

CITY OF MILTON
AND
WISCONSIN & SOUTHERN RAILROAD COMPANY
INDUSTRIAL SPUR TRACK AGREEMENT

THIS AGREEMENT, made and entered into this 1ST day of December 2003, A.D. by and between the Wisconsin & Southern Railroad Co., hereinafter called the "Railroad" and, City of Milton hereinafter called the "City", WITNESSETH:

WHEREAS the City desires the construction, maintenance and operation of a spur track siding, hereinafter called the "track" to be located substantially as indicated by the lines shown in attached Exhibit A, to serve the industries located at Milton, Wisconsin, and the Railroad is willing that said track be constructed, maintained and operated, upon the terms and conditions hereinafter set forth;

NOW THEREFORE, in consideration of the premises, the parties hereto agree as follows:

1. CONSTRUCTION, MAINTENANCE AND OPERATION

- a. 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 thereafter own all trackage designated on Exhibit A. The Railroad shall be responsible to maintain all of the trackage set forth in Exhibit A.
- b. Subsequent to construction of the track, the Railroad at it's sole cost and expense, shall maintain, repair and renew the track to railroad Industry sidetrack standards, in accordance with federal or state regulations.
- c. 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.
- d. City shall pay the cost of all such agreed to additions, betterment's and changes to said track, and the cost of installation and maintenance of such derrails, signals and other safety devices, as required by railroad industry side track standards and by state and federal regulations.
- e. City shall pay the cost and expense of all future changes in said track, rendered necessary by changes in the Railroad's tracks, property or operating requirements, or rendered necessary to conform said track to change of grade of the tracks or property of the Railroad required by any law or ordinance of state or municipality having jurisdiction thereof. City shall also pay the cost and expense of all future changes in or additions to the Railroad's tracks and property or construction made necessary solely by the construction, or operation of said track, in accordance with industry sidetrack standards and federal or state regulations.
- f. City shall not place, or permit to be placed, or to remain, any material, equipment, structure, pole or other obstacle or obstruction, with 8.5 feet, on straight track or 9.5 feet on curved track, laterally of the center, or within twenty-five (25) feet vertically from the top of either rail of said track; nor shall it make or permit to be made, or to remain, any excavation within six (6) feet laterally from the nearest rail of said track. The number of feet of clearance herein specified may be changed by the Railroad at any time to meet legal requirements by giving written notice thereof to the City. Within ten (10) days after receipt of such notice, the City shall at its own expense proceed to make such changes as may be necessary to comply therewith. If the City shall fail to do so, the Railroad shall have the option to make such changes at the expense of the City,

or to terminate this Agreement. Should the Railroad exercise its option to make such changes, the City agrees to pay the Railroad cost and expense thereof.

- g. Railroad shall have the right to use said track, and also to operate over it in connection with any extension thereof, when such use and operation is not a detriment to City.
- h. Railroad shall provide to City or to the Bureau of Railroads and Harbors of Wisconsin Department of Transportation (BORAH) with a copy to the City, no later than January 20th of each year, a report of the number of loaded railcars shipped or received on said track by Cargill, Incorporated. 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 requirement shall remain in effect for the term of the Transportation Economic Assistance Agreement- Rail between City and the Wisconsin Department of Transportation.

2. INDEMNIFICATION:

Each party hereto agrees to indemnify and hold harmless the other party hereto for loss, damage or injury from any act or omission of the indemnifying party, its employees or agents, to the person or property of the other party hereto and their employees, and to the person or property of any other person or corporation, while on or about the spur track; and if any claim for liability shall arise from the joint or concurring negligence of such parties hereto, it shall be borne by them in proportion to their judicially determined liability. This includes allocating responsibility for derailments.

3. SUCCESSORS AND ASSIGNS

This Agreement shall be assignable and binding to all heirs, executors, administrators, or successors of interest by either party. Prior notification by the party making succession or assignment of this Agreement is required.

4. FORCE MAJURE

The Railroad shall not be obligated to operate said track if it shall be prevented or hindered from so doing by acts of God, public authority, strikes, riots, labor disputes, or by any cause reasonably beyond its control.

