

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177
(206) 546-1936
FAX: (206) 546-3739

247514

ENTERED
Office of Proceedings
April 17, 2019
Part of
Public Record

16 April 2019

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

Re: STB Docket F.D. 36291
Dakota Southern Railway Company --
Notice of Modified Certificate of PCN
Per 49 C.F.R. 1150.32(a)

For filing 17 April 2019

Dear Ms. Brown:

Enclosed for filing please find an original and ten copies of a Notice of Modified Certificate of Public Convenience and Necessity pursuant to 49 C.F.R. 1150.23(a) on behalf of Dakota Southern Railway Company (DSRC), and a check in the amount of \$1900 for the filing fee. By my signature below, I certify service on counsel for the State of South Dakota and the MRCA per page 7 of the notice.

Thank you for your assistance in this matter. April 17, 2019

FILED
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 17, 2019
SURFACE
TRANSPORTATION BOARD

Very truly,


Charles H. Montange
Counsel for DSRC

Encls.

cc. Counsel for State and MRCA



BEFORE THE SURFACE TRANSPORTATION BOARD

DAKOTA SOUTHERN RAILWAY COMPANY -)
) F.D. 36291
NOTICE OF MODIFIED CERTIFICATE OF)
)
PUBLIC CONVENIENCE AND NECESSITY)

Notice of Modified Certificate of
Public Convenience and Necessity pursuant to
49 C.F.R. 1150.23(a)

Pursuant to 49 C.F.R. 1150.23(a), Dakota Southern Railway Company ("DSRC"), a Class III rail carrier, hereby files this Notice of Modified Public Convenience and Necessity ("Modified Certificate") to provide freight rail operations over approximately 187.98 miles of rail line owned by the State of South Dakota and located between MP 374.44 in Mitchell and extending in a westerly direction to MP 562.53 in Kadoka, in and through the Counties of Davison, Aurora, Brule, Lyman, Jones and Jackson. The line in question is part of a longer line, sometimes referred to herein as the Mitchell to Rapid City ("MRC") line or the "Entire Line," of the former Chicago, Milwaukee, St. Paul & Pacific Railroad Company ("Milwaukee Road").

Pursuant to 49 C.F.R. 1150.23(b), DSRC provides the following required information:

- (1) Name and address of rail carrier: Dakota



Southern Railway Company, c/o Wendall Hoffman, 106 N. Main, White Lake, South Dakota 57383. Mr. Hoffman is the current agent for service of process.

(1)(i) Articles of Incorporation - See Exhibit A (also includes DSRC certificate of good standing).

(1)(ii) Names and addresses of all of its Officers and directors and a statement indicating any present affiliation each may have with a rail carrier:

Michael Williams, President and director

address: 12085 Hwy 13, Richmond, MO 64085

Tammy Williams, Secretary and director

address: same

Mr. and Mrs. Williams (the above) own and control the DSRC through SDR Holding Company. (A copy of the articles of incorporation and certificate of good standing of the holding company is also included in Exhibit A.) Mr. Williams currently owns and controls the following additional rail carriers:

- (1) BG & CM Railroad (76.2 miles of rail line in Idaho);
- (2) Ozark Valley Railroad (24.99 miles of purchased and leased rail line in Missouri); (3) St. Maries River Railroad (71 miles of rail line in Idaho); (4) McCloud Railway (19.6 miles of rail line in California); and (5) Boot Hill & Western Railway Holding

Co., Inc. (10.2 miles of rail line and the right to reactivate service on 15.8 miles of rail-banked rail line in Kansas). See Michael Williams - Control Exemption - SDR Holding Company, F.D 35957, served Dec. 15, 2015. In addition, Mr. Williams owns and controls S+S Shortline Leasing, LLC (which currently provides car storage, but may in the future provide common carrier services, in Nevada) and Fremont Northern Railroad (abandoned and severed line, no operations), and holds an interest in Washington & Idaho Railway, Inc.

(1)(iii) Sufficient information to establish the financial responsibility of the operator: See Exhibit B.

(2) Information about the prior abandonment: The MRC line, which includes the segment from Mitchell to Kadoka (MP 374.44 to MP 562.53), was formerly part of the Milwaukee Road. The Entire Line was authorized for abandonment in 1980 by the United States District for the Northern District of Illinois following the issuance of a report by the Interstate Commerce Commission ("ICC") recommending abandonment; although authorized for abandonment, the Entire Line was not abandoned, but instead acquired by the State of South Dakota ("State") in 1980 during the Milwaukee Road reorganization proceedings. See Sammamish Transportation Co. - Modified Rail Certificate, F.D. 33398, served June 12, 1997, discussing the history of the Entire Line. The portion of the Entire Line west of Kadoka is now rail

banked.¹ In the past, to the best of DSRC's knowledge, two carriers have obtained modified certificate rights to operate over portions of the Entire Line east of Kadoka, but no longer exercise that authority.²

(3) Exact dates of operation and copy of Agreement:

A copy of the pertinent agreement -- a sublease between DSCR and MRC Regional Rail Authority ("MRCA") -- is attached as Exhibit C.³ DSRC has been operating pursuant to the terms of the sublease since January 1, 2012 and will commence operations pursuant to this modified certificate filing immediately. When SDR Holding Company acquired the line from the prior owners, the new owners understood a modified certificate already to exist

¹ See Sammamish Transportation Company - Notice of Interim Trail Use or Abandonment, F.D. 33398 (Sub-No. 1, served Feb. 26, 1998; Mitchell-Rapid City Regional Railroad Authority - Modified Rail Certificate - Between Caputa and Rapid City, SD, F.D. 35149

² See Burlington Northern Railroad Co. - Operations - In the States of IA and SD, F.D. 29672, served Aug. 1981 (Mitchell to Chamberlain); Nobles Rock Railroad, Inc. - Modified Rail Certificate, F.D. No. 33792, served Sept. 16, 1999 (west of Mitchell to Murdo, SD). To the best of DSRC's knowledge, the Burlington Northern's rights were terminated on notice years ago, and Nobles Rock became insolvent and no longer exists.

³ MRCA is a political subdivision of the State. The State leases the line between Mitchell to Kadoka to the MRCA and MCRA subleases the line to DSRC. The sublease provides that MRCA will be the Operator of the line and will assume all common carrier obligations to provide service on the line. (Exhibit C, § 6). A copy of the current lease between the State and MRCR is appended in Exhibit D.

for this operation. However, neither the State of South Dakota nor DSRC can locate such a certificate, and DSRC wishes to obtain modified rail certificate authority as soon as possible in accordance with the terms of the sublease. The term of the current sublease is twenty years (Exhibit C, § 17) from the effective date, stated as January 1, 2012 (Exhibit C, preface). Unless extended, or terminated earlier pursuant to its terms, the last day of operations is accordingly December 31, 2031.

(3) Service to be provided: freight common carrier.

(4)(i) Line over which service is to be performed:

Mitchell to Kadoka segment as previously described, MP 374.44 to MP 562.53.

(4)(ii) Interline connections, including lines of connecting railroads: DSRC interchanges with BNSF Railway Company ("BNSF") at or near Mitchell, SD pursuant to interchange, trackage, haulage, and lease agreements with BNSF.

(4)(iii) Nature and extent of all liability insurance coverage, including binder or policy number and name of insurer: Commercial general and railroad liability \$15 million each occurrence and \$30 million aggregate per certificate of liability insurance attached as Exhibit E.

(4)(iv) Any preconditions which shippers must meet to receive service: Not applicable.

(5) Name and address of any subsidizers: Not applicable.

(6) Sufficient information to establish the financial responsibility of any subsidizers: Not applicable.

Respectfully submitted,



Charles H. Montange
426 NW 162nd Street
Seattle, WA 98177
206-546-1936
Fax: -3739
E-mail: c.montange@frontier.com

Attorney for Dakota Southern
Railway Company

Attachments:

Verification

Exhibit A -- Articles of Incorporation, latest annual reports, certificate of good standing for DSRC; Articles of Incorporation and certificate of good standing for holding company

Exhibit B - financial responsibility information

Exhibit C - Sublease with MRCA,
lessee to State of South Dakota

Exhibit D - Lease between State and MRCA

Exhibit E - Certificate of Liability Insurance for period
7/31/2018 to 7/31/2019

cc.

John LeSeur, Esq.

Slover & Loftus

1224 - 17th St.,

Washington, D.C. 20036

Attorneys for State of South Dakota

Ken Cotton, Esq.

Wipf & Cotton Law Offices

107 S. Main St.

P.O. Box 370

Wagner, SD 57380

Attorneys for MRCA

(both by USPS and by email attachment, 6 April, 2019)

Verification

State of Missouri)
)ss:
County of Platte)

Michael Williams, being duly sworn, deposes and says that he is the President of SDR Holding Company, Inc. d/b/a Dakota Southern Railway Company, and Dakota Southern Railway Company, that he has read the foregoing Notice of Exemption, and knows the facts asserted therein, and that the same are true and correct.



Subscribed and sworn to
Before me this 12th day of
April, 2019

ERICA LAMOR
Notary Public

My commission expires: Mar 08, 2020



Exhibit A

DSRC Articles of Incorporation,
Recent Annual Reports, and
Certificate of Good Standing

And

SDR Holding Company Articles of Incorporation and
Certificate of Good Standing

STATE OF SOUTH DAKOTA
OFFICE OF
THE SECRETARY OF STATE

Certificate Of Incorporation
Business Corporation

I, ALICE KUNDERT, Secretary of State of the State of South Dakota, hereby certify that
duplicate originals of the Articles of Incorporation of

.. DAKOTA SOUTHERN RAILWAY COMPANY
duly signed and verified, pursuant to the provisions of the South Dakota Business Corporation Act,
have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this
Certificate of Incorporation

of .. DAKOTA SOUTHERN RAILWAY COMPANY
and attach hereto a duplicate original of the articles of Incorporation.

IN TESTIMONY WHEREOF, I have hereunto
set my hand and affixed the Great Seal of the
State of South Dakota, at Pierre, the Capital,
this 10th day of

..... June A.D. 1915

Alice Kundert
Secretary of State

Gary D. Vogt
Deputy

SOS CRP 427 5/80

Filed this 10th day of June 19 85

Albert Kumpf
SECRETARY OF STATE

ARTICLES OF INCORPORATION

RECEIVED

JUN 10 1985

Secretary of State

Subscribed by the undersigned for the purpose of forming a SOUTH DAKOTA BUSINESS CORPORATION

ARTICLE I

The name of the corporation is Dakota Southern Railway Company.

ARTICLE II

The period of existence is perpetual.

ARTICLE III

The purpose or purposes for which the corporation is organized are to operate and maintain a common carrier railroad for the transportation of freight and passengers and all related items and all allied lines in connection therewith.

