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August 8, 2006



217245

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 700
Washington, D. C. 20423

ENTERED
Office of Proceedings

AUG - 8 2006

Part of
Public Record

RE: Finance Docket No. 34908, *CSX Transportation, Inc., Norfolk Southern Railway Company, and Consolidated Rail Corporation—Modified Certificate of Public Convenience and Necessity—Staten Island, NY and New Jersey*

Dear Secretary Williams:

Enclosed are the original and 10 copies of a Notice of Modified Certificate of Convenience and Necessity, a check of \$1,400.00 for the filing fee and a CD containing the Notice.

Please time and date stamp the additional copy of this letter, and the Notice and return them with our messenger. Thank you for your assistance.

If you have any questions please call or email me.

Sincerely yours

A handwritten signature in black ink, appearing to read 'Louis E. Gitomer'.

Louis E. Gitomer
Attorney for: Consolidated Rail Corporation

Enclosures

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SURFACE
TRANSPORTATION BOARD

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34908



CSX TRANSPORTATION, INC., NORFOLK SOUTHERN RAILWAY COMPANY,
AND CONSOLIDATED RAIL CORPORATION—MODIFIED CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY—STATEN ISLAND, NEW YORK AND
NEW JERSEY

**NOTICE OF MODIFIED CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY**

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TRANSPORTATION BOARD

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Dated: August 8, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

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CSX TRANSPORTATION, INC., NORFOLK SOUTHERN RAILWAY COMPANY,
AND CONSOLIDATED RAIL CORPORATION—MODIFIED CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY—STATEN ISLAND, NEW YORK AND
NEW JERSEY

**NOTICE OF MODIFIED CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY**

CSX Transportation, Inc. (“CSXT”), Norfolk Southern Railway Company (“NSR”), and Consolidated Rail Corporation (“Conrail”)¹ jointly submit this Notice of Modified Certificate of Public Convenience and Necessity (the “Modified Certificate”) pursuant to 49 C.F.R. §1150.23(a) to provide rail freight operations jointly and severally as specified in an Operating Agreement over the 7.69-mile abandoned rail line generally between the Conrail Chemical Coast Line and points on Staten Island (fully described in Exhibit A and on the Map in Exhibit B and referred to herein as the “Line”), which was acquired by the New York City Economic Development Corporation (“NYCEDC”) and the Port Authority of New York and New Jersey (the “Port Authority”).²

¹ CSXT, NSR, and Conrail are jointly referred to as “Operators.”

² Operators previously sought similar authority in a Notice of Modified Certificate of Public Convenience and Necessity filed with the Board on February 18, 2004. The Board served a Modified Rail Certificate on in *CSX Transportation, Inc., Norfolk Southern Railway Company, and Consolidated Rail Corporation—Modified Rail Certificate*, STB Finance Docket No. 34473 (STB served March 19, 2004). The Operators never exercised the authority granted under that Modified Certificate. Operators are seeking a new Modified Certificate here because of the time that has passed since they first sought the Modified Certificate and because of the changed Operating Agreement that Operators are

SUMMARY

Rail service has not been provided on the Line in over 15 years. NYCEDC and Port Authority are jointly involved in the Staten Island Railroad Revitalization Project (the "Project"). Operators will provide rail freight operations over the Line pursuant to an Operating Agreement (See Exhibit C) as part of the Project. The Operating Agreement between the Operators and NYCEDC, as Administrator, provides for the Operators to manage and maintain the Line.

Operators are concurrently filing a Petition for Exemption under 49 U.S.C. §10502 from the requirements of 49 U.S.C. §11323(a)(6) for CSXT, NSR and Conrail to acquire the joint use of a railroad line operated by another rail carrier.

SPECIFIC INFORMATION REQUIRED BY 49 C.F.R. §1150.23(b)

Pursuant to the requirements of 49 C.F.R. §1150.23(b), the Operators provide the following information for this modified certificate of public convenience and necessity. The Operators are existing Class I railroads and will therefore provide the information required by the rules for existing railroads.

49 C.F.R. §1150.23(b)(1). The name and address of the operator ... an existing rail carrier.

CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

entering with the Administrator. By separate concurrent filing, Operators are notifying the Board of the termination of the Modified Certificate in Finance Docket No. 34473.

Consolidated Rail Corporation
2001 Market Street
Philadelphia, PA 19103

49 C.F.R. §1150.23(b)(2). Information about the prior abandonment, including docket number, status and date of the first decision approving the abandonment.

The Line has resulted from two abandonment proceedings.

In *Staten Island Railway Corporation–Abandonment Exemption*, ICC Docket No. AB-263 (Sub-No. 2X) (ICC Served July 3, 1990), the abandonment by Staten Island Railway Corporation (“SIRR”) was exempted for the so-called Travis Branch entirely on Staten Island, NY between milepost 0.00 at Arlington Yard and milepost 3.65. This abandonment has been consummated.

In *Staten Island Railway Corporation–Abandonment*, ICC Docket No. AB-263 (Sub-No. 3) (ICC Served December 5, 1991), the SIRR was authorized to abandon two line segments: (1) between milepost 3.8 at John Street east of Arlington Yard, Richmond County, NY, and milepost 12.09, at or near Cranford Junction, Union County, NJ; and (2) between milepost 0.00 at or near Port Ivory, Richmond County, NY and milepost 0.94 at the end of the line near Howland Hook, Richmond County, NY. This abandonment has been consummated.

49 C.F.R. §1150.23(b)(3). The exact dates of the period of operation which have been agreed upon by the operator and the State which owns the line (if there is any agreement, it should be provided).

Operations over the Line are scheduled to commence on October 1, 2006 and continue for a 10-year term, which is renewable for an additional 10 years. However, the Modified Certificate will not become effective until the Operating Agreement is signed and fully in effect. A copy of the unexecuted Operating Agreement is in Exhibit C.

Operations over the Line will not commence until the Operating Agreement is fully in effect. The Operators will not be obligated to commence operations and assume responsibility for the Line until the Operating Agreement is fully in effect, which, among other actions, requires: (1) reconstruction of the Line by NYCEDC is completed, Conrail has inspected the Line and is satisfied with the physical condition of the Line, including, but not limited to, all signals and appurtenances, and the appropriate and necessary crews of the Operators have been qualified to operate the Line; and (2) the U.S. Coast Guard regulations and requirements with respect to the maintenance and operation of the Arthur Kill Lift Bridge are acceptable to Conrail.

49 C.F.R. §1150.23(b)(4). A description of the service to be performed including, where applicable, a description of:

Operators propose to provide rail freight service between points on Staten Island and the Conrail Chemical Coast Line in New Jersey (the “CCC”) pursuant to the provisions of the Operating Agreement in a manner similar to that provided in the Conrail Shared Assets Areas established in *CSX Corp. et al.–Conrail Inc. et al.*, 3 STB 196, 228 (1998).

Operators have the exclusive right to manage operations with respect to the Line. Operators shall use the Line (a) to the extent necessary to perform their duties and obligations under the Operating Agreement, (b) to operate Unit Trains over the Line and to provide other rail services to railroads using the Line and (c) to have non-exclusive use of the Line to serve shippers on the Line, including new customers not currently served by the Line.

Pursuant to the Operating Agreement, on the Line, the Operators will be responsible for the performance of carload switching, dispatching, clearing derailments,

establishing a safety program and emergency response and recovery program, security services they deem necessary and desirable, and hiring, training and supervising personnel necessary to perform the duties and obligations under the Operating Agreement or engage subcontractors. Operators will be responsible for the maintenance of the Line and the Arthur Kill Lift Bridge (“AKLB”). Operators will control the AKLB. Routine maintenance on the Line will be performed by Conrail, program maintenance will be performed by CSXT, NSR or others under contract.

CSXT and NSR will independently market and solicit traffic to and from the Line, and will independently establish rates and rail transportation contracts for service to and from the Line. Conrail will have no marketing functions and will not make rates or enter into transportation contracts with customers. Conrail will not have any ratemaking, interchange or other common carrier authority as a result of the Operating Agreement that it currently lacks as a result of *Conrail Control*.

There are only three primary traffic flows anticipated over the Line consisting of: (a) intermodal traffic moving in blocks assembled by the Howland Hook Marine Terminal/Port Ivory operator moving to and from Arlington Yard (“Howland Hook Traffic”); (b) containerized municipal solid waste trains assembled by the Fresh Kills facility operator to and from the Fresh Kills facility (“Fresh Kills Traffic”); and (c) mixed merchandise (including aggregates and paper products) moving to and from two potential customers located on the Travis Branch (“Travis Branch Traffic”) that may, in the future, construct rail connections from their facilities to the Travis Branch in order to receive direct rail service.

As currently planned, Conrail will move the Howland Hook Traffic and the Travis Branch Traffic between Staten Island and the North Jersey Shared Asset Area for line haul movement via NSR and CSXT. Conrail will switch the Travis Branch Traffic directly from the relevant customer's facilities, if and when it develops, between Staten Island and the North Jersey Shared Asset Area for line haul movement via NSR and CSXT. Conrail will dispatch the Line.

NSR and/or CSXT at a future time will likely provide service to the Fresh Kills Traffic and the Howland Hook traffic directly, as that traffic is expected to move in unit train volumes.

(i) The line over which service is to be performed.

The Line is described in Exhibit A.

(ii) All interline connections including the names of the connecting railroads.

Interchange between Conrail and CSXT and NSR will occur in the North Jersey Shared Asset Area. Any interchange on the Line between CSXT or NSR and any other railroad that receives authorization to operate over the Line, or any portion thereof, shall occur at Arlington Yard.

(iii) The nature and extent of all liability insurance coverage, including binder or policy number and name of insurer.

CSXT, NSR and Conrail are all existing Class I railroads. As such, they have substantial liability insurance coverage, which is being expanded to cover their operations over the Line.

(iv) Any preconditions which shippers must meet to receive service.

The only precondition to any shipper's receipt of service is the execution of an agreement with CSXT or NSR that specifies the rates and other terms and conditions of

service that such railroad will provide. Conrail will not be authorized to quote rates and other terms and conditions of service, just as it is not authorized to do so in the North Jersey Shared Asset Area.

49 C.F.R. §1150.23(b)(5). The name and address of any subsidizers.

None.

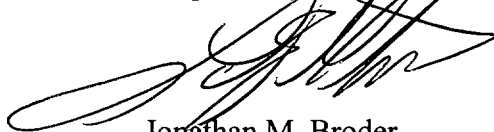
49 C.F.R. §1150.23(b)(6). Sufficient information to establish the financial responsibility of any subsidizers (if the subsidizer is a State, the information should show that it has authority to enter into the agreement for subsidized operations).

Not applicable.

CONCLUSION

CSXT, NSR, and Conrail respectfully request the Board to serve a Modified Certificate for them to be able to operate over the Line.

Respectfully submitted,



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Dated: August 8, 2006

CERTIFICATE OF SERVICE

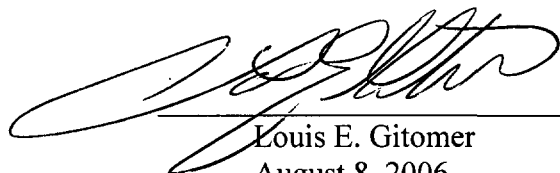
I hereby certify that I have caused the foregoing document to be served by first class mail, postage prepaid on:

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Louis E. Gitomer
August 8, 2006

EXHIBIT A-DESCRIPTION OF LINE

The Line shall consist of the rail line segments and rail facilities described below in A and B:

A. Rail Line Segments:

The SIRR is defined as the following two line segments: (a) the North Shore Line between the end of track at MP 4.6 at Union Avenue east of Arlington Yard, Richmond County, NY and MP 7.4, via the Chemical Coast Connector, at the proposed point of switch at the connection between the Chemical Coast Connector and Conrail's Chemical Coast Line in Union County, NJ, a distance of 2.8 miles; and (b) the "Travis Branch" between MP 0.00, Arlington Yard Station and MP 4.41 in Richmond County, NY, a distance of 4.41 miles (collectively referred to as "the SIRR Lines").

Included within the North Shore Line segment are all the tracks in Arlington Yard together with lead tracks on both the east and west ends of the yard, the so-called Wye Connector that provides a direct connection to the Travis Branch from the North Shore Line and a track designated as the Travis Lead that provides a connection to and from the Travis Branch to the east end of Arlington Yard. A map depicting the entire railroad as described above is attached hereto as Exhibit B.

B. Line: The following segments or components of the proposed Line are described in more detail below:

(i) "CHEMICAL COAST LINE CONNECTOR" or "CCC" means the segment of the Line indicated on the diagram attached hereto as Exhibit B consisting of a new single track rail alignment approximately 3,760 feet long measured from the point of switch of a new turnout connecting the Line to the Chemical Coast Line, south and then east to the west approach span of the AKLB. The new junction point consists of a number 15 turnout and a new signal interlocking (designated CP-11) remotely operated by Conrail. The CCC alignment then curves to the east on a 7° - 30' curve and passes under Bayway Avenue. The curve brings the new rail alignment parallel to the existing alignment towards the Arthur Kill. A new three span bridge carries both the new and existing track alignment over First Street South. 160 feet east of that bridge another new four span bridge carries the railroad over a rail spur and Front Street South. On this bridge, a number 15 turnout connects the new rail alignment to the existing. This is an interlocked turnout with signals that also function to protect eastward train movements to the AKLB.

(ii) "ARTHUR KILL LIFT BRIDGE" or "AKLB" means the lift bridge segment of the Line indicated on the diagram attached hereto as Exhibit B, located just north of the Goethals Bridge, at the southern end of the Intermodal Terminal. The structure is a vertical lift bridge carrying a single railroad track between Staten Island and New Jersey at a vertical clearance of 31 feet with the span in the closed (lowered) position. The span is normally kept in the open

(raised) position, which provides a vertical clearance of 135 feet above mean high water for marine traffic.

(iii) “WEST LEAD TRACK” means that track indicated on the diagram attached hereto as Exhibit B extending eastward from the AKLB as single track for 536 feet to a new number 10 right hand turnout that splits the line into two tracks: the west lead on the north and the running track on the south. This segment is on an earthen embankment and downgrade to the east from the AKLB towards Arlington Yard. The two tracks pass over the existing truck entrance to the Intermodal Terminal on a new two span concrete bridge. The two tracks cross over Bridge Creek and Western Avenue on a two span, open deck, steel bridge. The total distance of the West Lead Track from the AKLB to the Western Avenue (under grade) bridge is 3,528 feet.

(iv) “ARLINGTON YARD” means the main railyard indicated on the diagram attached hereto as Exhibit B, extending from the Western Avenue (under grade) bridge to the South Avenue overhead bridge, a distance of 4,500 feet. Arlington Yard is designed as a 10-track facility with all 10 tracks connected on both ends. Three of the tracks extend into the next segment to the east, the East Lead Track. The west-end of Arlington Yard includes two sets of crossovers to allow all yard tracks to be accessed by the two tracks coming into the yard from the AKLB. There is also a connection to the Wye Connector and two short stub end tracks that can be used for locomotive storage/servicing and a RIP track (Repair In Place) for car repairs and miscellaneous storage. The east end includes a connection from the Travis Branch and the group of shorter tracks (5 – 9) and a crossover from Track 4 to Track 3. Tracks 2, 3 and 4 continue east under South Avenue overhead bridge and are described below in “EAST LEAD TRACK”. Arlington Yard also contains an access road from Western Avenue, a narrow perimeter road for maintenance and emergency access and a yard lighting system to allow operation 24 hours per day.

(v) “EAST LEAD TRACK” means three track extensions of Tracks 2, 3 and 4 in Arlington Yard from the South Avenue overhead bridge to the Union Avenue overhead bridge, a distance of 2,260 feet. The northerly track (Track 2) would usually function as a switching lead for the east end of the yard where trains could be pulled back from the various tracks and then moved west onto the lead track into the Intermodal Terminal. Tracks 3 and 4 are extensions of the tracks in the main Arlington Yard and provide for receiving and departing trains longer than would fit on a track in the main Arlington Yard.

(vi) “TRAVIS BRANCH” means the segment of the Line indicated on the diagram attached hereto as Exhibit B that is a single track line that diverges southwest from Arlington Yard, crosses the Goethals Bridge highway and parallel service roads on three ballasted deck bridges, then over Bridge Creek on a three-span, open, deck plate girder bridge and descends into the GATX Corporation (“GATX”) site. The alignment then curves to the south, comes tangent and continues south across areas of marsh with some adjacent areas filled and

occupied by various uses. At the north end of this tangent is a new two span, concrete, ballasted deck bridge. Just north of that bridge is a rebuilt private grade crossing, River Road, which leads to a Con Ed substation and a gated entrance to the GATX site.

Further south in the middle of the long tangent is a new, three span, concrete, ballasted deck bridge over Saw Mill Creek. Further south, to the west of the Travis Branch is a new track to the VanBro facility. Just south of VanBro the tracks curve to the west and cross South Avenue at grade. Immediately south of South Avenue are two double-ended sidings about 1,300 feet long. South of the two sidings, the Travis Branch crosses under Meredith Avenue and then passes over a new two span concrete ballasted deck bridge.

The Travis Branch then curves west and then north to south traversing the old AKP rail yard. The extension then traverses the Visy Paper (NY), Inc. ("Visy") container board mill property, crosses Victory Boulevard at grade, and vacant land owned by Consolidated Edison ("ConEd"). A significant segment of the alignment on ConEd consists of a seven-degree curve to the east turning the proposed alignment from a north/south axis to an east/west axis. This aligns with the Transfer Station rail car loading area on the SI Transfer Station site to the east of ConEd. Most of the rail alignment on ConEd consists of a two-track right of way supported on a new embankment up to six to eight feet high. A new twin, 10' x 10' concrete box culvert carries the rail line over a tidal creek at the ConEd/SI Transfer Station property line.

(vii) "WYE CONNECTOR" means the connector segment of the Rail Facilities indicated on the diagram attached hereto as Exhibit B providing a direct connection from the Travis Branch to the North Shore Line in a direction towards the Arthur Kill Lift Bridge. The Wye Connector is a 1,492 foot long curving track with a turnout at each end; one on the running track from the AKLB and one on the Travis Branch.

EXHIBIT B-MAP

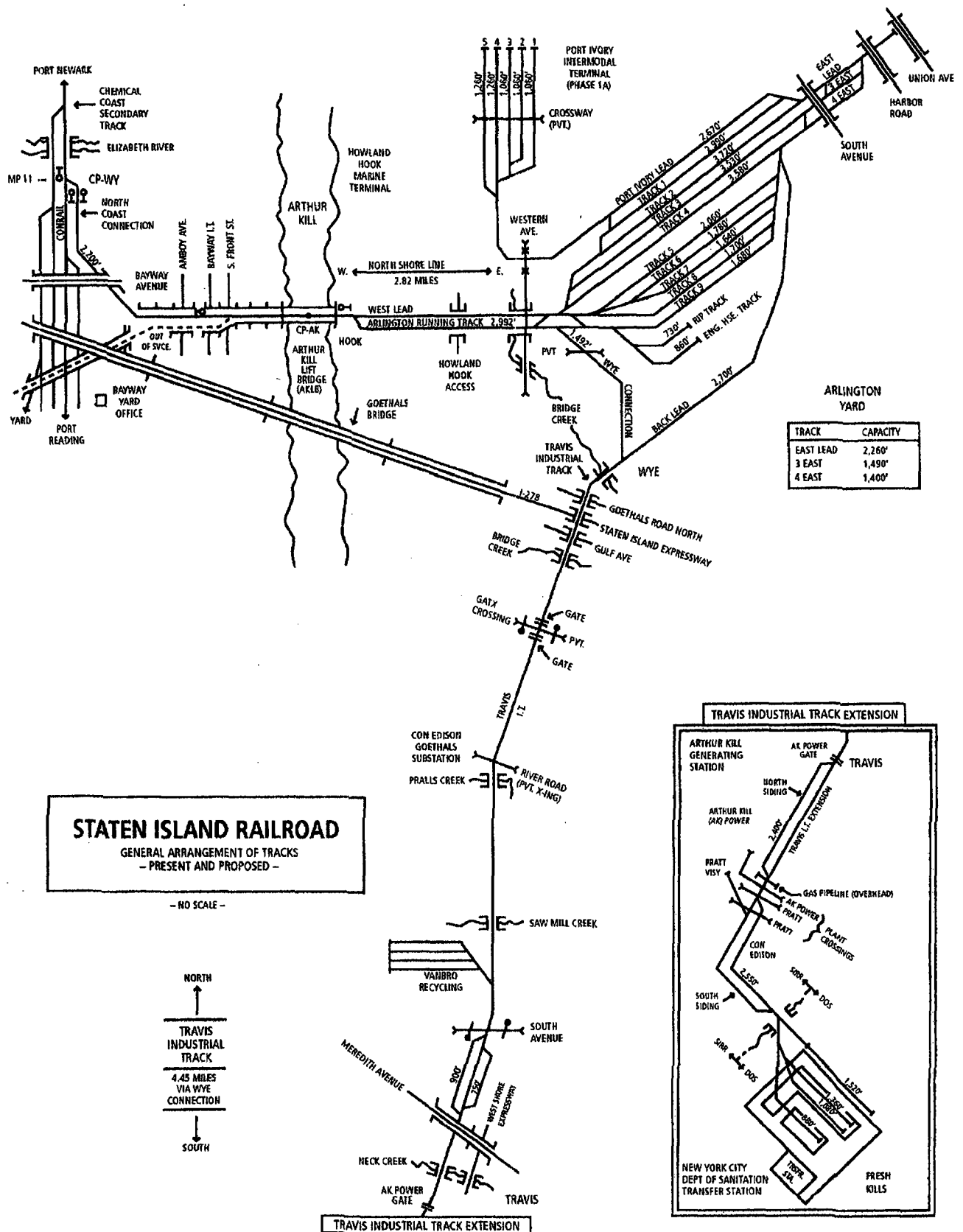


EXHIBIT C-OPERATING AGREEMENT

DRAFT 8.07.06

OPERATING AGREEMENT

BETWEEN

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION,

AS ADMINISTRATOR

AND

CSX TRANSPORTATION, INC.,

NORFOLK SOUTHERN RAILWAY COMPANY

AND

CONSOLIDATED RAIL CORPORATION

JOINTLY AND SEVERALLY, AS OPERATOR

Dated as of _____, 2006

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EXHIBITS

OPERATING AGREEMENT

THIS **OPERATING AGREEMENT** (the "Agreement") made as of this ____ day of _____, 2006, between **NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**, a New York not-for-profit corporation, having an address at 110 William Street, New York, New York 10038 (the "**Administrator**"), and **CSX TRANSPORTATION, INC. ("CSX")**, having an address at 500 Water Street, Jacksonville, Florida 32202, **NORFOLK SOUTHERN RAILWAY COMPANY ("NS")** having an address at 3 Commercial Place, Norfolk, Virginia 23510, and **CONSOLIDATED RAIL CORPORATION ("Conrail")** having an address at 2001 Market Street, 8th Floor, Philadelphia, Pennsylvania 19103 (CSX, NS and Conrail, jointly and severally, the "**Operator**"). Initially capitalized terms used and not otherwise defined herein have the meanings given such terms in Article 23.