5. TERMINATION

This Agreement may be terminated as follows:

- a) By Railroad or City with thirty (30) days written notice in the event of any of the following occurrences:
 - 1) Upon mutual agreement by both parties to terminate.
 - 2) Railroad is able, required or authorized by law, ordinance or any lawfully constituted public order having jurisdiction of the matter, to discontinue the operation of said track

6. REPRESENTATIONS & WARRANTIES

The parties hereto represent and warrant that they have the power and authority to enter into this Agreement and to carry out their obligations under this Agreement.

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

WISCONSIN & SOUTHERN RAILROAD CO,

CITY OF MILTON

BY: *James J. [Signature]*

BY: *Nathan W. Bruce*
Nathan W. Bruce

TITLE: *Vice President Marketing*

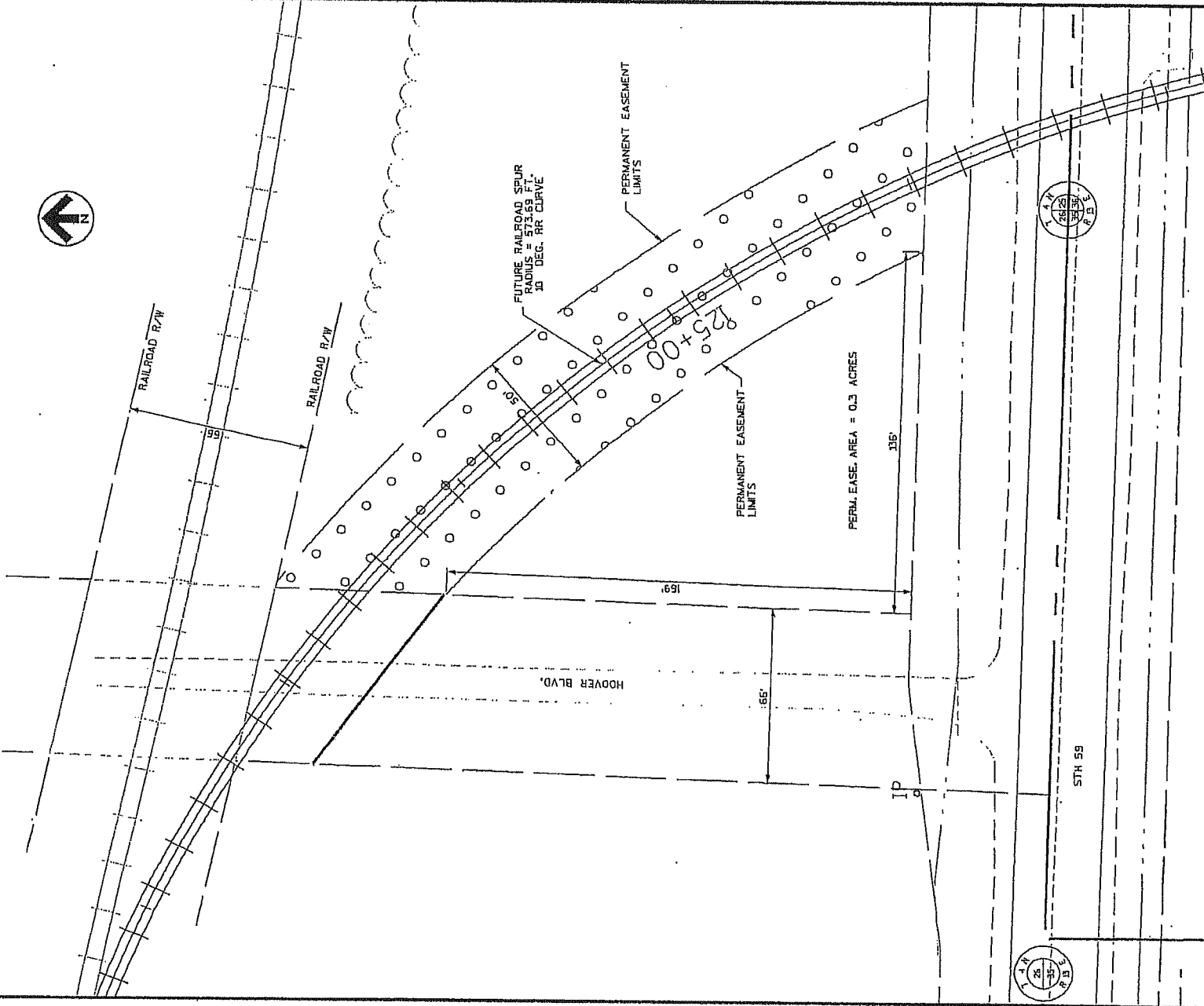
TITLE: Mayor

BY: *Todd Schmidt*
Todd Schmidt

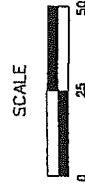
TITLE: City Administrator

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EXHIBIT A



Foth & Van Dyke
consultants - engineers - scientists



EASTSIDE BUSINESS PARK
AND UTILITY IMPROVEMENTS
CONTRACT M3-01
RICK COUNTY
CITY OF MILTON
WISCONSIN

Jim Lombard

From: Ben Meighan
Sent: Monday, November 24, 2003 11:27 AM
To: Jim Lombard
Subject: FW: Milton-Cargill agreements

Ben Meighan
Superintendent MOW
Wisconsin & Southern Railroad Co.
1890 E. Johnson St.
Madison, WI 53704
608-243-9129 x200

-----Original Message-----

From: Roethe Law Firm - Milton [SMTP:roethe@charter.net]
Sent: Monday, November 24, 2003 11:26 AM
To: Ben Meighan
Cc: Todd Schmidt
Subject: Milton-Cargill agreements

Dear Ben:

