

SWITCHING SERVICES AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into as of _____, 2015 (“Execution Date”), by and among BURLINGTON JUNCTION RAILWAY, INC., an Iowa corporation (“BJRY”) and the CITY OF ROCHELLE, ILLINOIS (“City”).

RECITALS:

City, a common carrier, owns certain industrial trackage and related appurtenances connecting with trackage owned and operated by BNSF Railway Company and Union Pacific Railroad Company. Currently, pursuant to a Lead Track Agreement between RYDER INTEGRATED LOGISTICS, INC (“RYDER”) and City, dated October 1, 2004, RYDER utilizes the Line to perform railroad switching and related transportation services as an independent agent of the City for industries which connect via spur tracks to the Line. BJRY, a common carrier, currently performs certain services for RYDER on the Line as a subcontractor, including operation of locomotives and delivering and picking up railcars from both Line Industries and Connecting Carriers, pursuant to a Switching Services Agreement between BJRY and RYDER (as successor in interest to Total Logistics Control, LLC) dated August 29, 2006, as extended and/or amended. City desires to terminate the existing Lead Track Agreement with RYDER and BJRY desires to terminate its related Switching Services Agreement with RYDER. City and BJRY desire to enter into a Switching Services Agreement as set forth in this Agreement.

AGREEMENT:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Defined Terms. The following definitions are used in this Agreement:

(a) Applicable Laws. All present and future federal, state and local laws, codes, ordinances, rules, regulations and requirements of any governmental authority which apply to or affect the Line, the business of BJRY or City, or the performance of the obligations of the parties, or their respective employees, agents or subcontractors, under this Agreement, including, but not limited to, regulations enforced by FRA or OSHA.

(b) Governmental Approvals. All permits, licenses, consents and approvals of any governmental authority which are required by Applicable Laws in connection with this Agreement.

(c) Hazardous Materials. Any of the following: asbestos; urea formaldehyde; petroleum hydrocarbons and other petroleum products (including gasoline, diesel fuel, fuel oil, crude oil and motor oil and constituents of those products); ethanol; tetrachloroethylene; polychlorinated benzyls; polychlorinated biphenyls; biological hazards; nuclear fuel or materials; chemical, biological or medical wastes; radioactive materials; explosives; known carcinogens; and all dangerous, toxic or hazardous substances defined as hazardous (including commodities listed in Title 49, Code of Federal Regulations, Part 100, *et seq*) or as pollutant or contaminant in, or the release or disposal of which is regulated by, any Applicable Laws.

(d) Demurrage Charges. Charges assessed for detention of a railcar beyond the specified time period allowed by applicable tariffs or other directives of the parties or Connecting Carriers for loading or unloading the railcar.

(e) Storage Charges. As used in this Agreement, Storage Charges are charges assessed by the City for use of any rail tracks of the Line designated for storage of railcars pursuant to an agreement between the City and the entity that desires to store such railcars.

(f) Storage Charge Agreement: An agreement entered into between City and a Line Industry or other party to provide short or long term storage of rail cars.

(g) Line Industries: Industries which connect via spur tracks to the Line.

(h) Line: Trackage and related appurtenances owned by City and connecting with trackage owned and operated by BNSF Railway Company and Union Pacific Railroad Company.

(i) Connecting Carriers: A term used herein to refer to both BNSF Railway Company and Union Pacific Railroad Company, both of which connect with the Line.

(j) Common Carrier: A rail carrier authorized by the Surface Transportation Board to offer itself to the general public to move freight by rail.

(k) Industry Track Agreement: An agreement entered into between a Line Industry and City to provide, among other things, rail freight service via the Line to Connecting Carriers.

(l) Interchange Agreement: Agreement entered into with each Connecting Carrier and either RYDER, BJRY or City setting forth the terms, charges and conditions of interchange with Line Industries.

(m) Fund: A fund, managed by the City and set forth in Exhibit A of the Agreement, established for the purposes of setting aside monies from the revenues allotted to each party hereunder and from which monies for capital expenditures will be drawn.

(n) Rochelle Industrial Park: The Rochelle Dual Rail Industrial Park which includes that area bounded on the north by the Union Pacific Railroad mainline running east/west from Caron Road to I-39; on the east by I-39 running north/south from the I-39/ Union Pacific intersection to the I-39 interchange at Perry Road; on the south by the Village of Steward city limit line between I-39 and the City right-of-way adjacent to the BNSF mainline; and on the west by the BNSF mainline running from the Steward city limit line to the Union Pacific Railroad mainline.

(o) FRA: Federal Railroad Administration

(p) OSHA: Occupational Safety and Health Administration

(q) STB: Surface Transportation Board

(r) AAR: Association of American Railroads

2. BJRY Exclusive Operation. City grants to BJRY the exclusive right to provide professional switching services on the Line as further set forth in this Agreement. BJRY shall provide professional contract services as City's independent agent, providing switching of railcars and related transportation services to and from Line Industries located within the Rochelle Industrial Park and elsewhere on the Line. Switching services shall include delivery and pickup of railcars to or from Connecting Carriers. As the City constructs or acquires additional rail line segments following the Execution Date hereof and connected to the Line, upon notice from the City to BJRY, such additional rail line segments shall automatically become a part of the Line, and BJRY shall perform the services thereon as provided in this Agreement; provided, however, City shall not be obligated to include such additional rail line segments within the scope of this Agreement.

