

WISCONSIN & SOUTHERN RAILROAD
INDUSTRIAL LEAD TRACK AGREEMENT

This **Industrial Lead Track Agreement** (“Agreement”), is dated as of 9/1/2021, (“Effective Date”) by and between the following:

Railroad

Railroad:	Wisconsin & Southern Railroad, L.L.C.
Entity State/Type:	DE / Limited Liability Company
Mailing Address:	315 W. Third Street
City, State, Zip:	Pittsburg, KS 66762
Agreement Originator Name:	Brad Peot
Agreement Originator Phone:	608-445-3852

And

City

Industry:	CITY OF MILTON
Mailing Address:	710 S. Janesville Street
City, State, Zip:	Milton, WI, 53563
Agreement Originator Name:	Al Hulick
Agreement Originator Phone:	608-868-6900

WHEREAS, on December 1st, 2003 the City entered into an Industrial Spur Track Agreement, see **Exhibit “C”**, for Railroad to operate over certain City owned track, located at Mile Post **60.28**, in City of **Milton**, County of **Rock**, and State of **WI** (“City Lead”), for the purpose of serving a Cargill Feed Mill located within the City’s industrial park (“Park”), and

WHEREAS, on December 1st, 2005 the City entered into another Industrial Spur Track Agreement, see **Exhibit “D”**, for railroad to operate over an extension of the certain City owned track, located at Mile Post **60.28**, in City of **Milton**, County of **Rock**, and State of **WI** (“City Lead”), for the purpose of serving a United Ethanol Facility located within the City’s industrial park (“Park”), and

WHEREAS, the City desires Railroad to operate over another extension of the certain City owned track, located at Mile Post **60.28**, in City of **Milton**, County of **Rock**, and State of **WI** (“City Lead”), for the purpose of serving a Clasen Quality Chocolates facility to be located within the City’s industrial park (“Park”), and

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to replace all previous Agreements covering the City owned track shown on **Exhibit “A”**, located at Mile Post **60.28**, in City of **Milton**, County of **Rock**, and State of **WI** (“City Lead”), with a new Agreement

covering the maintenance and operation of the City Lead that enables the Railroad to serve industries located in the City's Park subject to the following terms and conditions:

1. OWNERSHIP AND MAINTENANCE.

- 1.1. The City, at its sole cost and expense and with its own means and forces, or by means of a competent Contractor, shall furnish the engineering, labor, and material for and shall lay ballast and construct and surface the track, and therefore own all City Lead trackage designated on Exhibit A.
- 1.2. Subsequent to construction of the City Lead or future extensions of the City Lead, the Railroad at its sole cost and expense, shall maintain, repair and renew the track to railroad industry sidetrack standards as set forth in Exhibit A, in accordance with the federal or state regulations.
- 1.3. Railroad, at its sole cost and expense, with its own forces or by a competent contractor, shall keep the track clear of snow, ice, weeds, and other similar obstructions for its own operations
- 1.4. City shall pay to the Railroad the cost of all such agreed to additions, betterments, and changes to said track, and the cost of installation and maintenance of such derails, public grade crossings, private grade crossings, signals, and other safety devices, as required by railroad industry side track standards and by state and federal regulations (collectively, "Legal Requirements").
 - a. Railroad agrees to maintain the East High Street crossing signals on behalf of the City for an annual cost of \$3000. Annual signal maintenance cost shall adjust annually by 3% over the term the Agreement is in effect.
- 1.5. Without relieving City from any of its obligations under this Agreement and Railroad of its obligations in 1.2, Railroad may refuse to operate over the City Lead whenever Railroad, in its reasonable discretion, determines that the condition of City Lead is unsatisfactory for Railroad's operation. When City or Railroad has remedied such unsatisfactory condition to Railroad's reasonable satisfaction, Railroad shall resume operation over the City Lead.

