

OPERATING AGREEMENT

FOR RAIL FREIGHT SERVICE

BY AND BETWEEN

SEDA-COG JOINT RAIL AUTHORITY

AND

DATED _____, _____

AND EFFECTIVE JULY 1, 2017

OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the “Agreement”) is made and entered into on the ____ day of _____, 20____, to become effective July 1, 2017, by and between **SEDA-COG JOINT RAIL AUTHORITY**, a Pennsylvania municipal authority created under the Pennsylvania Municipality Authorities Act of 1945 (the “Authority”)

AND

_____, (the “Operator”).

WITNESSETH

WHEREAS, the Authority was incorporated as a joint municipal authority under the Pennsylvania Municipality Authorities Act of 1945, 53 Pa. C.S.A. § 5601 et seq., as amended and supplemented (the “Act”); and

WHEREAS, there are currently eight (8) member counties of the Authority, being Centre County, Clinton County, Columbia County, Lycoming County, Mifflin County, Montour County, Northumberland County, and Union County; and

WHEREAS, the Authority is the non-operating owner of certain lines of railroad (the “Railroad Premises”) described in **Exhibit A** as authorized by the Interstate Commerce Commission in Docket No. AB-167 (Sub Nos. 392N, 457N, 489N, 989, 779 and 485N)), and STB Finance Docket Nos. 33010 and 33008; and

WHEREAS, pursuant to a Request for Proposals (“RFP”) issued by the Authority soliciting proposals from individuals and entities with experience, knowledge and qualifications necessary to provide Rail Freight Service (as defined herein) on the Authority’s railroad lines, the Authority has selected the Operator to provide Rail Freight Service and to maintain the Railroad Premises for the benefit of shippers and communities served by the Authority’s lines of railroad; and

WHEREAS, pursuant to its proposal in response to the RFP, the Operator desires to conduct and provide common carrier railroad operations and service on the Railroad Premises and to contract with the Authority for the provision of such services; and

NOW THEREFORE, the parties, intending to be legally bound, agree as follows:

Section 1. Definitions

“**Affiliate**” means any entity that is not a Subsidiary and is a rail common carrier, rail switching services provider, rail equipment vendor or lessor, or that is a supplier of goods or services to the Operator or any parent of the Operator or other entity under common control with Operator, that is owned, directly or indirectly, in whole or in part, by either: (i) any of the directors, officers or employees of the Operator or any parent of the Operator, or their spouses or lineal descendants; (ii) any individual having greater than a 25% ownership interest in the Operator or any parent of the Operator (a “Principal”), or (iii) a Principal’s spouse or lineal descendants.

“**Agreement**” means this Operating Agreement.

“**Authority Standards**” means the maintenance standards set forth in **Exhibit B**, “Track Maintenance Standards,” of this Agreement.

“**Capital Improvements**” mean asset additions, improvements, or replacements that are not the result of ordinary maintenance activities to be performed by the Operator under this Agreement.

“**Change in Control**” of the Operator shall be deemed to have occurred if and when any person or group of persons shall, subsequent to the date of this Agreement, have acquired ownership of or the right to vote or to direct the voting of ownership interest in the Operator representing fifty-one (51%) percent or more of the total voting interest of the Operator.

“**Environmental Contamination**” shall mean any contamination of the Railroad Premises arising from the deposit, acceptance, use, storage, transport, disposal or release of Hazardous Materials to, or under the Railroad Premises as a result of the receipt, transportation, delivery, use or storage of said materials by any of the Operator.

“**FRA**” means the Federal Railroad Administration of the United States Department of Transportation.

“**Hazardous Materials**” shall mean and include, without limitation, (1) any “hazardous substance” or “pollutant or contaminant” as those terms are defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., as amended and supplemented; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as amended and supplemented; or the Hazardous Materials Transportation Act, 49 U.S.C. § 5102 et seq., as amended and supplemented; (2) “hazardous waste” as that term is

defined by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended and supplemented; (3) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any other applicable federal, state or local law, regulation, code, ordinance, guideline, order, agreement or requirement imposing liability or standards of conduct concerning any hazardous, toxic or dangerous residual waste substance or material, or the exposure of persons thereto, all as amended or supplemented; (4) any crude oil or other petroleum product; (5) any radioactive material, including any source, special or nuclear or by-product material; (6) asbestos and asbestos-containing materials in any form; or (7) compounds containing polychlorinated biphenyls.

“**Jannotti Report**” means the Track Inspection and Maintenance Right of Way Report to be prepared by Paul Jannotti pursuant to Section 13(a) of this Agreement.

“**Operating Agreement Consultant**” means a qualified consultant engaged by the Authority from time to time for the purpose of providing periodic reports and advice to the Authority regarding the Operator’s operations under this Agreement.

“**PUC**” means the Pennsylvania Public Utility Commission.