In connection with said purposes, to lease, rent, own, buy and sell all types of personal and real property, to transact whatever business may be necessary in connection with the purposes above set forth, including the right to borrow money and pledge the property of the Corporation therefore.

ARTICLE IV

The number of shares which it shall have authority to issue, limited by class, par value of shares, shares without par value, and series, if any, within a class:

Class	Series	Number of shares	Par value per share or statement that shares are without par value
Common		50	2,000

ARTICLE V

The preferences, limitations, designation and relative rights of each class or series of stock: None

ARTICLE VI

The corporation will not commence business until consideration of the value of at least One Thousand Dollars (\$1,000.00) has been received for the issuance of shares.

ARTICLE VII

The address of its registered office is P. O. Box 144, Delmont, South Dakota 57330
and the name of its registered agent at such address is Leon E. Steege.

STATE OF SOUTH DAKOTA - BUREAU OF ADMINISTRATION - OFFICE OF RECORDS MANAGEMENT - CERTIFICATE OF AUTHENTICITY
THIS IS TO CERTIFY THAT THE MICROPHOTODUPLICATION IMAGE APPEARING ON THIS SLIDE OF MICROFILM IS AN ACCURATE REPRODUCTION OF THE
ORIGINAL RECORD AND WAS MICROFILMED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SOUTH DAKOTA COMPILLED
LAW 1-27-4. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A MANNER
AND ON MICROFILM WHICH MEET THE RECOMMENDED REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROPHOTODUPLICATION
REPRODUCTIONS. REDUCTION 25 ROLL NO. 135
DATE MICROFILMED 6-18-85
CAMERA OPERATOR David Paulson

ARTICLE VIII

The number of directors constituting the initial board of directors is three and the names and addresses of the persons who are to serve as directors:

Name	Address
<u>George A. Huff IV</u>	<u>Rte 1, Box 169-B1, Carthage, TX 75633</u>
<u>Richard H. Huff</u>	<u>P. O. Box 685, Wedderburn, OR 97491</u>
<u>Leon E. Steege</u>	<u>P. O. Box 144, Delmont, SD 57330</u>
_____	_____
_____	_____
_____	_____

ARTICLE IX

The names and addresses of the incorporators:

Name	Address
<u>George A. Huff</u>	<u>Rte 1, Box 169-B1, Carthage, TX 75633</u>
<u>Leon E. Steege</u>	<u>P. O. Box 144, Delmont, SD 57330</u>
_____	_____
_____	_____
_____	_____

ARTICLE X
(Other provisions)

None.

ALL INCORPORATORS MUST SIGN BELOW AND SIGNATURES MUST BE NOTARIZED.

These Articles may be amended in the manner authorized by law at the time of Amendment.

Executed in duplicate on the 28 day of JUNE, 1985
Leon E. Steege
George A. Huff IV

STATE OF SOUTH DAKOTA - BUREAU OF ADMINISTRATION - OFFICE OF RECORDS MANAGEMENT - CERTIFICATE OF AUTHENTICITY
 THIS IS TO CERTIFY THAT THE MICROPHOTGRAPHIC IMAGE APPEARING ON THIS SLIDE OF MICROFILM IS AN ACCURATE REPRODUCTION OF THE
 ORIGINAL RECORD AND WAS MICROFILMED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SOUTH DAKOTA COMPILLED
 LAW 1-27-4. IT IS FURTHER CERTIFIED THAT THE MICROPHOTGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A MANNER
 AND ON MICROFILM WHICH MEET THE RECOMMENDED REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROPHOTGRAPHIC
 REPRODUCTIONS. REDUCTION 25 ROLL NO. 135
 DATE MICROFILMED 6-18-1985
 CAMERA OPERATOR David J. [Signature]

STATE OF Minnesota
 County of Beauregard
 On this 17 day of May, 1985
Dean E. Stuge, the undersigned officer, personally appeared

known to me or satisfactorily proven to be the person(s) whose name(s) subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notarial seal.  **HELEN M. BRYAN**
 NOTARY PUBLIC - MINNESOTA
 BEAUREGARD COUNTY
 Commission expires Jan. 13, 1987

Helen M. Bryan
 Notary Public

STATE OF Texas
 County of McComaches
 On this 3rd day of June, 1985
George A. Hoff IV, the undersigned officer, personally appeared

known to me or satisfactorily proven to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notarial Seal.

Dorinda Krueger
 Notary Public.

FORMS MUST BE SUBMITTED AS DUPLICATE ORIGINALS AND BOTH MUST CARRY ORIGINAL SIGNATURES OF ALL INCORPORATORS AND OF NOTARY PUBLIC.

SDCL 47-9-7. Amounts of fees. The secretary of state shall charge and collect for:
 (1) Filing articles of incorporation and issuing a certificate of incorporation.

Authorized capital stock of	\$ 25,000 or less	\$ 40
Over \$25,000 and not exceeding 100,000		60
Over \$100,000 and not exceeding 500,000		80
Over \$500,000 and not exceeding 1,000,000		100
Over \$1,000,000 and not exceeding 1,500,000		150
Over \$1,500,000 and not exceeding 2,000,000		200
Over \$2,000,000 and not exceeding 2,500,000		250
Over \$2,500,000 and not exceeding 3,000,000		300
Over \$3,000,000 and not exceeding 3,500,000		350
Over \$3,500,000 and not exceeding 4,000,000		400
Over \$4,000,000 and not exceeding 4,500,000		450
Over \$4,500,000 and not exceeding 5,000,000		500

For purposes only of computing fees under this section, the dollar value of each authorized share having a par value shall be equal to such par value and the value of each authorized share having no par value shall be equal to one hundred dollars per share.

STATE OF SOUTH DAKOTA - BUREAU OF ADMINISTRATION - OFFICE OF RECORDS MANAGEMENT - CERTIFICATE OF AUTHENTICITY
 THIS IS TO CERTIFY THAT THE MICROPHOTGRAPHIC IMAGE APPEARING ON THIS SLIDE OF MICROFILM IS AN ACCURATE REPRODUCTION OF THE ORIGINAL RECORD AND WAS MICROFILMED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SOUTH DAKOTA COMPILLED LAW 1-27-4. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A MANNER AND ON MICROFILM WHICH MEET THE RECOMMENDED REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROPHOTODUPLICATIONS.
 REDUCTION 25 ROLL NO. 135
 DATE MICROFILMED 6-18-85
 OPERATOR David J. Smith

Receipt No. *C36863*

File No. *DB-24476*

ARTICLES OF INCORPORATION OF

DAKOTA SOUTHERN RAILWAY COMPANY

50 com. shares, \$2,000 par value
\$100,000.00

Filed at Request of

Ivy Associates
Route 1, Box 169 - 81
Carthage, Texas 75633

State of South Dakota

Office of Secretary of State

Filed in the office of the Secretary of State on
the 10th day of June 19 85

Alice Kunder
Secretary of State

By *Jay D. Vogt*
Deputy

Fee Received \$60

SOS CRP 491 4/81

State of South Dakota

Office of the Secretary of State

Certificate of Good Standing

Domestic Business Corporation

I, **Steve Barnett**, Secretary of State of the State of South Dakota, hereby certify that

DAKOTA SOUTHERN RAILWAY COMPANY

Business ID: DB024476

was authorized to transact business in this state on: June 10, 1985.

I, further certify that **DAKOTA SOUTHERN RAILWAY COMPANY** has complied with the laws of this State relative to the formation of Certificate of Good Standing/Authorizations of its kind and is now regularly and properly organized and existing under the laws of this State and is in Good Standing, as shown by the records of this office. This certificate is not to be construed as an endorsement, recommendation or notice of approval of its financial condition or business activities and practices. Such information is not available from this office.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of South Dakota, in Pierre, the Capital City, this day, April 12, 2019.

Steve Barnett

Steve Barnett
Secretary of State

04/12/2019 3:31 PM

Verification #: 011647116



530539893

South Dakota State Capitol
500 E. Capitol Ave
Pierre, SD 57501-5070
(605) 773-4845

2018
FILING YEAR

ANNUAL REPORT
Domestic Business Corporation
SDCL 59-11-24, 24.1

Please Type or Print Clearly in Ink
Please submit one Original
Make payable to the SECRETARY OF STATE

Filing Fee: \$50
SOC (Agent) Fee: \$10
Total Fee: \$60

B0057-2964 04/02/2018 9:24AM Rec'd by SD SOS

1. Business ID and Name:

DB024476
BUSINESS ID

DAKOTA SOUTHERN RAILWAY COMPANY
BUSINESS NAME

2. The jurisdiction under whose law it is formed SOUTH DAKOTA

3. The address of the principal executive office (business address):

Actual Street Address

**10100 N. AMBASSADOR DR. SUITE 105
KANSAS CITY, MO 64153**

Mailing Address

**10100 N. AMBASSADOR DR. SUITE 105
KANSAS CITY, MO 64153**

4. The South Dakota Registered Agent's Name:

South Dakota law permits the registered agent to be either (a) a noncommercial registered agent, (b) a commercial registered agent, or (c) an office holder.

(b) The South Dakota Commercial Registered Agent's name & CRA#

CRA: **C T CORPORATION SYSTEM (00000002)**

Actual Street Address in this State

**319 S COTEAU ST
PIERRE, SD 57501-3187**

Mailing Address in this State

5. The names and business addresses of its principal officers.

Title	Name	Address
President	MICHAEL WILLIAMS	PO BOX 612, RICHMOND, 64085
Secretary	TAMMY WILLIAMS	PO BOX 612, RICHMOND, MO, 64085

6. The names and business addresses of its directors (governors).

Name	Address
------	---------

7. Beneficial Owners (optional): A beneficial owner is a person who has or in some manner controls an equity security. Please consult an attorney for legal advice if you have any questions concerning this entry. Any question under this heading is considered a request for legal advice and the secretary of state's office is, by statute, not permitted, to provide legal advice.

No person may execute this report knowing it is false in any material respect. Any violation may be subject to a civil and/or criminal penalty (SDCL 47-1A-129; 22-39-36).



04/02/2018

Dated

Email (Optional)

Michael Williams

Signature of an Authorized Person

Michael Williams

Printed Name

B0057-2965 04/02/2018 9:24AM Rec'd by SD SOS



530325222

ANNUAL REPORT

South Dakota State Capitol
500 E. Capitol Ave
Pierre, SD 57501-5070
(605) 773-4845

Domestic Business Corporation
SDCL 59-11-24, 24.1

2017
FILING YEAR

Please Type or Print Clearly in Ink
Please submit one Original
Make payable to the SECRETARY OF STATE

Filing Fee: \$50

Total Fee: \$50

1. Business ID and Name:

DB024476
BUSINESS ID

DAKOTA SOUTHERN RAILWAY COMPANY
BUSINESS NAME

2. The jurisdiction under whose law it is formed **SOUTH DAKOTA**

3. The address of the principal executive office (business address):

Actual Street Address

**10100 N. AMBASSADOR DR. SUITE 105
KANSAS CITY, MO 64153**

Mailing Address, if Different from Street Address

**10100 N. AMBASSADOR DR. SUITE 105
KANSAS CITY, MO 64153**

4. The South Dakota Registered Agent's Name:

South Dakota law permits the registered agent to be either (a) a noncommercial registered agent, (b) a commercial registered agent, or (c) an office holder.