2. OPERATION.

- 2.1. City shall, at its sole expense, pay all costs for changes, repairs or alterations to the City Lead that may be necessary in order to conform to any changes of grade or relocation of any track owned by Railroad ("Railroad Track") at the point of connection with the City

Lead, if such change of grade or relocation is required to comply with any Legal Requirement or is made for any other reason beyond Railroad's reasonable control.

- 2.2. In the event the City Lead is used for receiving, forwarding, or storing hazardous materials as defined by any federal, state, or local environmental law or regulation, City agrees to comply with all applicable Legal Requirements and with Railroad's further requirements concerning the same.
- 2.3. Railroad shall be solely responsible for providing railroad freight service to industries connecting to the City Lead and administering any agreements or safety protocols that are customary for a Railroad operated corridor regarding the City Lead which shall include but is not exclusive of private crossing agreements, flagging protection, and clearance and design alterations regarding the City Lead.
- 2.4. City shall construct, install, use, maintain, and repair all non-railroad related infrastructure, hereinafter "Facilities" at its sole risk and expense, in a manner and of materials satisfactory to provide safe Railroad operations. City, during the installation, construction, use, operation, renewal, relocation, modification, maintenance and repair of these Facilities, shall exercise reasonable diligence to prevent damage to the property of the City Lead, Railroad, or injury to Railroad's agents, employees, invitees and contractors. The presence of any Facilities must never be a source of danger to or interfere with the safe operations of Railroad over the City Lead.
- 2.5. City shall keep any gates across the City Lead open whenever necessary, in Railroad's sole judgment, to enable Railroad to safely and efficiently operate over the City Lead. City shall operate and maintain all other Facilities so as not to negatively affect the safe and efficient operation of Railroad over City Lead.
- 2.6. Railroad shall provide to City or the Bureau of Railroads and Harbors (BORAH) of the Wisconsin Department of Transportation (with a copy to the other party) a report upon request of the number of loaded railcars shipped or received by industries located in the Park which use the City Lead for access to the Railroad. Railroad shall allow access by BORAH or its authorized agent to examine waybill, demurrage, or other appropriate records for the purpose of validating reported car counts. This provision shall remain in effect for the term of the Transportation Economic Assistance Agreement – Rail between the City and Wisconsin Department of Transportation.

3. DEFINITION OF COST AND EXPENSE.

- 3.1. For the purpose of this Agreement, “cost” or “costs” “expense” or “expenses” include, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
- 3.2. All invoices are due thirty (30) days after City’s receipt of an invoice from Railroad. In the event City shall fail to pay any monies due to Railroad within thirty (30) days after City’s receipt of such invoice, then City shall pay a service charge at the rate of 1.5% per month (or at the legal maximum in the jurisdiction where the City Lead is located, whichever is less) on the amount of any such unpaid amount.

4. **CLEARANCES.**

- 4.1. City shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within 8 feet 6 inches laterally from the center (9 feet 6 inches on either side of the centerline of curved City Lead) or from 23 feet 6 inches vertically from the top of the rail of said City Lead (“Minimal Clearances”), provided that if any Legal Requirement requires greater clearances than those provided for in this Section 8, then City shall strictly comply with such Legal Requirement. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal Requirements will not be a violation of this Section 8, so long as City strictly complies with the terms of any such Legal Requirement.
- 4.2. Railroad's operation over the City Lead with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of City contained in this Section 8 or of Railroad's right to recover and be indemnified and defended against such damages to property, or injury to or death of persons, that may result therefrom.
- 4.3. City shall not place or allow to be placed any freight car within 50 feet of either side of any at-grade crossings on the City Lead.

5. **COMPLIANCE WITH LAWS.**

- 5.1. City shall obtain, at its sole expense, all necessary real property rights and public authority and permission, including applicable permits, for the Maintenance of, and operation over, the City Lead. City shall timely pay all compensation, assessments and levies required at any time by a municipality or any other public authority for the privilege of maintaining and operating the City Lead, and shall not cause or permit any liens to be filed against the Railroad Track or any Railroad property. In the event any such liens are filed, City shall cause such liens to be released or provide security sufficient to bond over any such lien within fifteen (15) days.

