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GOVERNMENT RELATIONS

214435

July 28, 2005

RECEIVED
JUL 28 2005
M.L.
MANAGEMENT
STG

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

**Re: Finance Docket No. 32609 --- Chesapeake Railroad Company - Modified Rail
Certificate**

Dear Sir:

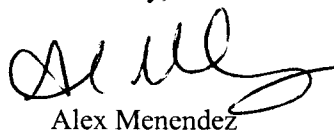
I am enclosing an executed original and ten (10) copies of the *Verified Notice Of Maryland Transit Administration, a modal agency of the Maryland Department of Transportation, acting by and on behalf of the State of Maryland ("MTA") of (1) Termination of Operations Pursuant to Modified Certificate in Caroline County, Maryland; Talbot County Maryland; and Kent County, Delaware; and (2) Notice Of Interim Trail Use* in the above referenced proceeding. Please date stamp the extra copies of these documents and return to our messenger. In addition, we are enclosing a 3.5" diskette with this document.

Please note that the MTA is seeking waiver of any associated filing fees pursuant to 49 C.F.R. § 1002.2. Specifically, 49 C.F.R. 1002.2(e)(1) states that "filing fees are waived for application and other proceedings which is filed by...a state or local government agency." MTA is a state government agency.

Moreover, pursuant to 49 C.F.R. § 1150.24, MTA is serving this notice upon the State of Maryland by serving the Governor, and upon the Board. Because no shipper has used the line within the six months preceding the date of this notice MTA is not serving any shippers. As explained more fully in the attached document, MTA is serving this notice because the Chesapeake Railroad Company is no longer available to serve the notice itself.

Thank you for your assistance.

Sincerely,


Alex Menendez

ENTERED
Office of Proceedings

JUL 28 2005

Part of
Public Record

Enclosure

214435

**Before the
Surface Transportation Board**

Finance Docket No. 32609

RECEIVED
JUL 28 2005
M. L.
MANAGEMENT
STB

CHESAPEAKE RAILROAD COMPANY – MODIFIED RAIL CERTIFICATE

**VERIFIED NOTICE OF
MARYLAND TRANSIT ADMINISTRATION, A MODAL AGENCY OF THE
MARYLAND DEPARTMENT OF TRANSPORTATION, ACTING BY AND ON
BEHALF OF THE STATE OF MARYLAND OF
(1) TERMINATION OF OPERATIONS
PURSUANT TO MODIFIED CERTIFICATE IN
CAROLINE COUNTY, MARYLAND; TALBOT COUNTY MARYLAND;
AND KENT COUNTY, DELAWARE;
AND (2) CERTIFICATE OF INTERIM TRAIL USE**

Communication with respect to this
document should be addressed to:

CHARLES A. SPITULNIK
ALEX MENENDEZ
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, DC 20001
(202) 842-2345

THOMAS G. PETER
Assistant Attorney General of Maryland
Deputy Counsel
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, MD 21076
(410) 865-1107

ENTERED
Office of Proceedings

JUL 28 2005

Part of
Public Record

Dated: July 28, 2005

Counsel for the Maryland Transit
Administration, a modal agency of the
Maryland Department of Transportation,
acting by and on behalf of the State of
Maryland

RECEIVED
JUL 28 2005
M. L.
MANAGEMENT
STB

**Before the
Surface Transportation Board**

Finance Docket No. 32609

CHESAPEAKE RAILROAD COMPANY – MODIFIED RAIL CERTIFICATE

**VERIFIED NOTICE OF
MARYLAND TRANSIT ADMINISTRATION, A MODAL AGENCY OF THE
MARYLAND DEPARTMENT OF TRANSPORTATION, ACTING BY AND ON
BEHALF OF THE STATE OF MARYLAND OF
(1) TERMINATION OF OPERATIONS
PURSUANT TO MODIFIED CERTIFICATE IN
CAROLINE COUNTY, MARYLAND; TALBOT COUNTY MARYLAND;
AND KENT COUNTY, DELAWARE;
AND (2) CERTIFICATE OF INTERIM TRAIL USE**

The Maryland Transit Administration, a modal agency of the Maryland Department of Transportation, acting by and on behalf of the State of Maryland ("MTA") hereby notifies the Surface Transportation Board ("Board") pursuant to 49 C.F.R. § 1150.24 that it has terminated the agreement that granted limited operating rights to the Chesapeake Railroad Company ("CRC") over the line segment between Clayton, Delaware and Easton Maryland, MP 0.0 to MP 45.3, and a portion of Denton track between Queen Anne and Denton, Maryland, MP 0.0 to MP 8.8, U.S.R.A. Line Nos. 169/150 (collectively "Clayton-Easton Rail Line"). CRC's operating rights were the subject of a Modified Certificate of Public Convenience and Necessity in *Chesapeake Railroad Company – Modified Rail Certificate*, Finance Docket No. 32609 (Served November 23, 1994) ("Modified Certificate") and will be referred to as the "Trackage Rights." A copy of the Modified Certificate is attached hereto as Exhibit A.

