

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

THIS AGREEMENT, made and entered into this 1ST day of December 2005, 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 its 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 to the Railroad the cost of all such agreed to additions, betterment's and changes to said track, and the cost of installation and maintenance of such derails, 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 City, no later than January 20 of each year, a report of the number of loaded rail cars shipped or received on said track by United Ethanol, LLC. Railroad shall allow access by BORAH or its authorized agent to examine waybill, demurrage, or other appropriate records for purposes 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.

5. 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.

CITY OF MILTON

WISCONSIN & SOUTHERN RAILROAD CO.

BY Nathan W. Bruce

BY: [Signature]

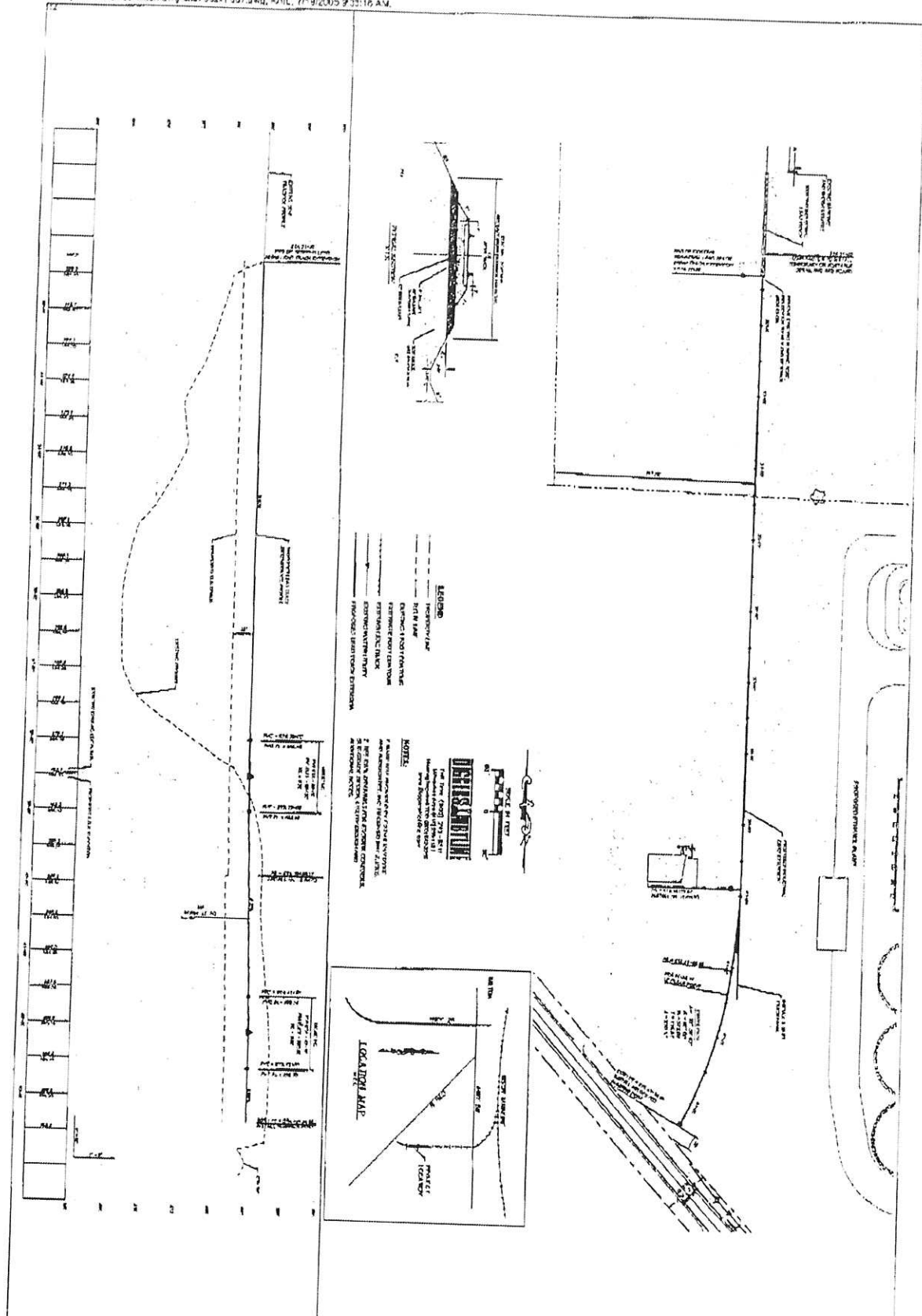
TITLE: Mayor


TITLE: VP Marketing

BY: [Signature]
Todd Schmitt

TITLE: City Administrator

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<p>R-1</p>	<p>INDUSTRIAL LEAD TRACK EXTENSION PLAN & PROFILE EASTSIDE BUSINESS PARK MILTON, WISCONSIN</p>		 <p>TERRATEC ENGINEERING, LLC 1000 W. KENNEDY BLVD., SUITE 100 MILTON, WI 53151 TEL: 262.771.1100 FAX: 262.771.1101 WWW.TERRATECENGINEERING.COM</p>	DRAWN BY RVL	CHECKED BY LKJ	DATE 4/28/05	
				PROJECT NO. C307902-1	SHEET NO. 05	DATE 4/28/05	BY RVL
				PROJECT NAME EASTSIDE BUSINESS PARK	SHEET TITLE TRACK EXTENSION	DATE 7/17/05	BY RVL
				PROJECT LOCATION EASTSIDE BUSINESS PARK	SHEET TITLE TRACK EXTENSION	DATE 7/17/05	BY RVL