- 5.2. Both Parties further agree to fulfill all obligations, and exercise all rights, in full compliance with all laws, statutes, regulations, ordinances, orders, covenants and restrictions and Legal Requirements.

6. LIABILITY.

- 6.1. **TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD AND RAILROAD'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "RAILROAD INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) THIS AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF RAILROAD.**
- 6.2. **TO THE FULLEST EXTENT PERMITTED BY LAW, RAILROAD SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND CITY'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "CITY INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) THIS AGREEMENT, TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF RAILROAD.**

7. INSURANCE

City shall, at its sole cost and expense, procure and maintain during the life of this Agreement the insurance coverage as outlined in **Exhibit "B"**.

8. ENVIRONMENTAL.

- 8.1. City shall strictly comply with all federal, state and local environmental laws and regulations in its use of the City Lead. City shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on, under, or within the Minimal Clearances of the City Lead. City shall not release or suffer the release of any pollutant, as defined by Environmental Laws on, under or within the Minimal Clearances of the City Lead and any leased area by the City.
- 8.2. City shall give Railroad immediate notice to Railroad at 866-386-9321 of any release of pollutants on or from the City Lead, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to City's use of the City Lead. City shall use the best efforts to promptly respond to any release on or from the City Lead. City also shall give Railroad immediate notice of all measures undertaken on behalf of City to investigate, remediate, respond to or otherwise cure such release or violation.
- 8.3. In the event that Railroad has notice from City or otherwise of a release or violation of federal, state, or local environmental health and safety regulations on the City Lead which occurred or may occur during the term of this Agreement, Railroad may require City, at City's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Park, City Lead or Railroad's right-of-way.
- 8.4. City shall promptly report to Railroad in writing any conditions or activities upon the Park or City Lead which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that City's reporting to Railroad shall not relieve City of any obligation whatsoever imposed on it by this Agreement. City shall promptly respond to Railroad's request for information regarding said conditions or activities.

9. DEFAULT.

- 9.1. If City creates or maintains any condition on or about the City Lead, which in Railroad's reasonable judgment interferes with or endangers the operations of Railroad, or in case of any assignment or transfer of this Agreement by operation of law, Railroad may, at its option, terminate this Agreement by serving fifteen (15) days' notice in writing upon City. Notwithstanding the foregoing, if such termination is a result of a condition interfering with or endangering operations of Railroad and City commences work to remedy such condition within said fifteen (15) day notice period and is diligently

pursuing such remedy, Railroad may suspend all service to City while the condition exists but may not terminate the Agreement unless and until City ceases in its efforts to remedy the condition prior to completion whereupon the Agreement shall immediately terminate without further notice.

- 9.2. Except as otherwise set forth in subparagraph 9.1 above, if City defaults on any of the covenants or agreements of City contained in this document, for a period of thirty (30) days following written notice of such default by Railroad, Railroad may, at its option, terminate this Agreement on five (5) days' notice in writing to City.

10. **TERM; TERMINATION.**

- 10.1. This Agreement, unless terminated by either party due a default as outlined in Section 9, will remain in full force and effect until terminated by either party for any reason upon thirty (30) days' advance written notice.

- 10.2 In addition to all other remedies available at law or in equity, Railroad may, without incurring any liability to City, terminate this Agreement and discontinue the maintenance and operation of the City Lead and remove the Railroad Track, in the event of any of the following contingencies:

10.2.1 If City fails to utilize rail service from Railroad to or from the Park for a period of twelve (12) consecutive months, Railroad may, at its option, expressed in writing, terminate this Agreement, effective immediately.

10.2.2 If Railroad is required by competent public authority to abandon its line to which the City Lead is connected, Railroad may, upon written notice to City, terminate this Agreement effective immediately.

