dependent on rail service” from UP. *See R.R. Salvage & Restoration, Inc. and G.F. Weideman Int’l, Inc.—Petition for Investigation and for Emergency Relief Under 49 U.S.C. 721(B)(4)—Sec. Deposit for Demurrage Charges, Mo. & N. Ark. R.R. Co., Inc.*, STB Docket No. NOR 42107, slip op. at 4 (Service Date June 30, 2008). Metra commuters face a severe hardship if they lose three vital transportation arteries in and out of downtown Chicago. The public interest requires the Board to protect commuters from this irreparable harm.

C. UP Does Not Face Substantial Harm if the STB Issues a Preliminary Injunction

UP will not be substantially harmed by a preliminary injunction which requires it to provide the services it has provided for the last twenty-five years under the current terms and conditions of the most recent agreement. *See e.g. Cent. Valley Ag Grinding*, STB Docket No. NOR 42159, slip op. at 6 (finding that a short line railroad would not be substantially harmed if it was enjoined from requiring prepayment for a service it provided without prepayment for nine years previously while the Board reviewed the matter). UP, and CNW before it, operated the trains on the UP North, UP West, and UP Northwest lines for over 150-years. UP has not provided any rationale for rushing forward with its plan to unilaterally abandon the commuters of Chicago. There is no possibility that UP will face substantial harm if UP continues to provide commuter rail passenger service under the terms of the current PSA while the STB reviews this Petition. While Metra cannot force UP to extend the current PSA, Metra is willing to continue to adhere to the terms prescribed under current PSA as long as UP continues to provide the same service in the same manner as prescribed under the PSA in furtherance of its common carrier obligation. Metra is also willing to engage in negotiations with UP for a reasonable modification of the terms of that PSA. In either event, Metra will continue to provide the same substantial subsidies to UP for the service that it has provided for over two decades pending negotiation of a new agreement.

If the terms of the current PSA are extended, UP will not face any significant losses if its planned service cessation is delayed during the pendency of this proceeding. There is, therefore, no risk of substantial harm if the Board grants Metra's request for a preliminary injunction.

D. The Public Interest Supports the Issuance of the Injunction

The public interest not only supports but requires the issuance of an order requiring UP to continue to provide commuter rail passenger service and the attendant functions while the Petition

for Declaratory Order is pending before the Board. The UP North, UP West, and UP Northwest lines provided 89,000 passenger trips each day pre-COVID. If UP barrels ahead with its plan to reduce commuter rail passenger services on the lines, these passengers face a loss of transportation in the midst of an economic downturn and public health crisis. As outlined previously in this Petition, these three lines form an integral part of a network of public transportation alternatives that, when the economy is not stunted by a pandemic, moves hundreds of thousands of commuters each day. It is unconscionable for UP to argue that, not only can it walk away from a service that the area residents have relied upon for 150-years, but also that it may do so in a span of five months when the public seeks to repair the economic harm of a global pandemic. UP's actions are contrary to the public interest.

The commuting public who travel on the UP North, UP West, and UP Northwest lines should not have their livelihoods jeopardized by UP before the Board has adequate time to address the question raised in this case. Particularly in these unique and difficult circumstances, the public interest requires the Board to enjoin UP from beginning to dismantle its operation of commuter rail passenger service on these three lines.

Granting an injunction here is consistent with the Board's precedent granting housekeeping stays in order to allow the Board to "fully consider the arguments presented" in this case. *BNSF Ry. Co., CBEC Ry. Inc., Ia. Interstate R.R., Ltd., and Union Pac. Ry. Co.—Joint Relocation Project Exemption—In Council Bluffs, Ia.*, STB Finance Docket No. 35755, slip op. at 1 (Service Date Nov. 8, 2013) (granting request for a housekeeping stay following railroad and shipper argument that a state would avoid disruption of service to shippers during the pendency of an exemption proceeding); see also *Burlington Shortline R.R. Inc., d/b/a Burlington Junction Ry.—Acquisition and Operation Exemption—BNSF Ry. Co.*, STB Finance Docket No. 35121, slip op. at 1 (Service

Date April 16, 2008) (granting housekeeping stay in rail acquisition and operation case in order for the Board to make “an informed decision.”).

IV. Conclusion

Metra respectfully requests the Board issue a preliminary injunction ordering UP to continue to operate, and provide the services associated with the operation of, the three lines known as UP North, UP West, and UP Northwest until the Board issues a decision on the question presented in Metra’s Petition for a Declaratory Order.