CRC has ceased operating over the Clayton-Easton Rail Line and as of October 31, 1998 does not exercise its limited operating rights. MTA hereby notifies the Board that: (1) the

agreement that was the source of CRC's operating rights has terminated; (2) it is submitting this notice of Termination of the Modified Certificate pursuant to 49 C.F.R. § 1150.24 because CRC is no longer available to serve the notice itself; and (3) pursuant to 49 C.F.R. § 1152.29, MTA (or a transferee agency or department of the Maryland State government) will use the Clayton-Easton Rail Line for interim trail use and rail banking pursuant to 16 U.S.C. § 1247(d).

STATEMENT OF FACTS

The Clayton-Easton Rail Line was owned by the Trustees of the former Penn Central Transportation Company ("Penn Central"). Penn Central abandoned the Clayton-Easton Rail Line in 1976 pursuant to Section 305 of the Regional Rail Reorganization Act of 1973. The abandonment was never consummated. In 1982, Penn Central sold the Clayton-Easton Rail Line to the State of Maryland. In 1993 the Mass Transit Administration of the Maryland Department of Transportation¹ and CRC entered into an operating agreement allowing CRC to provide limited common carrier service "under the authority of a modified certificate as issued by the Interstate Commerce Commission" over the Clayton-Easton Rail Line. A copy of the operating agreement is attached hereto as Exhibit B. CRC obtained a modified certificate on November 16, 1994.

For more than a decade, CRC attempted to restore the Clayton-Easton Rail Line and generate rail business.² CRC ultimately concluded that a substantial infusion of capital monies to rehabilitate the infrastructure was necessary before it was possible for it to serve freight customers. By way of example, in 1995 and 1996 CRC's car loadings were 14 and 26,

¹ The Mass Transit Administration of the Maryland Department of Transportation subsequently changed its name to the Maryland Transit Administration.

² CRC acquired the rights to operate the Clayton-Easton Rail Line in 1985, and as early as 1986 made a proposal to operate the line. Eventually, CRC entered into an operating agreement in 1993.

respectively. CRC apparently did not believe that this level of traffic justified the necessary expenditure to reopen any portion of the Clayton-Easton Rail Line and the operating agreement between MTA and CRC terminated on October 31, 1998.

Since that time CRC has not operated. Moreover, CRC has forfeited its status as a corporate entity in Maryland.³ A copy of a certification to that effect from the State Department of Assessments and Taxation is attached hereto as Exhibit C. Consequently, based upon the fact that the operating agreement has terminated and CRC has effectively “disappeared,” MTA, as owner of the Clayton-Easton Rail Line files this notice to: 1) discontinue the Modified Certificate as to the Clayton-Easton Rail Line; and 2) evidence its intent to use the Clayton-Easton Rail Line for interim trail use and rail banking pursuant to 16 U.S.C. § 1247(d).

I. TERMINATION OF THE MODIFIED CERTIFICATE

Pursuant to 49 C.F.R. § 1150.24, service under a Modified Certificate of Public Convenience and Necessity may be terminated by an operator if it provides sixty (60) days’ notice of its intent to terminate. That notice must be:

- (a) Filed with the State and the Board, and
- (b) Mailed to all persons that have used the line within the 6 months preceding the date of the notice.

49 C.F.R. § 1150.24.

In the instant action MTA is filing the required notice under 49 C.F.R. § 1150.24 because CRC is no longer a viable entity, has not been providing service on the Clayton-Easton Rail Line for over six (6) years and is not available to file the required notice. As noted above, the operating agreement between MTA and CRC terminated on October 31, 1998 and CRC has not

³ “Forfeited” means that its existence has been ended by the State for some delinquency.

operated on the Clayton-Easton Rail Line since that time. Moreover, CRC has forfeited its status as a corporate entity in Maryland. Based upon the termination of the operating agreement that gave rise to the Modified Certificate of Public Convenience and Necessity and the disappearance of CRC, MTA, as the owner of the Clayton-Easton Rail Line, is filing this notice to terminate the service provided under the Modified Certificate of Public Convenience and Necessity.

In compliance with 49 C.F.R. § 1150.24, MTA files this notice with the Board and simultaneously will file and serve this notice with the Office of the Governor of the State of Maryland. Furthermore, MTA is not required to mail this notice to any other entities or persons because no entities or persons have used the Clayton-Easton Rail Line within the six (6) months preceding the date of the notice.