10.2.3 If Railroad is dispossessed of the right to operate over the City Lead or its connecting track or any part thereof which effectively prevents service to City, Railroad may terminate this Agreement effective immediately by written notice to City.

- 10.3 In addition to all other remedies available at law or in equity, City may, without incurring any liability to Railroad, terminate this Agreement and discontinue the maintenance and operation of the City Lead and remove the City Lead, at its option, in the event Railroad ceases to provide service to City for a period of twelve (12) consecutive months. In the event of a default by Railroad continuing for a period of thirty (30) days following written notice of such default by City, City may, at its option, terminate this Agreement

on five (5) days' notice in writing to Railroad. Any waiver by City of any default or defaults shall not constitute a waiver of the right to terminate this Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect City's ability to enforce any Section of this Agreement. The remedy set forth in this Subsection 10.3 shall be in addition to, and not in limitation of, any other remedies that City may have at law or in equity.

- 10.4 Upon the expiration or earlier termination of this Agreement as provided herein, City shall, at its sole cost and expense, remove any Facilities or improvements upon, over, or under that portion of the City Lead within the Railroad right-of-way and to restore the same to substantially the state in which it was on the Effective Date of this Agreement. In the event City shall fail within thirty (30) days after the date of such termination to make such removal and restoration, the Railroad may, at its option, remove the Facilities or improvements or otherwise restore its right-of-way, and in such event City shall, within thirty (30) days after receipt of a bill therefor, reimburse Railroad for any costs incurred.
- 10.5 City hereby agrees to waive and release all claims, rights, and causes of action that City has, may have, or may assert against Railroad because of the discontinuance of operation and removal of the Railroad Track as provided in this Section 10.2 of this Agreement.

11. MISCELLANEOUS.

- 11.1 **Assignment; Binding on Successors.** City may not assign this Agreement, nor any of its individual rights or obligations under this Agreement, without the prior consent of Railroad, which consent may not be unreasonably withheld, delayed or conditioned. City may, however, after providing Railroad with notice, assign this Agreement to an affiliate or subsidiary as part of any corporate reorganization or recapitalization, without seeking the consent of Railroad. This Agreement will inure to the benefit of and be binding upon the successors and assigns of the Parties.
- 11.2 **Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be in writing, and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Railroad

Company: Wisconsin & Southern Railroad,
L.L.C.
Attention: General Counsel
Mailing Address: 315 W. Third Street
City, State, Zip: Pittsburg, KS 66762

If to City

Company: CITY OF MILTON
Attention: City Administrator
Mailing Address: Suite 3 430 E High Street, 710 S.
Janesville Street
City, State, Zip: Milton, WI, 53563

- 11.3 **Survival.** Neither termination nor expiration will release either party from any liability or obligation assumed under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, the date when the City Lead, Facilities, and improvements are removed and the right-of-way is restored to its condition as of the Effective Date.
- 11.4 **Recordation; Announcements.** This Agreement will not be made of public record, nor will any press release or announcement be issued with respect to this Agreement, without the prior written consent of Railroad.
- 11.5 **Governing Law.** The laws of the state where the City Lead is located, without giving effect to any choice of law or conflict of law rules or provisions, govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the state courts of the such state, or in the United States District Court for the district where the City Lead is located.
- 11.6 **Severability.** To the maximum extent allowed by law, if any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement are not affected or impaired in any way. Each covenant, agreement, obligation or other provision of this Agreement is separate and independent of any other provision of this Agreement unless expressly provided herein. Notwithstanding the foregoing, if it is judicially determined that the indemnities voluntarily assumed in this Agreement exceed the maximum limits under applicable law, it is agreed that said indemnities will automatically be amended to conform to the maximum limits permitted under such law.