3. Services to be Performed by BJRY. Except as otherwise provided in this Agreement, BJRY hereby assumes and agrees to perform and comply with all obligations, responsibilities and covenants set forth herein during the Term of this Agreement, including without limitation, performance of City's common carrier obligations. BJRY shall assure that its Switching Services Agreement with RYDER has expired or been terminated prior to the Execution Date of this Agreement. BJRY shall use the Line for the sole and exclusive purpose of performing rail freight transportation services, together with track upgrading, maintenance, repair and replacement, as provided in this Agreement. The obligations under this Agreement shall include, without limitation, the following:

(a) Rehabilitation/ Maintenance. Except as otherwise noted in this Section 3(a), BJRY shall, at all times, and at its sole cost and expense, inspect, keep and maintain the Line and all associated real property, rights of way, trackage, fixtures, switches, crossings (including but not limited to crossbucks, signals, gates, and other crossing warning devices, materials and FRA testing and equipment) in good and working condition and repair and shall keep and maintain all trackage on the Line in accordance with Applicable Laws. City shall maintain the grade crossing roadway surface and all highway signage and markings. All trackage on the Line shall be maintained and kept by BJRY in compliance with FRA Class I standards or such other standards as may be required by law or by Connecting Carriers. BJRY shall provide City with detailed quarterly report of items, locations and expenses incurred by BJRY for rehabilitation or maintenance.

(b) Capital Improvements. In the event the City determines there is a need for additional rail lines or other capital improvement projects on the Line, or the State of Illinois determines that warning devices at public crossings on the Line should be upgraded or and implementing such projects and, if required, for the selection of contractors to perform the related work. Expenses therefor shall be paid from the Fund.

(c) Operations. BJRY shall provide and maintain sufficient locomotive power (including at least two locomotives, one with a minimum of 1,000 horsepower, and one with a minimum 1500 horsepower), fuel, and crews required to perform the switching and related operations on the Line in accordance with this Agreement. BJRY shall also provide operations management personnel sufficient to control the switching operations and to coordinate directly with Line Industries on a day-to-day basis, to assure prompt and reasonable switching for the Line Industries in accordance with Industry Track Agreements and the performance standards set

forth herein. It is understood and agreed that nothing contained herein shall prevent any Line Industry from electing to perform its own railcar movement at its facility with its own equipment, or by contract with a third party for such service, in which case BJRY's operations as to this Agreement shall be limited to sorting railcars designated for such industry and setting railcars on and removing them from the designated point of delivery location. Prior to removing railcars from a Line industry facility where the Line Industry has engaged in its own railcar movement, BJRY shall assure that such railcars are reasonably clean and safe to move or have not been damaged beyond reasonable wear and tear. In the event any Line Industry requests that BJRY perform railcar movement within its facility as a third party contractor, BJRY shall first request approval of the City Manager to engage in such work, which approval shall not be unreasonably withheld.

(d) BJRY Personnel. BJRY shall employ all persons and furnish all equipment necessary to perform the services contemplated by this Agreement and such personnel shall be and remain the agents, representatives or employees of BJRY respectively. City shall have no control whatsoever over the employment, discharge, compensation or benefits of or service rendered by such agents, representatives or employees of BJRY. BJRY shall indemnify, defend and save harmless the City from and against any Losses (as defined in Section 8 hereof) arising from a claim by an employee of BJRY, or an employee of any of BJRY's subcontractors, that such employee is acting in the capacity of an employee of the City.

(e) Switching Service. BJRY shall switch, handle and deliver to the Line Industries on points of destination on the Line, or on any industry spur track, all railcars delivered to BJRY by Connecting Carriers. BJRY shall promptly (and without discrimination among Line Industries) move both loaded and empty railcars between the lines of the Connecting Carriers and the Line Industries' spur tracks. BJRY will communicate by oral, written or electronic means, in coordination with each Line Industry, on an agreed upon basis, all information relating to the daily switching requirements of that Line Industry. Written reports based upon electronic switching data shall, upon request, be made available to the City by BJRY. Unless otherwise agreed between Line Industries and City, the Line Industries are responsible for making arrangements with Connecting Carriers for shipping or receiving of railcars.

(f) Weed Spraying and Brush Cutting. BJRY shall provide weed spray, in compliance with Section 8(c), for vegetation up to ten feet (10') from the center line of the track and shall be responsible for cutting brush that is within twenty feet (20') of the center line of the track.