RECITALS:

WHEREAS, to support the economic development of Staten Island and to accommodate growth at the Intermodal Terminal, the City, through the Administrator, and PANYNJ, are reactivating the Rail Facilities, also known as the Staten Island Railroad or SIRR, as defined herein and more particularly described on Exhibit A to this Agreement;

WHEREAS, (i) a portion of the Rail Facilities is located within the State of New York and owned by the City or on real property beneficially owned by Visy (with the NYCIDA, as nominal fee owner of Visy property), AKP and Con Ed in which the City has or will obtain easement or ownership rights, and is managed by Administrator on behalf of the City and (ii) a portion is located within the State of New Jersey and is owned by NJ and leased to PANYNJ pursuant to the NJ-PANYNJ Lease Agreement (the City, PANYNJ and NJ are each referred to herein individually as "Owner", or collectively as "Owners" and Visy, AKP and Con Ed are referred to herein individually as "Private Owner", or collectively as "Private Owners" to the extent of their respective fee, leasehold or easement or other interests in real property and/or improvements comprising a portion of the Rail Facilities);

WHEREAS, Administrator, on behalf of the City, and PANYNJ have agreed to make certain improvements for the efficient operations of the Rail Facilities, including the construction of the Chemical Coast Connector by PANYNJ to connect the AKLB to the Chemical Coast Line;

WHEREAS, pursuant to the annual Amended and Restated Maritime Contract dated as of July 1, 2006 between the City and Administrator, as the same may be amended and extended (the "City Contract") the City has retained Administrator to engage in, inter alia, various activities intended to promote the economic development of the City's waterfront property and related transportation facilities, including the operation of the Rail Facilities;

WHEREAS, pursuant to the City-PANYNJ Operating Agreement, the City and PANYNJ have agreed to provide each other with mutual operating rights over portions of the Rail Facilities and further agreed to authorize Administrator to engage Operator to manage and maintain the Rail Facilities;

WHEREAS, Administrator desires to engage Operator to manage the Rail Facilities and Operator desires to operate and manage the Rail Facilities on the terms and conditions set forth herein;

WHEREAS, the purpose of this Agreement is to grant the right to Operator to conduct and operate such railroad operations on a non-exclusive basis for the purpose of promoting the transportation of freight on the Rail Facilities; and

WHEREAS, Administrator and Operator desire to set forth herein the terms and conditions of Operator's rights and obligations with respect to the Rail Facilities;

NOW, THEREFORE, in consideration of the benefits accruing to each of the parties as recited to herein, the parties do mutually agree hereto as follows:

ARTICLE 1 APPOINTMENT OF OPERATOR; USE OF RAIL FACILITIES

1.1 Appointment of Operator; Independent Contractor. On and subject to the terms and conditions of this Agreement, Administrator hereby appoints Operator to perform the duties specified in this Agreement to be performed by Operator with respect to the Rail Facilities described on Exhibits A and B to this Agreement. Other than as required by this Agreement, Administrator shall not direct Operator's exclusive rights to manage operations with respect to the Rail Facilities as specified in this Agreement. Operator shall be an independent contractor for all purposes under this operating Agreement.

1.2 Use of Rail Facilities; Limitations. Operator is hereby authorized to use the Rail Facilities for the Term of this Agreement (a) to the extent necessary to perform its duties and obligations hereunder, (b) to operate Unit Trains over the Rail Facilities and to provide other rail services to railroads using the Rail Facilities and (c) to have non-exclusive use of the Rail Facilities to serve shippers on the Rail Facilities, including new customers not currently served by the Rail Facilities, subject to the terms of this Agreement.

1.3 Limitations on Operator's Rights.

1.3.1 The appointment and authorization contained herein grant Operator a license to operate on the Rail Facilities on the terms and conditions contained herein; such appointment and authorization however do not, and shall not be construed to, give or grant Operator any right, title or interest of any kind or character in or to the Rail Facilities or any other property of the City of New York, PANYNJ or Administrator, and Operator specifically acknowledges that it has no leasehold, easement or other interest in any of such real or personal property.

1.3.2 Operator shall have no right to grant, convey, enter into, modify, extend or renew leases, licenses, easements or conveyances of all or any portion of the Rail Facilities, or any right or interest therein. Subject to the provisions of Article 1.7, the City, PANYNJ and Administrator retain all of their respective rights to modify, extend, renew and manage, and shall

retain all income from, all leases, licenses, easements, conveyances and the like from their respective interests in the Rail Facilities.

1.3.3 Operator's right to use and operate the Rail Facilities shall be subject to all of the following limitations:

(a) All utility easements and occupancies located on the Rail Facilities, including (i) that certain Easement from the Staten Island Rail Transit Company and the New York Transit and Terminal Company, Limited to Consolidated Edison Company of New York, Inc. ("Con Ed") dated the 30th day of April 1959 and recorded at liber 1463, Page 96, in Richmond County, New York and (ii) that certain Easement Agreement by and between the Staten Island Rapid Transit Railway Company and Consolidated Edison Company of New York dated the 24th day of January 1992 and recorded at Reel 3344, Page 0155, in Richmond County, New York ((i) and (ii), hereafter, the "Utility Easements"). In order to comply with the requirements of the Utility Easements, Operator covenants and agrees to comply with the requirements set forth in Exhibit C-1 hereto;

(b) Any rights to the property encumbered by encroachments, tenants, licensees, or other occupancies currently on the Rail Facilities. Administrator shall disclose to Operator all such encumbrances known to Administrator and not otherwise described, referenced or summarized in this Agreement. There shall be no obligation on the part of the Administrator or Owners to take any action to remove the same;

(c) The restrictions, terms and provisions of the NJ-PANYNJ Lease Agreement, made as of August 1, 2003, by and between the State of New Jersey Department of Transportation and PANYNJ attached as Exhibit C-2 hereto;

(d) The restrictions, terms and provisions of the Easement Agreement, made as of August 2, 2004, by and among NYCIDA, Visy and the City attached as Exhibit C-2 hereto (the "Visy Easement"). In order to comply with the requirements of the Visy Easement, Operator covenants and agrees to comply with the requirements set forth in Appendix A to Exhibit C-3 hereto;

(e) The restrictions and requirements set forth on Exhibit C-4 hereto (the "AKP Requirements"). Operator covenants and agrees to comply with the AKP Requirements;

(f) The restrictions and requirements set forth on Exhibit C-5 hereto (the "Con Ed Requirements"). Operator covenants and agrees to comply with the Con Ed Requirements;

(g) Operator may not enter into any agreements that permit a third party to use or operate any portion of the Rail Facilities except by written consent of Administrator, which may be granted at the sole discretion of Administrator. Operator shall be permitted to enter into an agreement with the operator of the Intermodal Terminal or its contractor for purposes of allowing such operator or such contractor to move, on behalf of such

Intermodal Terminal operator, intermodal Railcars from the Intermodal Terminal into Arlington Yard for physical interchange with the Operator. Notwithstanding the foregoing, Administrator shall have the right in its sole discretion to review and approve the non-commercial terms of such contract, which shall be in all respects subject and subordinate to the provisions of this Operating Agreement. The liability insurance required by Article 19 of this Agreement shall name the Operator, Administrator, the City and PANYNJ as additional insureds with respect to any such activities on the Rail Facilities. The Operator shall require the Intermodal Terminal operator or its contractor to maintain liability insurance in amounts acceptable to the Administrator and to also indemnify and release the Operator, Administrator, the City and PANYNJ in accordance with the requirements of Article 18 hereof; and

(h) The limitations and restrictions set forth in the Modified Certificate and any other required approvals.

1.4 Use by Owners and Others.

1.4.1. Each Owner may sell, transfer or encumber all or any portion of its ownership interest in the Rail Facilities provided that any such sale, transfer or other encumbrance shall be subject to Operator's rights or obligations hereunder.

1.4.2 The grant of permission to operate Unit Trains or other Trains over the Rail Facilities contained in this Agreement is not exclusive and Administrator or Owners may grant access to third parties to all or any portion of the Rail Facilities (including permission to operate Trains over the Rail Facilities) pursuant to contracts, agreements, licenses, easements, franchises and leases so long as the operations of the other operators do not unreasonably interfere with the operations of the Operator, and provided any such users reach agreement with Operator with regard to customary insurance, indemnification, fees (provided that Operator shall only be entitled to charge customary fees for interchange, switching and similar services, and fees for Trackage maintenance costs based on an allocable percentage of use, but not for access and use of the Rail Facilities) and other customary matters. Operator will have dispatch and management authority over all other freight carrier users of the Rail Facilities and will be required to collect Service Fees (as described in Section 5.1 hereof) from all traffic carried by such other freight carriers, subject to the provisions of this Agreement.

1.4.3 Administrator will apprise the Operator of any plans for passenger rail service on the Rail Facilities. As of the Effective Date, to Administrator's knowledge, there are no environmental studies, construction plans or funds allocated for the potential initiation of passenger rail service on the Rail Facilities.

1.5 Additions, Modifications and Deletions to Rail Facilities by Owner.

1.5.1 Subject to Article 10.5, the Administrator or Owners may at any time in their sole discretion construct new rail facilities that integrate with the Rail Facilities and the Administrator may, in its sole discretion, designate such new rail facilities as Rail Facilities. Administrator shall consult with Operator prior to the commencement of construction of such new rail facilities. When new rail facilities that the Owners and Administrator intend to include

in the Rail Facilities are completed and connected to the existing Rail Facilities and any necessary regulatory approvals or exemptions have been obtained, such new rail facilities will, upon being made available to Operator, become part of the Rail Facilities and subject to the terms of this Agreement. Operator may elect to operate or not operate such additional facilities. If Operator elects to not operate such additional facilities it shall not be obligated to maintain them. If Operator does elect to operate such additional facilities it shall be obligated to maintain them. If Operator elects to operate such additional facilities, it shall promptly inspect such additional facilities and may reject the same only if Operator determines that operations over such facilities would not be safe. Unless the Administrator designates a higher maintenance standard, the maintenance standard for new facilities added to the Rail Facilities under this Agreement shall be FRA Class 2 for main line tracks and FRA Class 2 for other tracks or, if an Owner has constructed the new facilities to a lower maintenance standard, such lower maintenance standard shall apply.

1.5.2 Subject to the Administrator or an Owner obtaining any necessary regulatory approvals or exemptions, with 30 days' prior written notice to the Operator and subject to Operator's written consent, Administrator may remove from service a Rail Facility, either temporarily or permanently.

1.5.3 Operator shall be solely responsible at its own cost and expense for obtaining any necessary regulatory approvals or exemptions required for the actions described in this Section 1.5.

1.6 No Changes to Rail Facilities by Operator. Operator shall not take out of service, embargo or remove any of the Rail Facilities (other than temporarily in the course of its maintenance and repair activities, in an emergency or as a result of a hazardous condition), without the prior written approval of Administrator, which approval may be given or withheld in the reasonable discretion of Administrator.

1.7 Easements and Licenses.

1.7.1 All mineral rights underlying the Rail Facilities remain the exclusive property of Administrator, the City and, with respect to the CCC, PANYNJ or NJ. All existing easements including public utility easements and rights-of-way for crossings, pipelines, wirelines, fiber optic facilities, roads, streets, highways, signboards shall remain undiminished and in full force and effect. Administrator agrees to consult with the Operator and the Owners to ensure that neither Administrator nor Owners grant any easements, leases, licenses or rights of occupancy (collectively, "Easements") that would unreasonably interfere with Operator's railroad operations and use of the Rail Facilities. Requests for entry onto the Rail Facilities by any third party shall be granted by Administrator only upon prior written notice to Operator, which shall include a reasonably detailed explanation for such entry and/or of work to be performed. Entry upon the Rail Facilities by or on behalf of the Administrator shall be coordinated with the Operator and Operator shall control any such entry and time of performance of work. At Operator's request, Administrator agrees to request that the City and PANYNJ take reasonable actions for the purpose of enforcing their respective rights under any Easement affecting the Rail Facilities to the extent that the grantee under such Easement is not in compliance with the terms and provisions of such Easement and such non-compliance is in

Administrator's judgment unreasonably interfering with Operator's railroad operations and use of the Rail Facilities.

1.7.2 With respect to the Chemical Coast Connector, PANYNJ and NJ retain the exclusive right to grant easements or leases to others for use thereon. Administrator agrees to consult with the PANYNJ, NJ and Operator to ensure that neither the PANYNJ nor NJ grant any easements, leases, licenses or rights of occupancy that would unreasonably interfere with Operator's railroad operations and use of the Rail Facilities. Operator shall have no rights to any revenue from new or existing easements granted to others for use of such right-of-way.

1.7.3 For that portion of the Rail Facilities located in New York City, including the AKLB and approaches owned by the City or Administrator, the Administrator and the City retain the exclusive right to grant easements, leases or licenses to others for use thereon. Administrator agrees to consult with the City and Operator to ensure that the neither Administrator nor the City grants any easements, leases, licenses or rights of occupancy that would unreasonably interfere with Operator's railroad operations and use of the Rail Facilities. Any revenue from new and existing easements granted to others for such right-of-way shall remain sole property of the Administrator and the City. All parties seeking access to service through the construction of a spur connecting to the Rail Facilities located in Staten Island shall first obtain a revocable license from the City, to be issued in the City's sole discretion. Upon the issuance of said revocable license, Operator may provide service to such licensee upon the negotiation of applicable transportation, sidetrack and other agreements. Operator shall have no right to grant access to or use of the Rail Facilities located in Staten Island or the City's real property without the prior written consent of the City.

ARTICLE 2 MAINTENANCE

2.1 Management, Operation and Maintenance. Operator hereby agrees to manage, operate and maintain, directly or through use of sub-contractors (provided that Operator shall not contract or use any sub-contractor that is a Prohibited Person), the Rail Facilities as provided herein and as more particularly described on Exhibit D to this Agreement. Operator agrees that the standard to which the track, roadbed and appurtenances are to be maintained is Class 2 FRA standards.

2.2. Maintenance of Rail Facilities. Operator shall maintain and repair all of the Rail Facilities in accordance with Exhibit D. Operator's obligation to maintain the Rail Facilities shall continue until such time as a termination of this Agreement occurs. Administrator retains the right, on reasonable notice to Operator and at its own risk (but without limiting Operator's indemnification obligations described in Article 18), to inspect or have inspected the Rail Facilities. Further, copies of all physical inspection reports produced by or for Operator shall be promptly sent to Administrator upon Administrator's written request.

2.3. Replacement of Trackage. Unless agreed to by Administrator and Operator, Operator will not replace existing track and other track materials ("OTM") on the Rail Facilities with substitute or replacement track or OTM having a lighter weight, or of lesser quality. Any

repair or replacement shall, as a minimum, be in kind (i.e., welded rail repair or replacement shall also be welded). Operator may make any replacement and substitute with any material having the same or higher weight and quality as the materials being replaced, provided that the work being performed and the materials being provided by Operator are sufficient to maintain the trackage to Class 2 FRA standards. Operator shall give Administrator fourteen (14) days' written notice of any material change in track, signal or switching configurations. Approval of such material changes by Administrator is required and will not unreasonably be withheld or delayed. Replacement components installed during maintenance shall become property of the City or, in the case of the CCC and certain other Rail Facilities, PANYNJ or NJ and salvaged materials shall become the property of the Operator upon the written consent of the respective Owner of such property.

2.4 Maintenance Plans. Within 90 days of the execution hereof, Operator and Administrator shall meet and agree on the Approved Maintenance Plan for the Traffic Year 2007. At least 90 days prior to the beginning of each Traffic Year after 2007, Operator shall provide to Administrator proposed maintenance plans for the Rail Facilities for the coming Traffic Year, as applicable, which plans shall be in such detail as Administrator may reasonably request

2.5 Approval of Annual Maintenance Plans. Within 45 days after receipt of Operator's proposed annual maintenance plan for the Rail Facilities under Section 2.4, Administrator, in its reasonable discretion, shall review and approve or disapprove such plan. If the Administrator disapproves the proposed annual maintenance plan for the Rail Facilities the Operator shall deliver to the Administrator a revised annual maintenance plan for the Rail Facilities which shall reflect all comments made by the Administrator to the original proposed plan. The process described in the preceding sentence shall continue until the Administrator approves a revised annual maintenance plan and budget for the Rail Facilities proposed by Operator. Such revised plan shall then be the "Approved Maintenance Plan" for the applicable Traffic Year.

2.6 Plan Dispute. If the parties are unable to agree on a budget and annual maintenance plan prior to the beginning of the applicable Traffic Year, then either the Operator or Administrator may invoke the arbitration procedures specified in Article 23. Should such dispute not be resolved prior to the beginning of the applicable Traffic Year, then to reduce any disruption to maintenance and operations within the Rail Facilities the prior Traffic Year's Approved Maintenance Plan shall apply and Operator shall conduct its operations on the Rail Facilities in accordance therewith and the Operator shall pay for such maintenance in accordance therewith until the dispute is resolved.

2.7 Replacement of Materials. Operator and Administrator acknowledge that the annual Approved Maintenance Plans are intended to provide for a normalized maintenance and replacement schedule over a period of time that will maintain the Rail Facilities and all components thereof in the condition required by this Agreement. The maintenance program described in this Agreement and as set forth in the Approved Maintenance Plans shall include the periodic replacement of ties, rail, switches and other components of the Rail Facilities with materials of like quality. Operator acknowledges that such replacements of materials are part of normalized maintenance and, as such, the costs thereof are to be borne by Operator. Operator

and Administrator further acknowledge that notwithstanding consistent performance of the normalized maintenance and replacement program described above, at some point in the future major portions or components of the Rail Facilities may need to be replaced. During the Term of this Agreement, Operator shall provide to Administrator information regarding annual replacement of ties, rail, switches and other components of the Rail Facilities as part of the Approved Maintenance Plan. Whether the replacement of portions or components of the Rail Facilities constitutes capital maintenance or normalized maintenance, for which Operator is responsible, shall be determined by application of standard railroad accounting procedures and principles.

ARTICLE 3

CONDITION OF RAIL FACILITIES; WARRANTY DISCLAIMER

3.1 Acknowledgement Regarding Investigations. Operator acknowledges that prior to its execution hereof, Operator had the opportunity to investigate and determine (a) the physical aspects and condition of all portions of the Rail Facilities, (b) traffic projections (including carload and Unit Train projections), and (c) such other matters as Operator deemed relevant to analyze the proposed transaction, to discover any risks and to determine whether the transaction is economically viable for Operator. Operator's investigations have included, among other things, meetings with the Owners. Operator further acknowledges that Operator's entry into this Agreement is based solely on the results of its own investigations and examinations, or its election not to investigate some or all of such matters as may be relevant, and not on any representation, warranty, promise or statement by Administrator, Owners, or any representative or agent thereof (other than those expressly provided in this Agreement). Operator agrees that, except as otherwise expressly set forth in this Agreement, neither Administrator nor the Owners has made any representation, warranty, promise or statement, express or implied, to Operator, or to anyone acting for or on behalf of Operator, concerning or regarding such matters.

3.2 Condition of Rail Facilities. Operator acknowledges that it has inspected the condition of the Rail Facilities and conducted due diligence to its satisfaction prior to the Effective Date. Operator acknowledges and agrees that its right to manage and use the Rail Facilities are granted hereunder on an "as is/where is" basis and Operator shall be responsible for the condition of the Rail Facilities as of the Effective Date, provided, however, that this assumption of responsibility by Operator shall not serve as the basis for the imposition of liability against Operator for either environmental conditions or latent defects in the Rail Facilities that existed prior to the Effective Date, provided further, however, that, without amending or modifying any prior agreement(s), if any, between or among any parties to this Agreement with respect to such matters, the foregoing proviso shall not release any party to this Agreement from any liabilities that may arise from such party's previous activities on, or ownership of, if any, the Rail Facilities. Administrator makes no representation or warranty as to the condition of the Rail Facilities or their suitability for any particular use or as to any other matter affecting this Agreement. Upon the written notice by Operator of any defect in workmanship or materials relating to the Rail Facilities, Administrator will at Operator's reasonable request make good faith efforts to enforce or assign to Operator any warranties for workmanship or materials available to it with respect to any work performed on the Rail Facilities, provided that no assurance is hereby given by Administrator to Operator relating to the

existence or enforceability of any such warranties. Operator is prohibited from selling, salvaging, demolishing or removing any part of the Rail Facilities, including but not limited to the track, ties, ballast and track supports, without the prior written consent of Administrator.