Respectfully Submitted,



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Date: July 21, 2020

CERTIFICATE OF SERVICE

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

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



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Suite 300
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(202) 955-5600
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Dated: July 21, 2020

VERIFICATION

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

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

Executed on July 20, 2020.

By: Charles J. Harrison

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

Sworn to and subscribed before me

this 20th day of July, 2020.

Vicki J Ladage
Notary Public

My commission expires: 2/8/23

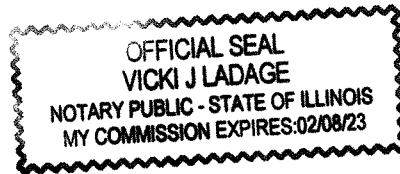


EXHIBIT A

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

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

Preliminary Statement

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

ARTICLE I

Definitions

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

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

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

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

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

Additional Compensation -- the meaning thereof in Article 6.06.

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

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

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

Authority -- the Regional Transportation Authority.

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

Board of Directors -- Directors of the CRD.

Budget Limits -- the meaning thereof in Article 6.02.

Budget Objection -- the meaning thereof in Article 6.03.

Budget Period -- the meaning thereof in Article 6.03.

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

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

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

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

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

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

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

Compensation -- the meaning thereof in Article 6.04.

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

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

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

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

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

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

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

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

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

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

Estimated Compensation -- the meaning thereof in Article 6.04.

Estimated Surplus -- the meaning thereof in Article 6.04.

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

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

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

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

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

Labor -- the meaning thereof in Article 2.03.

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

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

Monthly Payment -- the meaning thereof in Article 6.04.

Parties -- CRD and Railroad.

Peak Periods -- the meaning thereof in Article 2.04.

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

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

Property -- the meaning thereof in Article 2.02.

Proposed Budget -- the meaning thereof in Article 6.03.

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

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

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

Reimbursable Expenses -- the meaning thereof in Article 6.02.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

Services to be Provided by Railroad

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III

Property

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

Railroad's Responsibility to Manage

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

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

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

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

ARTICLE V

Fares and Tickets

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VI

Revenues and Compensation

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

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

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

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

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

CRD & UPRR PSA AGREEMENT

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

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

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

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

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

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

(b) Reimbursable Expenses do not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VII

Reports and Access to Information

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VIII

Additional Covenants, Warranties and Agreements of Railroad

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

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

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

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

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

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

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

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

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

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

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

CRD & UPRR PSA AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IX

Labor Protection

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

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

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

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

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

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

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

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

ARTICLE X

Notice, Defense of Claims, and Allocation of Claims Expenses

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

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

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

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

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

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

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

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

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

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

ARTICLE XI

Agreement Term

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

(a) December 31, 2016, or

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

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

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

ARTICLE XII

Termination

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

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

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

ARTICLE XIII

Miscellaneous Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CRD & UPRR PSA AGREEMENT

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

ATTEST:

By: Alfred M. Ellison

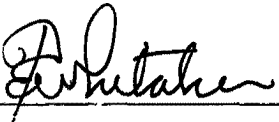
COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION
AUTHORITY

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

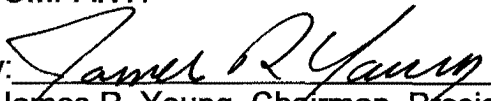
(Signature continued on next page).

CRD & UPRR PSA AGREEMENT

ATTEST:

By: 
Assistant Secretary

THE UNION PACIFIC RAILROAD
COMPANY:

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

SUMMARY OF EXHIBITS

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

CIRD & UPRR PSA AGREEMENT

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

EXHIBIT B



BUILDING AMERICA®

June 30, 2020

Via email to: JDerwinski@METRARR.COM

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

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

Dear Mr. Derwinski,

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

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

Cynthia M. Sanborn
Vice President
Network Planning & Ops

Attachment
Services Transfer Schedule*

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

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

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

EXHIBIT C



July 17, 2020

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

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

Dear Ms. Sanborn:

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

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

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

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

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

Cindy Sanborn
July 17, 2020
Page 2

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

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

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

Sincerely,



James M. Derwinski
CEO/Executive Director

DRAFT: LIST SUBJECT TO CHANGE

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

DRAFT: LIST SUBJECT TO CHANGE

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

DRAFT: LIST SUBJECT TO CHANGE

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

DRAFT: LIST SUBJECT TO CHANGE

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