(g) Clerical and Administrative Services. BJRY shall provide all clerical and administrative functions associated with rail operations on the Line including, but not limited to, input into the RMI Railconnect or equivalent system, publication of applicable rules and tariffs, billing and accounting services, car hire accounting, AAR and FRA reporting, waybill issuance, dispatching, generation of switch lists or reports of railcars stored on the Line and all other clerical and administrative functions normally associated with rail operations. BJRY will invoice Connecting Carriers and disburse payments to City in accordance herewith and as set forth in Exhibit A. BJRY will generate reports required by the City or that are otherwise necessary and customary to support the clerical and administrative services set forth herein.

(h) Industry Track Agreements. As of the date of this Agreement, the City has entered into Industry Track Agreements with the following industries which are, or were, serviced by the Line: DP Industrial, Inc. (4/6/05); ConAgra Foods, Inc. (11/7/05); Nippon Sharyo Manufacturing, LLC (4/8/11); and Coated Sand Solutions, LLC (9/12/11). City shall be responsible for negotiating and maintaining all Industry Track Agreements with Line Industries and shall consult with BJRY prior to executing any agreement, or amendment to an existing agreement, not in effect on the Execution Date of this Agreement. BJRY agrees not to enter into any agreement or understanding with any Line Industry covering the same subject matter as such Industry Track Agreements. BJRY acknowledges that it has reviewed the terms of the existing Industry Track Agreements, and agrees that its obligations under this Agreement shall be deemed to include performance of the City's obligations under the existing Industry Track Agreements.

(i) Taxes. BJRY shall pay all taxes, assessments and other governmental fees, charges or impositions (collectively, "Fees") levied on or assessed against the services provided by under this Agreement. City shall pay any Fees levied on or assessed against any equipment or other property owned by City.

(j) Interchange Agreements. BJRY agrees to perform and comply with all obligations, responsibilities and covenants of the City under the Agreement dated May 6, 1998 between BNSF, the City and RYDER, and the interchange agreement with the UP dated May 28, 1998, during the Term of this Agreement.

(k) Spur Track Maintenance. Neither the City nor BJRY shall have any responsibility under this Agreement for maintenance of trackage owned by any of the Line Industries, including maintenance of spur tracks or switches, weed control, alignment, gauging and the periodic oiling of all moving parts of the switches.

(l) Safety. BJRY agrees that in its operations, its agents, servants, employees and contractors, shall exercise reasonable care and precaution for prevention of accidents or damage. BJRY will provide to City a copy of its Operating and Safety rule book. Additionally, BJRY shall prescribe suitable Operating and Safety rules which comply with all Applicable Laws, including FRA, OSHA and AAR requirements, and assure that its subcontractors operate in compliance with the same requirements. Further, BJRY and its agents, employees and subcontractors shall perform the services provided for herein in a timely, expeditious and workmanlike manner, and each shall be duly trained, certified and licensed, with the requisite physical and mental capabilities and skills necessary for the performance of BJRY's obligations hereunder.

(m) Compliance With Applicable Laws and Railroad Rules. BJRY shall comply with all Applicable Laws, including but not limited to, regulations of the FRA, OSHA, the STB and any and all other rules or regulations applicable to railroad operations, including, but not limited to, the AAR Interchange Rules, with respect to BJRY's railroad operations, locomotive and railcar maintenance and maintenance of the Line and shall assure that its contractors do likewise.

4. Compensation.

(a) BJRY will publish switching tariff charges made to the Connecting Carriers annually unless otherwise agreed between City and BJRY. Charges will be established by City following consultation with BJRY, which consultation shall take place at least thirty (30) days prior to BJRY annual publication date. Charges will be billed to and paid by the Connecting Carriers (BNSF, UP or their successors) to BJRY. Switching charges will apply to loaded incoming and loaded outgoing rail cars and shall not discriminate among the Line Industries except to the extent necessary to appropriately reflect the distance between the lines of the Connecting Carriers, the point of destination on the Line for each Line Industry, or other cost or service differentiation. Except as provided in subsection 4(c) below, or otherwise agreed to in writing between BJRY and City, in no event shall any charge be made by BJRY to the Line Industries for services required hereunder.

(b) Acting as City's independent agent, BJRY shall collect from the Connecting Carriers the amounts due under 4(a) above and, on or before the last day of each calendar month, BJRY shall pay to City, and deposit into the Fund, an amount calculated as outlined on Exhibit A, attached hereto, for each railcar for which BJRY has completed handling (including both pick-up and delivery to and from Connecting Carriers) in the preceding month. Payment shall be based upon those railcars that have been cleared by the UP or BNSF's electronic switching system data. BJRY shall provide documentation on the number of railcars handled and payment received not later than the twenty-fifth (25th) day of the calendar month following the calendar month in which such railcars were handled and payment received. BJRY shall also provide City with a copy of all statements received from the UP and BNSF or their successors relating to the number of railcars handled and payment made therefor.

(c) Switching Charge Absorption. In the event a Connecting Carrier modifies its current practice of absorbing the switching tariff charges identified in Section 4(a), then BJRY will collect the same unabsorbed switching tariff charges directly from the applicable Line Industries affected thereby; provided, however, if such change in practice results in an additional net cost to any Line Industry, which the Line Industry is unwilling to absorb and City is unable to negotiate a satisfactory agreement for new charges, any party may terminate this Agreement on written notice to the others effective on the last day of the sixth (6th) calendar month after the date upon which such notice is given.