II. NOTICE OF INTERIM TRAIL USE

The Clayton-Easton Rail Line is suitable for rail banking. As required by the statute and the Board's regulations relating to Certificates of Interim Trail Use, MTA states the following:

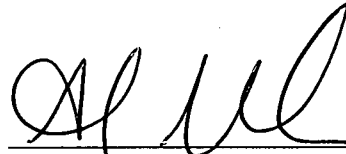
STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and railbanking under section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, MTA is willing to assume full financial responsibility for management of, for any legal liability arising out of the transfer of use of and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by and operated by MTA.

MTA acknowledges the use of the right-of-way is subject to MTA continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. In the event of a transfer of MTA's rights and interests with respect to the Clayton-Easton Line to another Department of the Maryland government, MTA

will: (a) require the transferee to assume the same responsibilities and obligations with respect to the line; and (b) notify this Board of the transfer and of the transferee's assumption of those responsibilities and obligations.

Respectfully submitted,



CHARLES A. SPITULNIK
ALEX MENENDEZ
McLeod, Watkinson & Miller
One Massachusetts Avenue, NW
Suite 800
Washington, DC 20001
(202) 842-2345

THOMAS G. PETER
Assistant Attorney General of Maryland
Deputy Counsel
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, MD 21076
(410) 865-1107

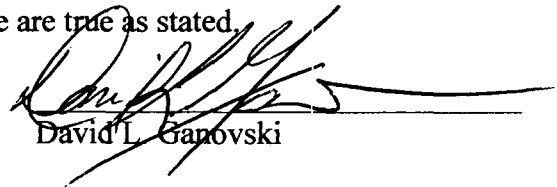
Counsel for the Maryland Transit
Administration, a modal agency of the
Maryland Department of Transportation,
acting by and on behalf of the State of
Maryland

Dated: July 28, 2005

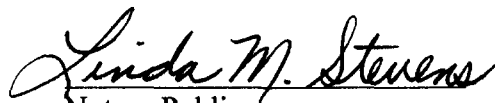
VERIFICATION

City of Baltimore)
)
State of Maryland)

I, David L. Ganovski, Director of the Office of Freight Logistics, of the Maryland Department of Transportation hereby verify that I have knowledge of the facts stated in the foregoing Verified Notice of the Maryland Transit Administration, a modal agency of the Maryland Department of Transportation, acting by and on behalf of the State of Maryland of (1) Termination Of Operations Pursuant To Modified Certificate In Caroline County, Maryland; Talbot County Maryland; And Kent County, Delaware; and (2) Certificate Of Interim Trail Use, and that the same are true as stated.


David L. Ganovski

Subscribed and sworn to
before me this 22 day of
July, 2005.


Notary Public

My Commission Expires:

**MY COMMISSION EXPIRES
JULY 01, 2008**

A

Westlaw

Slip Copy
(Cite as: 1994 WL 657183 (I.C.C.))

Page 1

Surface Transportation Board (S.T.B.)

*1 CHESAPEAKE RAILROAD COMPANY--MODIFIED RAIL CERTIFICATE

Decided: November 16, 1994

Service Date: November 23, 1994

INTERSTATE COMMERCE COMMISSION
Finance Docket No. 32609

By the Commission, David M. Konschnik, Director, Office of Proceedings.

On October 28, 1994, Chesapeake Railroad Company (CHRR) filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, to operate a line of railroad between milepost 00.0 at Clayton, DE, and milepost 45.3 at Easton, MD, and a connecting branch line between milepost 00.0 at Queen Anne, MD, and milepost 8.8 at Denton, MD, a total distance of approximately 54.1 miles.

The lines were owned by the Trustees of the former Penn Central Transportation Company. The Trustees abandoned the lines in 1976 pursuant to Section 304 of the Regional Rail Reorganization Act of 1973. [FN1] On January 8, 1982, the Trustees sold the lines to the State of Maryland Department of Transportation, Mass Transit Administration (MTA). MTA has entered into an operating agreement with CHRR.

The Commission will serve a copy of this notice on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Vernon A. Williams

Secretary

FN1. Pub.L. 93-236, 87 Stat. 1008, codified at 45 U.S.C. 744.

1994 WL 657183 (I.C.C.)

END OF DOCUMENT

Copr. © West 2004 No Claim to Orig. U.S. Govt. Works

B

AGREEMENT

PREAMBLE

THIS AGREEMENT made and entered into this 15th day of November 1993, between the Chesapeake Railroad Company, (hereinafter referred to as "OPERATING RAILROAD"), and the Mass Transit Administration of the Maryland Department of Transportation (hereinafter referred to as "STATE").

WHEREAS, this AGREEMENT results from a request by the OPERATING RAILROAD to restore rail service on the Clayton, DE to Easton, MD line, and Queen Anne to Denton, MD and.