(a) The South Dakota Noncommercial Registered Agent's name

Name **WENDALL HOFFMAN**

Actual Street Address in this State

**106 N MAIN
WHITE LAKE, SD 57383**

Mailing Address in this State, if Different from Street Address

5. The names and business addresses of its principal officers.

Name	Address
MICHAEL WILLIAMS	PO BOX 612, RICHMOND, 64085
TAMMY WILLIAMS	PO BOX 612, RICHMOND, MO, 64085

6. The names and business addresses of its directors (governors).

Name	Address
------	---------

7. Beneficial Owners (optional): A beneficial owner is a person who has or in some manner controls an equity security. Please consult an attorney for legal advice if you have any questions concerning this entry. Any question under this heading is considered a request for legal advice and the secretary of state's office is, by statute, not permitted, to provide legal advice.

No person may execute this report knowing it is false in any material respect. Any violation may be subject to a civil and/or criminal penalty (SDCL 47-1A-129; 22-39-36).



04/12/2017

Dated

Email (Optional)

Michael Williams

Signature of an Authorized Person

Michael Williams

Printed Name

B0028-5714 04/12/2017 9:35AM Rec'd by SD SOS

State of South Dakota

Office of the Secretary of State

Certificate of Good Standing

Domestic Business Corporation

I, **Steve Barnett**, Secretary of State of the State of South Dakota, hereby certify that

SDR HOLDING COMPANY

Business ID: DB054763

was authorized to transact business in this state on: August 31, 2009.

I, further certify that **SDR HOLDING COMPANY** has complied with the laws of this State relative to the formation of Certificate of Good Standing/Authorizations of its kind and is now regularly and properly organized and existing under the laws of this State and is in Good Standing, as shown by the records of this office. This certificate is not to be construed as an endorsement, recommendation or notice of approval of its financial condition or business activities and practices. Such information is not available from this office.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of South Dakota, in Pierre, the Capital City, this day, April 4, 2019.

Steve Barnett

Steve Barnett
Secretary of State

04/04/2019 1:59 PM

Verification #: 011620917

State of South Dakota



OFFICE OF THE SECRETARY OF STATE

Certificate of Incorporation Business Corporation

ORGANIZATIONAL ID #: DB054763

I, **Chris Nelson**, Secretary of State of the State of South Dakota, hereby certify that the Articles of Incorporation of **SDR HOLDING COMPANY** duly signed and verified, pursuant to the provisions of the South Dakota Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY, and by virtue of the authority vested in me by law, I hereby issue this Certificate of Incorporation and attach hereto a duplicate of the Articles of Incorporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this August 31, 2009.



Chris Nelson

Chris Nelson
Secretary of State

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

ARTICLES OF INCORPORATION DOMESTIC BUSINESS CORPORATION

Please Type or Print Clearly In Ink

Please submit one Original and one Photocopy

FILING FEE: \$150 payable to SECRETARY OF STATE

Filed this 31st day of

Aug 2009
Chi Nelson
SECRETARY OF STATE

RECEIVED

AUG 31 2009

S.D. SEC. OF STATE

Telephone # (816) 776-7270

FAX # (816) 470-7069

Required Articles

Article I

The name of the corporation is SDR Holding Company

DB054763

Note: The name must include the term corporation, incorporated, company, limited or the applicable abbreviation.

Article II

The number of shares the corporation is authorized to issue 10,000

Article III

The address of the principal executive office in or out of the State of South Dakota.

PO Box 612

Richmond

MO

64085

Street Address

City

State

ZIP+4

1202 Hwy 13

Richmond

MO

64085

Mailing Address (Optional)

City

State

ZIP+4

Article IV

The South Dakota Registered Agent name

George Alexander Huff

408 E Prospect St

Chamberlain

SD

57325

Street Address (Required to be a South Dakota Address)

City

State

ZIP+4

Mailing Address (Optional - Required to be a South Dakota Address)

City

State

ZIP+4

When listing a Commercial Registered Agent, please state their CRA #.
This number can be obtained from the Commercial Registered Agent.

Article V

The name and address of each incorporator (one or more persons – person includes an individual or entity)

Michael Williams	PO Box 331	Richmond	MO	64085
Incorporator	Street Address	City	State	ZIP+4
Tammy Williams	PO Box 331	Richmond	MO	64085
Incorporator	Street Address	City	State	ZIP+4
Incorporator	Street Address	City	State	ZIP+4
Incorporator	Street Address	City	State	ZIP+4
Incorporator	Street Address	City	State	ZIP+4

This document must be executed by the chair of the board of directors, by its president, or by another of its officers. If directors have not been selected or the corporation has not been formed, an incorporator may execute the document.

Dated [REDACTED]


(Signature of an authorized officer)

Michael Williams
(Printed Name)

President
(Title)

Optional Provisions

Any of the optional articles may be added by attachment.

The names and addresses of the individuals who are to serve as the initial directors

- (1) Provisions not inconsistent with law regarding:
 - (a) The purpose or purposes for which the corporation is organized;
 - (b) Managing the business and regulating the affairs of the corporation;
 - (c) Defining, limiting, and regulating the powers of the corporation, its board of directors and shareholders;
 - (d) A par value for authorized shares or classes of shares; and
 - (e) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;
- (2) Any provision that under this chapter is required or permitted to be set forth in the bylaws;
- (3) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for the amount of a financial benefit received by a director to which the director is not entitled; an intentional infliction of harm on the corporation or the shareholders; a violation of SDCL 47-1A-833; or an intentional violation of criminal law;
- (4) A provision permitting or making obligatory indemnification of a director for liability, as defined in subdivision 47-1A-850(5), to any person for any action taken, or any failure to take any action, as a director, except liability for receipt of a financial benefit to which the director is not entitled; an intentional infliction of harm on the corporation or its shareholders; a violation of 47-1A-833.1; or an intentional violation of criminal law; and
- (5) Any provision limited or denying preemptive rights to acquire additional or treasury shares of the corporation.

Exhibit B

Balance Sheet

Balance Sheet
As of 12/31/2018

Dakota Southern Railroad (DSR)

Assets

Cash

1030	Citizens Bank	\$ 970.47	
1031	USBank	\$ 568.69	
1034	First Dakota National	\$ 1,764.99	
Total Cash:			\$ 3,304.15

Accounts Receivable

1100	AR Trade	\$ 935,687.67	
1150	Allow-Doubtful Accts	\$ 22,103.00	
Total Accounts Receivable:			\$ 913,584.67

Prepaid

1320	Prepaid Insurance	\$ 11,586.21	
1370	Prepaid Expense	\$ 5,000.00	
Total Prepaid:			\$ 16,586.21

Fixed Assets

1500	Land	\$ 200,000.00	
1505	Bldgs/improvements	\$ 11,327.53	
1510	Trucks and Autos	\$ 220,835.30	
1515	Equipment	\$ 841,820.32	
1516	Tools	\$ 18,010.00	
1520	Furn & Office Equip	\$ 11,744.59	
1526	Railroad Structure	\$ 1,443,401.68	
1528	Track Leasehold Improvements	\$ 5,902,484.74	
1590	Accum Depreciation	\$ 2,280,597.05	
Total Fixed Assets:			\$ 6,369,027.11

NR Related Parties

1727	N/R Midwest Pacific	\$ 3,009,602.14	
1742	N/R - Cruz W LLC	\$ 4,728.22	
1746	N/R Williams Term MO	\$ 35,342.94	
1747	Bucks Creek	\$ 40,548.41	
1748	Whitman Terminating	\$ 143.51	
Total NR Related Parties:			\$ 2,928,839.06

Other Assets

1816	Security Deposit	\$ 2,500.00	
Total Other Assets:			\$ 2,500.00
Total Assets:			<u><u>\$ 4,376,163.08</u></u>

Liabilities

Current Liabilities

2000	Accounts Payable	\$ 2,435,584.62	
2005	AP - Other	\$ 127,900.48	
2069	Dep-St. Louis Scrap	\$ 155,284.85	
2070	Deposit RMSI	\$ 285,006.00	
2130	Sale Tax Payable	\$ 1,962.90	
2165	Property Tax	\$ 9,752.94	
2174	Miscellaneous	\$ 36,311.95	
2300	Unearned Gain on sale/leaseback-current	\$ 1,500.00	
Total Current Liabilities:			\$ 2,483,291.74

Payroll & Related Liabilities

2200	Accrued Payroll	\$ 22,211.01	
2224	Kentucky W/H	\$ 251.97	

Balance Sheet
As of 12/31/2018

Dakota Southern Railroad (DSR)

		(Continued)		
Payroll & Related Liabilities				
2235	Health Ins		\$ 998.16	
2240	401 K		\$ 1,689.21	
2241	Tier I and II		\$ 12,291.31	
	Total Payroll & Related Liabilities:			\$ 37,441.66
Long-Term Liabilities				
2600	Unearned gain on sale/leaseback-LT		\$ 1,750.00	
	Total Long-Term Liabilities:			\$ 1,750.00
Long Term Debt				
2764	NP - Iron Horse Development Co		\$ 41,072.72	
	Total Long Term Debt:			\$ 41,072.72
LTD Related Parties				
2820	NP S&S Shortline		\$ 35,058.77	
2837	N/P Mike Williams		\$ 495,625.95	
2846	NP Gamer Williams		\$ 10,180.10	
2850	N/P Rapid Rail		\$ 74,554.57	
2859	NP Williams Group Terminating SD		\$ 5,019.88	
	Total LTD Related Parties:			\$ 620,439.27
	Total Liabilities:			\$ 3,183,995.39
Equity				
3010	Capital Stock		\$ 1,000.00	
3200	Retained Earnings		\$ 847,019.24	
3200	Retained Earnings-Current Year		\$ 344,148.45	
	Total Equity:			\$ 1,192,167.69
	Total Liabilities & Equity:			\$ 4,376,163.08

Exhibit C

Sublease with MRCA

**SUBLEASE AGREEMENT BETWEEN
MRC REGIONAL RAILROAD AUTHORITY
AND
DAKOTA SOUTHERN RAILWAY COMPANY**

THIS SUBLEASE AGREEMENT, "Agreement," is made and entered into by and between the MRC Regional Railroad Authority, referred to in this Agreement as the "Authority," and the Dakota Southern Railway Company, referred to in this Agreement as the "Operator." This Agreement is effective beginning January 1, 2012.