(d) Demurrage Charges. Demurrage Charges, as established by Connecting Carriers or by other owner of rail cars used in service to Line Industries, if not paid directly by the Line Industries to such Connecting Carriers or other rail car owner, are deducted from the switching revenues due to the parties hereunder. BJRY is responsible for collecting such Charges from the respective Line Industries involved.

(e) Storage of Railcars and Storage Charges. Storage of railcars on any track or tracks(s) of the Line designated by the City as available for storage, and charges related thereto, shall not be part of this Agreement but shall be the exclusive purview of City. However, BJRY shall receive switch fees in connection with the movement of stored railcars to and from the designated tracks. Switch fees for such storage railcars shall be established by City following

consultation with BJRY. BJRY shall generate and provide the City with monthly reports setting forth what railcars are located on designated storage tracks.

5. Performance Standards.

(a) BJRY shall provide the following minimum Performance Standards:

i. At least two railcar movers at ninety (90%) percent availability

ii. Minimum hours of switching services:

Monday-Saturday	12 hours per day
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Sunday and Holidays	as required
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iii. Maximum response time after request for switching service:

From shipper	60 minutes
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From Class I Railroad	120 minutes
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(b) Notwithstanding the foregoing Performance Standards, or any other provisions of this Agreement, BJRY acknowledges it has reviewed all Industry Track Agreements with respect to Line Industries, and the Performance Standards set forth therein. In the event that BJRY materially violates the Performance Standards of any Line Industry in effect on the Execution Date of this Agreement, or the Performance Standards set forth in Section 5(a), or materially violates the Performance Standards set forth in any subsequently executed Industry Track Agreements (which standards will be agreed to by BJRY prior to execution thereof), the City shall notify BJRY in writing of the material failure. If the violation is not cured by BJRY within thirty (30) days of the date of the notification, then City shall have the right to terminate this Agreement as to BJRY on five (5) days' notice to BJRY and substitute another operator in lieu thereof.

(c) If BJRY is unable to meet any obligation under this Agreement due to floods, windstorm, blizzard, ice storm, tornado, earthquake, fire, washouts, explosions, strikes, labor disputes, war, insurrection, criminal acts of others, acts of governmental authorities, acts or omissions of other rail carriers, and other acts of nature ("Force Majeure"), no liability or default shall result to BJRY for the duration of such cause. BJRY shall notify the City as soon as practicable after any event constituting Force Majeure occurred and indicate the anticipated time for cure thereof.

6. Term and Termination.

(a) Term. The term of this Agreement (the "Term") shall commence at 12:01 a.m. on _____, 2015 (the "Commencement Date") and shall expire on the date which is Five (5) years after the Commencement Date ("Initial Term") unless earlier terminated or extended as provided herein. The term of this Agreement shall be extended for an additional Five (5) year

term unless any party provides notice of termination to the other party at least six (6) months prior to the expiration of the Initial Term.

(b) Termination for Cause. In addition to all rights and remedies available at law or in equity, and unless otherwise specified in this Agreement, prior to the expiration of the Term, upon sixty (60) days written notice to BJRY, City shall have the right to terminate this Agreement for cause in the event of a material breach by BJRY of any specific provision of this Agreement, or in the event performance under this Agreement fails to satisfy the reasonable requirements of the City.

(c) Termination for Change in Control. City shall have the right to terminate this Agreement upon seven (7) days written notice to BJRY in the event that any parent or affiliate of BJRY is a party to any transaction that results in any change, directly or indirectly, in the ownership or control of BJRY.

7. City's Right to Inspect. At all times, City shall have the right to enter upon the Line and make inspections to determine compliance with the terms of this Agreement, provided that City shall indemnify BJRY for any acts or omissions of City during such inspection resulting in Losses as defined in Section 8. In no event shall City be obligated to make any such inspections, and City shall not be liable for any failure to make any inspections.

8. Liability and Indemnity.

(a) Definition of Losses. In this Agreement the term, "Losses" shall include all damages, losses, costs, expenses, fees, or liabilities of, or in any way related to the following:

- i. Any violation of Applicable Laws;
- ii. Any damage to property, the environment, or to natural resources;
- iii. Any bodily injury or death of any person;
- iv. Any claim based on the City's status as owner of the Line except as otherwise stated in Section 7 above;
- v. Any freight loss and damage claims occurring on the Line or for which any party hereto is determined to be liable; or
- vi. The breach of this Agreement.

"Losses" shall include, but not be limited to, any and all costs of claims or suits, activities in response to enforcement, damages, judgments, awards, orders, decrees, payments, fines, penalties, assessments, court costs, and reasonable attorney, consultant and expert witness fees related thereto, including any Losses assessed for violation of City's common carrier obligation, provided that in no event shall the definition of Losses include, and no party shall be liable to the other for, any special, incidental, punitive or consequential damages of any kind or nature, including but not limited to business interruption, arising directly or indirectly under this Agreement, however caused and regardless of legal theory or foreseeability. The parties agree that any Losses related to violation of City's common carrier duty shall not be deemed to be special, incidental, punitive or consequential.