We're asking the DoT to finalize approval of the City of Milton TEA grant and all related agreements this week in the hopes of getting grading done yet this fall in order to meet Cargill's goal of receiving cars by June 1st. One of the last pieces we need in place is the track agreement between the City and Wisconsin and Southern, which we discussed last week. Can you please let me know the status of that document. The State needs to see that and may require that we have signed documents completed before they give the go-ahead for construction. Thanks and please call me at 608-868-4346 today or 608-884-3391 on Tuesday if you have any questions.

Mike Haas
Milton City Attorney

*508 Campus St
Suite 101
Milton 53563*

BALFOUR BEATTY RAIL INC
MIDWEST REGIONAL OFFICE
117 NORTH MILLS STREET
MADISON WI. 53715
TEL. (608)260-9846
FAX (608)260-9845

FACSIMILE TRANSMITTAL SHEET

TO: Ben Morgan FROM: 5/31/07
COMPANY: DATE: Doc Scarron
FAX NUMBER: 243-9225 TOTAL NO. OF PAGES INCLUDING COVER: 9
PHONE NUMBER: SENDER'S REFERENCE NUMBER:
RE: YOUR REFERENCE NUMBER:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

May 31 07 11:09a

Cathryn Miller

904 378-7295

P.1

Dec 12 06 03:07p
12/12/2005 15:48

City of Milton
948888521

608-868-6929

P.1

*Red on
11-1-07
Colander*

Balfour Beatty Rail

Balfour Beatty Rail Systems, Inc.
4380 Ineson Road
Jacksonville, FL 32219-5314
Tel 904-378-7100
Fax 904-378-7295

February 2, 2005

City of Milton
Department of Public Works
Attn: Mr. Howard Robinson
430 East High Street, Suite 3
Milton, MA 03563

RE: Signal Maintenance Services

Dear Mr. Robinson:

On January 28, 2005 you contacted us in regards to maintaining your railroad grade crossing in the City of Milton.

We would like to enter into a five-year agreement with the City of Milton. Please review the attached agreement and if you approve, please sign both copies and return to me in our Jacksonville office at the address listed above.

Balfour Beatty Rail Systems, Inc. sincerely appreciates your business. If you have any questions or concerns, please contact me at 904-378-7175.

Sincerely,
BALFOUR BEATTY RAIL SYSTEMS, INC.



David P. Gunkle
Director of Crossing Project Improvements

Enclosure.