3.3 No Representations or Warranties Regarding Materials or Documents. Operator acknowledges that the delivery of materials and documents to Operator by or on behalf of Owners or the Administrator has been made solely to facilitate Operator's investigations relating to this transaction, and neither Administrator nor the Owners makes any representations or warranties of any kind regarding the accuracy or thoroughness of the information contained in such materials and documents, which matters have been independently reviewed and accepted or rejected, as the case may be, by Operator, provided, however that Operator's review of such material, documents or other matter shall not serve as the basis for the imposition of liability against Operator for either environmental conditions or latent defects in the Rail Facilities that existed prior to the Effective Date, provided further, however, that the foregoing proviso shall not release Operator from any liabilities that may arise from Operator's previous activities or ownership of certain of the Rail Facilities.

ARTICLE 4

EFFECTIVE DATE; COMMENCEMENT OF OPERATIONS; TERM

4.1 Effective Date. The Term of this Agreement shall commence on the date set forth by this Agreement in Section 4.2 below (the "Effective Date").

4.2 Conditions to Effective Date. Operator's duties hereunder shall commence on the later of (i) October 1, 2006, or (ii) the date of satisfaction or waiver by Operator and Administrator of the conditions set forth in Article 4.2 (in either event, the "Effective Date"). Administrator and Operator shall execute a Memorandum of Effective Date within five business days after the Effective Date. All covenants, representations, warranties and agreements contained herein by the parties shall also be made as of the Effective Date, as evidenced by the delivery of certifications delivered by each party hereto and contained in such Memorandum of Effective Date. The obligations of Operator and Administrator to commence operations under this Agreement on the Effective Date are subject to the satisfaction on or prior to the Effective Date of each of the following conditions:

- (a) The Modified Certificate shall be in full force and effect;
- (b) Operator shall obtain regulatory approvals or exemptions therefrom as may be necessary to enable it to operate and manage the Rail Facilities as contractor for Administrator, including approvals for the operation and/or maintenance of any rail crossings. The signals for the AKLB shall have been tested by Operator and shall be operational. The Operator may, but is not required to, remote control the AKLB. Administrator will support the Operator's petition, if any, for authority to remote control the AKLB;
- (c) On the Effective Date, (i) no statute, rule, regulation, order, decree, directive, injunction, writ or judgment enacted, adopted, issued, promulgated or rendered

at any time after the date of this Agreement by any governmental authority or court, and (ii) no litigation shall have been commenced or threatened which, in either case, would (w) prevent the commencement of operations under this Agreement, (x) invalidate the transactions contemplated by this Agreement, (y) materially interfere with or prohibit the continued effectiveness of this Agreement, or (z) have a material adverse effect on Operator's ability to operate the Rail Facilities pursuant to this Agreement;

(d) Operator shall have been given an opportunity to perform a final physical inspection of the Rail Facilities, including a demonstration of the AKLB's safe operability, including testing of AKLB signals and controls, to confirm to Operator's reasonable satisfaction that the Rail Facilities are operational; and

(e) Each of CSX, NS and Conrail shall have presented Administrator with evidence of insurance or self-insurance in accordance with the provisions of Article 19;

(f) Operator shall have entered into a premises use agreement, which shall not contain commercial terms, with the operator of the Intermodal Terminal and a long-term agreement with the operator of the SI Transfer Station, the terms of which are reasonably acceptable to the Administrator and the City, and shall have obtained, at Operator's sole cost and expense, any required STB approvals or exemptions for such agreement.

If one or more of the above conditions have not been satisfied by March 1, 2007, then Administrator and Operator each shall use reasonable efforts to attempt to satisfy such failed conditions as soon as reasonably possible, and the Effective Date shall be extended until the failed conditions are satisfied, or waived by Administrator and by Operator, provided, however, that if such failed conditions have not been satisfied (or waived) by the date which is 360 days after the date of this Agreement, then either Administrator or Operator may terminate this Agreement by written notice to the other party. Upon such termination, this Agreement shall immediately and automatically be deemed terminated. The conditions listed in this Article 4.2 are for the benefit of both Operator and Administrator, and to be effective a waiver of any such condition must be in writing and signed by an authorized officer of the party waiving the condition.

4.3 Term of Agreement. This Agreement shall have a term (the "Term") that begins on the Effective Date and ends on (i) the tenth (10th) anniversary the Effective Date, or (ii) if the Administrator, with the consent of the Owners, and Operator agree in writing not less than 365 days prior to the tenth (10th) anniversary of the Effective Date to a ten (10) year extension of this Agreement, the twentieth (20th) anniversary of the Effective Date, unless this Agreement is terminated earlier in accordance with its terms (the earliest date on which the Agreement is terminated or expires in accordance with its terms, the "Expiration Date").

ARTICLE 5 FEES

5.1. Service Fees, Impositions and Expenses. As part of its services, Operator agrees to pay to Administrator the following fees, impositions and expenses:

5.1.1 Service Fees. During the term of this Agreement and subject to the provisions set forth herein, Operator agrees to pay to Administrator the following service fees (each a “Service Fee”) on a monthly basis:

(i) a Service Fee equal to ten dollars (\$10) per international marine container transported by railroad train using the Rail Facilities for some portion of the movement, as a linehaul revenue movement, to or from the Intermodal Terminal.

- Example: a five well DTTX car moves via the Rail Facilities with 10 containers and is unloaded at the Intermodal Terminal and reloaded there with 12 containers. The car then moves off the Rail Facilities. The fee is \$220 because 22 containers were transported.
- Example: a five well DTTX car moves via the Rail Facilities with 10 containers and is unloaded at the Intermodal Terminal and reloaded there with 5 containers. The car then moves off the Rail Facilities. The fee is \$150 because 15 containers were transported.
- Example: a single well DTTX car moves via the Rail Facilities with 3 containers and is unloaded at the Intermodal Terminal and reloaded there with 2 containers. The car then moves off the Rail Facilities. The fee is \$50 because 5 containers were transported; and

(ii) a Service Fee equal to \$48 per loaded freight car transported by railroad train using the Rail Facilities for some portion of the movement, as a linehaul revenue movement, to or from a customer located on the Rail Facilities. Freight cars carrying containers subject to fees under subparagraph (i) preceding are not subject to the fees specified in this subparagraph (ii).

- Example: a flat car moves via the Rail Facilities with four empty waste containers, which are unloaded at the SI Transfer Station. The car is reloaded with four containers loaded with municipal waste and moves off the Rail Facilities. The fee is triggered by the move off the Rail Facilities and is \$48. The fee applies regardless of the number of containers on the car.
- Example: a private shipper moves a box car load of waste paper into its plant located on the Rail Facilities. The car is emptied and reloaded with brown paper. Because this is a revenue movement in both directions, the fees will total \$96.
- Example: if in the case above the cars were moved empty onto the Rail Facilities for loading, the fee would be \$48 triggered by the revenue movement from Visy off the Rail Facilities.

- Example: an ordinary 60-foot flat car carrying machinery (not in containers) is moved via the Rail Facilities, switched into the Intermodal Terminal and is unloaded, whereupon the car is returned empty to the railroad and moved off the Rail Facilities. The fee payable by the Operator to the Administrator is \$48.
- (iii) The Service Fees shall be adjusted commencing on the fifth anniversary of the Effective Date.
- (iv) The fees specified in subparagraphs (i) and (ii) of this Section 5.1.1 are mutually exclusive.
- (v) Any shipments by rail not specifically covered in the Agreement shall be the subject of a separate negotiation between the Administrator and the Operator. This would specifically include domestic intermodal shipments shipped to the Intermodal Terminal.

5.1.2 Billing; Payments Due Dates. No invoices for the Service Fees will be issued by Administrator. Operator will submit all payments in respect thereof to Administrator together with the supporting documentation outlined herein. If any payment under this Agreement is due on a holiday, Saturday or Sunday, the Service Fees shall be paid on the first business day following the holiday, Saturday or Sunday.

5.1.3 Revenue Documentation. Operator shall submit monthly statements to Administrator by the 45th day of the month following the month such payment relates to during the Term of this Agreement. Such statements shall be in a form approved by Administrator, and shall include (i) accounting statements showing the basis for the Service Fee(s) and/or revenue calculation, which shall be supported by reasonably detailed written documentation supporting such fee and/or revenue calculation for an annual audit. Operator shall make available to representatives of Administrator, during normal business hours and at the location such materials are routinely maintained, all relevant work and materials, books, records, correspondence, disks, receipts, vouchers and memoranda of every description, with respect to the Rail Facilities (collectively, the "Information") pertaining to calculations and revenue statements under this Agreement. Operator, at its own expense, shall preserve such Information for a period of six years or such longer period required under state or federal laws and regulations. In addition, the Chief Financial Officer of Conrail shall have certified to the accuracy of the information and calculations submitted as part of the revenue documentation described herein. In addition, at the request of Administrator, but in no event more frequently than once per year, Administrator shall have the right to audit such Information at its own expense.

5.1.4 Payment Address. All payments by Operator to Administrator shall be directed to:

New York City Economic Development Corporation
 110 William Street, 4th Floor
 New York, New York 10038
 Att: Senior Vice President, Transportation

or at such other location as Administrator may from time to time designate by written notice. All payments will be paid in lawful money of the United States.

5.1.6 Audit Rights. Administrator shall have the right to inspect and audit Operator's books and records regarding its operations and maintenance expenditures under the Operating Agreement. All such rights shall be exercised reasonably and upon thirty days notice to Operator.

ARTICLE 6 SWITCHING

6.1 Operator to Perform Carload Switching Operations. Operator shall have the exclusive right to perform, and shall perform, all spotting and pulling of all Carload Traffic (including the corresponding empty movement of the equipment, if any), receiving or delivering those cars in interchange with railroads, all rail freight operations and all other switching operations on the Rail Facilities (collectively, "Carload Switching Operations"); provided, however, that the operator of the Intermodal Terminal may have the right to operate Trains and perform Carload Switching Operations for Trains moved by such operator or its contractors from the Intermodal Terminal to Arlington Yard, subject to the execution of an agreement between the operator of the Intermodal Terminal or its contractor and the Operator, the non-commercial terms of which shall be satisfactory to Administrator and, the consent to which shall not be unreasonably withheld or delayed.

6.2 Switching Standards. Operator shall perform all Carload Switching Operations on the Rail Facilities in an impartial, nondiscriminatory and efficient manner.

6.3. No Assurances as to Volume. Operator acknowledges and agrees that the Administrator had not made any representations or assurances with respect to the volume of business which Operator will or may have in the exercise of the rights granted herein during the Term of this Agreement. Administrator shall not be responsible for damages, nor shall there be any diminution of payments due from Operator under this Agreement, for or on account of any decrease in the volume of Operator's business or any change in Operator's expenses.

6.4 Marketing. Each of CSX and NS shall have the primary and independent responsibility for marketing and negotiating transportation contracts for service to, from and on the Rail Facilities to existing and potential customers. Conrail shall have no marketing function with respect to the Rail Facilities, and shall be prohibited by virtue of its Agreement with CSX and NS from making rates and entering into transportation contracts with SIRR shippers. Administrator will work separately and independently with CSX and NS toward marketing, promoting, enhancing and generally developing and expanding the business on the Rail Facilities. However, Administrator will not be required to make any expenditures to do so. Administrator's assistance with marketing does not lead to any guarantees of volumes or traffic for the railroad.

ARTICLE 7 DISPATCHING AND TRAIN COORDINATION

7.1 Operator as Dispatcher. Operator will have exclusive authority to manage and dispatch all rail operations using the Rail Facilities in accordance with customary railroad industry standards, subject to the terms and conditions of this Agreement.

7.2 Dispatching Standards. Operator shall perform its dispatching obligations on the Rail Facilities in an impartial, nondiscriminatory and efficient manner.

7.3 Easement and Permit Conditions. Operator shall observe any and all easement, permit or other legal restrictions or conditions imposed on the Owners, Administrator or Operator in effect from time to time that govern the hours of operation or number of trains that may use the Rail Facilities, provided such matter is contained in an easement, permit or other agreement affecting the Rail Facilities and binding upon the Owners or Administrator, including, but not limited to the restrictions in the easements and other agreements identified in Article 1.3.3 of this Agreement and as described, without limitation, in the Exhibits to this Agreement. In addition, Operator shall observe and enforce such conditions and restrictions in its train control and dispatching functions. Where reasonably practicable, Administrator will give Operator prior notice of any proposal to adopt, amend or add any permit restriction that will materially affect Operator's performance of its obligations under this Agreement. Administrator shall provide written notice to Operator of any such new restrictions or conditions, or modifications to existing restrictions or conditions that have been adopted by the Owners or Administrator.

ARTICLE 8 DERAILMENTS

8.1 Clearing of Derailments. Operator shall be responsible for promptly clearing all train derailments occurring on the Rail Facilities.

8.2 Repair of Damage Caused by Derailments. Operator shall repair any damage to the Rail Facilities resulting from a derailment, regardless of the cause thereof.

8.3 Repair of Track Damage. Operator shall be responsible for repairing any damage to the Rail Facilities resulting from improper train handling (i.e. running through switches, excessive rail burn, etc.) and the cost of such repair shall be borne by the Operator.

ARTICLE 9 BRIDGE MAINTENANCE; ARTHUR KILL LIFT BRIDGE

9.1 Maintenance of Bridges. Operator shall maintain directly or through a subcontractor approved by Administrator in its sole discretion, all bridges on the SIRR, including the AKLB in accordance with the requirements set forth on Exhibit E.

9.2 Operations. Operator shall be solely responsible for operating the AKLB as a moveable railbridge to allow vessels to pass through the Arthur Kill channel and shall provide and train, at no cost to Administrator, the personnel necessary to operate the AKLB during the Term of this Agreement. The Operator may plan, design and install, and to the extent necessary will secure Coast Guard approval for, remote control on the AKLB, all at Operator's own cost.

ARTICLE 10 CAPITAL AND OTHER IMPROVEMENTS

10.1 Approval of Capital Improvements. Operator shall obtain the prior written approval from Administrator or, in the case of the CCC, PANYNJ and Administrator (to the extent that such improvements may affect Travis Branch rail traffic), such approval not to be unreasonably withheld or delayed, for the selection, design and implementation of any material improvements (i.e. the cost of which exceeds \$10,000) to the Rail Facilities, including without limitation, appurtenances to the Rail Facilities, repairs, replacements and improvements to the Rail Facilities, operating equipment, security equipment and signage. Subject to the foregoing, Operator may, at its sole risk and expense, construct or reconstruct freight-related facilities and infrastructures (such as transloading facilities, shops, Team Tracks, yards, sidings, etc.) as additions and improvements to the Rail Facilities subject to prior review and approval by Administrator or, in the case of the CCC, PANYNJ and Administrator (to the extent that such improvements may affect Travis Branch rail traffic), of Operator's plans, such approval not to be unreasonably withheld or delayed. All facilities constructed by Operator hereunder, improvements made thereon or improvements made to existing Rail Facilities by Operator shall be made in compliance with applicable building codes and other regulations, except to the extent such codes and regulations are preempted by applicable federal law. Administrator, the Owners and PANYNJ shall not be liable to any contractor or materialman for any improvements and betterments made at the direction of the Operator to the Rail Facilities. For the purposes of this section, voluntary additions and betterments mean new facilities, capacity or technology, and specifically exclude repairs or maintenance Operator is otherwise required to perform. Replacement of a failed Rail Facilities infrastructure component, even if the replacement represents a betterment, is not a voluntary addition or betterment.

10.2 Ownership of Improvements and Alterations. Unless otherwise provided herein or agreed in writing, capital improvements shall be property of the City or, in the case of the CCC and certain other Rail Facilities, PANYNJ or NJ, except the following items: temporary, movable truck scales, and temporary structures, including but not limited to, administrative and/or service trailers for Operator's personnel. Replacement components installed during maintenance shall become property of the City or, in the case of the CCC, PANYNJ or NJ. Any other capital improvements may not be removed from the Rail Facilities without the written approval of Administrator.

10.3 Restoration. Upon the expiration or earlier termination of this Agreement, Operator shall restore the Rail Facilities to its condition as of the Effective Date (other than with respect to capital or other improvements approved by Administrator or PANYNJ pursuant to Article 10.1), at Operator's sole cost and expense, to the reasonable satisfaction of Administrator, normal wear and tear excepted. In the event Operator fails or neglects to do so,

Administrator and Owners shall have the right to remove any structures and improvements and effect restoration of the Rail Facilities or any part thereof at the sole cost and expense of Operator.

10.4 Capital Improvements by Administrator or Owners. Except as provided otherwise in this Article, Administrator and Owners shall have no obligation whatsoever to make any Capital Improvements or other modifications or additions on or to the Rail Facilities. Administrator and the Owners shall be entitled, but shall not be obligated, to make such Capital Improvements and modifications to the Rail Facilities as Administrator and Owners, each in its respective sole discretion, deems necessary or desirable, and shall be entitled to employ contractors other than Operator to perform such Capital Improvements or other modifications to the Rail Facilities.

10.5 Construction Work by Administrator or Owners. Upon at least ninety (90) days' prior written notice to Operator, and subject to the terms and conditions hereof, Administrator or Owners may elect to construct any modifications, additions or other improvements (including Capital Improvements) to their respective Rail Facilities. The specific construction periods shall be determined by Owners and Administrator in consultation with Operator. Administrator agrees to consult with the Operator and the Owners to ensure that neither Administrator nor Owners construct any modifications, additions or other improvements that would unreasonably interfere with Operator's railroad operations and use of the Rail Facilities. In no event shall Operator be entitled to any sums, damages, fees or other compensation relating to any loss of business or revenues resulting from such construction activities by Administrator or Owners or as a result of any related closure of any Rail Facilities. Operator shall not have the right to perform construction work for Administrator or Owners unless specifically contracted by Administrator or Owners for that purpose.

ARTICLE 11 SAFETY AND SECURITY

11.1 Safety and Emergency Response and Recovery Programs. Operator shall establish and observe a safety program and an emergency response and recovery program for all of its activities on or about the Rail Facilities, in accordance with prevailing industry standards and shall use reasonable care in all of its activities in, on or about the Rail Facilities. With respect to Operator's emergency response and recovery program, Operator shall coordinate with involved federal, state and local police, fire and emergency response personnel in Staten Island and New Jersey.

11.2 Encroachers, Trespassers and Other Third Parties: Hazards. Operator shall notify Administrator in writing of any third party operations and activities on the Rail Facilities which interfere with Operator's performance of its obligations under this Agreement, including, without limitation, trespasses by and operations and activities of employees or agents of any tenant operating equipment on the Rail Facilities (unless specifically authorized by Administrator or an Owner). Operator is solely responsible for taking reasonable steps to prevent such operations by unauthorized persons. Operator acknowledges that the Owners, Private Owners and Administrator shall have no responsibility to prevent such operations by unauthorized persons.

Operator shall give Administrator prompt written notice of any encroachment onto the Rail Facilities by adjoining property owners or tenants that interferes with operations on the Rail Facilities.

11.3 Security. Operator shall be solely responsible for providing any security services or measures it deems necessary or desirable for its property and equipment, and all cargo and rail cars and equipment in its possession or control. Operator acknowledges that the Owners, Private Owners and Administrator shall have no responsibility to provide any security services or measures to protect from theft, vandalism or damage to the Rail Facilities or any other property, equipment or improvements owned or used by Operator. The Owners, Private Owners and Administrator shall have no obligation to provide police protection or security services on the Rail Facilities. Operator shall provide adequate security for the Rail Facilities and operations related to such Rail Facilities. Nothing in the foregoing shall be construed to limit any right City police, investigators or other law enforcement persons may otherwise have to enter the Rail Facilities at any time for official purposes in the exercise of their public duties, including but not limited to investigations, searches, inspections and examinations pursuant to appropriate legal process.

11.4. Hazardous Materials. Operator shall be strictly responsible, and shall ensure that its agents, representatives, contractors, licensees, lessees or other designees, comply with all applicable governmental laws, regulations, rules and orders or industry rail transportation standards (whichever is stricter) relating to the types of freight handling, rail cars, engines, containers and any other similar or related equipment or carriage. Operator and its agents, representatives, contractors, licensees, lessees or other designees, shall be strictly liable to Administrator, Owners and Private Owners and any other party having an interest in the Rail Facilities to prevent, clean-up, mitigate, remediate and correct any adverse safety or environmental impact, spill or release arising from the Operator's use of the Rail Facilities, including, as a result of any work or construction activities on or about the Rail Facilities, the operation of the Rail Facilities or the use, operation or existence of any freight, train cars, or equipment on or about the Rail Facilities, irrespective of whether such freight is in sealed containers, or the train cars or equipment or the operation of the Rail Facilities is deemed to be otherwise in compliance with applicable governmental laws, regulations, rules and orders or industry rail transportation standards. In addition, Operator shall remain liable for any acts or omissions on its part that worsens any condition existing on the Rail Facilities on the date this Agreement is effective.

In the event of any release of Hazardous Materials occurring on any segment of the Rail Facilities from Railcars and regardless of the cause of such release, Operator at its sole expense shall immediately: (a) make any and all reports required by federal, state or local authorities; (b) advise both the owner/shipper and Administrator of the Hazardous Materials in the release and their location; and (c) arrange for and perform or cause the performance of any appropriate response action in connection with any release of Hazardous Materials from the Rail Facilities, in accordance with all applicable federal, state, or local laws, rules or regulatory requirements, provided, however, that the foregoing shall in no way limit Operator's ability to seek recovery from any responsible third parties of the costs incurred by Operator.

The provisions of this Section 11.4 shall survive the termination or expiration of this Agreement.