(b) General Liability and Indemnity. To the extent consistent with Illinois law governing non home-rule communities, BJRY shall indemnify, protect and hold harmless City,

its elected and appointed officials, officers, employees, agents, contractors, successors, and assigns, from and against any and all Losses resulting from: (1) any injuries to or death of persons whomsoever or damage to property whatsoever because of any act or omission of BJRY, or their respective representatives, subcontractors, officers, employees, or agents in the performance of their respective duties and obligations under this Agreement, except in the event such Losses are caused solely by the acts or omissions of City; (2) breach of contract; (3) Losses related to work performed by BJRY when acting as a contractor for a Line Industry or (4) liens, fines, penalties, or claims for which BJRY might be or become liable, or to which the Line or other property of BJRY or the City might be or become subject as a result of the acts or omissions of BJRY in the performance of their respective duties and obligations hereunder.

(c) Environmental Liability and Indemnity. To the extent consistent with Illinois law governing non home-rule communities, BJRY shall not create or permit any condition on the Line or any real property or improvements used in connection with the Line that could present a threat to human health or to the environment. BJRY shall be responsible for, and shall indemnify, protect and hold harmless City from, any and all Losses (including special, incidental, punitive or consequential) alleged to have been caused in whole or in part by any hazardous or dangerous condition resulting, in whole or in part, from BJRY's use of the Line or violation of any Applicable Laws related to the performance of services under this Agreement or related to the release of Hazardous Materials from railcars on the Line. BJRY shall bear the expense of all practices or work, preventive or remedial, which may be required because of their respective obligations under this Section. City shall be responsible for, and shall indemnify, protect and hold harmless BJRY from and against, any environmental conditions caused or created by City prior to August 29, 2006. The City represents and warrants to BJRY that it does not have any knowledge of any Hazardous Materials on the Line, or any lack of compliance with any Applicable Laws related to the Line, prior to August 29, 2006. BJRY expressly agrees that the indemnification and hold harmless obligations assumed hereunder shall survive the termination or expiration of this Agreement. Statutory limitation periods on actions to enforce the obligations set forth herein shall not be deemed to commence until a party discovers, or reasonably should have discovered, any such environmental condition, and each hereby knowingly and voluntarily waives the benefit of any shorter limitation period. BJRY acknowledges that City has provided them with full access to inspect the Line.

(d) Hazardous Materials Handling. BJRY agrees to comply with all Applicable Laws and the terms of any Governmental Approvals concerning handling and disposal of Hazardous Materials subsequent to the Execution Date of this Agreement.

(e) Assumption of Defense. Upon written notice from City, BJRY agrees to assume the defense of any lawsuit or other proceeding brought against the City by any person or entity for Losses relating to any matter covered by this Agreement for which BJRY has an obligation to indemnify, protect and hold harmless the City hereunder and to pay all costs incident to such defense, including, but not limited to, attorneys' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments. This section shall survive termination of this Agreement.

9. Liens. BJRY shall promptly pay and discharge any and all liens arising out of any construction, alterations, or repairs done, suffered or permitted to be done by BJRY on the Line,

and shall indemnify, defend, and hold harmless City from and against any Losses incurred by the City on account of such liens. The City shall have the right to post any notices or take any other action upon or with respect to the Line that is or may be permitted by law to prevent the attachment of any such liens to the Line or the property owned by the City; provided, however, that failure of the City to take any such action shall not relieve BJRY of any obligation or liability under any provision of this Agreement. If, because of any act or omission of BJRY, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against the City, or any property of either of the City, BJRY shall, at its own expense, cause the same to be discharged of record within thirty (30) days after written notice from the City to BJRY of the filing thereof, and shall indemnify and save harmless the City from and against all costs, liabilities, penalties, and claims, including legal expenses, resulting therefrom.

10. Insurance. BJRY shall, at its sole cost and expense, procure and maintain during the Term of this Agreement the following insurance coverage:

- (a) All risks property insurance covering all property of BJRY or the City in the care, custody or control of BJRY. Such insurance shall:
 - i. Be issued on a replacement cost basis providing for restoration to prior condition;
 - ii. Provide that the insurance shall not be invalidated by any action or inaction of the City or BJRY or any other person and shall insure the respective interests of BJRY and the City as they appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by BJRY or any other person;
 - iii. Include a standard loss payable endorsement naming BJRY and the City as the loss payee, as its interests may appear;
 - iv. Include a waiver of subrogation in favor of the City;
 - v. Include coverage for property in the care, custody or control of BJRY, which is owned by the City.