BACKGROUND:

1. The State of South Dakota, "State," is the owner of railroad property, including mainline tracks, sidings, and extra-width property facilities beginning at MRM 374.55 at Mitchell, South Dakota, and ending at MRM 562.53 at Kadoka, South Dakota. The railroad property runs through the following counties for a distance of approximately 187.98 miles: Davison, Aurora, Brule, Lyman, Jones, and Jackson.
2. The Authority entered into an agreement with the State to lease that part of the above-described railroad property, including mainline tracks, sidings, and extra-width property facilities, but excluding any property which is currently subject to a lease by the State to a third party. All property leased to third parties is identified in records on file at the South Dakota Department of Transportation, 700 East Broadway Avenue, Pierre, South Dakota 57501-2586. In addition, the State may exclude additional property at any time during the term of this Agreement with the Authority's consent. The parties recognize and agree that this Agreement is for railroad purposes. Consequently, the parties agree that any property not necessary for railroad operations will be excluded from and not be considered part of the leased property, upon designation of such property by the State and concurrence by the Authority. The Authority's concurrence will not be unreasonably withheld.
3. The railroad property leased by the State to the Authority will be referred to in this Agreement as the "Rail Facilities."
4. The Authority wants to permit the Operator to use any and all of the Authority's rights and licenses in these Rail Facilities.

THE AUTHORITY AND THE OPERATOR MUTUALLY AGREE AS FOLLOWS:

1. Purpose. The Authority will permit the Operator to use the Rail Facilities.
2. Condition of Rail Facilities. The Operator understands and agrees the Rail Facilities are subleased in "AS IS" condition. The State and the Authority will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purpose of this Agreement.
3. Representations and Warranties. The Operator accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Agreement, the Operator acknowledges the Operator has inspected the Rail Facilities, including all improvements and structures. The Operator acknowledges that no representations have been made by the State or the Authority or relied upon by the Operator concerning the state or condition of the Rail Facilities.
4. Operating Rights. The Authority permits the Operator to use any and all of the Authority's rights and licenses in and to the Rail Facilities to the extent necessary for the purpose of providing rail freight service, passenger service, and rail car storage. Passenger service may include recreational motorcar use by individuals and organizations. If individual or organizational motorcar clubs are allowed by the Authority to utilize any portion of the Rail Facilities under lease in this Agreement or sublease, as the case may be, it will be the responsibility of the Authority and the Operator to obtain a

certificate of insurance naming the State, the Authority, and the Operator as additional insureds, prior to any motorcar event; and, further, the Authority and the Operator will obtain from the individual recreational motorcar enthusiast or organization, as the case may be, an indemnification agreement to be executed by the person or entity in charge of the motorcar event, indemnifying the State and the Authority from any claim or liability arising out of the event, and will provide copies of said indemnification agreements to the State prior to any motorcar travel on the Rail Facilities. The rights granted to the Operator under this Agreement relate solely to the provision of these rail services on the Rail Facilities. The Operator may not use the Rail Facilities for any other purpose without the prior written authorization of the Authority and the State.

The Operator may lease rail sidings on the Rail Facilities for rail operations. The Operator will not refuse to lease a siding to a rail shipper or a prospective rail shipper without the State's and the Authority's prior written consent, and no lease price for any rail siding will exceed the State of South Dakota Rail Board Guidelines for lease prices without the State's and the Authority's prior written consent. If the State and the Authority disagree, the State's position will prevail. The Operator will require any lessee of rail siding to indemnify the State and the Authority from suits, actions, and claims on the same basis as set forth in Section 7 below.

This Agreement is subject to the State's prior written consent. This Agreement is expressly made subject to all of the terms, conditions, and limitations contained in the Lease Agreement entered into between the Authority and the State effective January 1, 2012.

Neither the State nor the Authority will have any obligation to perform any maintenance on the Rail Facilities. The Operator will be responsible for the normal and regular work required to keep the Rail Facilities in a condition necessary to enable safe operations as further provided by paragraph 14 of this Agreement.

5. Administration of Rail Facilities. Notwithstanding any provision of this Sublease Agreement, or the Lease Agreement between the State and the Authority, the State will retain sole responsibility for the management of State-owned facilities and equipment located on the railroad property described at BACKGROUND Paragraph 1 which are not required for railroad purposes. The State may grant leases, easements, licenses, and all other similar property rights, on the Rail Facilities for non-rail purposes, including, but not limited to, placement on the Rail Facilities of utilities, fiber optics cables, pipelines, at grade crossings and grade separations, and other non-rail related facilities and businesses, provided that such leases, easements, and licenses do not unreasonably interfere with the Authority's or the Operator's performance of rail operations. The State will be entitled to all revenues derived from such grants of property rights.
6. Common Carrier Obligations. The Operator will assume all common carrier obligations related to the operation of the Rail Facilities for the term of this Agreement.
7. Liability of Operator. The Operator will indemnify the Authority, and the State, and their individual members, representatives, officers, employees, successors, and assigns, from all suits, actions, or claims of any character pertaining to any death, injury, or damage received or sustained by any person or persons whomsoever (including, but not limited to, State and Authority employees), and any property whatsoever (including, but not limited to, State or Authority-owned property), which arises out of or as a result of entering into this Agreement or any rail siding lease, except when such death, injury, or damage is caused by the sole negligence of the State. The Operator will cause all lessees of rail sidings to indemnify the State from suits, actions, or claims on the same basis as set forth in this Section 7.
8. Laws to be Observed. The Operator will keep fully informed of all federal, state, and local laws, rules, ordinances, regulations, injunctions, and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, including without limitation any laws, rules, ordinances, regulations, orders, or decrees identified in this Agreement. The Operator will at all times observe and comply with all such laws, rules, ordinances, regulations,

and all final orders and decrees. The Operator will indemnify the State, the Authority, and their officers, employees, and representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree.

9. Insurance. The Operator will maintain a Commercial General form of insurance covering liability in connection with any of Operator's activities or operations on or near the Rail Facilities, including but not limited to Public Liability, Personal Injury, and Property Damage; Federal Employers Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable state law); said insurance must contain a specific waiver of the insurance company's subrogation rights against the State; Bill of Lading and Foreign Rolling Stock Liability; and Contractual Liability; with such limits (consistent with the terms set forth below), deductibles and exclusions as the State may agree are satisfactory, provided however, that: (i) such limits will not be less than \$5 million per occurrence; and \$10 million in the aggregate; and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State and the Authority must be named as an additional insureds on such liability insurance policies. Any coverage afforded to the State and the Authority as an additional insureds will apply as primary insurance of the State and the Authority, and will not be deemed to be excess to any insurance issued in the name of the State and the Authority. The Operator must obtain such liability insurance from an insurance company licensed to do business in the State of South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

The Operator will furnish to the State and the Authority, Certificates of Insurance satisfactory to the State, certifying the issuance to the Operator of the policies of Insurance providing the types of insurance and limits of liability prescribed above, and stating the State will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution, or cancellation of such insurance policies in advance of normal expiration dates. If the Operator does not maintain the required insurance coverage, the State or the Authority may immediately terminate this Agreement, without notice to the Operator and without opportunity to cure such default. The Operator will supply the State and the Authority with copies of its insurance policies and any amendments within ten (10) days of receiving a request for the same from the State or the Authority. The Operator acknowledges that the purchase of insurance as required by this Paragraph will not in any way limit the liability of the Operator.

10. Amendment. No term or provision of this Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge, or termination is sought; provided however, when an emergency situation arises, changes in this Agreement may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telefacsimile or other delivered writing.
11. Assignment. The Operator will not assign its rights or delegate its duties under this Agreement or any part of this Agreement, without the prior written consent of the State and the Authority. An approved assignment will not relieve the Operator of its primary responsibility to the Authority.
12. State and Authority Inspection. The Authority and the State or a duly authorized representative of either, upon reasonable notice to the Operator or its duly authorized representatives, reserve the right at all times to perform any and all inspections over and across the Rail Facilities, including rail trackage, for the purpose of verifying compliance with the terms and conditions of this Agreement and the Agreement executed previously between the State and the Authority. The Operator will correct any deficiency noted during each rail inspection within the time frames set by the State and the Authority. The State/Authority inspections or failure to conduct such inspections will not relieve the Operator of the responsibility to properly maintain the Rail Facilities.
13. Responsibility for Rehabilitation. The State and the Authority will have no responsibility for rehabilitating the Rail Facilities.

14. Additions to Rail Facilities. The term "Addition(s)" as used in this Agreement means capital improvements which are in addition to the Rail Facilities. The Authority grants to the Operator the right to make such Addition(s) to the Rail Facilities as the Operator may require to permit rail freight, passenger service, or rail car storage, at the Operator's sole expense. The Operator will own and have the right to remove any Addition outside of the actual mainline and siding track structures, only if the Addition can be removed without causing the Rail Facilities to be less serviceable than before said Addition was made. Any Addition which cannot be removed without diminishing serviceability will become the State's property and will become a part of the Rail Facilities. Under no circumstances may any Addition placed into the actual mainline or siding track structures be removed at the termination of this Agreement, such Addition will remain the property of the State.
15. Maintenance. The State and the Authority will have no obligation to perform any maintenance of the Rail Facilities. The Operator will maintain any sections of the Rail Facilities upgraded by state and federal funding to FRA Class II standards, subject only to normal wear. On sections not upgraded, the Operator will be responsible for the normal and regular work required to keep the Rail Facilities in the condition necessary to enable safe rail operations, including, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, snow removal, brush cutting, and weed control, and other necessary repairs and work.
16. Payment. The Operator will make an annual rent payment "Rent," to the Authority based on traffic for each calendar year for the lease and use of the Rail Facilities, equal to one and one-half percent (1.5%) of the gross revenues for any rail freight, passenger service, or rail car storage originating, terminating, or carried along any point on the Rail Facilities.
- Revenues will be calculated each calendar year commencing January 1, 2012, and the Rent will be payable on May 1 of the next succeeding year, commencing May 1, 2013. A late payment fee will be assessed to annual payments not received by May 1 of each year, calculated at a rate of 1.5% per month.
- Further, the Operator agrees that the Authority reserves the right to renegotiate the Rent on or before each annual anniversary date of this Agreement by giving the Operator notice, in writing, at least fifteen (15) days prior to the annual anniversary date of each year that the Authority intends to renegotiate the Rent.
17. Term. Subject to paragraphs 9 and 18, this Agreement will continue in full force and effect for a period of twenty (20) years from and after the effective date of this Agreement.
18. Termination for Fault. Should either the Operator or the Authority substantially fail to perform its obligations under this Agreement, and continue in such default for a period of sixty (60) days, the party not in default will have the right at its option, after first giving thirty (30) days' written notice to the party in default, and notwithstanding any waiver by the party giving notice of any prior breach, to terminate this Agreement. It is further agreed that inadequate or substandard performance by the Operator will constitute a basis upon which the State and the Authority may terminate this Agreement on twenty (20) days' notice to the Operator under this paragraph. Activities to be considered default include, but are not limited to: fraud, theft of state property, non-payment of rent, misappropriation of funds, and lapse of insurance. Inadequate or substandard performance includes, but is not limited to, two or more instances of failure to cause movement of loaded or empty rail cars within seven (7) days of release to the Operator. Upon termination of this Agreement, the Operator will return any sections of the Rail Facilities upgraded by state and federal funding in a condition meeting FRA Class II standards, subject only to normal wear, and, on sections not upgraded, in not less than the condition which existed on the effective date of this Agreement or in a condition necessary to enable safe rail operations, whichever is the greater.
19. Audit. The Operator will keep detailed records, accounts, invoices, and supporting documentation pertaining to all costs paid for under this Agreement. Upon reasonable notice, the Operator will allow

the State and the Authority, through any authorized representative to examine and copy all records, accounts, invoices, and supporting documents.