- 11.7 **Entire Agreement.** This Agreement, together with any exhibits or schedules, sets forth the entire agreement between the Parties, and replaces and supersedes any prior agreements, understandings, negotiations, or discussions between the Parties relative to the subject matter of this Agreement. Nothing contained herein, however, is intended to terminate any surviving obligation of a Party in any prior written agreement between the parties, including, but not limited to, the Parties' obligation to defend and hold the other harmless. This Agreement may only be modified by a written amendment signed by an authorized representative of both Parties and said written amendment must expressly refer to this Agreement. At no time shall either Party use a purchase order or other invoicing or payment document to attempt to modify the terms and conditions of this Agreement. Any attempt to modify the terms in such a manner shall be considered null and void.
- 11.8 **Joint and Several.** In the event City consists of two or more parties, all covenants and agreements of City are joint and several covenants and agreements of such parties.
- 11.9 **Non-waiver.** The failure of either party to insist upon or enforce, in any instance, strict performance by the other party of any of the requirements, covenants, conditions, or restrictions of this Agreement or to exercise any rights herein conferred, may not be construed as a waiver or relinquishment of the party's right to assert or rely upon such terms or rights on any future occasion, except to the extent the party specifically expresses, in writing, its intent to waive its rights.
- 11.10 **Captions & Terminology.** The descriptive headings of the articles, sections, and subsections of this Agreement are for convenience of reference only and do not constitute a part of this Agreement. Any reference in this Agreement to the singular includes the plural where appropriate, and any reference in this Agreement to the masculine gender includes the feminine and neuter genders where appropriate.
- 11.11 **Authority.** By execution of this Agreement, the parties represent to the other that they are entities validly existing, duly constituted and in good standing under the laws of the jurisdiction in which they were formed and in which they presently conduct business. The parties further represent that all acts necessary to permit them to enter into and be bound by this Agreement have been taken and performed, and the persons signing this Agreement on their behalf have due authorization to do so. The parties further represent that they have carefully read this Agreement, and that they have consulted with legal counsel regarding the terms and provisions of this Agreement (or have had the

opportunity to consult with legal counsel and have chosen not to do so), and that they have relied solely upon their own judgment without the influence of anyone in entering into this Agreement.

11.12 **Drafting.** The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

11.13 **Counterparts.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or by e-mail in portable document format “PDF”, is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

IN WITNESS WHEREOF, the said parties hereto have caused this Agreement to be duly executed and delivered as of the day and year above first written.

Wisconsin & Southern Railroad, L.L.C. (Railroad)

By: _____

Printed Name:

Title:

CITY OF MILTON (City)

By: _____

Printed Name:

Title:

Exhibit A

INDUSTRY TRACK AGREEMENT TRACED AERIAL

1. Railroad	Wisconsin & Southern Railroad, L.L.C
2. Industry	CITY OF MILTON
3. City, State	Milton, WI
4. Milepost	60.28
5. Track ID(s)	Track A, Track B
Point B	Point of ownership transition from Railroad to City. 336 feet after the switch at MP 60.28 of the Railroad's Waukesha Subdivision.
Point K	End of Track A and 3999 feet from Point B
Point F	Point of switch for Track B off of Track A and 2364 feet from Point B
Point N	Future clearance point denoting end of City Lead B and beginning of private customer track and 4374 feet after the point of switch at Point F.

Exhibit B

INDUSTRY TRACK AGREEMENT INSURANCE REQUIREMENTS

City shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

Before commencing work, the following categories of City must provide a Certificate of Insurance certifying that the insurance limits and coverages, with the appropriate endorsements, all as outlined below are in effect.