- (b) Railroad liability policy of insurance acceptable, in its reasonable opinion, to the City in an amount of at least Twelve Million Five Hundred Thousand Dollars (\$12,500,000) per occurrence and an aggregate limit of at least Twenty-Five Million Dollars (\$25,000,000). Such insurance shall include coverage for:
 - i. Injury to or death of persons whomsoever, Personal Injury, Federal Employers Liability Act, property damage liability including but not limited to, damage or destruction of any and all property including public liability, bill of lading, and foreign rolling stock;
 - ii. Contractual liability for the liability assumed in this Agreement; and
 - iii. Evacuation expense coverage.

- (c) Workers compensation insurance as required by Applicable Laws; provided that BJRY may self-insure where permitted by Illinois law.
- (d) Employers Liability insurance including coverage for, but not limited to:
 - i. Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee;
 - ii. All such coverage shall include coverage for the Federal Employers Liability Act.
- (e) Commercial general liability insurance, on occurrence form, in an amount of at least \$12,500,000 per occurrence and \$25,000,000 aggregate. Such insurance shall include coverage for the liabilities assumed in this Agreement, and name the City as an additional insured.
- (f) Business Automobile Liability insurance with a combined single limit of Five Million Dollars (\$5,000,000) naming the City as an additional insured.
- (g) Other Requirements.
 - i. All policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.
 - ii. BJRY must waive and release any right of recovery against City for loss or damage to property of BJRY, or their respective employees, licensees and invitees, resulting from any cause which would be coverable by "all risk" property insurance, whether or not such insurance is actually in effect, and whether or not the loss or damage is caused by the negligence of City, its agents, employees or contractors. This waiver shall be binding on all insurers and other parties claiming by, through or under BJRY.
 - iii. BJRY's insurance policies through policy endorsement must include wording which states the policy shall be primary and non-contributing with respect to any insurance carried by City.
 - iv. All policies required above shall include a severability of interest endorsement and shall name City as an additional insured with respect to work performed, or operations conducted, under this Agreement.
 - v. The fact that insurance is obtained by BJRY shall not be deemed to release or diminish its liability hereunder, including, without limitation, liability under the indemnity provisions of the Agreement. Damages recoverable by City shall not be limited by the amount of the required insurance coverage.

11. Assignments and Subcontracting. BJRY shall not assign this Agreement, in whole or in part, or any interest herein, or grant a security interest in any buildings or improvements on the Line, nor subcontract or delegate performance of any of their obligations under this Agreement nor enter into any agreements with Line Industries without the consent of the City Manager. No rights or interests under this Agreement shall pass to any heir, executor, administrator, receiver, master, sheriff, trustee in bankruptcy, or other assignee by operation of law, without the express prior written consent of City Manager in each instance. Any permitted assignee, including any successor in interest, of BJRY's rights under this Agreement, shall assume in writing all of BJRY's continuing and existing, or thereafter arising, obligations under this Agreement, and under any then effective contract assigned by City, in whole or in part, in accordance with the terms of this Agreement, which obligations are related to the property or rights involved in the assignment. To the extent any services under this Agreement are allowed by City to be subcontracted, such subcontract shall require the subcontractor to indemnify and insure the City to the same extent provided in this Agreement; however, the parties agree that the City will look first to BJRY for indemnity regarding any such subcontractors.

12. Defaults and Remedies. If any party fails to perform any obligation required of it under this Agreement (the "defaulting party"), then the other party (the "non-defaulting party") shall provide written notice of such failure to the defaulting party. The defaulting party shall have ten (10) days, in the case of a monetary default, and thirty (30) days, in the case of a non-monetary default, after receipt of such notice in which to cure the specified default. If the defaulting party fails to timely cure the specified default, then the non-defaulting party shall be permitted to pursue any and all remedies available to it whether at law or in equity, including without limitation, the right to cure the specified default on behalf of the defaulting party, and to receive reimbursement from the defaulting party for the reasonable documented costs incurred by the non-defaulting party in such cure.

13. Independent Contractor. BJRY acknowledges and agrees it is acting at all times hereunder as independent contractor and is not a partner or agent of the City, except in the limited context set forth in Section 4 hereof and when performing the City's common carrier obligations. City: (i) has no right to direct or control BJRY's, or their respective subcontractors' employees, with respect to the physical conduct or the performance of services; (ii) does not supervise, nor does it have the right to supervise, details of BJRY's, or their respective subcontractors' employees' work or the manner in which such work is accomplished; (iii) retains no control over the details of BJRY's, or their respective subcontractors' employees' work; and (iv) has no right to select, hire, train, or fire BJRY's, or their respective subcontractors', employees. Notwithstanding the above, if it is determined that any employee of BJRY, or their respective subcontractors, has violated a safety rule or regulation or Applicable Law, City may demand that the individual be removed from the Line and another individual selected to replace him or her. BJRY's failure to do so shall be deemed a material breach hereof.