Dec 12 06 03:07p
12/12/2006 15:49

CITY OF MILTON
94866627

CITY OF MILTON
508-868-6929

SIGNAL SERVICES AGREEMENT

This Signal Services (Agreement) is made this 1st day of February 2005, by and between the City of Milton (Owner), a corporation having its principal address at 430 East High Street, Suite 3, Milton, WI 53563 and Balfour Beatty Rail, Inc. (hereinafter referred to as "BBRI"), a Florida corporation having its principal address at 4390 Imeson Road, Jacksonville, FL 32205

WITNESSETH

WHEREAS, the Owner operates a highway rail grade crossing within the state of Wisconsin; and

WHEREAS, there is one flasher grade crossing for which the Owner desires to obtain maintenance services; and

WHEREAS, the Owner desires to obtain construction services to maintain the highway rail grade crossing warning device and

WHEREAS, BBRI desires to render Maintenance services for the Owner's highway rail grade crossing warning device in accordance with the terms and provisions set forth in this Agreement,

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth in this Agreement, the parties hereto agree as follows:

- 1) SCOPE OF SERVICES - MAINTENANCE: BBRI will provide Maintenance Services in accordance with Attachment A.
- 2) NEW REGULATIONS in the event significantly new or modified signal system maintenance or testing requirements are issued by a state, federal or other regulatory authority, both parties agree to negotiate an appropriate adjustment of BBRI's fees.
- 3) STORAGE SPACE The Owner shall provide space for the storage of all materials used by BBRI in performing the maintenance services described in this Agreement. BBRI agrees that storage of hazardous materials in the custody and care of BBRI shall be subject to the Operating Agreements and applicable law. Owner shall have no liability for BBRI equipment stored at or on the facility, except where Owner's personnel are using BBRI equipment.
- 4) INSURANCE BBRI shall, during the term of this Agreement, maintain the following insurance:
 - a) Workers' compensation insurance as required by law but not less than \$1,000,000.
 - b) Automobile insurance that does include the protection of the operating Owner with a face amount of One Million and 00/100 Dollars (\$1,000,000.00).

Dec 12 06 03:08p
12/12/2006 15:46

City of Milton
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Milton

608-668-6929
CITY OF MILTON

City of Milton and BBRI
SIGNAL SERVICES AGREEMENT

- c) The insurance obtained pursuant by BBRI shall be primary with respect to the obligations of BBRI. Any other insurance maintained by an additional insured shall be excess of this coverage herein defined as primary and shall not contribute with it
- d) Unless otherwise agreed, the insurance required by this Article shall be maintained by BBRI for the full term of this Agreement and shall not be permitted to expire or be canceled or materially changed except upon 60 days prior written notice to the Owner.

BBRI shall furnish proof of insurance before the work commences.

5) INDEMNITY. To full extent permitted by law, Owner shall indemnify, defend and hold harmless BBRI, its parent company Balfour Beatty PLC, and the share holders, directors, officers and employees of BBRI and Balfour Beatty PLC, from and against all claims, demands, losses, liabilities and expenses, arising out of performance of BBRI's services under this agreement.

6) MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES. The Contractor and Owner waive all claims against each other for all consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- a) damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- b) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit other than anticipated profits arising directly from this Project.
 - i) This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Subparagraph shall be deemed to preclude an award of liquidated damages, if applicable in accordance with the requirements of the Contract Documents.

7) OPERATING INSTRUCTIONS The Owner and BBRI shall freely exchange any written information that will affect the safety of personnel or property or the adequacy of the signal system.

8) CHANGES IN OWNER'S OPERATING CHARACTERISTICS This Agreement assumes the Owner's operating characteristics, as of the effective date of this Agreement, will remain in effect. In the event the Owner decides to change these characteristics, the Owner shall notify BBRI in a timely manner so that BBRI may evaluate the effect of the changes on the adequacy of the signal systems. In the event that a change of operating characteristics requires significant changes in either equipment or maintenance services, BBRI and the Owner shall negotiate an

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CITY OF MILTON
608-868-8929

CITY of Milton and BBRI
SIGNAL SERVICES AGREEMENT

appropriate adjustment in BBRI's fees.

9) **SALVAGE MATERIAL** The Owner agrees that upon retirement of a portion of the railway and/or signal system, any signal related material will remain the property of the Owner.