20. Operator's Right of First Refusal. So long as the Operator remains as the Authority's designated operator of the Rail Facilities, if the State desires to sell all or any part of the Rail Facilities, the State will offer all or such part of the Rail Facilities to the Operator in writing upon the same terms and conditions of any bona fide written third party offer received for said Rail Facilities. The Operator will have thirty (30) days to accept such offer in writing, and will have one hundred and twenty (120) days thereafter to close on the purchase of the Rail Facilities. If the Operator does not accept or close within these time periods, then the State will be free to accept the initial third party offer and complete the sale of the Rail Facilities, or any portion thereof, to that offeror. Upon such sale, the terms and conditions of this Agreement will continue in full force and effect for its remaining term, and will bind the State's successors and assigns. If the State received multiple bona fide third party offers, the Operator will be obligated to match the best (as determined by the State in its reasonable discretion) offer.
21. Notice. Except as expressly provided otherwise, all notices or other communications required under this Agreement will be in writing and will be deemed duly given, if delivered in person, by telefacsimile, or by overnight commercial carrier, to the address set forth below. Notices will be given by and to the contacts listed below, or such authorized designees as either party may from time to time designate in writing.

For the Authority:

Chairperson (or any successor chairperson)
MRC Regional Railroad Authority
25129 401st Avenue
Mitchell, SD 57301

For the Operator:

President (or any successor)
Dakota Southern Railway Company
P.O. Box 612
Richmond, MO 64086

For the State:

Program Manager, Office of Air, Rail, and Transit
SD Department of Transportation
700 Broadway Avenue East
Pierre, SD 57501-2586

22. Severability. If any court of competent jurisdiction holds any provision of this Agreement unenforceable or invalid, such holding will not invalidate or render unenforceable any other provisions of this Agreement.
23. Entire Agreement. All other prior discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and, except as specifically provided in this Agreement, this Agreement constitutes the entire agreement with respect to its subject matter. The terms of this Agreement have been arrived at after mutual negotiation and, therefore, the parties intend that the terms of this Agreement not be construed against any of the parties by reason of the fact that the Agreement was prepared by one of the parties.
24. Force Majeure. Performance (other than payment of Rent) pursuant to this Agreement is subject to events of force majeure, including accidents, acts of God, weather conditions, tortuous acts of third

parties, restrictions imposed by any government or governmental agency, or other similar events beyond the reasonable control of the parties. If performance under this Agreement or operability of the Rail Facilities is prevented by any cause described above, the State and Authority will be under no obligation to restore the operability of the Rail Facilities to enable resumption of performance under this Agreement. If restoration is not made, then this Agreement will be terminated without penalty to either party.

25. Authority to Sign Agreement on behalf of the Authority. The Authority has designated its Chairperson as the Authority's authorized representative and has empowered the Chairperson with the authority to sign this Agreement on behalf of the Authority. A copy of the Authority's Commission minutes or resolution authorizing the execution of this Agreement by the Chairperson as the Authority's authorized representative is attached to this Agreement as Exhibit A.
26. Authority to Sign Agreement on behalf of the Operator. The Operator has designated its President as the Operator's authorized representative and has empowered the President with the authority to sign this Agreement on behalf of the Operator. A copy of the Operator's Commission minutes or resolution authorizing the execution of this Agreement by the President as the Operator's authorized representative is attached to this Agreement as Exhibit A.

This Agreement is binding upon the signatories not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of the State and the Authority to enter into the same.

Dakota Southern Railway Company

By: Mike Williams

Its: President

Date: 6/4/12

(Corporate Seal)

MRC Regional Railroad Authority

By: Sam Harnway

Its: Chairperson

Date: 4-11-12

(Corporate Seal)

ACKNOWLEDGMENTS FOLLOW

Consent to enter into this Agreement given this 7th day of June, 2012.

State of South Dakota
Department of Transportation

By: B. S. Luk

Its: Program Manager
Office of Air, Rail, and Transit

Approved as to Form

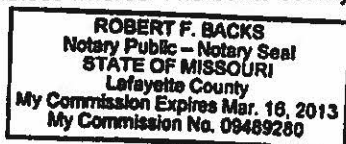
Paula J. [Signature]
Special Assistant Attorney General

OPERATOR ACKNOWLEDGMENT

STATE OF Missouri)
COUNTY OF Ray) SS

On this the 4 day of June, 2012, before me, Robert F. Backs, a Notary Public within and for said County and State, personally appeared Michael W. Williams, President of the Dakota Southern Railway Company, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



(NOTARY SEAL)

Robert F. Backs

NOTARY PUBLIC

My Commission Expires: 3-16-13

AUTHORITY ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF Charles Mix) SS

On this the 11th day of APRIL, 2012, before me, Kenneth W. Cotton, a Notary Public within and for said County and State, personally appeared Thomas Greenway, Chairperson of the MRC Regional Railroad Authority, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Kenneth W. Cotton

NOTARY PUBLIC

My Commission Expires: 8-1-2015

Use the TAB key to move to the next field
See DOT 121 instructions for completing this form

	Select	Enter number
1. Contract Type	New Agreement	

Note: A DOT-121 form required for workorders and assignments to workorders.

2. Complete for Amendment/IGGOMOD and Wastewater only

CONTRACT NUMBER
010867

FINANCE TO COMPLETE	
DATE ASSIGNED	INITIAL
7-3-12	KL

2. SECOND PARTY NAME
Dakota Southern Railway Company

ADDRESS
P.O. Box 612, Richmond, MO 64085

4. VENDOR NUMBER (IF AVAILABLE)	PURPOSE CODE	5. PERIOD COVERED	START DATE	EXPIRATION DATE
	900		01/01/2012	12/31/2031

4. PURPOSE OF AGREEMENT

Sublease for MRC Rel line Between MRC RRA and Dakota Southern

7. ORIGINATING OFFICE NUMBER	8. OUT-DISTRICT PERSONNEL	9. PHONE
111144	Misty Siedschlaw	3048

9. WAS STANDARD TEMPLATE USED WITHOUT CHANGE? Enter Yes / No	Yes
--	-----

10. IS THIS A JOINT POWERS AGREEMENT PER RCCL 1-34-6.17 Yes / No **No**

11. IS THIS RELATED TO SOFTWARE OR IT CONSULTING? Enter Yes/no in y/n, answer the following questions & attach IT review document:	No
HAS A MORATORIUM BEEN ISSUED BY SIT? Yes/no	Click on link for MORATORIUM GUIDANCE

12. W-4 ATTACHED (Click text for W-4 Form) Enter Yes / No		No	Click on link for W-4 Form Link to R26
ATTACH A COPY OF THE RFP FOR PROFESSIONAL SERVICE CONTRACTS \$10,000 OR GREATER PER BCL 5-460-12. ENTER YES/NO			
IS THIS FOR A SERVICE, PROFESSIONAL SERVICE, OR SUPPLY OF POLICE OR GREATER REFER TO 2002 2010 SEASON? ENTER YES/NO			
ATTACH A COPY OF THE MINUTES FOR CONTRACTS WITH LOCAL GOVERNMENT ENTITIES. ENTER YES/NO			

12. DOES THIS CONTRACT REQUIRE A DOT BILLING? Enter Yes / No	No
--	----

14. AGREEMENT TYPE (CHECK ONE)	ACTUAL COST		
	LUMP SUM		
	OTHER		DESCRIPTION

15. **COMMENTS:**

less is 1.6% of gross revenues for any rail freight, passenger or rail car storage

10.	AMOUNT PAYABLE	FEDERAL SHARE	STATE SHARE	LOCALITY SHARE	TOTAL PROJECT
TOTAL PAYABLE AMT	-				-
ADJUSTMENT	-				-
TOTAL		-	-		-
FIXED FEE AMOUNT (INCLUDED IN ABOVE)					-

[illegible]

LEAD REVIEW:		AUDIT REVIEW:	
N/A - Already Approved		N/A	
_____ SIGNATURE	_____ DATE	_____ SIGNATURE	_____ DATE

Amendment Number 1 to Agreement Number 910867

BACKGROUND:

1. On January 1, 2012, the MRC Regional Railroad Authority, referred to in this Amendment as the "Authority," and Dakota Southern Railway Company, referred to in this Amendment as the "Operator," entered into a sublease agreement, which agreement, referred to in this Amendment as the "AGREEMENT," was signed by a representative of each party and assigned agreement number 910867 by the State of South Dakota, acting by and through its Department of Transportation, referred to in this Amendment as the "State."
2. The Authority and the Operator wish to amend the AGREEMENT effective June 25, 2015.

THE AUTHORITY AND THE OPERATOR MUTUALLY AGREE AS FOLLOWS:

1. Effective June 25, 2015, paragraph 16 of the AGREEMENT, entitled "Payment," is revised to read as follows:

16. Payment. The Operator will make an annual rent payment, "Rent" to the Authority based on traffic for each calendar year for the lease and use of the Rail Facilities, equal to one and one half percent (1.5%) of the gross revenues for any rail freight, passenger service, or rail car storage originating, terminating, or carried along any point on the Rail Facilities. In addition to the Operator making the annual rent payment, the Operator will make an annual per car surcharge payment, "Surcharge" of Fifty Dollars (\$50.00) on all traffic originating and all traffic with a destination on the rail line effective January 1, 2015.

Revenues will be calculated each calendar year commencing January 1, 2012, and the Rent will be payable on May 1 of the next succeeding year, commencing May 1, 2013. The Surcharge will be calculated each calendar year commencing January 1, 2015, and the Surcharge will be payable on May 1 of the next succeeding year, commencing May 1, 2016. A late payment fee will be assessed to annual payments not received by May 1 of each year, calculated at a rate of 1.5% per month.