ARTICLE 12 COMPLIANCE WITH LAW

12.1 Compliance with Law.

12.1.1 Operator covenants that it will comply, solely at Operator's cost and expense, with all applicable Federal, state and municipal laws, ordinances and regulations (whether imposed upon Operator, Administrator or Owners) pertaining to the Rail Facilities and the maintenance and operation of the Rail Facilities. Operator shall indemnify, protect, defend and hold harmless Administrator and Owners, and their respective directors, officers, agents or employees from and against all fines, penalties and liabilities imposed upon Administrator, Owners, or their directors, officers, agents or employees under such laws, rules, and regulations by any public authority or court having jurisdiction over the Rail Facilities, when such fines, penalties and liabilities are attributable to the failure of Operator to comply with the obligations of this Article 12.

12.1.2 Operator shall, at its sole cost, obtain and maintain in full force and effect all governmental licenses, permits, approvals, franchises and other entitlements that are necessary for its operations on or about the Rail Facilities. Operator acknowledges that any approval by or consent of Administrator which may be given pursuant to this Agreement with respect to the subject matter hereof shall not be deemed or construed as eliminating or reducing Operator's obligation to obtain any licenses, permits, approvals, franchises or entitlements which may be necessary or required from any governmental or regulatory agency, authority or body.

12.1.3 The obligation of Operator to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property on the Rail Facilities. Such provision is not to be construed as an admission by Administrator that such requirements are applicable to it.

12.1.4 Operator shall comply with FRA and AAR rules and regulations prior to their departure from the Rail Facilities to ensure compliance with FRA and AAR rules and regulations concerning inspection of Trains. Operator will keep records of all such inspections to the extent, and for the duration, required by FRA and AAR rules and regulations.

12.1.5 Operator shall deliver to Administrator and Owners, promptly after receipt of any written notice, warning, violation, order to comply or other document in respect of the enforcement of any laws, ordinances, and governmental rules, regulations and orders, a true copy of the same.

12.1.6 Operator shall furnish to Administrator upon its written request copies of any studies or tests conducted to achieve or determine compliance with laws, ordinances and governmental rules, regulations and orders during the Term of this Agreement.

12.1.7 Operator shall notify Administrator promptly of any scheduled inspections of the Rail Facilities by the municipal or other governmental authorities (including the Department of Transportation). Operator shall deliver copies of any violations to Administrator within five (5) days of receipt.

12.1.8 Operator shall maintain the effectiveness of the Modified Certificate or such other authority that permits Operator to perform rail freight service on the Rail Facilities. Operator shall maintain such judicial, administrative or other regulatory approvals or exemptions as may be necessary to enable it to operate and manage the Rail Facilities as contractor for the Administrator. Operator shall, at its own cost and expense, initiate by appropriate notice, application or petition and thereafter diligently and in good faith prosecute proceedings for the procurement of all necessary and appropriate consents, approvals, or authorizations (or exemptions therefrom) from any governmental agency to maintain its authority to carry out this Agreement and the operations of this to be carried on by Operator hereunder.

ARTICLE 13

PERSONNEL AND EQUIPMENT

13.1 Personnel. Operator shall hire, train and supervise, at its sole cost and expense, all persons necessary to perform its duties and obligations hereunder except to the extent Operator engages subcontractors to perform such duties and obligations. Operator shall ensure that all persons performing any duties and obligations of Operator hereunder, including, without limitation, all contractors and subcontractors hired by Operator and all persons operating the AKLB, are competent, trained, qualified and, to the extent required by law or by sound business practices in the industry, licensed or certified for the task that they are performing. Operator shall employ at the Rail Facilities a sufficient, in its sole opinion, number of personnel capable of managing and maintaining the Rail Facilities in accordance with the terms and conditions hereof.

13.2 No Discrimination. Operator covenants that it will not violate any applicable laws concerning discrimination, including but not limited to Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act, as amended, Americans With Disabilities Act, Section 1981 of the Civil Rights Act of 1870 and Section 1983 or 1985 of the Civil Rights Act of 1871 (the "Discrimination Laws"). Operator further covenants to require any subcontractor to comply with applicable Discrimination Laws.

13.3 Labor Protection Costs. As between Administrator and Owners, and Operator, Operator shall be responsible, at no cost to Administrator or Owners, for all labor protection costs and conditions applicable to its employees and contractors providing services hereunder or in connection herewith, including, but not limited to, any labor protection payments that may result from the expiration or termination of this Agreement. This provision shall survive the expiration or termination of this Agreement.

13.4 Equipment. Administrator and Owners shall have no obligation to provide to Operator any equipment required by Operator to perform its duties and obligations hereunder. Operator shall not be responsible for installing an air plant system in Arlington Yard.

ARTICLE 14
PROHIBITION AGAINST LIENS; ASSESSMENTS AND UTILITIES

14.1 Prohibition on Liens

14.1.1 Operator shall not create, cause to be created or allow to exist (i) any lien, encumbrance or charge upon the Rail Facilities or any part thereof, (ii) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Administrator, Owners, NYCIDA or Private Owners, or (iii) any other matter or thing whereby the estate, rights or interest of Administrator, the Owners, NYCIDA or Private Owners in and to the Rail Facilities or any part thereof might be impaired. If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien is filed against the Rail Facilities or any part thereof, or if any public improvement lien is created, or caused or suffered to be created by Operator and shall be filed against any assets of, or funds appropriated to, Administrator, Owners, NYCIDA or Private Owners, then Operator shall within thirty (30) days after receipt of notice of the filing of such mechanic's laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be vacated or discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise, subject to Operator's right to dispute the validity of the lien, as addressed in Subsection 14.1.2 below.

14.1.2 Should Operator elect to dispute the validity of any such lien or charge placed, filed or recorded against the Rail Facilities, in lieu of canceling or discharging the same, Operator (i) shall furnish to Administrator or other affected party a bond or bonds in connection therewith in such form and amount as shall be approved by Administrator and (ii) shall bring an appropriate proceeding to discharge such lien and shall prosecute such proceeding with diligence and continuity; except that if, despite Operator's efforts to seek discharge of the lien, Administrator or other affected party reasonably believes such lien is about to be foreclosed and so notifies Operator, Operator shall immediately cause such lien to be discharged as of record or Administrator or other affected party may use the bond or other security furnished by Operator in order to discharge the lien.

14.2 Prohibition on Security Interests. Operator shall not pledge as security for any loan any of the assets or interests in the Rail Facilities.

14.3 Utilities. Operator must provide and pay for its utilities including all sewer charges and for all water, gas, heat and electricity consumed and used in the Rail Facilities, and Operator, at its sole cost and expense, shall maintain and repair all meters and procure all permits, approvals and licenses necessary to effectuate this provision.

ARTICLE 15
REPORTS AND NOTICES

15.1 Delivery of Notices. Operator shall promptly deliver to Administrator copies of all non-commercial notices and correspondence it receives from any governmental agency, tenant, licensee, shipper, customer, easement holder or railroad concerning the Rail Facilities.

15.2 Statements. Within 45 days after the end of each month during the Term hereof, Operator shall deliver to Administrator monthly unaudited statements for the immediately preceding month in a form acceptable to Administrator showing (a) total Railcar movements by Operator, summarized by traffic type and class i.e. intermodal flat car or rail carload traffic (type) or interline forwarded, interline received or overhead (class); (b) total Service Fees due Administrator under this Agreement, (c) total maintenance expenditures on Rail Facilities, and (d) such other information as Administrator may reasonably request.

15.3 Annual Track Usage and Maintenance Expenditures Reports. Within 45 days after the end of each Traffic Year, Operator shall deliver to Administrator and PANYNJ an annual report of track usage and maintenance expenditures for operations and maintenance on the Rail Facilities.

15.4 Inspection Reports. Operator shall perform and document all inspections of the Rail Facilities required under applicable federal, state and local laws and shall submit to the appropriate governmental entities all reports required to be submitted under applicable federal, state and local laws.

15.5 Reporting of Accident/Incidents. Operator shall promptly report to Administrator, the City and PANYNJ any FRA reportable Accident/Incident or crime which arises in connection with the Rail Facilities. Operator will comply with all rules and regulations issued by the FRA and other agencies with jurisdiction concerning the reporting of Accidents/Incidents.

15.6 Records Retention: Review. Operator shall maintain (at Conrail's office at the address specified in Article 24.17) full and complete records of all of its activities pursuant to this Agreement, including, without limitation, all permits, licenses, inspection reports, governmental or regulatory notices or approvals, operating, maintenance and dispatching logs and records and reports of any accidents or injuries on the Rail Facilities. Administrator may at any time during normal business hours and upon reasonable notice review and/or copy (at the expense of the person reviewing and copying the records) any or all of such records and information, which review may be performed by the employees of Administrator or by any agent of Administrator. All such records and accounts shall be maintained for a period of six years after termination of this Agreement, provided that if a contest or dispute arises with respect to any matter covered by such records and accounts then such records and accounts shall be maintained and available for inspection and audit until the later of (A) six years after termination of this Agreement or (B) resolution of any such contest or dispute. No provision of this Agreement giving Administrator a right of access to records, accounts and documents is intended to impair or affect any right of access to records, accounts and documents that Administrator and/or the City would have in the absence of such provision. The provisions of this Section 15.6 shall survive termination of this Agreement for said six-year period.

ARTICLE 16

ADMINISTRATOR OVERSIGHT

16.1 Administrator Oversight. Administrator shall be entitled to monitor the performance by Operator of its duties and obligations hereunder. Operator shall attend periodic meetings during each annual period during the Term with Administrator and PANYNJ and make presentations to the Administrator and PANYNJ concerning Operator's activities and performance under this Agreement and to review maintenance, volume of traffic, performance, security, efficiency of operations and community and regulatory issues. Administrator shall not unreasonably interfere with Operator's use of the Rail Facilities in accordance with the terms and provisions of this Agreement.

ARTICLE 17

DEFAULT AND REMEDIES

17.1 Defaults.

17.1.1 Operator Defaults. Any of the following events shall be deemed a default by Operator hereunder:

- (a) Failure to pay any amount provided for herein (including, without limitation, Use Fees) within 30 days after receipt of written notice of nonpayment of any amounts payable hereunder;
- (b) Failure to maintain insurance as required hereunder;
- (c) Failure to perform any other obligation of Operator hereunder within 30 days of receipt of written notice by Administrator; provided that if Operator commences to cure such failure but such failure cannot be cured within such 30 day period despite diligent pursuit of such cure, Operator shall be entitled an extension of the period of time necessary to cure such default if Operator continues to diligently pursue such cure;
- (d) Commencement of an insolvency, bankruptcy or other similar proceeding by or against Operator which proceeding is not dismissed within 30 days after commencement thereof;
- (e) The making of a general assignment for the benefit of creditors of Operator;
- (f) Any representation or warranty made by the Operator in this Contract shall prove to be untrue or be breached; or

(g) Operator voluntarily, or by operation of law, assigns, transfers, conveys or otherwise disposes of its interest in this Agreement without the prior written consent of the Administrator.

Provided that if Operator commences to cure such failure but such failure cannot be cured within such 30-day period despite diligent pursuit of such cure, Operator shall be entitled to an extension of the period of time necessary to cure such failure if Operator continues to diligently pursue such cure.

17.1.2 Administrator Defaults. Administrator's failure to perform any obligation of Administrator hereunder within 30 days after receipt of written notice by Operator; provided that if Administrator commences to cure such failure but such failure cannot be cured within such 30-day period despite diligent pursuit of such cure, Administrator shall be entitled to an extension of the period of time necessary to cure such failure if Administrator continues to diligently pursue such cure.

17.2 Remedies. The remedies provided for herein shall be cumulative.

17.2.1 Damages. In the event of a default under or breach of any of the terms of this Agreement which default or breach is not cured within the applicable cure period provided for herein, if any, the non-defaulting party shall have all remedies available at law or in equity against the defaulting party. Operator acknowledges and agrees that in no event will Administrator have any liability to Operator for any railroad's or any other person's failure to pay Operator the fees required under this Agreement.

17.2.2 Specific Performance. Operator and Administrator acknowledge that in the event of a default under or breach of any of the terms of this Agreement by either party that is not cured within the applicable cure period, if any, provided for herein, damages may not be an adequate remedy, and either party may, in addition to exercising its legal remedies, seek equitable relief, including, without limitation, the entry of a decree for specific performance against the other.

17.2.3 Right to Cure. In the event of a default under or breach of any of the terms of this Agreement which default or breach, is not cured within the applicable cure period provided for herein, if any, Administrator shall have the right, but not the obligation, to cure the default hereunder. All sums expended by Administrator in exercising its rights under the preceding sentence including reasonable attorneys' fees, shall be repaid by Operator upon demand therefor. Operator acknowledges that Operator shall have no right to cure defaults by Administrator hereunder.

17.2.4 Termination by Administrator for Default. In the event of a default under or breach of any of the terms of this Agreement by Operator which default or breach is not cured within the applicable cure period provided for herein, if any, Administrator will have the right to terminate this Agreement by delivery of a 30-day written notice to Operator.

17.2.4.2 No Termination by Operator for Default. Operator shall not have the right to terminate this Agreement as a result of a default under or breach of any of the terms of this Agreement.

17.2.4.3 Termination of City Contract. This Agreement shall terminate upon the termination of the City Contract, unless the same has been renewed or this Agreement has been assigned to and assumed by the City or another entity designated by the City to administer the Rail Facilities. Upon such termination or non-renewal of the City Contract, Administrator shall make best efforts to assign this contract to the City or such other entity.

17.3 Termination for Convenience.

17.3.1 The Administrator and the Operator each shall have the right to terminate this Agreement upon a specified date (but not less than 365 days from the date of written notice of such termination), upon written notice to the other party and for any reason deemed by such terminating party to be in its interest, provided that such termination becomes effective no earlier than the fifth (5th) anniversary of the Effective Date.

17.3.2 Operator may terminate on not less than 365 days notice if the number of revenue carloads during any Traffic Year originating on the Rail Facilities, but specifically excluding oceanborne shipments from or through the Intermodal Terminal ("Revenue Carload Volume"), is less than 3,565, provided, however, that no such election to terminate this Agreement shall be effective if within 45 days following the filing by Operator of its final report for such Traffic Year pursuant to Article 15.3, if Administrator, in its sole discretion, makes a payment to Operator in an amount as calculated below:

(i) If Revenue Carload Volume for such Traffic Year is 1000 or less, the payment shall equal the lesser of:

(A) AKLB O&M Costs for such Traffic Year, or

(B) \$425,000; or

(ii) If Revenue Carload Volume for such Traffic Year is in excess of 1000, the payment shall equal the lesser of:

(A) the product of

(x) a fraction, the numerator of which is

(i) 2565 minus (ii) (the actual Revenue Carload Volume for such Traffic Year minus 1000), and

the denominator of which is 2565,

multiplied by

(y) AKLB O&M Costs for such Traffic Year; or

(B) \$425,000.

The Revenue Carload Volumes, numbers, and dollar amounts used in the foregoing formula shall be prorated (i) if the total number of months in the applicable Traffic Year is less than twelve, and (ii) to account for any reduction of Revenue Carload Volume due to a Force Majeure Event.

For purposes of this Article 17.3.2, "AKLB O&M Costs" shall mean, for any Traffic Year, the Operator's actual documented out-of-pocket costs for operational and maintenance costs incurred in connection with the AKLB during such Traffic Year, including salaries and benefits for employees who operate and maintain the AKLB, costs of utilities and similar expenditures.

17.3.3 In the event that there are costs or expenses that affect the Operator's ability to operate the Rail Facilities exceeding an aggregate of \$500,000 in any Traffic Year that arise as a result of an unanticipated mechanical failure or other latent defect in or natural disaster affecting the Rail Facilities, provided that such failure did not arise from the negligence or willful misconduct of Operator or Operator's failure to fulfill its obligations under applicable law or this Agreement, Operator will not be responsible for such cost or expense and Operator may elect to terminate the Operating Agreement upon not less than 365 days written notice; provided, that no such election to terminate shall be effective if, as between Operator and Administrator, Administrator elects in its sole discretion to bear the costs in excess of \$500,000 for such Traffic Year of correcting such mechanical failure or defect or natural disaster damage. Operator shall report any such losses or expenses to the Administrator on a monthly basis.

17.3.4 Effects of Termination for Convenience or for Cause.

(a) The Agreement shall terminate (i) as of the Expiration Date set forth in the notice given pursuant to Article 17.2.4 or (ii) as of the Expiration Date that is 365 days from the date of the notice given pursuant to or Article 17.3.1, 17.3.2 or 17.3.3.

(b) On the Expiration Date, the Operator shall cease any or all of its activities under this Agreement in accordance with the terms of the notice.

(c) Termination, whether for convenience or for cause, shall not give rise to any cause of action for damages against the Administrator, the City or PANYNJ.

17.4 No Release. Termination of this Agreement, whether by expiration of its Term or otherwise, shall not release the Operator from any liability to the Administrator or from the Operator's indemnification and other obligations under this Agreement that have not been specifically terminated pursuant to this Article of the Agreement.

17.5 Suspension of Operations. During the Term of this Agreement, Operator shall not suspend operations, except where Operator, in its sole discretion, deems such continued operations unsafe because of infrastructure damage or condition. Operator shall promptly notify Administrator in writing and promptly set forth in writing its plan for resumption of operations.

17.6. Expiration. In addition to Administrator's right to terminate this Agreement under Article 17.1 and notwithstanding any other provision of this Agreement:

17.6.1 Upon the Expiration Date, Operator shall vacate the Rail Facilities. In the event that Operator abandons the Rail Facilities or permits the same to become vacant during the Term of this Agreement, this Agreement shall terminate upon the date of such abandonment or vacatur as fully and completely as if that were the date originally set in this Agreement for such termination. Nothing herein contained shall be construed to prevent Administrator from maintaining an action for damages against Operator by reason of such abandonment or vacatur.

17.6.2 In the event that Operator tenders any partial payments of fees or any additional charges to Administrator for a period subsequent to the Expiration Date, the same shall under no circumstances be construed to create or revive any right on the part of Operator to perform services under this Agreement.

17.6.3 In the event that Operator leaves any of its property including, without limitation, trade fixtures, in or upon the Rail Facilities after the Expiration Date, Administrator may dispose of same and charge Operator for the cost of such disposal, or keep the property as abandoned property.

ARTICLE 18 INDEMNIFICATION

18.1. Indemnification. Operator, jointly and severally, shall forever defend (with counsel reasonably acceptable to the Indemnitee), indemnify and hold harmless Administrator, Owners and NYCIDA and their respective officers, agents, representatives and employees (each, an "Indemnitee") from and against any and all liabilities, claims, demands, penalties, fines, settlements, damages, costs, expenses and judgments of whatever kind or nature or unknown, contingent or otherwise (including, without limitation, claims made under the Federal Employer's Liability Act, costs of investigation, reasonable attorneys' fees and costs, expenses of arbitration, trial or appeal, and judgments) (collectively, "Losses") (a) arising from injury to any person or persons, including death, or any damage to property of any nature, to the extent said injury is the result of any act(s) or omission(s) of Operator, or of Operator's employees, guests, contractors, subcontractors, representatives or agents occurring on or in proximity to the Rail Facilities, or arising out of or as a result of actions taken by Operator in the performance of its obligations under this Agreement or operations by Operator conducted on the Rail Facilities, including, without limitation, any personal injury, including death, or property damage caused by activities or equipment or cargo transported by Operator while under the control of or while being transported by Operator or any failure of all or any part of the Rail Facilities which Operator is obligated to maintain, or (b) relating to or arising from any and all liens and encumbrances which may be filed or recorded against the Rail Facilities or any public improvement lien filed against any funds of Administrator, NYCIDA or any Owner as a result of actions taken by or on behalf of Operator, its contractors, subcontractors, agents, representatives, employees, guests or invitees, or (c) arising from or relating to the indemnification obligations of the Administrator, NYCIDA or any Owner pursuant to any agreements and easements or requirements and related obligations, including as described in Article 1.3.3 (c) and (d) hereof, as

a result of acts or omissions of Operator, its contractors, subcontractors, agents, representatives, employees, guests or invitees, or (d) a breach of the terms of this Agreement or any other agreement affecting or governing the Rail Facilities, or of any law, ordinance or regulation, or a failure by Operator to obtain or maintain in effect any license, permit, approval, franchise or other governmental approval required by law, or (e) the activities during the Term hereof of Operator or its affiliates or subsidiaries, or their respective employees, agents, representatives, contractors, invitees or equipment, on or around the Rail Facilities or elsewhere, or (f) arising out of Operator's breach of the provisions set forth in Section 11.4 of this Agreement, or resulting from the presence, storage, transportation, disposal, release or threatened release of any Hazardous Materials over, under, in, on, or from or affecting the Rail Facilities or any persons, real property, personal property, or natural substances thereon or affected thereby, to the extent said presence, disposal, release or threatened release is the result of any act(s) or omissions(s) of Operator or Operator's employees, guests, contractors, subcontractors, representatives or agents.

18.2 Notifications.

18.2.1 Demand. In the event that any claim, action, proceeding, investigation or demand shall be brought or threatened against any Indemnatee, by reason of any matter requiring indemnification (an "Indemnified Matter"), Indemnatee shall give written notice thereof to the person required to make such indemnification (an "Indemnitor") which notice shall contain a reasonably detailed description of the event, occurrence or condition giving rise to the claim for indemnity and shall enclose a true copy of any and all documents served upon or received by Indemnatee.

18.2.2 Payment. In the event Indemnatee shall suffer or incur any Losses arising from or in connection with any Indemnified Matter, Indemnitor shall pay Indemnatee the total of such Losses suffered and incurred by Indemnatee within 30 days following demand therefor and delivery of an account of Losses suffered by Indemnatee and thereafter as such Losses are incurred and reported to Indemnitor by Indemnatee.