10) **TERM** This Agreement shall remain in full force and effect for a term ending five (5) years from the effective date written above and shall automatically renew for successive one-year periods unless sooner terminated as provided herein. This contract shall terminate if the Operating Agreements described in Section 17 are terminated.

11) **TERMINATION** Either party has the right to terminate the Agreement for cause by giving not less than (90) ninety days written notice. Any notice shall be given or made by facsimile or similar communication, confirmed by certified or registered mail addressed to the respective parties as follows:

To Owner:

City of Milton
Attn: Mr. Howard Robinson
430 East High Street, Suite 3
Milton, WI 53563

To Contractor:

Balfour Beatty Rail, Inc.
Attn: Mr. David P. Gunkle
4390 Imeson Road
Jacksonville, FL 32219

If any of the agreed work described above hereof shall have been performed prior to execution of this Agreement by all parties hereto, then in such event this Agreement shall take effect as of the date such work actually commenced.

12) **CONFIDENTIALITY** Neither party shall, during the term of this Agreement, disclose any confidential information, the disclosure of which would be detrimental to the other party.

13) **DISPUTE RESOLUTION** The parties hereto agree that all disputes arising under this Agreement, including any disputes relating to the termination provisions set forth in Paragraph 13 of this Agreement, shall be submitted to binding arbitration, in accordance with the rules of the Construction Section of the American Arbitration Association. The aggrieved party shall have ninety (90) days following the date of any event which gives rise to a dispute, to provide to the other party written notice of such dispute, and of such party's election to proceed to arbitration. Both the Owner and BBRI shall be entitled to select an arbitrator of their choice, and each of these two arbitrators shall select a third arbitrator, and each party hereto shall be responsible for fifty percent (50%) of the cost of the third arbitrator. The arbitration shall take place at a neutral location agreed upon by the parties hereto.

May 31 07 11:10a
Dec 12 06 03:03p
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Cathryn Miller
City of Milton
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City of Milton and BBRI
SIGNAL SERVICES AGREEMENT

- 14) BINDING EFFECT This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors, assigns and personal representatives.
- 15) NON-DISCRIMINATION BBRI agrees not to discriminate in its employment practices against any employee or applicant for employment in violation of federal or state laws.
- 16) SEPARABILITY If any provision of this Agreement is invalid or unenforceable the remainder of this Agreement shall not be affected thereby.

17) GOVERNING LAW The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of ~~Massachusetts~~ Wisconsin.

IN WITNESS THEREOF, the parties hereto have executed this Agreement the day and year first written above.

Witness:

[Handwritten signature]

CITY OF MILTON

By: *[Handwritten signature]*

BALFOUR BEATTY RAIL, INC.

By: _____

City of Milton and BBRI
SIGNAL SERVICES AGREEMENT

ATTACHMENT A
MAINTENANCE SERVICES

- 1) SCOPE OF SERVICES - MAINTENANCE: BBRI will provide the following services to the Owner during the term of this Agreement. Services provided under this Agreement shall include the maintenance and repair of highway rail grade crossing warning devices.
 - a) Maintenance and Inspection Services: BBRI shall employ qualified signal maintainers to perform the required services. BBRI shall perform the maintenance and inspection services of the signal system to current and applicable federal and state standards.
 - b) Emergency Services: BBRI signal maintainers shall be available for emergency repair of the signal system, subject to the requirements of the Federal Hours of Service Act, 24 hours per day, every day of the year during the entire term of this Agreement.
 - c) Record Keeping Compliance: BBRI shall furnish, maintain and, at the request of the Owner, file all signal system documents required by regulatory authorities, including the Federal Railroad Administration (FRA) part 236.
 - d) Third Party Damage: Owner shall be responsible for the cost to repair or replace the signal system damaged or destroyed by itself or a third party.
 - e) Materials and Supplies: All materials will be supplied and installed by BBRI at the Owner's expense at actual cost plus a mark-up.
 - f) Production Track Work: Owner shall pay for BBRI personnel required to assist the Owner's production track work services (bonding and other signal related services). BBRI will bill, at its usual rates, for production track work.
 - g) Extraordinary Maintenance & Capital Improvements: BBRI will bill for extraordinary maintenance and capital improvement services at a cost to be mutually agreed upon between the parties. For the purposes of this Paragraph, extraordinary maintenance and capital improvements mean the necessary inspection, test and repair of the signal systems resulting from, but without limitation, cable installation, track installation or removal, switch installation or removal, excessive vandalism and Acts of God. Acts of God shall mean any event or condition resulting from forces beyond human control which materially disrupt Owner's operations or cause damage to the signal systems. BBRI will perform no billable service defined in this paragraph without the approval of the Owner. All services will be billed at our usual wage rates.