Further, the Operator agrees that the Authority reserves the right to renegotiate the Rent on or before each annual anniversary date of this Agreement by giving the Operator notice, in writing, at least thirty (30) days prior to the annual anniversary date of each year that the Authority intends to renegotiate the Rent.

2. Except as modified by this Amendment, all other terms and conditions of the AGREEMENT will remain in full force and effect.

SIGNATURE PAGE FOLLOWS:

This Amendment is binding upon the signatories not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of the Authority and the Operator to enter into the same.

MRC Regional Railroad Authority

By: Thomas Greenway

Its: Chairperson

Date: 12-17-15

(CORPORATE SEAL)

Dakota Southern Railway Company

By: Mike Williams

Its: President

Date: 12-23-2015

(CORPORATE SEAL)

ACKNOWLEDGMENTS FOLLOW

Consent to enter into this Agreement given this _____ day of _____, 20_____.

State of South Dakota
Department of Transportation

By: _____

Its: Secretary

Approved as to Form:

William J. Herin
Special Assistant Attorney General

AUTHORITY ACKNOWLEDGMENT

STATE OF South Dakota)
) : SS
COUNTY OF BRAZOS)

On this the 17th day of DECEMBER, 2015, before me, KENNETH W. COTTON, a Notary Public within and for said County and State, personally appeared THOMAS BALKAWAY, Chairperson of the MRC Regional Railroad Authority, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Kenneth W. Cotton

NOTARY PUBLIC

My Commission Expires: 8-1-2021

OPERATOR ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) : SS
COUNTY OF _____)

On this the _____ day of _____, 20____, before me, _____, a Notary Public within and for said County and State, personally appeared _____, Chairperson of the Dakota Southern Railway Company, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

(NOTARY SEAL)

NOTARY PUBLIC

My Commission Expires: _____

AMENDMENT NUMBER 2 TO AGREEMENT NUMBER 910867

BACKGROUND:

1. On January 1, 2012, the MRC Regional Railroad Authority, referred to in this Amendment as the "Authority," and Dakota Southern Railway Company, referred to in this Amendment as the "Operator," entered into a sublease agreement, which agreement, referred to in this Amendment as the "AGREEMENT," was signed by a representative of each party and assigned agreement number 910867 by the State of South Dakota, acting by and through its Department of Transportation, referred to in this Amendment as the "State."
2. Having previously amended the AGREEMENT, the Authority and the Operator wish to further amend the AGREEMENT effective June 25, 2015.

THE AUTHORITY AND THE OPERATOR MUTUALLY AGREE AS FOLLOWS:

1. Effective June 25, 2015, paragraph 16, entitled "Payment," is revised to read as follows:

16. Payment. The Operator will make an annual rent payment, "Rent" to the Authority based on traffic for each calendar year for the lease and use of the Rail Facilities, equal to one and one-half percent (1.5%) of the gross revenues for any rail freight, passenger service, or rail car storage originating, terminating, or carried along any point on the Rail Facilities. In addition to the Operator making the annual rent payment, the Operator will make an annual per car surcharge payment ("Surcharge") of Fifty Dollars (\$50.00) on all traffic originating on the Rail Facilities and all traffic with a destination on the Rail Facilities. No Surcharge will be applied to any established or new rail shippers located within the first 3.5 miles of the Rail Facilities immediately west of the BNSF switch near Mitchell (milepost 374.55 to milepost 378.00), unless their shipments extend to any point west of the first 3.5 miles of line.

Revenues will be calculated each calendar year commencing January 1, 2012, and the Rent will be payable on May 1 of the next succeeding year, commencing May 1, 2013. The Surcharge will be calculated each calendar year commencing January 1, 2015, and the Surcharge will be payable on May 1 of the next succeeding year, commencing May 1, 2016. A late payment fee will be assessed to annual payments not received by May 1 of each year, calculated at a rate of 1.5% per month.

Further, the Operator agrees that the Authority reserves the right to renegotiate the Rent on or before each annual anniversary date of this Agreement by giving the Operator notice, in writing, at least thirty (30) days prior to the annual anniversary date of each year that the Authority intends to renegotiate the Rent.

2. Except as modified by this Amendment, all other terms and conditions of the AGREEMENT along with the prior amendment will remain in full force and effect.

SIGNATURE PAGE FOLLOWS

This Amendment is binding upon the signatories not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of the Authority and the Operator to enter into the same.

MRC Regional Railroad Authority

By: Jan Greenway

Its: Chairperson

Date: 7-28-16

(CORPORATE SEAL)

Dakota Southern Railway Company

By: Michael Miller

Its: President

Date: Aug 17, 2016

(CORPORATE SEAL)

ACKNOWLEDGMENTS FOLLOW

Consent to enter into this Agreement given this 17 day of August, 20 16.

State of South Dakota
Department of Transportation

By: [Signature]

Its: Secretary

Approved as to form:

[Signature]
Special Assistant Attorney General

AUTHORITY ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) : SS
COUNTY OF Charles Mix)

On this the 28th day of July, 2016, before me, Kenneth W. Cotton, a Notary Public within and for said County and State, personally appeared Tommy Spiering, Chairperson of the MRC Regional Railroad Authority, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Kenneth W. Cotton
NOTARY PUBLIC

My Commission Expires: 8-1-2021

OPERATOR ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) : SS
COUNTY OF Hughes)

On this the 1st day of August, 2016, before me, Wanda Amundson, a Notary Public within and for said County and State, personally appeared Michael Williams, President of the Dakota Southern Railway Company, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Wanda Amundson
NOTARY PUBLIC

My Commission Expires: June 7, 2022

Exhibit D

Current Lease between State and MCRA

910866

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
LEASE AGREEMENT**

This Lease Agreement, "Agreement," is made and entered into by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "State," and the MRC Regional Railroad Authority, referred to in this Agreement as the "Authority." This Agreement is effective beginning January 1, 2012.

BACKGROUND:

1. The State is the owner of railroad property, including mainline tracks, sidings, and extra-width property facilities beginning at MRM 374.55 at Mitchell, South Dakota, and ending at MRM 562.53 at Kadoka, South Dakota. The railroad property runs through the following counties for a distance of approximately 187.98 miles: Davison, Aurora, Brule, Lyman, Jones, and Jackson.
2. The parties wish to enter into an agreement for the lease of that part of the above-described railroad property, including mainline tracks, sidings, and extra-width property facilities, but excluding any property which is currently subject to a lease by the State to a third party. All property leased to third parties is identified in records on file at the South Dakota Department of Transportation, 700 East Broadway Avenue, Pierre, South Dakota 57501-2586. In addition, the State may exclude additional property at any time during the term of this Agreement with the Authority's consent. The parties recognize and agree that this Agreement is for railroad purposes. Consequently, the Authority will not unreasonably withhold its consent to exclude property not necessary for railroad purposes.
3. The railroad property leased by the State to the Authority pursuant to this Agreement will be referred to in this Agreement as the "Rail Facilities."
4. The State has received the approval of the South Dakota State Railroad Board and the written consent of the Governor to enter into this Agreement for railroad purposes.
5. With the consent of the State, the Authority intends to sublease the Rail Facilities to Dakota Southern Railway Company, referred to in this Agreement as the "Operator," pursuant to a sublease agreement.

THE STATE AND THE AUTHORITY MUTUALLY AGREE AS FOLLOWS:

1. Purpose. The State hereby leases the Rail Facilities to the Authority.
2. Condition of the Rail Facilities. The Authority acknowledges the Rail Facilities are leased in "AS IS" condition. The State will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purpose of this Agreement.
3. Representations and Warranties. The Authority accepts the Rail Facilities "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Agreement, the Authority acknowledges the Authority and the Operator have inspected the Rail Facilities, including all improvements and structures. The Authority and the Operator agree that no representations have been made by the State concerning the state or condition of the Rail Facilities, and neither the Authority nor the Operator are relying on any representation made by the State concerning the state or condition of the Rail Facilities.
4. Operating Rights. The State permits the Authority to use any and all of the State's rights and licenses in the Rail Facilities to the extent necessary for the purpose of providing rail freight, passenger service, and rail car storage. Passenger service may include recreational motorcar use by individuals and organizations. If individual or organizational motorcar clubs are allowed by the Authority to utilize any portion of the Rail Facilities under lease in this Agreement or sublease, as the case may be, it will be the responsibility of the Authority and the Operator to obtain a certificate of insurance naming the State, the Authority, and the Operator as additional insureds, prior to any motorcar event; and, further, the Authority and the Operator will obtain from the individual recreational motorcar enthusiast or organization, as the case may be, an indemnification agreement to be executed by the person or entity in charge of the motorcar event, indemnifying the State and the Authority from any claim or liability arising out of the event, and will provide copies of said indemnification agreements to the State prior to any motorcar travel on the Rail Facilities. The rights granted the Authority under this Agreement relate solely to the provision of rail freight, passenger service, and rail car storage on the Rail Facilities. The Authority will not use or sublease the Rail Facilities for any other purpose without the State's prior written authorization.

It is in the State's best interest that the Rail Facilities be utilized by as many shippers and receivers as possible for the shipment and receipt of commodities via rail. Therefore, the Authority will allow the Operator

to lease rail sidings on the Rail Facilities for rail operations. The Authority will require the Operator to lease siding to a rail shipper or a prospective rail shipper and will require the lease price to not exceed the State of South Dakota Rail Board Guidelines for lease prices, unless the State consents otherwise. The Authority will ensure that the Operator will require any lessee of rail siding to indemnify the State from suits, actions, and claims on the same basis as set forth in Section 8 below.