14. Notices. All notices hereunder shall be in writing and sent (a) via hand delivery or (b) postage prepaid for next business day delivery with a nationally recognized express courier. Notices shall be sent as follows, unless changed by thirty (30) days' notice:

To BJRY: General Manager
 Burlington Junction Railway
 1510 Bluff Road
 P. O. Box 37
 Burlington, IA 52601

To City: City of Rochelle
 Attn: City Manager
 420 North 6th St.
 Rochelle, IL 61068

Notices shall be deemed given as of the date such notice is hand delivered or is placed with an express courier, if sent by express courier. If the last day for giving any notice or taking any action required or permitted under this Agreement would otherwise fall on a Saturday, Sunday, or legal holiday, that last day shall be postponed until the next legal business day.

15. Miscellaneous.

(a) Non-solicitation of BJRY employees. The City agrees that during the term of this Agreement and for one (1) year after the termination or expiration of this Agreement, unless BJRY provides written consent, the City and its affiliates will not solicit or hire any of the management employees of BJRY, or its affiliates with whom the City became acquainted by virtue of the provision of services under this Agreement. The City agrees that BJRY's damages resulting from a violation of this provision by the City would be real, but difficult to measure with certainty. Therefore, the City agrees that upon any violation of this provision, the City will pay liquidated damages to BJRY in an amount equal to one hundred fifty percent (150%) of the annual base pay of any employee hired in violation of this paragraph.

(b) Entire Agreement: Enforceability. This Agreement, including any recitals and any attached Exhibits, all of which are made a part of this Agreement, contains the entire agreement of the parties concerning this subject matter. This Agreement should be read carefully because only those terms in writing in this Agreement are enforceable. No other terms or oral promises which are not in this Agreement may be legally enforced, and no promises, projections, inducements or representations made before the Execution Date will change the terms of this Agreement or be binding on any party. No promises or other terms shall be implied in this Agreement.

(c) Amendments. No amendment of this Agreement shall be binding unless it is in writing and signed by the party against whom enforcement is sought.

(d) Binding Effect: No Third Party Beneficiaries. This Agreement shall both bind and benefit the parties hereto and their respective heirs, personal representatives, successors, and permitted assigns. The parties do not intend that there be any third party or other beneficiaries of this Agreement.

(e) Waivers: Consents. A party shall not be deemed to have made a waiver, consent or approval under this Agreement unless it does so in writing, and the mere failure of a party to

act to enforce any provision of this Agreement shall not be considered a waiver, consent or approval and shall not prevent that party from enforcing any provision of this Agreement in the future. Wherever this Agreement requires obtaining the waiver, consent or approval of any person or entity, such waiver, consent or approval may be granted or withheld in such person or entity's sole discretion, unless this Agreement expressly provides otherwise. Any waiver, consent or approval under this Agreement shall apply only to the matter expressly waived, consented to or approved, and shall not be deemed to be waiver, consent or approval of any subsequent breach or of any other provision of this Agreement. Wherever this Agreement provides for an action to be taken at a party's option, the decision whether or not to exercise such option shall be in such party's sole discretion. Approvals on behalf of City shall be granted by the City Manager.

(f) Severability. The invalidity or unenforceability of one provision of this Agreement will not affect the validity or enforceability of the other provisions.

(g) Captions. The section numbers and captions are inserted only as a matter of convenience, and do not in any way define, limit, or describe the scope or intent of this Agreement. Any references in this Agreement to a Section or subsection shall refer to such Section or subsection of this Agreement, unless expressly provided otherwise.

(h) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(i) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. All actions arising, directly or indirectly, as a result or consequence of this Agreement and not resolved pursuant to Section 19, shall be instituted and litigated only in the Fifteenth Circuit Court the County of Ogle, Illinois or the U.S. District Court for the Northern District of Illinois, Western Division. The parties hereby consent to the exclusive jurisdiction and venue of said courts, and waive any objection based on forum non conveniens.

(j) Construction. This Agreement has been negotiated at arm's length, with both parties having the opportunity to be represented by counsel, and therefore should a dispute arise concerning the meaning of any provision of this Agreement, there shall be no presumption that such provision shall be construed against the party that drafted this Agreement.

(k) Records and Audit. At the end of each month, BJRY shall provide to City a financial record detailing the revenues and expenses associated with this Agreement. Each year, City shall have the right to audit BJRY's, or its respective subcontractors', records solely with respect to operations on the Line and the services provided under this Agreement, and all expenses incurred with respect thereto. BJRY, and its respective subcontractors, shall make their records available to City during normal business hours, upon reasonable notice. BJRY shall maintain all records pertaining to this Agreement for a period of at least three (3) years after the date such records are created.

(l) Publicity. BJRY shall not use or publish in any format the name of the City of Rochelle or its logo or publicize the operations of the Line without the written consent of the City Manager. BJRY agrees that it will, upon request of City, display the logo or other depiction provided by City on its locomotives used for service provided pursuant to this Agreement in a prominent position that does not interfere with the BJRY logo or the safe use and operation of the locomotives.

16. No Offer. The submission of this Agreement for examination and negotiation does not constitute an offer to enter into an agreement, and this Agreement shall not be binding on any party until it is executed and delivered by each party to this Agreement.