18.2.3 Overdue Rate. Any Losses required to be paid by Indemnitor to Indemnatee under this Agreement which are not paid within 30 days after demand therefor, shall be delinquent. In addition to all other rights and remedies of Indemnatee against Indemnitor provided herein, or under applicable law, Indemnitor shall pay to Indemnatee interest accrued on any delinquent payments at the Overdue Rate (defined below) from the date such payment is due until paid. As used herein the "Overdue Rate" shall be equal to twelve (12)% per annum, but in no event shall the Overdue Rate be greater than the maximum rate of interest permitted to be contracted for by New York law as of the date of demand.

18.2.4 Defense. Indemnitor shall at its own cost, expense, and risk: (a) defend Indemnatee in all suits, actions, or other legal or administrative proceedings that may be brought or instituted against an Indemnatee on account of any Indemnified Matter with counsel selected by Indemnitor and reasonably acceptable to Indemnatee; (b) pay and/or satisfy any judgment or decree that may be recorded against Indemnatee in any such suit, action, or other legal or administrative proceedings; and (c) reimburse Indemnatee for all Losses incurred by Indemnatee relating to or in connection with any such suit, action, or other legal or administrative

proceedings. Indemnatee shall cooperate with Indemnitor and shall comply with reasonable requests therefore. The foregoing notwithstanding, any Indemnatee may engage its own attorneys to defend such Indemnatee, or to assist such Indemnatee in such Indemnatee's defense of such claim, action or proceeding, as the case may be, at such Indemnatee's sole cost and expense.

18.2.5 Settlement. Notwithstanding anything in this Agreement to the contrary, Indemnitor shall not settle any claim against the City or PANYNJ, as the case may be, without such party's prior written consent, it being understood and agreed that Indemnitor shall not be obligated to indemnify the City or PANYNJ, as the case may be, in any claim, action or proceeding for which a settlement is proposed in good faith by Indemnitor and its counterparty in such claim, action or proceeding, but which settlement is not consented to by the City or PANYNJ, as the case may be. The City or PANYNJ, as the case may be, may also settle any claims against any them, provided that Indemnitor shall not be obligated to indemnify the City or PANYNJ, as the case may be, hereunder for any claim, action or proceeding for which a settlement is proposed by the City or PANYNY and its counterparty in such claim, action or proceeding, but which settlement is not consented to by Indemnitor, it being understood and agreed that Indemnitor shall not unreasonably withhold its consent to any such proposed settlement.

18.3 Releases. To the maximum extent permitted by applicable law, Operator hereby expressly releases, remises and discharges forever Administrator and Owners and NJ from any and all liabilities, losses, actions, penalties, demands, detriments, claims, damages, costs or judgments which may have been or in the future may be incurred or suffered by Operator, or its property, caused or otherwise resulting from the condition or state of repair of, or any defects in, the Rail Facilities. Administrator acknowledges that the foregoing release by Operator shall not serve as the basis for the imposition of liability against Operator for either environmental conditions or latent defects in the Rail Facilities that existed prior to the Effective Date, provided, however, that, without amending or modifying any prior agreement(s), if any, between or among any parties to this Agreement with respect to such matters, the foregoing proviso shall not release any party to this Agreement from any liabilities that may arise from such party's previous activities on, or ownership of, if any, the Rail Facilities.

18.4 Survival. The provisions of this Article 18 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 19 INSURANCE

19.1 Insurance. During the period in which this Agreement is in effect, each of NS, CSX and Conrail shall, prior to using the Rail Facilities, either present evidence of self-insurance in compliance with the provisions of Article 19.6 below or be required to purchase, pay for and maintain, with insurance companies satisfactory to Administrator and meeting the requirements

set forth in Section 19.5 below, the following applicable types of insurance in form and substance satisfactory to Administrator and in face policy amounts the minimum value of which are set forth under Section 19.2 below.

19.1.1 Commercial General Liability. Commercial general liability insurance to insure against claims and actions for personal injury, bodily injury, death, property damage to the extent such claims and actions are not insured under the Comprehensive Railroad Liability Policy described in sub-Section 19.1.3 below, and which shall include blanket contractual liability coverage, including, but not limited to, coverage of Operator's indemnification obligations under Article 18 of this Agreement.

19.1.2 Automobile Liability Insurance. Automobile liability insurance to insure all automobiles, machinery and vehicles used in connection with any work with respect to the Improvements, whether owned, non-owned and/or hired vehicles, automobiles and/or machinery, with endorsement for "Changes in Business Auto and Truckers Coverage Forms - Insured Contract".

19.1.3 Comprehensive Railroad Liability. Comprehensive Railroad Liability insurance to insure against claims and actions for personal injury, bodily injury, death, property damage to, Federal employers liability act liability and bill of lading and foreign rolling stock liability with respect to all operations of Operator, and which shall include blanket contractual coverage, and which shall include blanket contractual liability coverage, including, but not limited to, coverage of Operator's indemnification obligations under Article 18 of this Agreement; furthermore the policy shall not incorporate any exclusion or condition of any nature that precludes indemnity being granted for claims arising from operations undertaken in the railroad right-of-way.

19.2. Policy Amounts. The limits of each policy shall be at least the following, unless another amount shall be agreed upon by Administrator or is required by law.

Commercial General Liability:	\$25,000,000 combined single limit per occurrence, but if an annual aggregate is applicable to the policy, not less than \$30,000,000 in the aggregate.
Automobile Liability:	\$2,000,000 combined single limit per accident for bodily injury and property damage.
Comprehensive Railroad Liability:	\$10,000,000 combined single limit per occurrence, but if an annual aggregate is applicable to the policy, not less than \$20,000,000 in the aggregate.

All deductibles shall be declared to and approved by Administrator and shall not exceed \$25,000 under any policy.

19.3 Required Provisions. Each Certificate of Insurance and policy named in Articles 19.1.1, 19.1.2, and 19.1.3 above shall insure Operator, Administrator, Owners, NYCIDA the Private Owners and their officials, officers, members, agents, directors, employees and volunteers, as insureds and shall contain the following provisions (where words are bracketed in the following required provisions, the applicable word shall be used) (each, an “Insured Party”):

(a) Notices from the insurer to each Insured Party shall be addressed to the respective addresses identified in Article 24.20 of this Agreement or the Exhibits hereto, or such other address as such Insured Party may notify the insurer in writing:

(b) The insurer shall accept notice of accident from the Insured Party within one hundred twenty (120) days after receipt by the Insured Party of notice of such accident as valid and timely notice under this policy;

(c) The insurer shall accept notice of claim from the City within one hundred twenty (120) days after such claim has been filed with the Comptroller of the City and notice of claim from Administrator, or PANYNJ within one hundred twenty (120) days after receipt by Administrator or PANYNJ as valid and timely notice under this policy;

(d) Notice of accident or claim to the insurer by Operator or the Insured Party shall be deemed notice by all under this policy;

(e) This policy shall not be suspended, voided, cancelled, non-renewed or modified by the insurer or the Operator unless sixty (60) days prior written notice is sent by certified mail to the Insured Party;

(f) The insurer shall not, without first obtaining express advance written permission from the General Counsel of PANYNJ, raise any defense involving in any way the jurisdiction of the tribunal, immunity of the, governmental nature of the PANYNJ, or provisions of any statutes respecting suits against the PANYNJ, the immunity of the PANYNJ, its Commissioners, officers, agents or employees, the governmental nature of the PANYNJ, or the provisions of any statutes respecting suits against the PANYNJ.

(g) The presence of engineers, inspectors or other employees or agents of the Insured Party during the performance of any of operations on the Rail Facilities shall not invalidate this policy of insurance.

(i) The policies specified in Articles 19.1.1, 19.1.2, and 19.1.3 shall not contain any exclusion from coverage from claims, losses, damages or injuries caused by terrorist acts.

19.4 Miscellaneous Insurance Provisions.

(a) Operator shall comply with the provisions of all insurance policies required pursuant to this Article 19, and shall give the insurer, the Insured Party due and timely notice of any claim, accident and loss promptly upon its acquiring knowledge of the same.

(b) The insurance coverage required hereby shall be primary insurance as respects the Insured Party and their officials, officers, directors, members, agents, employees and volunteers. Any insurance or self-insurance maintained by the Insured Party or their, directors, officials, officers, members, agents, employees or volunteers shall be excess of the Operator's and any of its subcontractors' insurance and shall not contribute with it.

(c) Operator shall provide the Insured Party with two (2) certificates of all policies of insurance, and two (2) copies of actual endorsements affecting coverage, required in compliance with this Article 19 before commencing its services hereunder and not less than thirty (30) days prior to the expiration of any policy, a confirmation of the renewal of such policy. Upon request from the Insured Party, Operator shall provide the policies themselves within thirty (30) days of such request.

(d) The insurance provisions of this Article 19 shall be in addition to any rights that Administrator or any Owner may have under the hold harmless and indemnification provisions of this Agreement and any other rights provided by this Agreement or by law.

(e) Operator shall include all their contractors and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each of their contractors and subcontractors and all coverages for contractors and subcontractors shall be subject to all of the requirements stated herein.

19.5. Carrier Requirements. All insurance carriers must be licensed in New York and New Jersey rated at least "A:VII" in Best's Insurance Reports.

19.6. Self-Insurance. To the extent that Operator is authorized to self-insure for the required insurance policies, and in the amounts and types of insurance coverage so indicated in this Article 19, Operator may elect upon prior written notice to Administrator to self-insure. Such election to self-insure shall be effective upon delivery by Operator to Administrator of certificate(s) of an authorized officer(s) of Operator evidencing that Operator is authorized by its Board of Director(s) to self-insure for the required insurance coverage described in this Article 19. Operator's right to self-insure pursuant to the Article 19.6 is conditioned upon Operator maintaining such authorization to self-insure. Upon request from an Insured Party, Operator shall provide such Insured Party with current certificates of authority to self-insure within thirty (30) days of such request. Operator agrees to notify Administrator immediately upon any change in Operator's authority to self-insure in a manner that is sufficient to satisfy the requirements of this Article 19.

ARTICLE 20 CASUALTY

20.1 Administrator and Owners Not Required to Repair. Administrator and Owners shall have no obligation to any party hereto to repair or replace damage to the Rail Facilities caused by a Force Majeure Event regardless of whether insurance proceeds are available to make such repairs or replacement. In furtherance of the foregoing, Administrator will be entitled to

immediately and unilaterally remove from service all or any portion of the Rail Facilities, without liability to Operator, if it is damaged or destroyed as a result of a Force Majeure Event. In no event shall Administrator, NYCIDA, Owner or Private Owners have any liability to Operator for injury to persons or damage to any property resulting from a Force Majeure Event.

20.2 Termination. Without limiting Operator's right to terminate this Agreement for convenience subject to the provisions of Article 17.3.1, in the event Administrator determines, in its sole and absolute discretion, that damage caused by a Force Majeure Event to all or any material portion of the Rail Facilities renders continuation of operations under this Agreement impracticable, and if such Administrator determines not to repair or restore the affected portion of the Rail Facilities, Administrator shall be entitled, unilaterally, without liability therefor, to terminate this Agreement with respect to the entire Rail Facilities by written notice to Operator. This Agreement shall be deemed terminated on the later of (a) the date on which such notice is delivered or (b) the date on which the regulatory approvals or exemptions necessary to terminate this Agreement have been obtained, provided that Operator shall have 60 days after the effective date of termination to wind up its affairs and to remove its property from the Rail Facilities.

ARTICLE 21 REPRESENTATIONS AND WARRANTIES

21.1. Representations and Warranties. Operator, severally, represents and warrants each with respect to itself that:

21.1.1 Operator is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and has all requisite power and authority to authorize, execute, deliver and perform this Contract in accordance with its terms and this Agreement shall be enforceable against it in accordance with its terms. Operator is authorized to do business in the States of New York and New Jersey.

21.1.2 The authorization, execution and delivery of this Contract, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any statute, indenture, mortgage, deed of trust or other agreement or instrument to which Operator is bound, or, to the knowledge of Operator, any order, rule or regulation of any court or governmental agency or body having jurisdiction over Operator or any of its activities or properties.

21.1.3 Operator has not been asked to pay, and has neither offered to pay, nor paid, any illegal consideration, whether monetary or otherwise, in connection with the procurement of this Agreement.

21.1.4 Operator has not employed any person to solicit or procure this Agreement, and has not made and shall not make, except to full-time employees of Operator, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of this Agreement.

21.1.5 Operator has not acquired nor will it acquire any interest of any nature, direct or indirect (including any interest in land over which there will be rail operations

hereunder or any interest in any corporation, partnership, or other entity with any such interest), which would conflict in any manner or degree with the performance of the Operator's performance hereunder. Operator further represents and covenants that in the performance of this Contract no person having any such conflicting interest shall be employed by Operator.

21.1.6 Operator is not in arrears to the City upon any debt, contract or taxes and is not a defaulter, as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of Operator to receive public contracts. Operator represents that it has paid all applicable New York City income, excise and other taxes for all years it has conducted business activities in New York City.

21.1.7 All questionnaires and/or disclosure forms delivered by Operator and its Representatives to the City and Administrator to date are, to the best of Operator's knowledge, true and correct in all material respects; no material change has occurred in the circumstances of Operator, or any of its principals or affiliated persons or entities since the respective dates upon which such disclosure forms were executed that would otherwise require disclosure on such forms; and such disclosure forms do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make any statement contained in such form not misleading.

21.1.8 The Modified Certificate and any other regulatory approvals will be final and effective prior to commencement of operations.

21.2 Representation and Warranties of Administrator. Administrator represents and warrants to Operator that it is fully authorized to enter into this Agreement and that this Agreement is binding and enforceable against it and its respective successors and assigns, in accordance with the terms of this Agreement

ARTICLE 22 ARBITRATION

22.1 Arbitration. In the event of a claim or dispute arising out of this Agreement, the disputing parties shall make good faith efforts to resolve the dispute through negotiation. Failing a resolution of the dispute or claim through these good faith efforts within 30 days after the commencement of the dispute or claim, any disputing party may serve upon the other disputing parties, within six months after expiration of the 30-day period provided for in the preceding sentence, a written demand for arbitration. The parties shall jointly submit the matter to final and binding arbitration under commercial arbitration rules of the American Arbitration Association. The disputing parties shall, within 15 days thereafter, or within such extended period as they shall agree to in writing, agree upon three mutually satisfactory arbitrators experienced in railway business and management. In the event of failure of the parties to agree, the AAA shall appoint such arbitrators. The arbitrators shall give each of the parties hereto ten days' prior written notice of the time and place (within New York County) of the initial hearing and shall proceed without delay to hear and determine the matters in such dispute. The award of the arbitrators shall be supported by law and substantial evidence and must comply with the terms of

this Agreement and, further, the arbitrators shall issue written findings of fact and conclusions of law. The making of an award which fails to comply with the requirements of the immediately preceding sentence shall be deemed to be in excess of the Arbitrators' powers and the court shall vacate the award if, after review, it determines that the award cannot be corrected without affecting the merits of the decision upon the controversy submitted. Any arbitration pursuant to this provision shall be conducted in New York County, New York. Operator acknowledges and agrees that the City is not bound or subject to the provisions of this Article 22.

ARTICLE 23 DEFINITIONS

Definitions Unless otherwise noted, the following definitions shall apply throughout this Agreement:

23.1 AAR means the Association of American Railroads.

23.2 Accident/Incident means an event or situation related to the Rail Facilities that (i) results in personal injury or material property damage on the Rail Facilities, or (ii) is required to be reported to the FRA pursuant to the rules and regulations of the FRA.

23.3 Administrator means New York City Economic Development Corporation, a not-for-profit corporation for under the Laws of the State of New York, having an address at 110 William Street, New York, New York 10038.

23.4 AKP means Arthur Kill Power LLC, a Delaware limited liability company having an address at 4401 Victory Boulevard, Staten Island, NY 10314.

23.5 Approved Maintenance Plan shall have the meaning given such term in Section 5.9.

23.6 Arlington Yard shall have the meaning set forth on Exhibit A hereto.

23.7 Arthur Kill Lift Bridge or AKLB shall have the meaning set forth on Exhibit A hereto.

23.8 Capital Improvement shall mean any additions, betterments and upgrades to the Rail Facilities.

23.9 Carload Switching Operations shall have the meaning given such term in Section 6.1.

23.10 Carload Traffic shall mean all loaded freight cars and the corresponding empty movement (other than Unit Trains) and any other rail traffic interchanged or transferred between a Railroad and Operator.

23.11 CFR means the United States Code of Federal Regulations, as amended.

23.12 Chemical Coast Line Connector or CCC shall have the meaning set forth on Exhibit A hereto.

23.13 City means The City of New York.

23.14 City Contract shall have the meaning given in the recitals to this Agreement.

23.15 City-PANYNJ Operating Agreement means that certain Operating Agreement among the City, PANYNJ and Administrator pursuant to which PANYNJ and the City have granted mutual trackage rights over the SIRR.

23.16 ConEd means Consolidated Edison Company of New York, Inc., a corporation having an address at 4 Irving Place, New York, New York 10003.

23.17 Conrail means Consolidated Rail Corporation, a Pennsylvania corporation, having an address at 2001 Market Street, 8th Floor, Philadelphia, Pennsylvania 19103.

23.18 CSX means CSX Transportation, Inc, a Delaware Corporation having an address at 500 Water Street, Jacksonville, Florida 32202.

23.19 DOT means the United States Department of Transportation or any successor agency performing the same or similar functions.

23.20 East Lead Track shall have the meaning set forth on Exhibit A hereto.

23.21 Effective Date shall have the meaning given such term in Article 4.1.

23.22 Employee means an officer, director, agent, employee, or contractor of any of the parties while engaged in any activity related to the Agreement.

23.23 Expiration Date shall have the meaning set forth in Article 4.3 hereof.

23.24 Force Majeure Event shall mean fire, earthquake, flood, mud slide, washout, storm, blockage, explosion, casualty, strike, riot, insurrection, civil disturbance, act of civil or military authority, act of public enemy, war, an act of terrorism, or act of God. Force Majeure Events shall not include derailments unless the derailment resulted directly from one of the Force Majeure Events described in the preceding sentence.

23.25 FRA means the Federal Railroad Administration and any successor agency performing the same or similar functions.

23.26 Hazardous Materials shall mean (i) petroleum or any fraction thereof; (ii) asbestos; (iii) urea formaldehyde; and (iv) any element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as a "hazardous substance", "hazardous waste" or "hazardous material" under applicable federal, state or local statutes, ordinances or regulations, as well as any amendments and successors to such statutes, ordinances and regulations, as may be enacted and promulgated from time to time, including, without limitation: (A) the Comprehensive Environmental

Response, Compensation and Liability Act; (B) the Resource Conservation and Recovery Act; (C) the Clean Water Act; (D) the Clean Air Act; (E) the Environmental Conservation Law of the State of New York; and (F) the New York City Hazardous Substances Emergency Response Law. As used herein, “noxious freight” means freight that is considered to create a nuisance under applicable New York law. MSW that has been sealed in containers and transported from the S.I. Transfer Station shall not be considered noxious freight. In addition, radioactive or toxic materials found in MSW from the S.I. Transfer Station, such as from batteries or bandages, shall not be considered radioactive or toxic materials.

23.27 Indemnitee shall have the meaning given such term in Article 18.1.

23.28 Indemnified Matter shall have the meaning given such term in Article 18.2.1.

23.29 Indemnitor shall have the meaning given such term in Article 18.2.1.

23.30 Intermodal Terminal means that near-dock, rail intermodal terminal located near the Goethals Bridge in Staten Island, which includes the Howland Hook Marine Terminal on a 187-acre tract on upland area and 124-acre Port Ivory site adjacent to the Howland Hook Marine Terminal on Staten Island acquired by PANYNJ from Procter & Gamble Co.

23.31 Losses shall have the meaning given such term in Article 18.1.

23.32 Modified Certificate means the Modified Certificate of Public Convenience and Necessity issued by the STB under 49 C.F.R. 1150 Subpart C to Operator on or prior to the Effective Date or such other authority that permits Operator (i) to perform rail service on the Rail Facilities and (ii) to terminate such service upon the giving of notice as provided under such rules without securing any further governmental authority from the STB or any other agency to terminate, discontinue or abandon the rail freight service provided by Operator.

23.33 MSW or Municipal Solid Waste means waste material (1) generated by a household, or (2) generated by a commercial industrial or institutional entity, to the extent that the waste material (a) is the same as waste normally generated by a household, (b) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services, and (c) contains a relative quantity of hazardous substances contained in waste material generated by a typical single-family household, but excluding any Hazardous Materials and other materials that constitute a threat to health or safety, or violate or cause the violation of any law, when accepted or disposed of.

23.34 NYCIDA means New York City Industrial Development Agency, a New York public benefit corporation with an address at 110 William Street, New York, NY 10038.

23.35 NJ means The State of New Jersey.

23.36 NJ-PANYNJ Lease Agreement means that certain Lease Agreement dated as of August 1, 2003 between the State of New Jersey Department of Transportation and PANYNJ pursuant to which the real property comprising the right of way for the CCC is leased to PANYNJ.

23.37 NS means Norfolk Southern Railway Company, a Virginia corporation having an address at 3 Commercial Place, Norfolk, Virginia 23510.

23.38 Operator means operator of the Rail Facilities which for purposes of this Agreement is NS, CSX and Conrail, jointly and severally.

23.39 Overdue Rate shall have the meaning given such term in Article 18.2.3.

23.40 Owners or Owner means the City, NJ and PANYNJ, collectively or individually, as the context requires.

23.41 PANYNJ means The Port Authority of New York and New Jersey.

23.42 Person shall mean any corporation, partnership, joint venture, joint stock company, limited liability company, trust, unincorporated organization or other legal entity.