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City of Milton
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908-868-6929

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City of Milton and BBRJ
SIGNAL SERVICES AGREEMENT

h) Battery Disposal: Batteries classified as hazardous, used in the performance of the agreed maintenance services, shall be disposed of by BBRJ on behalf of the Owner. In consultation with the Owner, BBRJ shall employ the services of a vendor for this purpose, which vendor shall be required to comply with all federal, state or local environmental regulations, and shall be approved by the Owner. Vendor shall provide "cradle to grave" documentation to the Owner when batteries are disposed and the Owner shall hold BBRJ harmless in the event that any claim be made against BBRJ concerning the disposal of such batteries. The cost of shipping and disposing of such batteries shall be borne by the Owner. BBRJ shall bill the Owner for the actual cost of battery disposal.

2) RULE 234:

a) BBRJ shall be responsible for all maintenance, testing and reporting procedures as announced and required under FRA Rule 234 as of the effective date of this Agreement.

b) Within ninety (90) days of commencement of this contract, BBRJ shall notify the Owner of any FRA Rule 234 deficiency or defect. Such notification will be written in detail, by location and by zone clarify schedules and total costs to correct. No work will commence under this paragraph without the approval of the Owner. Cost associated with this paragraph will be billed at our usual rates.

3) FEES: In consideration for the services to be rendered by BBRJ under the terms of the Agreement, except as provided herein, the Owner shall make payment to BBRJ as follows:

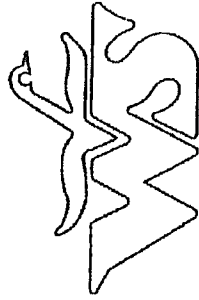
a) An annual billing shall be provided to the Owner in the 1st month of each year and shall be paid by the Owner to BBRJ on or before the last day of that month.

b) The Annual maintenance charge shall be \$1000.00 for the single crossing. This bill will change if there is a material change in the crossing or if additional crossings or signal train control systems are installed on the spur track.

c) The Annual maintenance charge shall be increased at an amount of 3% each year for the term of this agreement.

d) The Owner agrees to pay a late fee of .0005% per day (equivalent to 18% per year) for each day

e) Past the due date payment is received by BBRJ.



Wisconsin & Southern Railroad Co.

P.O. Box 9229
5300 N. 33rd Street
Milwaukee, Wisconsin 53209-0229
Phone 414-438-8820 Fax 414-438-8826 Web Site WWW.wsorroad.com

FAX COVER SHEET

DATE: December 9, 2003

COMPANY: ROETHE LAW FIRM Phone: _____

ATTN: MIKE HAAS Fax: 608-868-4348

FROM: James Lombard Ext. # 213

NUMBER OF PAGES, INCLUDING COVER 4

Mike, please review if you have any questions feel free to call me. Hard copy will follow by mail.

Regards,
Jim

Contract Verbage Ok'd By
Ben Weighan

**CITY OF MILTON
AND
WISCONSIN & SOUTHERN RAILROAD COMPANY
INDUSTRIAL SPUR TRACK AGREEMENT**

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City, or to terminate this Agreement. Should the Railroad exercise its option to make such changes, the City agrees to pay the Railroad cost and expense thereof.

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

WISCONSIN &

SOUTHERN RAILROAD CO, CITY OF MILTON

BY: _____ BY: Nathan W. Bruce

TITLE: _____ TITLE: Mayor

BY: _____
Todd Schmidt

TITLE: City Administrator