WHEREAS, the OPERATING RAILROAD has agreed to provide common carrier rail service under authority of a modified certificate as issued by the Interstate Commerce Commission (49 CFR 1150 C) over the railroad lines, and

WHEREAS, by virtue of a deed dated January 8, 1982, from the Penn Central Corporation and the Baltimore & Eastern Railroad Company, the State of Maryland is the owner of a railroad right-of-way ("the rail line") on Maryland's Eastern Shore as more particularly described herein, said deed having been recorded among the land records of the following counties at the liber and folio references indicated: Caroline County, Maryland, Liber MCB #214, Folio 676; Talbot County, Maryland, Liber J.T.B. No. 564, Folio 182; Kent County, Delaware, Liber/Folio Q-37-1, and

WHEREAS, STATE, through the Board of Public Works, has determined that the acceptance by OPERATING RAILROAD, to provide freight rail and excursion service with no subsidy on the part of the STATE is sufficient to grant this agreement, and

WHEREAS, OPERATING RAILROAD agrees that it bears the full responsibility for rehabilitation of the rail line and normal operating costs without financial assistance in any form from the STATE.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, and for other good and valuable consideration as set forth in the recitals of this Agreement, STATE does hereby agree, subject to the terms and conditions described herein, permit OPERATING RAILROAD the exclusive rights to operate freight and excursion rail service, on, over and to the railroad right-of-way as more particularly described in Section 1(a), and designated as the Clayton-Easton line.

This agreement is made subject to the following conditions:

Section 1 - Description of Service

- (a) Frequency of Service: The OPERATING RAILROAD agrees to provide, common carrier rail service on the line segment (hereinafter referred to as RAILROAD LINES) that begins in Clayton, DE at Valuation Station 20+90 and ends at Rte. 50 in Easton, MD at Valuation Station 2240. The frequency of service shall be as deemed appropriate by OPERATING RAILROAD. Should OPERATING RAILROAD discontinue service, notification shall be given to STATE within 7 calendar days.
- (b) Special Service: The OPERATING RAILROAD shall publish a tariff specifying the charges for special train services. Special train services are defined as train service scheduled more frequently than required by Section 1(a). When the general manager of the OPERATING RAILROAD receives a request for such service, the OPERATING RAILROAD shall furnish such special service at the established tariff rate.
- (c) Embargoes: The OPERATING RAILROAD shall immediately notify the STATE in writing of any embargo imposed on traffic to, from and via any station or stations on the lines listed in Section 1(a). Such notification shall specify the effective date of the embargo and the reason for the embargo.

Section 2 - Accounting Reports

- (a) Record Keeping: The OPERATING RAILROAD will keep accounting records in accordance with standard railroad accounting procedures.
- (b) Report Schedule: A quarterly report of revenues and costs of providing service will be issued to the STATE within thirty (30) days after each quarter of operating under the AGREEMENT. This report shall include cost and revenue summaries for the following categories: Interline Freight Revenue, Surcharge Revenue, Demurrage Revenue, Other Revenue, Transportation Expenses, Maintenance-of-Way Expenses, Insurance Expenses, Car Hire Expenses, General Expenses, the number of surcharge bearing and surcharge exempt cars, total carloads for the quarter and the total number of carloads for the same quarter from the preceding fiscal year. An annual report in the same format will be issued to the STATE within ninety (90) days following the end of each fiscal year of operation under this AGREEMENT.

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- (c) Inspection: Upon reasonable notice, the OPERATING RAILROAD will allow inspection of the rail facilities and the equipment used thereon by the authorized agents of the STATE, the Federal Railroad Administration, or any governmental agency having jurisdiction over OPERATING RAILROAD.
- (d) Quarterly Carload Report: ~~By~~ the tenth (10th) day of the month immediately following the end of a reporting quarter under this AGREEMENT, the OPERATING RAILROAD agrees to provide the STATE with the total number of carloads originated and/or terminated during the preceding quarter.
- Not Binding*

Section 3 - Accident/Incident Reporting

- (a) Immediate Report of Accidents/Incidents (49 CFR 225.19): The OPERATING RAILROAD shall report immediately by telephone to the STATE at 1-410-333-4403 whenever a reportable accident/incident occurs as defined in 49 CFR 225.19.
- (b) Immediate Report of Hazardous Materials Incident (40 CFR 171.15): The OPERATING RAILROAD shall report immediately by telephone to the STATE at 1-410-333-4403 whenever an incident during the course of transportation of hazardous materials (as defined in 49 CFR 172.101) which results in (1) a person being killed, (2) an injury to a person requiring his or her hospitalization, (3) a hazardous material being unintentionally released from its container, or (4) estimated carrier property damaged exceeding \$15,000.
- (c) Written Report of Accidents/Incidents (40 CFR 225.19): The OPERATING RAILROAD shall report in writing within fifteen (15) days to the STATE whenever a reportable accident/incident occurs as defined in 49 CFR 225.19.
- (d) Written Report of Hazardous Materials Incidents (49 CFR 171.16): The OPERATING RAILROAD shall report in writing to the STATE within fifteen (15) days whenever an incident occurs resulting in any of the situations as described in Section 4(b) above.