23.43 Private Owners means the Visy, ConEd and AKP, collectively or individually, as the context requires.

23.44 Prohibited Person shall mean any (i) Person (A) that is in default or in breach, beyond any applicable notice and/or grace period, of its obligations under any material written agreement with the City or Administrator, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable notice and/or grace period, of its obligations under any material written agreement with the City or Administrator, unless such default or breach has been waived in writing by the City or Administrator, as the case may be; (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with, a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure; (iii) any government, or any Person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of), the Export Administration Act of 1979, as amended, or any successor statute, or the regulations issued pursuant thereto, or any government that is, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government that is subject to the regulations or controls hereof; (iv) any government, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects or the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended; (v) any Person that is in default in the payment to the City of any real estate charges totaling more than \$10,000 (or any person that directly controls, is controlled by, or is under common control with a Person in such default), unless such default is then being contested in good faith in accordance with the law; and (vi) any Person (A) that has owned at any time during the three (3) years immediately preceding a determination of whether such Person is a Prohibited Person any property which, while in the

ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest pursuant to the Administrative Code of the City or (B) that, directly or indirectly controls, is controlled by, is under common control with, such a Person.

23.45 Railcar shall mean each railroad freight car, locomotive, caboose or other equipment furnished in substitution of railroad equipment.

23.46 Rail Facilities shall mean all Trackage, lands, easements, rights of way, facilities, appurtenances, and improvements including, but not limited to, those facilities and improvements described on Exhibit D to this Agreement and rights related in which the City or the PANYNJ has an ownership, leasehold, easement, or other right to use, and as described on Exhibits A and B to this Agreement, subject to the limitations set forth in this Agreement.

23.47 Service Fee shall have the meaning set forth in Article 5.1.1 hereof.

23.48 SI Transfer Station means that new truck-to-rail solid waste transfer station owned by the City's Department of Sanitation and located on an approximately twenty-acre site north of Fresh Kills Creek and west of the West Shore Expressway in Staten Island, New York.

23.49 STB means the Surface Transportation Board or, if there shall be no Surface Transportation Board, any federal agency which is charged with the function of approving combinations by rail carriers or persons controlling them, or of other arrangements between rail carriers, and granting exemptions from other laws with respect thereto or regulating other specific functions with respect to the context in which such term is employed or any successor entity thereof.

23.50 Term shall have the meaning set forth in Article 4.3 hereof.

23.51 Trackage shall mean all present and future railroad related improvements, systems or equipment, including, but not limited to all tracks (including main line tracks, spur tracks, lead tracks, passing tracks, yard tracks and industry tracks) and related facilities (including rails and fastenings, switches, frogs, bumpers, ties, ballast, signaling devices and systems, interlocking devices and plants, crossing warning devices, crossing surfaces, pole lines and communication facilities and equipment), and all track support structures and related facilities (including roadbed, embankments, bridges (including the AKLB), dikes, pavement, culverts, tunnels, drainage systems and, maintenance, access and service roads).

23.52 Traffic Year shall mean each twelve month period commencing on January 1 and ending on December 31 during the Term hereof; provided that the First Traffic Year of the Term hereof shall commence on the Effective Date and end on December 31, 2007 and the last Traffic Year of the Term hereof shall commence on January 1 of the last year of the Term hereof and end on the last day of the Term hereof.

23.53 Travis Branch shall have the meaning set forth on Exhibit A hereto.

23.54 Trains shall mean one or more freight trains, locomotives, cabooses, railroad cars, rolling stock, track and maintenance equipment, track inspection equipment, and all other rail-related machines and equipment.

23.55 Unit Train shall mean (a) any Train handling containers, trailers, MSW containers, bulk commodities or empty equipment for such traffic, operated by a crew of a railroad to or from any facility for handling containers, trailers, MSW containers, bulk commodities or empty equipment including the Intermodal Terminal or the SI Transfer Station, or any successor, replacement, or new bulk or intermodal facilities or storage tracks constructed on or adjacent to the Rail Facilities; and (b) any movement of empty equipment to/from such intermodal or bulk facilities, or any movements between such facilities; and (c) any loaded freight cars that are handled by a railroad and not interchanged to Operator, in order to meet the requirements of the shipper/receiver.

23.56 Visy means Visy Paper (NY), Inc., a Delaware corporation having an address at 4435 Victory Boulevard, Staten Island, New York 10314

23.57 West Lead Track shall have the meaning set forth on Exhibit A hereto.

23.58 Wye Connector shall have the meaning set forth on Exhibit A hereto.

ARTICLE 24 MISCELLANEOUS PROVISIONS

24.1 Severability. Each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law to the fullest extent possible. In the event, however, that any provision contained herein shall for any reason be held invalid, illegal or unenforceable in any respect, then, in order to effect the purposes of this Agreement it shall be construed as if such provision had never been contained herein.

24.2 No Assignment; Subcontracts; Agreement Binding on Successors and Assigns.

24.2.1 Assignment.

24.2.1.1 Administrator may assign all or a portion of this Agreement, and its rights and obligations hereunder, to the City or to an entity in which the Owners are members (including, without limitation, a joint powers authority) and which acquires all of the Rail Facilities.

24.2.1.2 Operator may not assign its duties and obligations under this Agreement without the prior written consent of Administrator which consent may be given or withheld in the sole discretion of Administrator. Notwithstanding the preceding sentence, the Operator may procure a third party to perform its obligations under this Agreement subject to Administrator's consent, which will not be unreasonably withheld or delayed, provided that the terms of any such

subcontract shall not violate any of the terms, provisions or conditions set forth in this Agreement or modify or waive the Operator's obligations thereunder.

24.2.2 Binding Agreement. Subject to the restrictions on assignment set forth in this Agreement, this Agreement shall be binding upon and shall inure to the benefit of Operator, Administrator and their respective successors and assigns.

24.3 Amendments. No modifications, amendments or changes herein or hereof shall be binding upon any party unless set forth in a document, duly executed and delivered by all parties. No provision of this Agreement shall be altered, amended, revoked or waived except by and instrument in writing signed by the party to be charged with such alteration, amendment, revocation or waiver.

24.4 Recordation and Termination. Without the prior written consent of all parties hereto, no party may record this Agreement. Upon termination of the rights granted to Operator hereunder, Operator shall execute, acknowledge and deliver to Administrator a copy of any appropriate instrument or instruments evidencing the termination.

24.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto.

24.6 Relationship of Administrator and Operator; Relationship of CSX, NS and Conrail. Notwithstanding anything to the contrary contained herein, neither this Agreement shall be deemed or construed to make Administrator and Operator partners or joint venturers, or to render one liable for any of the debts or obligations of the any other unless expressly so provided in this Agreement. CSX, NS and Conrail shall be jointly and severally liable for performance of the Operator's obligations under this Agreement. Administrator shall be entitled to rely on any action, notice or performance by any of CSX, NS or Conrail as action, notice or performance by Operator under this Agreement.

24.7 Third Party Beneficiaries. It is the intent of each party to this Agreement that each provision of this Agreement inure only to the benefit of the parties hereto, and their permitted successors and assignees, and shall not inure to the benefit of any other person or entity other than the Owners. Operator acknowledges that the Owners are express third party beneficiaries of this Agreement and that the Owners, together or individually, may enforce their rights directly against Operator under this Agreement.

24.8 Dissolution of Operator. Each of Conrail, CSX and NS covenants and agrees, respectively, that at all times during the Term of this Agreement, it will (i) maintain its corporate existence, (ii) continue to be subject to service of process in the State of New York and either be organized under the laws of the State of New York, or under the laws of any other state of the United States and duly qualified to do business in the States of New York and New Jersey, and

(iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets.

24.9 Waiver. No consent or waiver, express or implied, by any party to this Agreement to or of any breach or default by another party to this Agreement in the performance of its obligations hereunder, shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by the breaching party of the same or any other obligations hereunder. Failure on the part of any party to complain of any act or failure to act by another party, irrespective of how long such failure continues, shall not constitute a waiver of any rights hereunder.

24.10 Time of Essence. Time is of the essence of this Agreement and of all parts hereof.

24.11 Procurement of Bids, Services and Goods.

24.11.1 Independent Contractor. Operator agrees to enter into, or cause to be entered into, all contracts for goods or services in connection with the Rail Facilities independently and not as agent of Administrator. During the Term of this Agreement, Operator shall manage and operate the Rail Facilities as an independent contractor for Administrator.

24.11.2 Prohibited Persons. Operator shall not enter any contract with a Prohibited Person with respect to the Rail Facilities.

24.12 Sidetrack Agreements. Operator may enter into industry sidetrack agreements and all other agreements it deems necessary to perform normal railroad operations. Operator will be responsible for all arrangements with third parties concerning existing and future Team Tracks, including their use and maintenance. Operator shall not enter into any such Agreement that extends beyond the Term of this Agreement.

24.13 Access. Operator, upon reasonable notice, shall permit inspection of the Rail Facilities by Administrator's agents, employees, contractors and representatives (and the City and PANYNJ, and their respective agents, employees, contractors and representatives) and shall permit inspection thereof by or on behalf of prospective future operators pursuant to the terms of Article 2.2 hereto.

24.14 Audit. The parties to this Agreement agree to cooperate fully with the audit as provided for in Articles 5.1.3 and 5.1.5.

24.15 Governing Law; Venue. This Agreement will be performed in the State of New York and the State of New Jersey and the parties consent to its interpretation according to the law of the State of New York. The parties agree to be subject to and submit to personal jurisdiction in the State and Federal Courts located in New York City in connection with any action, suit or proceeding arising out of this Agreement, except with regard to matters that are subject to the jurisdiction of the U.S. Surface Transportation Board. To the extent permitted by law, the parties shall waive trial by jury in any action or proceeding or counterclaim brought on

any matter whatsoever arising out of or in any way connected with this Agreement, or the use or occupation of the Rail Facilities. This provision shall survive the expiration or earlier termination of this Agreement.

24.16 Press Releases. Operator and Administrator shall not issue or permit to be issued any press release, advertisement or literature of any kind which refers to the operations or services performed in connection with this Agreement, unless such party first obtains the written approval of the other party. Such approval may be withheld if the other party reasonably believes that the publication of such information would be harmful to the public interest or is in any way undesirable. Normal solicitations by the Operator to generate rail traffic for the Rail Facilities are permitted under this Section.

24.17 Notices. Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree upon, and shall be addressed as follows:

If to Administrator:

New York City Economic Development Corporation
110 William Street, 4th Floor
New York, New York 10038
Att: Executive Vice President, Transportation

If to the City:

New York City Law Department
100 Church Street, 6th Floor
New York, New York 10007
Attn: Chief, Economic Development Division

If to NYCIDA:

New York City Industrial Development Agency
110 William Street, 4th Floor
New York, New York 10038
Att: General Counsel

If to PANYNJ:

Director of Port Commerce
Port Commerce Department
The Port Authority of New York and New Jersey
225 Park Avenue South
New York, NY 10003

If to NJ:

Commissioner, New Jersey Department of Transportation
1035 Parkway Avenue
P.O. Box 600
Trenton, NJ 08625

If to Operator:

Vice President, Operations Research & Planning
CSX Transportation, Inc.
500 Water Street (J315)
Jacksonville, FL 32202

and

Senior Vice President, Operations
Norfolk Southern Corporation
3 Commercial Place
Norfolk, Virginia 23510

and

President and Chief Operating Officer
Consolidated Rail Corporation
2001 Market St., 8th Floor
Philadelphia, PA 19103

24.18 Women and Minority-Owned Business Enterprises. Operator understands that, while not a requirement of this Agreement, Administrator encourages participation by MBEs and WBEs in the provision of the rail services to be provided hereunder. In order to be considered W/MBEs for purposes of this Agreement, the W/MBEs must have received certification as such by City's Department of Small Business Services ("DSBS"). Businesses that have been certified as W/MBEs by the PANYNJ may be eligible to receive expedited certification from DSBS after completing the Expedited Certification Affidavit, a copy of which is available from DSBS.

24.19 Headings. All headings and titles in this Agreement are for purposes of identification and convenience only and shall not affect any construction or interpretation of this Agreement.

24.20 Entire Agreement. This Agreement (including the exhibits referred to in this Agreement, which are incorporated in and constitute a part of this Agreement) sets forth the entire understanding of the parties and supersedes all prior and contemporaneous oral or written agreements and understandings with respect to the subject matter. This Agreement may not be amended or modified except by a writing signed by the parties.

24.21 Force Majeure Event. Whenever a period of time is provided in this Agreement for either party to do or perform any act, said party shall not be liable for any delays due to or resulting from a Force Majeure Event. The party experiencing Force Majeure Event shall take prompt actions to notify the other party of the Force Majeure Event, to remove the causes of Force Majeure Event and to resume normal operations promptly after such causes have been removed. Nothing in this section shall cause the party affected by the Force Majeure Event to unfavorably disrupt other operations or enter into what it considers to be any unfavorable labor agreement to remove the causes of the Force Majeure Event. The suspension of any obligations owing to a Force Majeure Event shall neither cause the Term of this Agreement to be extended nor affect any rights accrued prior to the Force Majeure Event.

24.22. Confidential Information. Confidential information shall mean all information disclosed by or to Operator hereunder which relates to the operation, maintenance and security of the Rail Facilities, including but not limited to the maintenance and operation of the AKLB and the information provided to operator as referred to on Exhibit E hereof. Confidential information shall also mean any other tangible or intangible information or materials including but not limited to computer accessed information, reference manuals and reports obtained and/or used during the performance of Operator's services under this Agreement. Operator and Administrator agree (subject to Administrator's disclosure obligations under any applicable freedom of information law, rule or regulation) to hold all such confidential information in trust and confidence and agree not, during or after the termination or expiration of this Agreement, to disclose to any person, firm or corporation, or use for its own business or public or private benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Agreement. Operator and the personnel provided by Operator hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of Administrator or third persons in connection with their services hereunder, either before or after termination or expiration of this Agreement.

24.23 Incorporation of Exhibits. The exhibits attached hereto are incorporated herein by reference.

24.24 Construction. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. References to "Sections" or "Articles" are to Sections or Articles of this Agreement and references to "Exhibits" are to Exhibits attached hereto, unless otherwise specifically provided.

24.25 Further Assurances. Each party shall execute all such instruments and documents and shall take in good faith all such actions as are reasonably necessary to carry out the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION**

BY: _____
NAME:
TITLE:

CSX TRANSPORTATION, INC.

BY: _____
NAME:
TITLE:

NORFOLK SOUTHERN RAILWAY COMPANY

BY: _____
NAME:
TITLE:

CONSOLIDATED RAIL CORPORATION

BY: _____
NAME:
TITLE:

EXHIBIT A
RAIL FACILITIES DESCRIPTION

The Rail Facilities shall consist of the rail line segments and rail facilities described below in A and B:

A. Rail Line Segments:

The SIRR is defined as the following two line segments: (a) the North Shore Line between the end of track at MP 4.6 at Union Avenue east of Arlington Yard, Richmond County, NY and MP 7.4, via the Chemical Coast Connector, at the proposed point of switch at the connection between the Chemical Coast Connector and Conrail's Chemical Coast Line in Union County, NJ, a distance of 2.8 miles; and (b) the "Travis Branch" between MP 0.00, Arlington Yard Station and MP 4.41 in Richmond County, NY, a distance of 4.41 miles (collectively referred to as "the SIRR Lines").

Included within the North Shore Line segment are all the tracks in Arlington Yard together with lead tracks on both the east and west ends of the yard, the so-called Wye Connector that provides a direct connection to the Travis Branch from the North Shore Line and a track designated as the Travis Lead that provides a connection to and from the Travis Branch to the east end of Arlington Yard. A map depicting the entire railroad as described above is attached hereto as Exhibit B.

B. Rail Facilities: The following segments or components of the proposed Rail Facilities are described in more detail below:

(i) "CHEMICAL COAST LINE CONNECTOR" or "CCC" means the segment of the Rail Facilities indicated on the diagram attached hereto as Exhibit B consisting of a new single track rail alignment approximately 3,760 feet long measured from the point of switch of a new turnout connecting the Rail Facilities to the Chemical Coast Line, south and then east to the west approach span of the AKLB. The new junction point consists of a number 15 turnout and a new signal interlocking (designated CP-11) remotely operated by Conrail. The CCC alignment then curves to the east on a 7° - 30' curve and passes under Bayway Avenue. The curve brings the new rail alignment parallel to the existing alignment towards the Arthur Kill. A new three span bridge carries both the new and existing track alignment over First Street South. 160 feet east of that bridge another new four span bridge carries the railroad over a rail spur and Front Street South. On this bridge, a number 15 turnout connects the new rail alignment to the existing. This is an interlocked turnout with signals that also function to protect eastward train movements to the AKLB.

(ii) "ARTHUR KILL LIFT BRIDGE" or "AKLB" means the lift bridge segment of the Rail Facilities indicated on the diagram attached hereto as Exhibit B, located just north of the Goethals Bridge, at the southern end of the Intermodal Terminal. The structure is a vertical lift bridge carrying a single railroad track between Staten Island and New Jersey at a vertical clearance of 31 feet with the span in the closed (lowered) position. The span is normally kept in the open (raised) position, which provides a vertical clearance of 135 feet above mean high water for marine traffic.

(iii) "WEST LEAD TRACK" means that track indicated on the diagram attached hereto as Exhibit B extending eastward from the AKLB as single track for 536 feet to a new number 10 right hand turnout that splits the line into two tracks: the west lead on the north and the running track on the south. This segment is on an earthen embankment and downgrade to the east from the AKLB towards Arlington Yard. The two tracks pass over the existing truck entrance to the Intermodal Terminal on a new two span concrete bridge. The two tracks cross over Bridge Creek and Western Avenue on a two span, open deck, steel bridge. The total distance of the West Lead Track from the AKLB to the Western Avenue (under grade) bridge is 3,528 feet.

(iv) "ARLINGTON YARD" means the main railyard indicated on the diagram attached hereto as Exhibit B, extending from the Western Avenue (under grade) bridge to the South Avenue overhead bridge, a distance of 4,500 feet. Arlington Yard is designed as a 10-track facility with all 10 tracks connected on both ends. Three of the tracks extend into the next segment to the east, the East Lead Track. The west-end of Arlington Yard includes two sets of crossovers to allow all yard tracks to be accessed by the two tracks coming into the yard from the AKLB. There is also a connection to the Wye Connector and two short stub end tracks that can be used for locomotive storage/servicing and a RIP track (Repair In Place) for car repairs and miscellaneous storage. The east end includes a connection from the Travis Branch and the group of shorter tracks (5 – 9) and a crossover from Track 4 to Track 3. Tracks 2, 3 and 4 continue east under South Avenue overhead bridge and are described below in "EAST LEAD TRACK". Arlington Yard also contains an access road from Western Avenue, a narrow perimeter road for maintenance and emergency access and a yard lighting system to allow operation 24 hours per day.

(v) "EAST LEAD TRACK" means three track extensions of Tracks 2, 3 and 4 in Arlington Yard from the South Avenue overhead bridge to the Union Avenue overhead bridge, a distance of 2,260 feet. The northerly track (Track 2) would usually function as a switching lead for the east end of the yard where trains could be pulled back from the various tracks and then moved west onto the lead track into the Intermodal Terminal. Tracks 3 and 4 are extensions of the tracks in the main Arlington Yard and provide for receiving and departing trains longer than would fit on a track in the main Arlington Yard.

(vi) "TRAVIS BRANCH" means the segment of the Rail Facilities indicated on the diagram attached hereto as Exhibit B that is a single track line that diverges southwest from Arlington Yard, crosses the Goethals Bridge highway and parallel service roads on three ballasted deck bridges, then over Bridge Creek on a three-span, open, deck plate girder bridge and descends into the GATX Corporation ("GATX") site. The alignment then curves to the south, comes tangent and continues south across areas of marsh with some adjacent areas filled and occupied by various uses. At the north end of this tangent is a new two span, concrete, ballasted deck bridge. Just north of that bridge is a rebuilt private grade crossing, River Road, which leads to a Con Ed substation and a gated entrance to the GATX site.

Further south in the middle of the long tangent is a new, three span, concrete, ballasted deck bridge over Saw Mill Creek. Further south, to the west of the Travis Branch is a new track to the VanBro facility. Just south of VanBro the tracks curve to the west and cross South Avenue at grade. Immediately south of South Avenue are two double-ended sidings about 1,300 feet long. South of the two sidings, the Travis Branch crosses under Meredith Avenue and then passes over a new two span concrete ballasted deck bridge.

The Travis Branch then curves west and then north to south traversing the old AKP rail yard. The extension then traverses the Visy Paper (NY), Inc. ("Visy") container board mill property, crosses Victory Boulevard at grade, and vacant land owned by Consolidated Edison ("ConEd"). A significant segment of the alignment on ConEd consists of a seven-degree curve to the east turning the proposed alignment from a north/south axis to an east/west axis. This aligns with the Transfer Station rail car loading area on the SI Transfer Station site to the east of ConEd. Most of the rail alignment on ConEd consists of a two-track right of way supported on a new embankment up to six to eight feet high. A new twin, 10' x 10' concrete box culvert carries the rail line over a tidal creek at the ConEd/SI Transfer Station property line.

(vii) "WYE CONNECTOR" means the connector segment of the Rail Facilities indicated on the diagram attached hereto as Exhibit B providing a direct connection from the Travis Branch to the North Shore Line in a direction towards the Arthur Kill Lift Bridge. The Wye Connector is a 1,492 foot long curving track with a turnout at each end; one on the running track from the AKLB and one on the Travis Branch.