5. Provision of Operations. The Authority will obtain the State's advance approval, in writing, of any contract the Authority intends to enter into with an operator to provide rail freight service, passenger service, or rail car storage over the Rail Facilities. Any such approved contract must be made subject to all of the terms, conditions, and limitations contained in this Agreement.
6. Administration of Rail Facilities. Notwithstanding any provision of this Agreement, the State will retain sole responsibility for the management of all State-owned facilities and equipment located on the railroad property described in BACKGROUND Paragraph 1 not required for railroad purposes. The State may grant leases, easements, licenses, and all other similar property rights on the Railroad property and Rail Facilities for non-railroad purposes, including, but not limited to, placement on the Rail Facilities of utilities, fiber optic cables, pipelines, at-grade crossings and grade separations, and other non-rail related facilities and businesses, provided that such leases, easements, and licenses do not unreasonably interfere with the Authority's or the Operator's rail operations. The State will be entitled to all revenues derived from such grants of property rights.
7. Common Carrier Obligations. The Authority or the Operator will assume all common carrier obligations related to the operation of the Rail Facilities during the term of this Agreement.
8. Liability of Authority. The Authority will indemnify the State, its subdivisions and representatives, officers, employees, successors, and assigns, from all suits, actions, or claims of any character pertaining to any death, injury, or damage received or sustained by any person or persons whomsoever (including, but not limited to, State employees), and any property whatsoever (including, but not limited to, State-owned property), which arises out of or as a result of entering into this Agreement, or the rail siding leases referenced in Section 4, except when such death, injury, or damage is caused by the sole negligence of the State.
9. Laws to be Observed. The Authority and the Operator will keep fully informed of all federal, state, and local laws, rules, ordinances, regulations, injunctions, and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, including without limitation any laws, rules, ordinances, regulations, orders, or decrees identified in this Agreement. The Authority and the Operator will at all times observe and comply with all such laws, rules, ordinances, regulations, and all final orders and decrees. The Authority and the Operator will indemnify the State and its officers, employees, and representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree.
10. Insurance. The Authority will require the Operator to maintain a Commercial General form of insurance covering liability in connection with any of the Operator's activities and operations on or near the Rail Facilities, including but not limited to Public Liability, Personal Injury, and Property Damage; Federal Employers Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable state law); said insurance must contain a specific waiver of the insurance company's subrogation rights against the State; Bill of Lading and Foreign Rolling Stock Liability; and Contractual Liability; with such limits (consistent with the terms set forth below), deductibles and exclusions as the State may agree are satisfactory, provided however, that: (i) such limits will not be less than \$5 million per occurrence; and \$10 million in the aggregate; and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State must be named as an additional insured on such liability insurance policies. Any coverage afforded to the State as an additional insured will apply as primary insurance of the State, and will not be deemed to be excess to any insurance issued in the name of the State. The Authority will require the Operator to obtain such liability insurance from an insurance company licensed to do business in the State of South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

The Authority or the Operator will furnish to the State, a Certificate of Insurance satisfactory to the State certifying the issuance to the Operator of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating the State will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution, or cancellation of such insurance policies in advance of normal expiration dates. Cancellation or expiration of any such insurance

policies will not limit or otherwise preclude the State from recovery for any liability arising under this Agreement.

The Authority or the Operator will provide the State with evidence of the liability insurance coverage required by this Agreement before the Operator operates along the Rail Facilities. If the Authority or the Operator do not maintain the required insurance coverage, the State may immediately terminate this Agreement, without notice to the Authority or the Operator and without opportunity to cure such default. The Authority or the Operator will supply the State with copies of their insurance policies and any amendments within ten (10) days of receiving a request for the same from the State. The Authority and the Operator acknowledge that the purchase of insurance as required by this paragraph will not in any way limit the liability of the Authority or the Operator or any lessee or other operator.

11. Assignment. The Authority will not assign its rights or delegate its duties under this Agreement or any part of this Agreement, without the State's prior written consent. An approved assignment, including assignments occurring through operator contracts, will not relieve the Authority of its primary responsibility to the State.
12. Amendment. No term or provision of this Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge, or termination is sought; provided however, when an emergency situation arises, changes in this Agreement may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telefacsimile or other delivered writing.
13. State Inspection. The State or duly authorized representative, upon reasonable notice to the Authority, reserves the right at all times to perform any and all inspections over and across the Rail Facilities, including rail trackage, for the purpose of verifying compliance with the terms and conditions of this Agreement. The Authority will correct any deficiency noted during each rail inspection within the time frames set by the State. The State's inspection or failure to conduct such inspections will not relieve the Authority and its operators of the responsibility to properly maintain the Rail Facilities.
14. Responsibility for Rehabilitation. The State will have no responsibility for rehabilitating the Rail Facilities.
15. Additions to Rail Facilities. The term "Addition(s)" as used in this Agreement means capital improvements which are in addition to the Rail Facilities. The State grants to the Authority the right to make such Additions to the Rail Facilities as the Authority may require, at the Authority's sole expense, to permit rail freight, passenger service, or rail car storage. The Authority will own and have the right to remove any Addition outside of the actual mainline and siding track structures, if the Addition can be removed without causing the Rail Facilities to be less serviceable than before the Addition was made. Any Addition which cannot be removed without diminishing serviceability will become the State's property and will become a part of the Rail Facilities. Under no circumstances may any Addition placed into the actual mainline or siding track structures be removed at the termination of this Agreement, such Addition will remain the property of the State.
16. Maintenance. The State will have no obligation to perform any maintenance of the Rail Facilities. The Authority will be responsible for the normal and regular work required to keep the Rail Facilities in the condition necessary to enable safe rail operations and will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, snow removal, brush cutting, and weed control, and other necessary repairs and work.
17. Payment. The Authority will make an annual rent payment, "Rent" to the State based on traffic for each calendar year for the lease and use of the Rail Facilities equal to one percent (1.0%) of the gross revenues for any rail freight, passenger service, or rail car storage originating, terminating, or carried along any point on the Rail Facilities.

Revenues will be calculated each calendar year commencing January 1, 2012, and the Rent will be payable on May 1 of the next succeeding year, commencing May 1, 2013.

Further, the Authority agrees that the State reserves the right to renegotiate the Rent on or before each annual anniversary date of this Agreement by giving the Authority notice, in writing, at least thirty (30) days prior to the annual anniversary date of each year the State intends to renegotiate the Rent.

18. Term. Subject to Paragraphs 10 and 19, this Agreement will continue in full force and effect for a period of twenty (20) years from and after the effective date of this Agreement.
19. Termination for Fault. Should either the Authority or the State substantially fail to perform its obligations under this Agreement, and continue in such default for a period of sixty (60) days, the party not in default will have the right at its option, after first giving thirty (30) days' written notice to the party in default, and notwithstanding any waiver by the party giving notice of any prior breach, to terminate this Agreement. The

parties further agree that inadequate or substandard performance by the Authority or the Operator will constitute a basis upon which the State may terminate this Agreement on thirty (30) days' notice to the Authority under this paragraph. Activities to be considered default include, but are not limited to: fraud, theft of State property, non-payment of Rent, misappropriation of funds, and lapse of insurance. Inadequate or substandard performance includes, but is not limited to, two or more instances of failure to cause movement of rail cars within seven (7) days of release to the Operator. Upon termination of this Agreement, the Authority will return the Rail Facilities to the State in the same condition, less normal wear and tear, and subject to the terms of this Agreement, as existed on the effective date of this Agreement.

20. Audit. The Authority will keep detailed records, accounts, invoices, and supporting documentation pertaining to all costs paid for under this Agreement. Upon reasonable notice, the Authority will allow the State, through any authorized representative, to examine and copy all records, accounts, invoices, and supporting documents.
21. Operator's Right of First Refusal. So long as Dakota Southern Railroad Company, "Dakota Southern," is the Authority's designated operator of the Rail Facilities, if the State desires to sell all or any part of the Rail Facilities, the State will offer all or such part of the Rail Facilities to Dakota Southern in writing upon the same terms and conditions of any bona fide written third party offer received for said Rail Facilities. Dakota Southern will have thirty (30) days to accept such offer in writing, and will have one hundred and twenty (120) days thereafter to close on the purchase of the Rail Facilities. If Dakota Southern does not accept or close within these time periods, then the State will be free to accept the initial third party offer and complete the sale of the Rail Facilities, or any portion thereof, to that offeror. Upon such sale, the terms and conditions of this Agreement will continue in full force and effect for its remaining term, and will bind the State's successors and assigns. If the State received multiple bona fide third party offers, Dakota Southern will be obligated to match the best (as determined by the State in its reasonable discretion) offer.
22. Notice. Except as expressly provided otherwise, all notices or other communications required under this Agreement will be in writing and will be deemed duly given, if delivered in person, by telefacsimile, or by overnight commercial carrier to the address set forth below. Notices will be given by and to the contacts listed below, or such authorized designees as either party may from time to time designate in writing.

For the State:

Program Manager, Office of Air, Rail, and Transit
SD Department of Transportation
700 Broadway Avenue East
Pierre, SD 57501-2586

For the Authority:

Chairperson (or any successor chairperson)
MRC Regional Railroad Authority
25129 401st Avenue
Mitchell, SD 57301

23. Severability. If any court of competent jurisdiction holds any provision of this Agreement unenforceable or invalid, such holding will not invalidate or render unenforceable any other provisions of this Agreement.
24. Entire Agreement. All other prior discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and, except as specifically provided in this Agreement, this Agreement constitutes the entire agreement with respect to its subject matter. The terms of this Agreement have been arrived at after mutual negotiation and, therefore, the parties intend that the terms of this Agreement not be construed against any of the parties by reason of the fact that this Agreement was prepared by one of the parties.
25. Force Majeure. Performance (other than payment of Rent) pursuant to this Agreement and any sublease executed by the Authority is subject to events of force majeure, including accidents, acts of God, weather conditions, tortuous acts of third parties, restrictions imposed by any government or governmental agency, or other similar events beyond the reasonable control of the parties. If performance under this Agreement or operability of the Rail Facilities is prevented by any cause described above, the State will be under no obligation to restore the operability of the Rail Facilities to enable resumption of performance under this

Agreement or any sublease agreement. If restoration is not made, then this Agreement will be terminated without penalty to either party.

26. Authority to Sign Agreement. The Authority has designated its Chairperson as the Authority's authorized representative and has empowered the Chairperson with the authority to sign this Agreement on behalf of the Authority. A copy of the Authority's Commission minutes or resolution authorizing the execution of this Agreement by the Chairperson as the Authority's authorized representative is attached to this Agreement as Exhibit A.

This Agreement is binding upon the signatories not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of the State and the Authority to enter into the same.

MRC Regional Railroad Authority

By: Tom Hrenoway

Its: Ch.

Date: 4-11-12

(Corporate Seal)

State of South Dakota
Department of Transportation

By: ESL

Its: Program Manager
Office of Air, Rail, and Transit

Date: 5/17/12

Approved as to Form:

Kaula gh
Special Assistant Attorney General

ACKNOWLEDGMENTS FOLLOW

AUTHORITY ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF Charles Mix) : SS

On this the 11th day of April, 2012, before me, KENNETH W. COTTON, a Notary Public within and for said County and State, personally appeared THOMAS GREENWAY, Chairperson of the MRC Regional Railroad Authority, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Kenneth W. Cotton
NOTARY PUBLIC

My Commission Expires: 8-1-2015

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) : SS

On this the 7th day of May, 2012, before me, Coleen Kusser, a Notary Public within and for said County and State, personally appeared Bruce Lindholm, Program Manager, Office of Air, Rail, and Transit, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged to me that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

(NOTARY SEAL)

Coleen Kusser
NOTARY PUBLIC

My Commission Expires: 2-15-18

Amendment Number 1 to Agreement Number 910866

BACKGROUND:

1. On January 1, 2012, the State of South Dakota, acting by and through its Department of Transportation, referred to in this Amendment as the "State," and MRC Regional Railroad Authority, referred to in this Amendment as the "Authority," entered into a lease agreement, which agreement, referred to in this Amendment as the "AGREEMENT," was signed by a representative of each party and assigned agreement number 910866 by the State.
2. The State and the Authority wish to amend the AGREEMENT effective June 25, 2015.