Section 4 - Maintenance

- (a) Definition: Maintenance means the normal and regular work required to keep the railroad in condition necessary to continuously perform the level of rail freight and excursion service required by this AGREEMENT.

(b) Responsibility: Unless notified in writing by the STATE, the OPERATING RAILROAD is responsible for and shall have control over all maintenance on the RAILROAD LINES. The OPERATING RAILROAD shall maintain the RAILROAD LINES at a satisfactory level to permit operation of the rail freight and excursion service in compliance with Federal Railroad Administration Class 1 Track Safety Standards (49 CFR 213). If the track is rehabilitated to standards higher than Class 1 safety standards, the OPERATING RAILROAD shall maintain the RAILROAD LINES to such higher standards. The OPERATING RAILROAD shall not operate trains over the RAILROAD LINES if the lines do not meet the minimum FRA Class 1 Track Safety Standards. Any failure by the OPERATING RAILROAD to perform its obligations under this provision shall constitute a breach of this AGREEMENT.

(c) Safety Inspections:

- (1) The OPERATING RAILROAD shall conduct the inspections of the rail facilities as required by the Federal Railroad Administration's Track Safety Standards, 49 CFR 213, Subpart F. Copies of each track inspection report shall be submitted to the STATE within fifteen (15) days after each is completed. Each inspection report shall include the name of inspector, milepost limits of inspection, nature and location of all FRA Class 1 defects, and corrective action taken and date completed. In the event a defect remains uncorrected for any reason, the OPERATING RAILROAD shall explain the reason for not correcting the defect and provide an expected date for corrective action. Subsequent correction of said defect shall be verified in writing to the STATE upon completion. Handwritten: 2/14/02 Not seen this
- (2) The OPERATING RAILROAD shall provide to the STATE copies of any safety citations issued by the Federal Railroad Administration or any other government agencies and a schedule of corrective actions to be taken. Subsequent to taking corrective actions, the OPERATING RAILROAD shall provide to the STATE a record of the corrective actions.
- (3) Any fines levied by federal or state agencies for failure to correct Class I defects shall be the responsibility of the OPERATING RAILROAD.

(d)

Approval of Maintenance of Way Program: The OPERATING RAILROAD shall provide the STATE with a written proposal prior to July 15 of each fiscal year of operation under this AGREEMENT detailing all proposed maintenance-of-way expenditures for that fiscal year. Said proposal will list all planned projects including but not limited to, tie replacement, rail replacement, correcting line and surface defects, joint bar replacement, correcting gage defects, weed spraying, and brush removal. Said proposal will detail quantities and estimated prices of material to be used, estimates for labor and location of each work item by milepost. The STATE shall provide written approval of the Maintenance-of-Way Program. Nothing however, shall prohibit the OPERATING RAILROAD from expending additional funds on maintenance-of-way or performing other track work which is necessary to correct deviations from Track Safety Standards, 49 CFR 213 for Class 1 or higher Track. The STATE recognizes that modest changes to the maintenance-of-way plans may be required to address unusual circumstances during the course of the year; and that such changes will not constitute a breach of contract as it pertains to this section. Modest changes shall be defined as those not deviating from the original (or amended) maintenance-of-way plan by more than 25% of the estimated dollar value associated with accomplishment of the plan.

*approved
by
M. J.*

Section 5 - Liability

- (a) Indemnification: The OPERATING RAILROAD agrees to indemnify and hold harmless, the STATE against any and all liability, penalties, damages, expenses, attorney's fees and judgments incurred by reason of any injury or claim of injury to person or property, of any nature, including the railroad lines itself, arising out of its use, occupation or control of the railroad lines (as defined herein). The STATE shall promptly notify the OPERATING RAILROAD of any claim asserted against the STATE on account of any such injury or claimed injury to persons or property and shall promptly deliver to the OPERATING RAILROAD the original or a true copy of any summons or other process, pleading, or notice issued in any suit or other proceeding to assert or enforce any such claim. The OPERATING RAILROAD shall defend any such suit with its attorneys or attorneys of its own selection. The STATE shall have a right, if it sees fit, to participate in such defense at its own expense.