The foregoing Rail Facilities segments include all of the real property interests included in the legal descriptions of real property contained in the following instruments:

- (i) For the CCC, the real property described in the NJ-PANYNJ Lease Agreement;
- (ii) For the AKLB, West Lead Track, Arlington Yard, East Lead Track, Travis Branch and Wye Connector, the real property described in:
 - (a) Quitclaim Deed, dated October 28, 1994, between Staten Island - Arlington, Inc. ("SIAI"), a Virginia corporation, and The City of New York (the "City"), demising certain premises, subject to the easement premises referred to therein; and
 - (b) Quitclaim Deed, dated October 28, 1994, from Staten Island - Brighton, Inc., a Virginia corporation, The Staten Island Railroad Corporation, a New York corporation, and Staten Island Railroad Corporation, parties of the first part, and The City of New York (the "City"), party of the second part, demising certain premises, subject to the easement premises referred to therein;
 - (c) Easement, dated August 2, 2004, from New York City Industrial Development Agency and Visy Paper (NY), Inc. to The City of New York;
 - (d) The AK Easement Parcel described on Appendix A to Exhibit C-4.

- (e) The ConEd Easement Parcel described on Appendix A to Exhibit C-5.

EXHIBIT B
SIRR DIAGRAM

EXHIBIT C-1
Utility Easement Requirements

(a) In order to comply with the Utility Easements (a) Operator shall not (a) remove any unnecessary soil or earth from the easement parcels identified in such Utility Easements (the "Easement Parcels"), (b) pile or store excavated material within the bounds of any road paralleling the Easement Parcels, (c) remove, displace or damage any survey control monuments located on the Easement Parcels, nor (d) permit any equipment of Operator or over which Operator has control or equipment of Operator's contractors to come within twenty (20) feet of any overhead transmission utility lines located on or over the Easement Parcels.

(b) If Operator, in the performance of its maintenance and or operation duties under this Agreement requires the relocation or alteration of any utilities in or on the Easement Parcels, Operator shall provide Con Ed and Administrator with not less than thirty-five (35) days' notice in which Operator shall reasonably describe the action or activity intended to be taken by Operator.

(c) Any notice, consent, approval, permission or other communication required or permitted to be given or made by Operator to Con Ed pursuant to this Agreement, any applicable law or requirement of public authorities shall be in writing and mailed by certified mail with postage prepaid, and shall be deemed properly delivered on the date subsequent to the posting thereof. Notices, consents, approvals, permissions and other communications shall be addressed to:

If to Con Ed: Director, Real Estate Department
Consolidated Edison Company of
New York, Inc.
4 Irving Place
New York, NY 10003

With a copy to: General Counsel
Law Department
Consolidated Edison Company
of New York, Inc.
4 Irving Place
New York, NY 10003

Con Ed or Administrator may designate a different address from that described above for purposes of this paragraph by sending written notice to the other Party in the manner prescribed above.

EXHIBIT C-2
NJ-PANYNJ CCC Lease Agreement

EXHIBIT C-3
Visy Easement Agreement

Appendix A to Exhibit C-3
Visy Easement Requirements

- (a) Operator shall maintain the easement site (as depicted on Exhibit B to the Easement Agreement (the "Visy Easement Agreement") attached hereto as Exhibit C-3 (the "Visy Easement Site")) in good order and condition in accordance with industry practices and in accordance with all applicable laws, statutes, ordinances, requirements, regulations and rules.
- (b) Upon notice to Visy Paper (NY), Inc. ("Visy"), at least ten (10) days for routine inspection or maintenance and at least fifteen (15) days for all other purposes (except in emergency situations in which case no notice is required), the Operator shall have the right and privilege to enter upon the Visy Parcel (as more particularly described in Exhibit A to the Visy Easement (the "Visy Parcel")) to access the Visy Easement Site with or by its agents, representatives, servants, workers, contractors or subcontractors, together with their tools, equipment, vehicles and materials, at all times as may be necessary or convenient for the purpose of operating, inspecting, maintaining or repairing the Rail Facilities. Operator shall bear all costs of such work and shall ensure that the Visy Parcel is held harmless with respect thereto and is kept free of any liens in respect thereof.
- (c) Operator shall (i) schedule train switching operations to minimize interference with shift changes and truck deliveries through the entrance gates of the Visy Parcel, as well as truck deliveries to Visy via the rear of the Visy Parcel using the demapped section of Victory Boulevard, (ii) provide Visy with at least twelve (12) hours advance notice by facsimile or telephone of the anticipated date and time of a switching move, and (iii) organize train switching operations to minimize the number of train sections crossing the entrance gates of the Visy Parcel to prevent the setting of any train section in a position that would block access through such entrance gates except during the time required to complete the movement of a train section across the gate. Any change to any arrangements made with Operator concerning the immediately preceding clause shall be subject to the prior written consent of Visy, such consent not to be unreasonably withheld or conditioned. Operator will provide notice by telephone or radio to the plant manager(s) at the Visy facility, such manager(s) to be identified by Visy, immediately in advance of train movements across the Visy Parcel. It will be the responsibility of the Operator to open the gates, inspect the track for obstructions, notify the plant managers when the cycle of train switching has been completed, and to secure the access gates to the Visy Parcel when switching operations are completed. In addition, Operator will provide a schedule of operation to the Fire Department Staten Island District 3, including the expected duration of a train switching operation, and will notify District 3 as to any changes of operation. Operator, with the written consent of the City, will have the right to increase or reduce the number of train movements, provided that any such modification does not cause an unreasonable interference with use of the Visy Parcel by Visy. In the event of any such interference, Operator shall use commercially reasonable best efforts to minimize or eliminate any such interference.
- (d) Except as permitted above, Operator will not obstruct the Easement Site nor interfere with Visy's use of the Easement Site. Operator shall ensure that rail service over the Easement Site and related maintenance work thereon shall be performed in a manner that does not unreasonably impair, restrict or interfere with access to and from the Visy Parcel. Operator shall not, without the City's written consent, construct any permanent facilities or structures within the

Easement Site. Operator shall perform any work to be performed on the Easement Site in a manner which shall cause as little interference as reasonably possible with access to and from, and the conduct of business on, the Visy Parcel.

(e) Operator is advised that the Rail Facilities, except the immediate area encompassing the switch, permits vehicular crossings. Operator is further advised that Visy has agreed with the City that (i) there shall be no vehicles crossing the easement site during a train movement and that there shall be no parking on the rail facilities or within the Visy Easement Site at any time; (ii) it shall ensure that vehicles are not crossing the Visy Easement Site during the time required to complete movement of a train section across the Visy Parcel; (iii) it shall not permit and shall ensure that no vehicles are parked on the Rail Facilities or within the Visy Easement Site at any time; and (iv) it shall have at least one employee who shall monitor vehicular access across the Visy Easement Site at all times (24 hours a day/7 days a week). Operator agrees that it shall not permit vehicles to cross the easement site during a train movement and that it shall not park vehicles on the Rail Facilities on the Visy Easement Site or within the Visy Easement Site at any time

(f) Operator, in its sole discretion, may use self-help to remove any vehicle that is blocking the Rail Facilities on the Visy Easement Site or interfering with the operations of the SIRR.

(g) Operator shall not use the Rail Facilities on the Visy Easement Site for the parking or storage of railcars other than in connection with the completion of a train movement as specified above.

(h) Operator and its contractors or subcontractors shall report immediately to Visy and Administrator the spill or release of any freight, waste or other materials on the Visy Easement Site, including a complete description of the nature of the materials, location and amount.

(i) Any notice required or permitted to be given pursuant to Visy shall be effective and valid only if in writing, and delivered personally, by reputable overnight express courier or delivery service, sent by facsimile with a copy by first class mail, or by certified mail or registered mail, return receipt requested, as follows (or to such other address or person as Visy may specify by notice to Operator and the City):

If to Visy: Visy Paper (NY), Inc.
4435 Victory Boulevard
Staten Island, New York 10314
Attn.: Mill Manager
Tele: 718-370-1114
Fax: 718-370-1115

With a copy to: Pratt Industries (USA), Inc.
1800-C Sarasota Business Parkway
Conyers, Georgia 30013
Attn.: General Counsel
Tele: 770-918-5678
Fax: 770-388-5260

EXHIBIT C-4
AKP Requirements

- (a) With respect to the AK Power easement site (as depicted on Appendix A to this Exhibit C-4 (the “AK Power Easement Site”)), Operator shall allow Arthur Kill Power, LLC (“AK Power”), for itself and its successors and assigns, for its benefit and the benefit of the AK Parcel (as described on Appendix A to this Exhibit C-4 (the “AK Parcel”)) the right (i) to have permanent, free, safe and unimpeded access to and across the Easement Site for any and all vehicles, personnel and equipment AK Power deems appropriate for the conduct of its business or for other purposes, and (ii) to own, acquire, maintain, install, improve, replace, expand, repair, contract for and/or modify any utilities or utility services and/or interconnection facilities across, over, under or on the AK Power Easement Site that AK Power deems appropriate for the conduct of its business, including but not limited to natural gas pipelines, electric transmission lines and interconnections, water and sewer lines, communication lines and related facilities such as conduits, pipes, ducts and/or towers and poles, *provided, however*, that such work shall be coordinated with Operator to reasonably minimize any interference with SIRR rail operations
- (b) Operator shall maintain the AK Power Easement Site and Rail Facilities in good order and condition in accordance with industry practices and in accordance with all applicable laws, statutes, ordinances, requirements, regulations and rules.
- (c) Operator shall provide notice to Administrator and AK Power, of at least ten (10) days for routine inspection or maintenance and at least fifteen (15) days for all other purposes (except in emergency situations in which case no prior notice is required), before entering upon the AK Parcel to access the AK Power Easement Site with or by its agents, representatives, employees, contractors or subcontractors, together with necessary tools, equipment, vehicles and materials, at all times as may be necessary or convenient for the purpose of operating, inspecting, maintaining or repairing, the Rail Facilities.
- (d) Operator shall not perform any construction, removal, replacement, alteration, addition or any work other than maintenance, inspection and operations on the AK Power Easement Site, without the written consent of, and subject to conditions approved by, Administrator.
- (e) Any work required to be performed on the AK Power Easement Site by Operator shall cause as little interference as reasonably possible with access to and from, and the conduct of business on, the AK Parcel.
- (f) Operator shall comply with AK Power’s Safety and Security Rules and Procedures:
- A 24x7 uniformed guard service is stationed at the main gate entrance to the AK Parcel
 - The main gate entrance is closed at all times by AK Power security personnel except to allow entrance of authorized employees, contractors, visitors, etc. to enter or exit the AK Parcel
 - The guards on a 24x7 random basis perform a vehicular roving patrol
 - Valid picture identification and purpose for being on the premises must be established for all non-AK Power entrants prior to their admission to the AK Parcel

- People allowed entrance to the AK Parcel will be asked to sign in and out on log sheets provided by the guards at the main gate. Advance notification to security or to AK Power administration of non-AK Power people wishing to enter the AK Parcel is required
- People admitted to the AK Parcel must have identification on their person at all times to be produced if requested by AK Power personnel
- A temporary parking pass may be issued by the guards on entrance to the premises. This pass will be displayed in the windshield area of the vehicle. It will be surrendered as the person exits the property
- People entering and exiting the premises will follow all posted local vehicle speed and parking guidelines
- All vehicles are subject to inspection
- Oversize vehicles will be detained at the main gate until appropriate escort is secured
- Alcohol, illegal drugs, fireworks and explosives, and firearms and weapons are prohibited on the premises
- Any person who enters onto the AK Parcel or Easement Site through the rail easement may be required by AK Power to produce valid picture identification and demonstrate legitimate reason for presence on the AK Parcel or Easement Site
- All persons on the AK Parcel and Easement Site will comply with AK Power administration directives regarding safety and security, as issued from time to time

These Rules/Procedures are subject to review and amendment in the sole discretion of AK Power.

(g) Operator shall maintain the sliding gate at the end of the fence as described in the Exhibit C-4 to the Agreement. Operator shall maintain or cause to be maintained at all times the gates, barriers, railroad track crossing signals and signage, and all related equipment, such that crossing of the railroad track will be safe, hazard-free. Operator shall maintain the road surface within the AK Power Easement Site by the entrance gate to the AK Parcel so that such road surface (*i.e.* the road surface on the rail right-of-way within the AK Power Easement Site and not any driveway or access road beyond the AK Power Easement Site) is in a safe and hazard-free condition for unimpeded crossing when train movements are not in progress.

(h) Operator shall limit train movements across the AK Parcel entrance gate to a maximum of thirty-six (36) minutes per day.

(i) Operator shall provide AK Power with a schedule or notice at least twelve (12) hours in advance by facsimile, e-mail or telephone of the anticipated date and time of a switching move or train crossing, and organize train switching operations and crossings in a manner that does not unreasonably impair, restrict or interfere with access to and from the AK Parcel, including the setting of any train section in a position that would block access through such entrance gates except during the time required to complete the movement of a train section across the gate. In addition, Operator shall schedule train switching operations and crossing to minimize interference with shift changes at AK Power; AK Power or Administrator shall provide Operator with its scheduled shift changes and any updates. Operator shall establish a communications protocol and system so that Operator can notify the plant manager(s) and security guard at the

AK Power facility, such person(s) to be identified by AK Power, immediately in advance of train movements across the AK Parcel. Operator shall provide AK Power with the agreed upon communications system and shall be responsible for repairing and/or replacing such communication system. It shall be the responsibility of Operator to open the gates, inspect the track for obstructions, notify the plant managers when the cycle of train switching has been completed, and to secure the access gates to the AK Parcel when switching operations are completed. In addition, Operator shall provide a schedule of operation to the Fire Department Staten Island District 3 and AK Power, including the expected duration of a train switching operation, and will notify District 3 and AK Power as to any changes of operation.

(j) Operator and its contractors or subcontractors shall report immediately to AK Power and Administrator the spill or release of any freight, waste or other materials on the AK Power Easement Site, including a complete description of the nature of the materials, location and amount.

(k) Operator is advised that AK Power has agreed with the City that is shall not park or allow to be parked vehicles owned or used by AK Power or its agents, representatives, contractors, subcontractors, licensees, invitees or guests on the Rail Facilities or within the AK Power Easement Site at any time provided, however, that in the event AK Power needs to perform any work that requires a vehicle within or adjacent to the easement site, AK Power is required to coordinate such vehicular access with Operator so as not to unreasonably block or interfere with the operations of the Rail Facilities.

(l) Operator, in its sole discretion, may use self-help to remove any vehicle that is blocking the Rail Facilities or interfering with the operations of the SIRR within the AK Power Easement Site.

(m) Operator shall coordinate with AK Power to develop mutual emergency protocols that will, among other safety and security provisions, allow for AK Power to declare a site or plant emergency, at which time Operator will undertake to immediately clear all trains and equipment from the AK Parcel entrance gate so as to permit immediate emergency vehicle access to and from the AK Parcel.

(n) At the direction of Administrator, Operator shall cooperate with AK Power, its successor and assigns, with respect to any activities to maintain, modify, replace, install and/or expand any utilities, utility services and/or interconnection facilities across, over or under the AK Power Easement Site as is necessary for AK Power to conduct its power or any other business, including but not limited to natural gas pipelines, electric transmission lines and interconnections, water and sewer lines, communication lines and related facilities such as conduits, pipes, ducts and/or towers and poles.

(m) Operator shall not perform any reverse or shoving movements of railcars on the AKP Power Easement Site.

(n) Operator shall not operate trains in excess 5mph on the AK Power Easement Site.

(o) Operator shall not stop or park any locomotive engine underneath the overhead gas pipeline on the AK Power Easement Site.

(p) Operator shall take all actions legally permissible to prevent the transportation or storage of Hazardous Materials (as defined in the Agreement) or noxious freight, excluding MSW, as such terms are defined below or as otherwise defined in the Agreement, at, on or through the Rail Facilities. The Rail Facilities shall not be used for the transport of hazardous materials or noxious freight.

(q) Notice: Operator, in a timely manner, shall provide AK Power with a copy of all notices, inspection reports, permits or approvals received by the Operator from any regulatory authorities with respect to the AK Power Easement Site and any activities related thereto. Upon request by AK Power, Operator shall also provide a copy of any inspection reports or other records received or maintained by Operator with respect to the Easement Site or the Rail Facilities or any reports or notices filed by or on behalf of the Operator with any regulatory authorities with respect to the Rail Facilities.

Any notice required or permitted to be given pursuant hereto, other than emergency notices or communications of a train crossing from the Operator to AK Power's plant manager, shall be effective and valid only if in writing, and delivered personally, by reputable overnight express courier or delivery service, sent by facsimile with confirmation or receipt and with a copy by first class mail, or by certified mail or registered mail, return receipt requested, as follows (or to such other address or person as the Parties entitled to notice may specify by notice given as herein provided):

If to AK Power: Arthur Kill Power LLC
4401 Victory Boulevard
Staten Island, New York 10314
Attn.: Plant Manager
Tele: 718-390-2775/2776
Fax: 718-761-8825

With a copy to: NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
Attn: General Counsel
Tele: 609-524-4500
Fax: 609-524-4589

Unless otherwise specified, notices shall be deemed given when received, but if delivery is not accepted, on the earlier of the date delivery is refused or the fifth (5th) day after the same is deposited with the United States Postal Service. Notices given by counsel to the Operator shall be deemed given by the Operator.

Appendix A to Exhibit C-4

1. Description of AK Power Easement Site

LOCATED: BLOCK 2705, PART OF TAX LOT 1, LYING AND BEING IN THE BOROUGH OF STATEN ISLAND, COUNTY OF RICHMOND, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF NORTH WESTERLY R.O.W. OF MEREDITH AVE WITH NORTH WESTERLY R.O.W. OF R.R. RIGHT OF WAY OF STATEN ISLAND RAPID TRANSIT (100 FEET WIDE R.O.W.), SET POINT HAVING COORDINATES SOUTH 22005.09983 AND WEST 41422.44415.

THENCE SOUTH 15 DEGREES 56 MINUTES 07 SECONDS WEST ALONG THE WESTERLY R.R. R.O.W. LINE FOR A DISTANCE OF 945.03 FEET TO A POINT HAVING COORDINATES SOUTH 22913.81464 AND WEST 41681.90339 WHICH IS THE POINT OF BEGINNING;

THENCE SOUTH 15 DEGREES 56 MINUTES 07 SECONDS WEST ALONG THE WESTERLY R.R. R.O.W. LINE A DISTANCE OF 113.90 FEET TO A POINT;

THENCE SOUTH 29 DEGREES 51 MINUTES 55 SECONDS WEST FOR A DISTANCE OF 73.72 FEET TO A POINT;

THENCE SOUTH 30 DEGREES 44 MINUTES 34 SECONDS WEST FOR A DISTANCE OF 356.13 FEET TO A POINT;

THENCE ALONG A CURVE BEARING TO THE RIGHT HAVING A RADIUS 746.78 FEET, CENTRAL ANGLE 5 DEGREES 41 MINUTES 28 SECONDS, AND ARC LENGTH OF 74.18 FEET;

THENCE SOUTH 36 DEGREES 26 MINUTES 02 SECONDS WEST FOR A DISTANCE OF 1254.93 FEET TO A POINT;

THENCE NORTH 53 DEGREES 33 MINUTES 06 SECONDS WEST FOR A DISTANCE OF 4.42 FEET TO A POINT;

THENCE SOUTH 36 DEGREES 20 MINUTES 40.4 SECONDS WEST FOR A DISTANCE OF 941.40 FEET TO A POINT;

THENCE ALONG A CURVE BEARING TO THE RIGHT, HAVING A RADIUS OF 640.21 FEET; CENTRAL ANGLE OF 4 DEGREES 41 MINUTES 06 SECONDS, AND AN ARC LENGTH OF 52.35 FEET;

THENCE SOUTH 52 DEGREES 11 MINUTES 32 SECONDS WEST FOR A DISTANCE OF 108.27 FEET TO A POINT;

THENCE ALONG A CURVE BEARING TO THE LEFT, HAVING A RADIUS OF 515.00 FEET, CENTRAL ANGLE OF 15 DEGREES 54 MINUTES 35 SECONDS, AND AN ARC LENGTH OF 143.00 FEET ;

THENCE SOUTH 36 DEGREES 16 MINUTES 57 SECONDS WEST FOR A DISTANCE OF 247.67 FEET TO A POINT;

THENCE NORTH 48 DEGREES 18 MINUTES 04 SECONDS WEST FOR A DISTANCE OF 45.20 FEET TO A POINT;

THENCE NORTH 36 DEGREES 16 MINUTES 55 SECONDS EAST FOR A DISTANCE OF 243.40 FEET TO A POINT;

THENCE ALONG A CURVE BEARING TO THE RIGHT, HAVING A RADIUS OF 560.00 FEET, CENTRAL ANGLE OF 15 DEGREES 54 MINUTES 35 SECONDS, AND AN ARC LENGTH OF 155.499 FEET;

THENCE NORTH 52 DEGREES 11 MINUTES 32 SECONDS EAST FOR A DISTANCE OF 108.27 FEET TO A POINT;

THENCE ALONG A CURVE BEARING TO THE LEFT, HAVING A RADIUS OF 356.63 FEET, CENTRAL ANGLE OF 15 DEGREES 45 MINUTES 30 SECONDS, AND AN ARC LENGTH OF 98.09 FEET;

THENCE NORTH 36 DEGREES 26 MINUTES 02 SECONDS EAST FOR A DISTANCE OF 2138.16 FEET TO A POINT;

THENCE ALONG A CURVE BEARING TO THE LEFT, HAVING A RADIUS OF 701.78 FEET, CENTRAL ANGLE OF 5 DEGREES 41 MINUTES 28 SECONDS, AND AN ARC LENGTH OF 69.71 FEET;

THENCE NORTH 30 DEGREES 44 MINUTES 34 SECONDS EAST FOR A DISTANCE OF 356.13 FEET TO A POINT;

THENCE ALONG A CURVE BEARING TO THE RIGHT, HAVING A RADIUS OF 731.19 FEET, CENTRAL ANGLE OF 5 DEGREES 43 MINUTES 29 SECONDS, AND AN ARC LENGTH OF 73.06 FEET;

THENCE NORTH 36 DEGREES 28 MINUTES 03 SECONDS EAST FOR A DISTANCE OF 111.44 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONSIST OF 144931.15 S.F. = 3.32716 ACRES.