17. Survival of Terms. Sections 3(d), 8, 9, 15(a) and 19 shall survive termination of this Agreement

18. Dispute Mechanism/Arbitration. Any controversy, claim or dispute of whatever nature arising between the parties from or related to the Agreement, including the breach, termination, enforceability, scope or validity thereof, whether such claim existed prior to or arises on or after the execution date hereof (“Dispute”) shall be resolved first by the signatory parties hereto meeting and attempting to resolve such Dispute within thirty (30) days of written notification by a party to the other party setting forth the nature of the Dispute. In the event the Dispute cannot be resolved, the parties shall engage in Arbitration as set forth below.

Arbitration shall take place in Rochelle, IL and shall be binding for all Disputes where the amount in controversy does not exceed \$50,000. The party choosing to arbitrate shall do so by providing the other with written notification of the intent to invoke arbitration under this Section 18 and a description of the Dispute to be so arbitrated. Arbitration shall be conducted in accordance with such rules as may be agreed upon by the parties, or failing agreement within 30 days after arbitration is demanded, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) in effect on the Execution Date, subject to any modifications contained in this Agreement. Except as otherwise set forth herein, arbitration shall be governed by the Federal Rules of Civil Procedure. The Dispute shall be determined by one arbitrator, except that if the Dispute involves an amount in excess of \$1,000,000 (exclusive of interest and costs), three arbitrators shall be appointed.

Unless the parties agree otherwise, arbitrators shall be members of the AAA Large, Complex Case Panel or a CPR Panel of Distinguished Neutrals, or who have professional credentials similar to those persons listed on such AAA or CPR panels. The arbitrator(s) shall base the award on the applicable law and judicial precedent of the State of Illinois and shall have no authority to render an award which is inconsistent therewith. The award shall be in writing and including the findings of fact and conclusions of law upon which it is based.

Unless the parties agree otherwise, for Disputes involving amounts in controversy less than \$150,000, discovery will be limited to an exchange of directly relevant documents. Depositions will not be taken except as needed in lieu of a live appearance or upon mutual agreement of the parties. The arbitrator(s) shall resolve any discovery disputes. The arbitrator(s) and counsel of record will have the power of subpoena process as provided by law. For Disputes subject to binding arbitration hereunder, the parties knowingly and voluntarily waive their rights

to have any Dispute tried and adjudicated by a judge or a jury. Arbitration shall be governed by the substantive laws of the State of Illinois, without regard to conflicts-of-law rules, and by the arbitration law of the Federal Arbitration Act (Title 9, U.S. Code).

Judgment upon an arbitration award deemed to be binding hereunder may be entered in the District Court for Ogle County, IL or in the federal court for the Northern District of Illinois. Upon application by either party to such court for an order confirming, modifying or vacating the award, the court shall have the power to review whether, as a matter of law based on the findings of fact determined by the arbitrator(s), the award should be confirmed, modified or vacated in order to correct any errors of law made by the arbitrator(s). In the event a party so elects to apply to such court, in order to effectuate such judicial review limited to issues of law, the parties agree (and shall stipulate to the court) that the findings of fact made by the arbitrator(s) shall be final and binding on the parties and shall serve as the facts to be submitted to and relied upon by the court in determining the extent to which the award should be confirmed, modified or vacated.

Except as otherwise required by law, the parties and the arbitrator(s) agree to keep confidential, and not disclose to third parties, any information or documents obtained in connection with the arbitration process, including the resolution of the Dispute. If either party fails to proceed with arbitration as provided in this Agreement, or unsuccessfully seeks to stay the arbitration, or fails to comply with the arbitration award, or is unsuccessful in vacating or modifying the award pursuant to a petition or application for judicial review, the other party shall be entitled to be awarded costs, including reasonable attorney's fees, paid or incurred in successfully compelling such arbitration or defending against the attempt to stay, vacate or modify such arbitration award and/or successfully defending or enforcing the award.

19. Statute of Limitations. Notwithstanding any statute of limitations that may apply to controversies regarding this Agreement, the parties agree that all Disputes shall be commenced hereunder within two (2) years of the date when the party commencing the action first knew or should have known of the Dispute.

IN WITNESS WHEREOF, the parties execute this Agreement as of the Execution Date.

BURLINGTON JUNCTION RAILWAY, INC.

By: _____

Its: _____

Date: _____

CITY OF ROCHELLE

By: _____

Its: _____

Date: _____

Exhibit A
Percentage Share of Revenue

	CITY	BJRY	FUND
RLC 1 All RYDERS Manifest Switching North of I-88	25%	60%	15%
All rail services to industries North of I-88 other than RLC 1	25%	60%	15%
All Manifest Switching South of I-88 excluding Coated Sands Solutions LLC("CSS")	25%	60%	15%
All Manifest Switching for CSS until CSS Rail Improvement Loan is paid in full	25%	47.2%	27.8%
All Unit Train Building and Switching South of I-88	25%	60%	15%
Storage Track Switch Charge: One way into storage yard One way out of storage yard	25%	75%	