COVERAGE TYPE	MINIMUM COVERAGE
<p><u>Commercial General Liability (CGL)</u></p> <ul style="list-style-type: none"> • Non-Hazmat • Hazmat <p>Must include coverage for blanket contractual liability for the obligations assumed under contract including but not limited to:</p> <ul style="list-style-type: none"> • Bodily injury and property damage • Fire legal liability • Pollution liability (sudden and accidental) • Emergency evacuation • The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property. • Any exclusions related to the explosion, collapse and underground hazards shall be removed. • No other endorsements limiting coverage may be included on the policy with regards to the work being performed under this agreement. 	<p style="text-align: center;">\$10,000,000 each occurrence \$25,000,000 each occurrence</p>
<p><u>All Risk Property</u></p> <p>All risks property insurance covering all of City's property including property in the care, custody or control of City. Coverage shall include the following:</p> <ul style="list-style-type: none"> • Issued on a replacement cost basis. • Include a standard loss payable endorsement naming Railroad as the loss payee as its interests may appear. 	<p>Replacement Value</p>
<p><u>Automobile Liability</u></p> <p>Coverage must extend to all owned, hired, and non-owned vehicles and must include coverage for blanket contractual liability for the obligations assumed under contract.</p>	<p>\$2,000,000 Combined Single Limit Each Occurrence</p>
<p><u>Workers' Compensation</u> <u>Employers Liability</u></p> <p>Must include coverage for Longshoremen's and Harbor Workers' Compensation, if applicable, and coverage for Federal Employers' Liability Act, if applicable.</p>	<p>Statutory Limits where Services are to be performed \$1,000,000 Each Occurrence \$1,000,000 Disease Per Employee</p>
<p><u>Pollution Liability</u></p> <ul style="list-style-type: none"> • Non-Hazmat • Hazmat <p>The policy shall provide for protection against claims for third-party bodily injury, property damage, environmental damage, and clean-up cost caused by pollution conditions resulting from actions taken under this contract.</p>	<p>\$1,000,000 each occurrence \$5,000,000 each occurrence</p>

**An Umbrella liability policy, which follows form, may be used to obtain the aforementioned limits.

Certificate Holder and Endorsement Requirements

1. Railroad shall be listed as Certificate Holder as follows:
**Watco Companies, L.L.C., and its affiliates, subsidiaries and assigns 315 W. 3rd St.
Pittsburg, KS 66762.**
2. All aforementioned policies shall contain a blanket waiver of subrogation in favor of Certificate Holder, and an additional insured endorsement naming Certificate Holder as Additional Insured (with the exception of Workers' Compensation and Employer's Liability). All aforementioned policies shall be primary and non-contributory with respect to any insurance carried by Railroad.
3. If any policies are purchased on a "claims made" basis, City hereby agrees to maintain coverage in force for a minimum of three years and shall provide evidence of such coverage to Railroad, on an annual basis, during this additional three-year period.

Other Requirements

1. All policies required shall be written by a reputable insurance company reasonably acceptable to Railroad or with a Best's Guide Rating of A- and Class VII or better and authorized to do business in the state(s) in which City is conducting business.
2. City shall notify Railroad in writing at least thirty (30) days prior to any cancellation, non-renewal, and substitution or material alteration to any of the aforementioned policies.
3. Failure to provide evidence as required shall entitle, but not require, Railroad to terminate immediately.
4. Acceptance of a certificate that does not comply with this document shall not operate as a waiver of City's obligations hereunder.
5. City is not allowed to have a self-insure greater than \$250,000 without prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other similar financial responsibility for claims shall be covered directly by City in lieu of insurance. Any and all City liabilities that would otherwise, in accordance with the provisions of this document, be covered by City's insurance will be covered as if City elected not to include a deductible, self-insured retention or other financial responsibility for claims.
6. If any portion of the operation is to be subcontracted by City, City shall require that the subcontractor shall provide and maintain insurance coverage as set forth herein, naming Railroad as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railroad to the same extent and under the same terms and conditions as City is required to release, defend and indemnify Railroad herein.
7. Failure to provide evidence as required by this section shall entitle, but not require, Railroad to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of City's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by City shall not be deemed to release or diminish the liability of City including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

Exhibit C

INDUSTRY TRACK AGREEMENT WITH CITY OF MILTON FOR CARGILL FROM 2003

Exhibit D

INDUSTRY TRACK AGREEMENT FOR CITY OF MILTON FOR UNITED ETHANOL FROM 2005