2. Description of the AK Parcel

That certain real property designated as Block 2705, Lot 1 on the Tax Map for the Borough of Staten Island, County of Richmond, City and State of New York, comprising of approximately 112 acres and bounded by Victory Boulevard and the Con Ed Substation to the east, Block 2705, Lot 225 (the Visy Paper property) to the south, the waterway known as the Arthur Kill to the west and Neck Creek to the north.

EXHIBIT C-5
Con Ed Requirements

- (a) Operator shall maintain the Con Ed easement site (as depicted on Appendix A to this Exhibit C-5 (the "Con Ed Easement Site")) in good order and condition in accordance with industry practices and in accordance with all applicable laws, statutes, ordinances, requirements, regulations and rules.
- (b) Operator shall provide Con Ed with at least twelve (12) hours advance notice by facsimile or telephone of the anticipated date and time of a switching move affecting the Con Ed Easement Site.
- (c) Operator shall not, without the City's written consent, construct any permanent facilities or structures within the Con Ed Easement Site. Operator shall perform any work to be performed on the Easement Site in a manner which shall cause as little interference as reasonably possible with access to and from, and the conduct of business on, the Con Ed Parcel as depicted on Appendix A of this Exhibit C-5.
- (d) Operator and its contractors or subcontractors shall report immediately to Con Ed and Administrator the spill or release of any freight, waste or other materials on the Con Ed Easement Site, including a complete description of the nature of the materials, location and amount.
- (e) Any notice required or permitted to be given pursuant to Con Ed shall be effective and valid only if in writing, and delivered personally, by reputable overnight express courier or delivery service, sent by facsimile with a copy by first class mail, or by certified mail or registered mail, return receipt requested, as follows (or to such other address or person as Con Ed may specify by notice to Operator and the City):

If to Con Ed: Director, Real Estate Department
Consolidated Edison Company of
New York, Inc.
4 Irving Place
New York, NY 10003

With a copy to: General Counsel
Law Department
Consolidated Edison Company
of New York, Inc.
4 Irving Place
New York, NY 10003

Con Ed or Administrator may designate a different address from that described above for purposes of this paragraph by sending written notice to the other Party in the manner prescribed above.

5. Notice to Administrator and the City.

Operator shall provide notice to Administrator and City of all written communications and correspondence from Operator to Con Ed, AK Power, and Visy at the time of delivery of such communications and correspondence at the addresses specified in Article 15 of the Operating Agreement.

Appendix A to Exhibit C-5

1. Description of Con Ed Easement Parcel

LOCATED: BLOCK 2705, PART OF TAX LOT 300, LYING AND BEING IN THE BOROUGH OF STATEN ISLAND, COUNTY OF RICHMOND, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

FROM THE CORNER FORMED BY THE INTERSECTION OF THE SOUTHERLY LINE OF VICTORY BLVD., AND THE WESTERLY TERMINUS OF VICTORY BLVD., SAID POINT HAS THE COORDINATES: SOUTH 26521.773 AND WEST 44701.510.

THENCE ALONG THE SOUTHERLY LINE OF VICTORY BLVD. NORTH 77 DEGREES 03 MINUTES 53 SECONDS EAST A DISTANCE OF 366.79 FEET TO THE POINT OF BEGINNING;

THENCE STILL ALONG SOUTHERLY R.O.W. LINE OF VICTORY BLVD. NORTH 77 DEGREES 03 MINUTES 53 SECONDS EAST A DISTANCE OF 24.96 FEET TO A POINT;

THENCE ALONG THE SOUTHERLY R.O.W. LINE OF VICTORY BLVD. NORTH 60 DEGREES 28 MINUTES 22 SECONDS WEST A DISTANCE OF 228.66 FEET TO A POINT;

THENCE SOUTH 36 DEGREES 16 MINUTES 57 SECONDS WEST A DISTANCE OF 230.74 FEET TO A POINT;

THENCE ALONG A TANGENTIAL CURVE BEARING TO THE LEFT, HAVING A RADIUS 771.52 FEET; CENTRAL ANGLE 115 DEGREES 47 MINUTES 29 SECONDS, AND ARC LENGTH OF 1559.20 FEET;

THENCE SOUTH 79 DEGREES 30 MINUTES 32 SECONDS EAST A DISTANCE OF 289.88 FEET TO A POINT;

THENCE NORTH 7 DEGREES 27 MINUTES 38 SECONDS EAST A DISTANCE OF 115.63 FEET TO A POINT;

THENCE NORTH 79 DEGREES 30 MINUTES 32 SECONDS EAST A DISTANCE OF 325.52 FEET TO A POINT;

THENCE ALONG A TANGENTIAL CURVE BEARING TO THE RIGHT, HAVING A RADIUS OF 881.52 FEET; CENTRAL ANGLE 115 DEGREES 47 MINUTES 29 SECONDS, AND ARC LENGTH OF 1781.50 FEET;

THENCE NORTH 36 DEGREES 16 MINUTES 57 SECONDS EAST A DISTANCE OF 303.26 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONSIST OF 262640.18 S.F. = 6.02396 ACRES.

2. Description of Con Ed Parcel

That certain real property designated as Block 2705, Lot 300 on the Tax Map for the Borough of Staten Island, County of Richmond, City and State of New York, comprising of approximately 95 acres (of which approximately 76 acres is upland) and bounded by Victory Boulevard, the Con Ed Service Center (4400 Victory Boulevard) and Wild Avenue to the north, the waterway known as the Arthur Kill to the west, Little Fresh Kills and the New York City Fresh Kills Landfill to the south and the West Shore Expressway to the east.

EXHIBIT D
STATEN ISLAND RAILROAD
SCOPE OF WORK FOR BASIC MAINTENANCE PROGRAM

GENERAL REQUIREMENTS

1. Maintenance. Operator shall be required to maintain the Rail Facilities as more particularly described below. Maintenance activities on the Rail Facilities shall include inspection, normal and seasonal maintenance, repair, replacement and servicing of the Rail Facilities, including, without limitation, (a) replacement of all or any portion of the Trackage as part of its maintenance activities with materials of equal or greater quality as the quality of the existing materials except to the extent provided otherwise in the Approved Maintenance Plan; (b) weed and rubbish removal and abatement on and adjacent to the Rail Facilities to the extent necessary to prevent interference with rail operations; (c) snow and ice removal if warranted in order to perform the operations contemplated within this Agreement; (d) all required inspections and maintenance of the SIRR track structure including the right-of-way and fencing in Arlington Yard, (e) all required inspection and routine maintenance of the fixed bridge structures and culverts, (f) maintenance of the retaining walls for the CCC, (g) all required inspection and maintenance of the automatic highway crossing warning systems including the three automatic sliding gates at Visy Paper and the AKP plant entrance and associated electrical and mechanical systems, the lighting system, yard air system and yard entrance road at Arlington Yard, and (g) all required inspection and maintenance of the structural elements, mechanical systems, electrical systems, signal and bridge interlocking system of the Arthur Kill Lift Bridge together with any other systems installed thereon such as security systems. The full description of the Rail Facilities is Part VI of this Exhibit C. Operator shall be responsible to pay all utility charges associated with the operation of the railroad and various systems including but not limited to the Arthur Kill Lift Bridge, the Arlington Yard lighting and yard air system and the automatic highway crossing warning systems and automatic sliding gate systems on the Travis Branch.

A listing of the track inventory, bridges, grade crossings is included under Part VI following.

2. Approved Maintenance Plans. During each Traffic Year, Operator and Administrator shall meet and agree on a maintenance plan and budget (an "Approved Maintenance Plan") for each Traffic Year during the Term of the Agreement. At least 90 days prior to the beginning of each Traffic Year, Operator shall provide to Administrator a proposed maintenance plan and budget for the Rail Facilities for the coming Traffic Year, which plans shall be in such detail as Administrator may reasonably request.

TRACK MAINTENANCE REQUIREMENTS

GENERAL. Operator shall maintain all Trackage to Class 2 Standards as defined in the June 9, 2001 revision of the U. S Department of Transportation, Federal Railroad Administration, Code of Regulations, Title 49, Track Safety Standards, Part 213, Subparts A to F. All required inspections and records thereof shall be undertaken and maintained by the designated Operator,

either in paper form or on forms already in place by the Operator provided that the forms are in compliance with FRA reporting requirements and approved by Apple. Forms may also be in electronic format providing the procedures meet the requirements of Subpart F, 213.241 of the cited revision.

CONDITION OF THE RAILROAD AT START OF SERVICE.

At the start of rail service, the running and yard tracks of the Rail Facilities will be of all new construction, generally in conformance with an FRA Class 3 condition, except segments of the Travis Branch where existing 100 ARAB rail section with jointed rail will be retained and majority of existing tie population which are currently in good condition. Those segments of the Travis Branch (as specifically delineated hereunder) will generally be in conformance with an FRA Class 2 condition at the beginning of railroad operation. The general characteristics of the Rail Facilities at the end of the construction period and beginning of active rail operations will be as follows:

- The North Shore Line, including Arlington Yard, will consist of 136 RE rail with resilient fasteners on timber cross ties.
- Rail will be welded in all tracks except where curves exceed 10 degrees in which case the rail will be jointed in 78 or 80-foot lengths with six hole joint bars and segments where existing rail is to be retained on the Travis Branch.
- New segments of the Travis Branch will be 115 RE welded rail, with resilient fasteners on timber ties.
- A full ballast section and shoulders will be provided on all tracks.
- Turnouts will be welded, with resilient fasteners and of a rail section equal to connecting tracks. Turnouts will generally be of a No. 10 with RBM frog and guard rails, 16' – 6" undercut switch points with adjustable rail braces. All turnouts shall lie on timber ties.
- Grade crossings: rubber rail seal and bituminous with conventional track construction in low vehicular crossing areas or concrete modular units with no ties in the crossing area within high traffic crossings.

A detailed description of the Rail Facilities track lengths, number of turnouts, crossings and bridges is contained in Part IV following.

OTHER MAINTENANCE ITEMS

Operator shall be required to maintain and keep in good working order the following additional components and systems:

- The yard lighting system in Arlington Yard consisting of a high mast lighting units, lower mast mounted luminaries and a lighting control center.
- Yard compressed air system consisting of screw type compressor(s), moisture traps, dryers and air distribution system at west end of Arlington Yard
- Repairs to security fencing and gates as necessary to maintain railroad security, in particular Arlington Yard and the leads to the east and the AKP power plant in Travis.

DESCRIPTION AND QUANTIFICATION OF STATEN ISLAND RAILROAD PHYSICAL FEATURES

The Rail Facilities include two major rail routes:

- The North Shore Line, running from the connection to the Chemical Coast Line of Conrail Shared Assets in New Jersey, across the AKLB to an end of track short of the Union Avenue overhead bridge on Staten Island, as further described on Exhibit A hereto
- The Travis Branch, running from the North Shore Line at the west end of Arlington Yard via the Wye Connector, to a connection to the switching track industrial lead that serves the Department of Sanitation's Fresh Kills Transfer Station, as further described on Exhibit A hereto. In addition there is a connecting track on the south side of Arlington Yard, designated as the Travis Lead that forms the third leg of a railroad "wye" as further described on Exhibit A hereto.

NORTH SHORE LINE

New Jersey Segment

This route includes the segment of railroad in New Jersey between the Chemical Coast Line in Conrail Shared Assets Area and the west end of the AKLB, a distance of 3,824 feet. Under this Agreement, maintenance responsibilities for the track facilities shall end at the insulated joints defining the limits of the interlocking to be designated as CP-ESSO where the CCC will connect to the Chemical Coast Line. All track within the New Jersey segment will be new 136 RE CWR on timber ties. This segment includes a 7° - 30' curve about 1,200 feet long.

Three undergrade bridges are included in the CCC. Two of the three bridges (over Amboy Avenue and Front Street) are of all new construction, ballasted deck, with a total span length of 575 feet. The Front Street Bridge includes within its limits a new power operated No. 15 turnout that connects the new route to the existing, currently unused, former Rail Facilities line to the west. That turnout is the only turnout to be maintained on the CCC. Initially, and for some time in the foreseeable future, all rail traffic will be through the diverging side of the turnout. The third bridge structure on the CCC is a rehabilitated segment of the existing multiple span trestle west of the Arthur Kill. That structure will remain open deck with new 136 RE CWR and bridge timbers with a total length of 494 feet.

AKLB – Track. The AKLB spans the Arthur Kill onto Staten Island and consists of the 558 foot long main span vertical lift structure along with fixed approach spans on both sides. Total

length of the AKLB with approaches over water is 862 feet. All of the structure is open deck with existing 115 RE jointed rail. Miter rails are in place at the lift span. Maintenance of the bridge and signal system shall be in accordance with AASHTO's Movable Bridge Inspection, Evaluation and Maintenance Manual, and the Operation and Maintenance Manual of the Arthur Kill Lift Bridge.

Arlington Yard and Leads, East and West. Arlington Yard will be the operational hub of the Rail Facilities and will consist of 10 through (double ended) tracks, two stub end service tracks, various crossovers and lead tracks on both ends.

All track within this segment will be 136 RE CWR with resilient fasteners on timber ties. Total length from the AKLB to the end of track will be 10,297 feet. Total feet of track within this segment will be 46,790 feet, measured from point of switch and including distances through both legs of turnouts and crossovers. All turnouts will be No.10 with 21 single turnouts and 5 crossovers for a total of 31 turnouts. Total feet of track outside of turnouts will be 39,550 feet.

All grade crossings in this segment are rubber rail seal and bituminous and include the main yard entrance road crossing, 114 feet long and nine crossings of yard tracks by a perimeter maintenance access road, totaling 315 feet.

There are two undergrade bridges in this segment, one a new two span concrete ballasted deck bridge over the truck entrance to the NYCT 117 feet long between abutments and an existing two span open deck bridge over Western Avenue and Bridge Creek about 118 feet long between abutments. Both bridges are double track.

TRAVIS BRANCH. The Travis Branch diverges from Arlington Yard via a new Wye track at the west end of the yard and includes a diagonal link on the south side of the yard that forms the complete railroad wye. The Wye Connector as it diverges from the North Shore Line, marks the beginning of the Travis Branch. The Wye Connector is the sharpest curve on the Railroad at 10° - 30' for about 1,200 feet. The tracks north of the Goethals Expressway, generally within the Arlington Yard area, will be 136 RE CWR with resilient fasteners on timber ties. There is one additional 136 RE No. 10 turnout (in addition to the count above in Arlington Yard) that connects the south end of the Wye Connector with the Travis Lead. Track south of the bridges over the Goethals Expressway are a mixture of new 115 RE CWR (about 60% of the total) and existing 100 ARA A jointed rail (about 40% of the total).

The Travis Branch is single track to its pre-reconstruction south end where there are two 1200 foot long double-ended sidings on either side of the running track. These two existing sidings have existing 100 LB, number 8 turnouts on both ends. These will be replaced with new 115 RE, number 10 turnouts. The north end of these sidings will be relocated south to remove the turnouts from the body of a curve and provide some distance between the turnouts and the South Avenue grade crossing. The center portion of these sidings will retain the existing 100 ARA A rail.

South of the existing sidings, the new alignment will be constructed south through property leased from AKP, Visy and ConEd to reach industrial lead and switch tracts that will serve the SI

Transfer Station. Within this new proposed rail spur will be two new double-ended sidings, each more than 2,500 feet long, a connection to the Visy paperboard mill and several turnouts to connect to the four stub end tracks that comprise the SI Transfer Station. All rail on the extension of the railroad through private properties will be new 115 RE CWR. Turnouts will all be new number 10, manually operated.

Track quantities and types on the Travis Branch are as follows:

Total track footage – point of switch to point of switch = 32,114 feet
Total number of turnouts (all No. 10 – 115 RE) = 12
Total feet of track outside of turnouts = 30,274 feet
Included in above are 11,372 feet of existing 100 ARA B track + 16,876 feet of new 115 RE track and 2026 feet of new 136 RE track, this segment being from the north end of the bridges over the Goethals Expressway, including the Wye Connector..

In addition, there is 3,073 feet of new 136 RE track on the so called Travis Lead south of Arlington Yard.

There are a total of 8 grade crossings on the Travis Branch as follows, from north to south:

1. GATX Crossing – 40 foot long, rubber rail seal and bituminous – AHCWS with gates.
2. River Road – 50 foot long rubber rail seal and bituminous – Private with passive warning.
3. South Avenue – 46 foot concrete modular crossing – AHCWS with gates.
4. AKP internal access – 28 foot long rubber rail seal and bituminous – Private with passive warning.
5. AKP Main Entrance – 36 foot long concrete modular crossing – Private with AHCWS, flashers and bell. This system also is tied into an automatic sliding gate system across the tracks.
6. Visy Main Entrance – 56 foot long concrete modular crossing – Private with AHCWS, flashers and bell. This system also tied into an automatic sliding gate system across the tracks on both ends of Visy property.
7. Victory Boulevard – Three tracks (running track, south siding and Visy spur), total track length 292 feet rubber rail seal and bituminous – Private with passive warning.
8. Con Ed internal access – 38 foot long, double, track, rubber rail seal and bituminous – Private with passive warning.

There will be a total of 8 bridges on the Travis Branch as follows, from north to south:

EXISTING BRIDGES

1. North Service Road Br. No. 398.5 – Single span through girder – 50 foot long, ballasted deck
2. Goethals Expressway Br. No. 398– Five span through girder – 162 foot long, ballasted deck
3. South Service Road Br. No. 387.5– Single span through girder – 51 foot long, ballasted deck
4. Old Place Creek Br. No. 397– Three span deck plate girder – 179 feet long, open deck

NEW BRIDGES

5. Merrill's Creek – New two span concrete – 79 feet long, ballasted deck
6. Saw Mill Creek – New three span concrete – 106 feet long, ballasted deck
7. Neck Creek – New two span concrete – 79 feet long, ballasted deck
8. Smith's Creek – New twin concrete box culvert (2- 10' x 10' boxes) – 22 feet long, ballasted deck

TRACK SUMMARY – ENTIRE RR

Segment	PS to PS length	Exclusive of Turnouts	Number of Turnouts
New Jersey	3,576	3,414	1 – No. 15
AKLB	862	862	0
North Shore in NY	46,790	39,550	31
Travis Branch	32,114	30,274	12
Travis Lead	3,073	3,073	0
TOTALS	86,415	77,173	44

Except for the one number 15 interlocked turnout in New Jersey, all turnouts are new, number 10, manually operated.

EXHIBIT E
BRIDGE MAINTENANCE REQUIREMENTS

PART I – FIXED BRIDGES

Operator shall be required to perform required inspections of all fixed span bridges (see Exhibit C, Part IV for a description of such bridges) on the Rail Facilities in both New Jersey and New York. Inspection procedures and records shall be as required by both FRA and state transportation agencies. Operator shall furnish copies of the inspection reports to Administrator and the agencies requiring them. Any defects found shall immediately be reported to Administrator. It shall be the responsibility of the Operator to make repairs such as but not limited to: repair/replacement of bridge railings, rail guard rails, hook bolts and spacer blocks on open deck bridges and to keep all bridges in state of good repair.

PART II – ARTHUR KILL LIFT BRIDGE

A. Bridge Elements and Systems – General

1. Operator shall be required to perform all required inspections and maintenance functions for the bridge structure and all systems on the bridge including but not limited to all structural elements of the bridge and appurtenant structures such as fender systems, operators house, equipment rooms, emergency generator, and track structure including miter rails and expansion rails. The bridge is to be maintained per the standards set forth in (i) **AASHTO's Movable Bridge, Inspection, Evaluation and Maintenance Manual**, American Association for State Highway Transportation Official's guide to movable bridge maintenance, including movable bridge maintenance, structural mechanical, hydraulic, electrical and recordkeeping (Source: AASHTO, 1998) (the "AASHTO Manual"), and (ii) **AKLB Operations and Maintenance Manual**, a detailed operations and maintenance manual for the AKLB (Source: NYCEDC, March 2000) (the "AKLB Manual") and (iii) all applicable FRA requirements. Operator should be aware that the AKLB Manual will be more specific than the AASHTO Manual, and therefore takes precedence. Operator shall furnish copies of the inspection reports to Administrator and the agencies requiring them. Any defects found shall immediately be reported to Administrator. It shall be the responsibility of the Operator to make repairs such as but not limited to: repair/replacement of bridge railings, rail guard rails, hook bolts and spacer blocks on the bridge and to keep the lift bridge and approach spans in state of good repair.

All of the bridge mechanical and electrical systems shall be inspected as required and all routine maintenance necessary to keep the systems in a state of good repair shall be performed by the Operator.

Operator shall maintain a log book listing all items requiring routine inspection and servicing. The individual performing those duties shall sign their name in the log book indicating date that duty was performed.

B. Bridge Interlocking and Signal System

Operator shall be responsible to perform all required inspection, testing and maintenance for the AKLB Interlocking. This system includes the bridge locking mechanisms as well as an interlocked number 15 turnout located on the west approach to the bridge and a control panel located in the operator's house. The turnout connects the original Staten Island RR alignment west into Union County (currently out of service) to the new Chemical Coast Connector. That powered turnout is equipped with electric switch heaters. Signals are located at the single track east approach to the bridge from Arlington Yard and on the west approach where signals are located on both the Chemical Coast Connector and the original Rail Facilities alignment.

Maintenance of AKLB Interlocking shall comply with applicable state and federal regulations, including Federal Railroad Administration Signal System Safety Reporting Requirements, 49 CFR Part 236.

Operator shall provide all necessary equipment and material and perform all operations in connection with the normal maintenance, FRA testing and repair work contemplated hereby, which shall include the signal devices with integral controls and wiring, bridge locking operating mechanism and all other appurtenant equipment associated with the railroad lift bridge.