THE STATE AND THE AUTHORITY MUTUALLY AGREE AS FOLLOWS:

1. Effective June 25, 2015, paragraph 17 of the AGREEMENT, entitled "Payment," is revised to read as follows:
 17. Payment. The Authority will make an annual rent payment, "Rent" to the State based on traffic for each calendar year for the lease and use of the Rail Facilities, equal to one percent (1%) of the gross revenues for any rail freight, passenger service, or rail car storage originating, terminating, or carried along any point on the Rail Facilities. In addition to the Authority making the annual rent payment, the Authority will make an annual per car surcharge payment, "Surcharge" of \$50.00 on all traffic originating and all traffic with a destination on the rail line effective January 1, 2015.

Revenues will be calculated each calendar year commencing January 1, 2012, and the Rent will be payable on May 1 of the next succeeding year, commencing May 1, 2013. The Surcharge will be calculated each calendar year commencing January 1, 2015, and the Surcharge will be payable on May 1 of the next succeeding year, commencing May 1, 2016. A late payment fee will be assessed to annual payments not received by May 1 of each year, calculated at a rate of 1.5% per month.

Further, the Authority agrees that the State reserves the right to renegotiate the Rent on or before each annual anniversary date of this Agreement by giving the Authority notice, in writing, at least thirty (30) days prior to the annual anniversary date of each year that the State intends to renegotiate the Rent.
2. Except as modified by this Amendment, all other terms and conditions of the AGREEMENT will remain in full force and effect.

This Amendment is binding upon the signatories not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of the State and the Authority to enter into the same.

MRC Regional Railroad Authority

By: Thomas Greenway

Name: THOMAS GREENWAY

Its: Chairperson

Date: 12-17-15

(CORPORATE SEAL)

State of South Dakota
Department of Transportation

By: Darin P. Bergquist

Name: Darin P. Bergquist

Its: Secretary

Date: 12/24/15

Approved as to Form:

William J. Nevin
Special Assistant Attorney General

ACKNOWLEDGMENTS FOLLOW

AUTHORITY ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF Beule) : SS

On this the 17th day of December, 2015, before me, KENNETH W. COTTON, a Notary Public within and for said County and State, personally appeared THOMAS GREENWAY, Chairperson of the MRC Regional Railroad Authority, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Kenneth W. Cotton
NOTARY PUBLIC
My Commission Expires: 8-1-2021

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) : SS

On this the 24th day of December, 2015, before me, Wanda Amundson, a Notary Public within and for said County and State, personally appeared Darin P. Bergquist, Secretary of the South Dakota Department of Transportation, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged to me that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Wanda Amundson
NOTARY PUBLIC
My Commission Expires June 7, 2016

RESOLUTION NO. 2015-B08

BE IT RESOLVED BY THE
SOUTH DAKOTA STATE RAILROAD BOARD

WHEREAS, SDCL 49-16C-1 states: "For the purpose of planning, enlarging, maintaining, equipping, and protecting railroads and railroad facilities, there is hereby created a special fund within the state treasury known as the railroad trust fund. All moneys in the fund, except as otherwise provided in this chapter, shall be expended in accordance with the provisions of chapter 4-7, chapter 4-8, chapter 4-8A, and chapter 4-8B."

WHEREAS, on May 26th, 2011, the South Dakota Railroad Board approved loan (714336) in the amount of \$2,700,000.00 to MRC Regional Railroad Authority for the rehabilitation of rail between Mitchell and Chamberlain;

WHEREAS, MRC Regional Railroad Authority has since made payments in the amount of \$460,850.00, leaving a loan balance of \$2,239,150.00;

WHEREAS, On March 19th, 2014, the State Railroad Board approved loan (715514) in the amount of \$3,500,000.00 to the MRC Regional Railroad Authority for the rehabilitation between Chamberlain and Presho ;

WHEREAS, the loan (715514) funds have not been drawn down as of today; and,

WHEREAS, the South Dakota Railroad has approved to do direct expenditure and implement a \$50.00 per car surcharge on any cars originating or terminating on the MRC Rail line;

It is resolved, with the approval of the Governor:

1. The Secretary of the Department of Transportation or his designee will execute all documents under the following terms:

- a. The loan (714336) of a current balance of \$2,239,150.00 be forgiven;
- b. The loan (715514) agreement in amount of \$3,500,000.00 be terminated and the amount be a direct expenditure from the Railroad Trust;
- c. Direct expenditure of Railroad Trust funds in the amount of 2,500,000.00 and,
- d. Implement \$50.00 per car surcharge on cars originating and terminating on the MRC Rail line until such time as the Board determines the surcharge should be modified or terminated.

2. The South Dakota State Railroad Board authorizes DOT to obligate funds from the Railroad Trust Fund (3044) as direct expenditures in the amount of \$6,000,000.00 and implement \$50.00 per car surcharge on cars originating and terminating on the MRC Rail line until such time as the Board determines the surcharge should be modified or terminated.

Approved this 15 day of July, 2015.

SOUTH DAKOTA STATE RAILROAD BOARD

By:

Todd Yeaton, Chair

Approved this 31st day of August, 2015

By:

Dennis Daugaard, Governor

AMENDMENT NUMBER 2 TO AGREEMENT NUMBER 910866

BACKGROUND:

1. On January 1, 2012, the State of South Dakota, acting by and through its Department of Transportation, referred to in this Amendment as the "State," and the MRC Regional Railroad Authority, referred to in this Amendment as the "Authority," entered into a lease agreement, which agreement, referred to in this Amendment as the "AGREEMENT," was signed by a representative of each party and assigned agreement number 910866 by the State.
2. Having previously amended the AGREEMENT, the State and the Authority wish to further amend the AGREEMENT effective of June 25, 2015.

THE STATE AND THE AUTHORITY MUTUALLY AGREE AS FOLLOWS:

1. Effective June 25, 2015, paragraph 17 of the AGREEMENT, entitled "Payment," is revised to read as follows:

17. Payment. The Authority will make an annual rent payment, "Rent" to the State based on traffic for each calendar year for the lease and use of the Rail Facilities, equal to one percent (1%) of the gross revenues for any rail freight, passenger service, or rail car storage originating, terminating, or carried along any point on the Rail Facilities. In addition to the Authority making the annual rent payment, the Authority will make an annual per car surcharge payment ("Surcharge") of Fifty Dollars (\$50.00) on all traffic originating on the Rail Facilities and all traffic with a destination on the Rail Facilities. No Surcharge will be applied to any established or new rail shippers located within the first 3.5 miles of the Rail Facilities immediately west of the BNSF switch near Mitchell (milepost 374.55 to milepost 378.00), unless their shipments extend to any point west of the first 3.5 miles of line.

Revenues will be calculated each calendar year commencing January 1, 2012, and the Rent will be payable on May 1 of the next succeeding year, commencing May 1, 2013. The Surcharge will be calculated each calendar year commencing January 1, 2015, and the Surcharge will be payable on May 1 of the next succeeding year, commencing May 1, 2016. A late payment fee will be assessed to annual payments not received by May 1 of each year, calculated at a rate of 1.5% per month.

Further, the Authority agrees that the State reserves the right to renegotiate the Rent on or before each annual anniversary date of this Agreement by giving the Authority notice, in writing, at least thirty (30) days prior to the annual anniversary date of each year that the State intends to renegotiate the Rent.

2. Except as modified by this Amendment, all other terms and conditions of the AGREEMENT along with the prior amendment will remain in full force and effect.
3. The South Dakota State Railroad Board (the "Board"), with the consent of the Governor, has authorized the Secretary of the Department of Transportation to execute this Amendment on behalf of the State. A copy of the fully executed resolution of the Board is attached to this Agreement as Exhibit A.

SIGNATURE PAGE FOLLOWS

This Amendment is binding upon the signatories not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of the State and the Authority to enter into the same.

MRC Regional Railroad Authority

By: Tom Greenway

Name: Tom Greenway

Its: Chairperson

Date: 7-28-16

(CORPORATE SEAL)

State of South Dakota
Department of Transportation

By: Darin P. Bergquist

Name: Darin P. Bergquist

Its: Secretary

Date: 8/18/16

Approved as to Form:

Karl A. [Signature]
Special Assistant Attorney General

ACKNOWLEDGMENTS FOLLOW

AUTHORITY ACKNOWLEDGMENT

STATE OF SOUTH Dakota)
) SS
COUNTY OF CHARLES MIX)

On this the 28th day of July, 2016, before me, KENNETH W. COTTON, a Notary Public within and for said County and State, personally appeared TOM GREENAWAY, Chairperson of the MRC Regional Railroad Authority, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Kenneth W. Cotton

Notary Public

My Commission Expires: 8-1-2021

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

On this the 18th day of August, 2016, before me, Wanda Amundson, a notary public within and for said County and State, personally appeared Darin P. Bergquist, Secretary, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged to me that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Wanda Amundson

Notary Public

My Commission Expires: Wanda Amundson
My Commission Expires
June 7, 2022

Exhibit E

Certificate of Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
4/4/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER TRUSS 9200 Ward Parkway Suite 500 Kansas City MO 64114	CONTACT NAME: Certificate Department	
	PHONE (A/C, No, Ext): 816.708.4600	FAX (A/C, No): 816.708.9193
	E-MAIL ADDRESS: Certificates@TrussAdvantage.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Aspen Specialty Ins Co	10717
	INSURER B : Steadfast Insurance Co.	26387
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

INSURED
BG & CM Railroad, Inc.
*See Below for Additional Named Insureds
318 N 10th St
St Maries ID 83861

BOUNT-1

COVERAGES **CERTIFICATE NUMBER:** 2129440326 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	COMMERCIAL GENERAL LIABILITY ☒ CLAIMS-MADE ☐ OCCUR ☒ Railroad Liab GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☒ OTHER: \$50K SIR Per OCC			SCO 0120389-02	7/31/2018	7/31/2019	EACH OCCURRENCE \$15,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$30,000,000 COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS						
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$ ☐						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Excess Railroad Liability			RX004L118	7/31/2018	7/31/2019	Each Claim 10,000,000 General Aggregate 20,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Additional Named Insureds: BG & CM Railroad, Inc.; Ozark Valley Railroad, Inc.; S & S Shortline Leasing, LLC ; SDR Holding Company, Inc. dba Dakota Southern Railway Company; Fremont Northern Railroad, Inc.; St. Maries River Railroad; McCloud Railway Company; Shasta Sunset Corp.; Washington & Idaho Railway, Inc.; Boot Hill & Western Railway Holding Company, Inc. dba Boot Hill & Western

CERTIFICATE HOLDER

CANCELLATION

Charles H Montange
426 NW 162nd Street
Seattle WA 98177

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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