- (b) Insurance Policy: The OPERATING RAILROAD shall maintain and keep in effect during the entire term of this AGREEMENT (after operations have commenced), or any renewal thereof, a policy of insurance insuring the OPERATING RAILROAD and naming the STATE as an insured against liability for personal injury and for property damage including comprehensive coverage with limits of at least \$5,000,000 per accident or incident. Such policy shall be delivered to the STATE simultaneously with the executed agreement. Such policy shall, by its terms, be cancelable only on at least thirty (30) days prior written notice to the State. Further, OPERATING RAILROAD is required to provide thirty (30) days written notification of the expiration of said insurance and shall deliver, prior to expiration of same, proof of the renewal of the required insurance in the same form as required in this section.
- (c) Insurance Policy (prior to commencement of rail service): The OPERATING RAILROAD may, in lieu of insurance required in Section 5(b), substitute Comprehensive Liability Insurance, naming STATE as insureds, in the amount of one million dollars (\$1,000,000) for a single occurrence and aggregate limit of one million dollars (\$1,000,000). Certificates of insurance in a form satisfactory to STATE shall be delivered upon final execution of contract. Insurance requirements as stated in this section shall apply only during the period the OPERATING RAILROAD uses to rehabilitate track. Upon commencement of operations, insurance requirements under this section become null and void and OPERATING RAILROAD shall be required to conform to insurance requirements established in Section 5(b).

Section 6 - Track Material Removal

- (a) Track Retirement: The OPERATING RAILROAD shall not retire or remove any track, including sidetrack, without first obtaining written approval of the STATE.
- (b) Relocation of Track Material: The OPERATING RAILROAD shall not move any in situ track material from one location to another without prior written approval of the STATE, except as provided in Section 6(c).
- (c) Emergency Relocation of Track Material: In the event of an emergency, in situ track material may be moved without the prior written consent of the STATE. The OPERATING RAILROAD shall provide the STATE with a written report of such emergency relocation of in situ track material within seven (7) days of such action.

- (d) Disposal of Track Material: The OPERATING RAILROAD shall not dispose of any track material without the prior written consent of the STATE.

Section 7 - Railroad Rates

The OPERATING RAILROAD shall have the exclusive authority to establish rates in accordance with rules, regulations and guidelines as established by the Interstate Commerce Commission, the Public Service Commission and any other rate regulating authority and as dictated by good business practices.

Section 8 - Force Majeure

In the event that either party shall be delayed, hindered or in any way prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, acts of God, or war, or any other reason beyond its control, then performance of such act shall be excused for the period of delay and the period for the performance of any such act shall be extended for a period equivalent to the period of delay.

Section 9 - Notice

Any notice required or permitted by this AGREEMENT or given in connection herewith shall be in writing and made by personal delivery or first class mail, postage prepaid, to the following representatives of the parties:

If to the OPERATING RAILROAD:

Mr. William G. Bartosh, President
Chesapeake Railroad
P. O. Box 586
Ridgely, Maryland 21660

If to the STATE:

Director Freight Services
300 West Lexington Street
Baltimore, Maryland 21201-3415

Section 10 - Sanctions Upon Improper Acts

In the event the OPERATING RAILROAD, or any of its officers, directors, partners, principals or employees is convicted of a crime arising out of or in connection with the procurement of work to be done under this AGREEMENT, the AGREEMENT shall, at the discretion of the STATE, be terminated. Upon such termination, the OPERATING RAILROAD shall be liable to the STATE for any costs

incurred by the STATE. The sanctions provided hereunder shall, as appropriate and at the discretion of the STATE, be applicable to any conviction after the expiration of the term of the AGREEMENT as well. The rights and remedies set forth herein shall be in addition to, and the exercise thereof shall in no way be considered or construed as a waiver of any other rights or remedies granted or available to the STATE.

Section 11 - Non-Hiring of Employees

No employee of the State of Maryland, or any department, commission, agency or branch thereof, whose duties as such employee include matters relating to or affecting the subject matter of the AGREEMENT, shall, while such employee, become or be an employee of the party or parties hereby contracting with said State of Maryland, or any department, commission, agency or branch thereof.

Section 12 - Non-Discrimination

- (a) Compliance with State Regulations: The OPERATING RAILROAD shall comply with the requirements of Section 13-219 of the State Finance and Procurement Article of the Annotated Code of Maryland, any amendments thereto, and any Executive Order barring discrimination; further, in accordance with these requirements, it shall not discriminate in any manner against an employee or applicant because of political or religious opinion or affiliation, sex, race, creed, color or national origin; further, it shall include a similar clause in all subcontracts, except subcontractors for standard commercial supplies or raw materials.
- (b) Sanctions for Non-Compliance: In the event of the OPERATING RAILROAD's non-compliance with the non-discrimination provisions of this AGREEMENT, the STATE shall impose such sanctions as it may determine to be appropriate, including but not limited to cancellation, termination or suspension of the AGREEMENT in whole or in part.
- (c) Compliance with Federal Law: The OPERATING RAILROAD herewith assures the STATE that it is conforming to the provisions of the Civil Rights Act of 1964, and Section 202 of the Executive Order 11246 of the President of the United States of America as amended by Executive Order 11375, as applicable. The OPERATING RAILROAD shall comply with all applicable Federal law pertaining to non-discrimination in employment.