“**Railroad Premises**” means all property of every kind and description, real, personal, and mixed, including, but not limited to, the right of way, roadbed, tracks, bridges, track materials, poles, wire lines, signals, switches, and other facilities, buildings, and appurtenances comprising the Railroad Premises described on **Exhibit A** and utilized in the provision of Rail Freight Service pursuant to this Agreement.

“**Rail Freight Service**” means rail freight transportation service to be provided by the Operator pursuant to the relevant provisions of Title 49 of the United States Code, and under the terms of this Agreement.

“**STB**” means the Surface Transportation Board of the United States Department of Transportation.

“**Subsidiary**” means any entity in which the Operator owns or controls, directly or indirectly, greater than 50% of its voting interest.

“**Track Consultant**” means a qualified consultant engaged by the Authority from time to time for the purpose of inspecting the Railroad Premises and providing periodic reports to the Authority regarding the condition thereof.

Section 2. Term. The term of this Agreement (the “Term”) shall be seven (7) years beginning on July 1, 2017 and continuing through and including June 30, 2024. The Operator may extend the Term for an additional

five-year period, provided that the written consent of the Authority is obtained. If the Operator desires to so extend the Term of this Agreement for an additional five-year period, the Operator shall submit a written request to the Authority to extend the Term for such additional five-year period at least two (2) years but not more than three (3) years prior to the expiration of the Term. The Authority shall then, within one hundred twenty (120) days of receipt of such notice, render a decision on the Operator's request and notify the Operator in writing of its decision. If the Authority approves the Operator's request to extend the Term for an additional five years, the Term shall be extended for such additional five-year period to begin on July 1, 2024 and continue until June 30, 2029. All terms and conditions of this Agreement shall apply to the Term as extended unless amended by mutual agreement of the Operator and the Authority. There shall be no extension of the Term for any additional period thereafter under this Agreement.

Section 3. Exclusive Use of Railroad Premises. The Authority shall provide to the Operator access to and use of the Railroad Premises. The Operator shall have the exclusive right to use the Railroad Premises only for the purpose of providing Rail Freight Service thereon during the Term of this Agreement, or any permitted extension or renewal thereof, subject to the terms and conditions hereinafter contained. This Agreement shall not be construed as conveying any ownership interest to Operator. Any use of the Railroad Premises for purposes other than Rail Freight Service, including passenger service or rail excursions, shall require prior written permission of the Authority. Accordingly, Authority reserves the right to contract for the use of the Railroad Premises for passenger service. This contract may be with the Operator or any other entity, provided that Authority shall notify the Operator in writing of its intention to contract for passenger service. Should the Authority desire to solicit passenger service on the Railroad Premises, the Operator agrees to cooperate with the Authority in facilitating the provision of such service.

Section 4. Use by Other Carriers or Third Parties. In the event that the Operator desires to allow any other person or entity access to or upon the Railroad Premises for any purpose other than the provision of Rail Freight Service hereunder, the Operator shall secure prior written approval from the Authority, which approval shall not be unreasonably withheld. Nothing herein shall prohibit the Operator from providing access to or upon the Railroad Premises by persons or entities as required to enable the Operator to provide Rail Freight Service as provided herein.

Section 5. Operating Fees. Operator shall pay certain operating fees ("Operating Fees") for the use of the Railroad Premises as set forth in **Exhibit C**, entitled "Operating Fees," which is attached hereto and incorporated herein by reference. It is expressly understood that the Operating Fees shall be paid by Operator to the Authority without off-set for any charges incurred by Operator in the provision of Rail Freight Service.

Section 6. Non-Transferability. This Agreement and the rights herein granted shall not be assigned, sold, leased, or transferred, in whole or in part, without the prior written consent of the Authority, which may be withheld in the Authority's discretion for any reason. For purposes of this Section, an assignment shall include any transfer

of any rights under this Agreement, whether voluntary or involuntary or by operation of law, including any merger or consolidation of the Operator or any Change in Control of the Operator made without the Authority's prior written consent.

Section 7. Defects in Title. The rights contained herein as to the Railroad Premises are granted only insofar as the Authority's federal regulatory authorization and title permits. The Authority specifically disavows any implied or other warranty of title, and the Authority shall not be liable to the Operator for any defects in or encumbrances upon the title to the Railroad Premises or any portion thereof. Should a third party assert a claim of title to the Railroad Premises, the Authority and the Operator shall cooperate with each other and take action as necessary to preserve the Railroad Premises for the Operator's intended use hereunder.

Section 8. Right to Inspect. The Authority, its agents, contractors and/or assigns, shall have the right, upon reasonable notice, to enter upon the properties constituting the Railroad Premises for the purpose of making reasonable inspections. The Authority and the Operator shall make reasonable arrangements to assure that the inspections can be performed safely, without undue interference or disruption of the Operator's railroad operations, in a manner consistent with the security of the railroad facilities on the Railroad Premises. The Operator shall, upon adequate advance notice from the Authority, provide hi-rail equipment and a qualified driver to facilitate inspections exercised hereunder. The cost of such hi-rail equipment and driver shall be borne by the Operator; provided, however, that in the event the Authority requires such inspections more than two times during any calendar year (excluding any inspection to be conducted jointly by the Authority and the Operator for the purpose of assessing the condition of the Railroad Premises after any emergency or natural disaster), the Authority shall reimburse the Operator for the cost incurred by the Operator for such additional inspections.