Section 13 - Termination



- (a) (1) Termination for Default: If the OPERATING RAILROAD fails to fulfill its obligations under this AGREEMENT properly and on time, or otherwise violates any provision of the AGREEMENT, the STATE may terminate the AGREEMENT by written notice to the OPERATING RAILROAD. The notice shall specify the acts or omission relied on as cause for termination and shall provide 30 days to cure default. If damages are determined to be caused by the OPERATING RAILROAD's breach, the OPERATING RAILROAD will remain liable after termination for such damages and the STATE can affirmatively collect that amount.
- (2) The OPERATING RAILROAD will be considered to be in default if regular freight and/or excursion service has not been initiated by November 1, 1994.
- (b) Termination for Convenience of the State: The performance of work under this AGREEMENT may be terminated upon at least sixty (60) days written notice by the STATE in accordance with this clause in whole, or from time to time in part, whenever the STATE shall determine that such termination is in the best interest of the State.
- (c) Termination by Railroad: The OPERATING RAILROAD shall also have the option to terminate this AGREEMENT upon 6 months written notice to STATE.
- (d) Obligations of the OPERATING RAILROAD Upon Termination: Upon notice of termination as provided in Subsections (a) and (b) above, the OPERATING RAILROAD shall:
- (1) Take immediate action to orderly discontinue its work and demobilize its work force.
- (2) Take such action as may be necessary to protect the property of the State of Maryland, place no further orders or subcontracts, assign to the STATE in the manner and to the extent directed by the STATE all of the right, title, and if ordered by the STATE, possession and interest of the OPERATING RAILROAD under orders or subcontracts so terminated.
- (e) Remedies Not Exclusive: The rights and remedies contained in this Section are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.

Section 14 - Term of Agreement; Option For Additional Term

This AGREEMENT shall be in effect for five years from the effective date hereof, as defined in Section 18, subject to the termination provisions of Section 13. The STATE shall have the option to extend this AGREEMENT for two additional five year periods.

The option to extend this agreement is limited to two (2) additional terms of five (5) years each. The STATE may exercise its option to extend by giving written notice to the OPERATING RAILROAD of its election to exercise the option to extend not less than six (6) months nor more than twelve (12) months before expiration of the original term of the agreement or the first extension thereof. All other terms and conditions of the original AGREEMENT shall remain in full force and effect throughout the five year contract extension period(s).

Section 15 - Modifications

The STATE shall have the right, at its discretion, to change alter or modify the services provided for in this AGREEMENT and such changes, alterations, or modifications may be made even though it will result in an increase or decrease in the services of the OPERATING RAILROAD.

Section 16 - Interest

Notwithstanding any other provision in this AGREEMENT, the OPERATING RAILROAD hereby waives the right to predecision interest in the event of an award of an equitable adjustment under any provisions of this AGREEMENT including, but not limited to, Section 16 (b) "Termination for Convenience of the State."

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Section 17 - Contract Administration

This AGREEMENT will be administered on behalf of the STATE by the Director of Freight Services. The Director is that person authorized by the STATE in accordance with laws and regulations to administer this AGREEMENT or make written determinations and findings with respect to it. The term also includes an authorized representative acting within the limits of authority.

Section 18 - Effective Date

The effective date of this AGREEMENT shall be as indicated in the Preamble.

Section 19 - Governing Law

This AGREEMENT is to be construed in accordance with the Laws of the State of Maryland.

Section 20 - Assignability

The STATE expressly reserves the right to assign this AGREEMENT at any time to any responsible person, local government, or local transportation authority by giving notice to the OPERATING RAILROAD at least thirty (30) days prior to such assignment date. Such assignment shall be binding on the OPERATING RAILROAD. This AGREEMENT may not be assigned by the OPERATING RAILROAD without written prior approval of the STATE, which approval shall not be unreasonably withheld.

Section 21 - Severability

If any term, covenant, condition or provision (or part thereof) of this AGREEMENT or the application thereof to any person or circumstance shall at any time or to any extent, be invalid or unenforceable, the remainder of this AGREEMENT or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this AGREEMENT shall be valid and enforced to the fullest extent permitted by law unless the term, covenant, condition or provision or part thereof declared invalid or unenforceable is so fundamental to the AGREEMENT that the remainder of the AGREEMENT, standing alone, obviously does not represent a meeting of the minds of the parties.

Section 22 - Entire Agreement

No oral statement or prior written matter shall have any force or effect. The parties hereby acknowledge that they are not relying on any representations or agreements other than those contained in this AGREEMENT. This AGREEMENT shall not be modified except in writing subscribed to by both parties.

Section 23 - Board of Public Works Approval

It is agreed and understood by all parties hereto, that the execution of the AGREEMENT and its effectiveness are contingent upon the approval of the Secretary of Transportation and the Maryland Board of Public Works and this AGREEMENT shall be considered to bind the parties hereto in accordance with the Constitution and the Laws of the State of Maryland.

Section 24 - Covenant Against Contingent Fees

The OPERATING RAILROAD warrants that, except as expressly stated below, the OPERATING RAILROAD, its agents and employees, have not employed or retained any company or person, other than a bonafide employee working solely for the OPERATING RAILROAD, to solicit or secure this contract and that it has not paid or

agreed to pay any company or person other than a bonafide employee working solely for the OPERATING RAILROAD any fee, commission, percentage, brokerage fee gifts, or any kind of consideration contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warranty the STATE shall have the right to terminate this AGREEMENT without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Section 25 - Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay or interrupt all or any part of this performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

Section 26 - Financial Disclosure

The OPERATING RAILROAD shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time may be amended, which requires that every business that enters into contracts, leases or other agreements with the State of Maryland or its agencies during a calendar year in which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

Section 27 - Political Contributions Disclosure

The OPERATING RAILROAD shall comply with the provisions of Article 33, Sections 30-1 through 30-4 of the Annotated Code of Maryland, as from time to time amended, which require that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies, or a political subdivision of the State, during a calendar year under which the person receives in the aggregate \$10,000 or more, shall, on or before February 1 of the following year, file with the Secretary of State of Maryland certain specified information to include disclosure of political contributions in excess of \$100 to a candidate for elective office in any primary or general election.

Section 28 - Retention of Records

The OPERATING RAILROAD shall retain and maintain all records and documents relating to this AGREEMENT for three years after final payment by the State of Maryland hereunder or any applicable statute of limitations, whichever is longer, and shall

make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times.

Section 29 - Compliance with Laws

The OPERATING RAILROAD hereby warrants that:

- (a) It is qualified to do business in the State of Maryland and that it will take such action as, from time to time, may be necessary to remain qualified;
- (b) It is not in arrears with respect to the payment of any monies due or owing to the State of Maryland, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the AGREEMENT;
- (c) It shall comply with all federal, State and local laws applicable to its activities and obligations under this AGREEMENT; and,
- (d) It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this AGREEMENT.

Section 30

In exercising its rights hereunder, the operating railroad, and its agents, employees, and contractors, shall comply with all laws, rules, regulations, and orders of any governmental authority having jurisdiction over the subject matter. Without limitation on the foregoing, the operating railroad, its agents, employees, and contractors, shall comply with all such requirements with respect to protection of the environment and regulation of hazardous substances, and shall not place on or adjacent to the railroad lines any hazardous substance or substance which may cause harm to human health. Without limitation on the foregoing, the operating railroad, its agents, employees, and contractors, shall obtain and maintain in effect all applicable licenses and permits with respect to its use, maintenance and control of the railroad lines.



IN WITNESS WHEREOF the Parties hereto have caused these presents to be executed the day and year first above written.

ATTEST:

William H. Flannery

CHESAPEAKE RAILROAD

BY: William G. Bartosh (SEAL)
William G. Bartosh
President

WITNESS:

Lisa M. Miller

MASS TRANSIT ADMINISTRATION

BY: John A. Agro, Jr. (SEAL)
John A. Agro, Jr.
Administrator

APPROVED FOR FORM AND LEGAL SUFFICIENCY

BY: Irwin Brown
Irwin Brown
Legal Counsel

File: C:\WP51\FREIGHT\CHESAPEA.AGM

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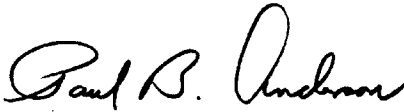
STATE OF MARYLAND
Department of Assessments and Taxation

I, PAUL B. ANDERSON OF THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THE DEPARTMENT, BY LAWS OF THE STATE, IS THE CUSTODIAN OF THE RECORDS OF THIS STATE RELATING TO THE FORFEITURE OR SUSPENSION OF CORPORATIONS OR THE RIGHTS OF CORPORATIONS TO TRANSACT BUSINESS IN THIS STATE, AND THAT I AM THE PROPER OFFICER TO EXECUTE THIS CERTIFICATE.

I FURTHER CERTIFY THAT CHESAPEAKE RAILROAD COMPANY, A MARYLAND CORPORATION, IS NOT IN GOOD STANDING WITH THIS DEPARTMENT FOR THE FOLLOWING REASONS:

THE CORPORATION WAS FORFEITED BY THIS DEPARTMENT ON OCTOBER 07, 1999.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY SIGNATURE AND AFFIXED THE SEAL OF THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF MARYLAND AT BALTIMORE ON THIS JUNE 22, 2005.



Paul B. Anderson
Charter Division



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