Section 9. Taxes and Utilities. The Operator shall pay and discharge, on or before the last day on which payment may be made without penalty or interest, any and all taxes (including, without limitation, all real property taxes), assessments, charges for public utilities, excise, license and permit fees, assessments, sewer rentals and other governmental impositions and charges which shall or may during the Term hereof be charged, assessed, imposed, become due and payable, or a lien upon, or arising in connection with the use by the Operator of the Railroad Premises. The Operator shall have the right to contest any such taxes or other charges by appropriate legal proceedings, conducted at its own expense, provided that the Operator shall furnish to the Authority a surety bond or other security satisfactory to the Authority sufficient to cover the amount of the contested item or items when such item or items exceed \$2,500.00, with interest and penalty for the period which such proceeding may be expected to take. The Operator shall also pay any and all charges for water, gas, electricity, and other utility services provided to the Railroad Premises and used by the Operator in the provision of Rail Freight Service hereunder.

Section 10. Existing Agreements. The Operator's use of the Railroad Premises is subject to all of the terms and conditions contained in the following existing agreements, copies of which have been previously delivered to the Operator:

(a) Acquisition Agreement dated July 25, 1984 between the Authority and the Consolidated Rail Corporation ("Conrail") under which certain of the Railroad Premises was acquired by the Authority from Conrail (the "July 25, 1984 Agreement");

(b) Acquisition Agreement dated November 28, 1988, between the Authority and Conrail under which certain of the Railroad Premises was acquired by the Authority from Conrail (the "November 28, 1988 Agreement");

(c) Acquisition Agreement dated November 6, 1996 between the Authority, NBER and Conrail under which certain of the Railroad Premises was acquired by the Authority from Conrail (the "November 6, 1996 Agreement"); and

(d) Any agreement for the grant of trackage rights between Norfolk Southern, the Operator, and the Authority (the "Trackage Rights Agreement").

The Operator shall conduct its operations over the Railroad Premises in accordance with the terms and conditions of the aforesaid agreements and all other agreements to which it is a party and the Authority is now or hereafter becomes a party or third party beneficiary. Except as set forth herein, neither the Authority nor the Operator shall incur any obligation, undertake any action or assume any liability of the other party under the aforesaid agreements.

Section 11. Condition of Railroad Premises. The Operator has inspected the Railroad Premises and accepts the same "as is." Operator acknowledges that the Railroad Premises are suitable for Operator's intended use under this Agreement. The Authority makes no representation or warranty to the Operator as to the physical condition of the Railroad Premises or the condition of the legal title. The Operator shall return the Railroad Premises to the Authority upon the termination or expiration of this Agreement in the same condition as received or as improved. Notwithstanding the foregoing, the Authority shall make no claim or demand against the Operator regarding the condition of the Railroad Premises at the termination of this Agreement, provided that the Operator has complied with its annual maintenance responsibilities as set forth in Section 13 of this Agreement.

Section 12. Provision of Personnel, Additional Equipment and Facilities. The Operator shall be responsible for providing all personnel, equipment and facilities that are reasonably necessary for safe and adequate Rail Freight Service on the Railroad Premises. Such personnel shall be under the sole control and direction of the Operator and shall be properly qualified and trained in the operation of Rail Freight Service. Such equipment and facilities shall include, but shall not be limited to, locomotives, rolling stock, maintenance equipment, office space, and such other facilities and equipment as are reasonably necessary to provide Rail Freight Service on the Railroad Premises and maintain the Railroad Premises as contemplated under this Agreement. Notwithstanding the above, the Operator shall not be found in default if cars which must be obtained from a Class I Carrier are not available at that time for which they are requested.

Section 13. Maintenance. The Operator shall perform or cause to be performed maintenance of the Railroad Premises, as may be necessary for the safe operation of Rail Freight Service, and as further provided in this Section.

(a) The Authority's Track Consultant has prepared a comprehensive report (the "Jannotti Report"), setting forth the existing condition of the Railroad Premises, which report shall be appended to this Agreement as **Exhibit D**. The Operator shall be solely responsible for maintaining the Railroad Premises in accordance with the Authority Standards. Any portion of the Railroad Premises that does not presently comply with the Authority Standards shall be improved to a condition that complies with the Authority Standards over a reasonable period of time, through the Annual Maintenance Program hereinafter described, and which shall thereafter be maintained to the Authority Standards. Without limiting the foregoing, the parties further agree as follows:

(1) On or before January 15 of each year, the Operator shall prepare and submit to the Authority a program (the "Annual Maintenance Program") setting forth the maintenance items to be performed for the entire Railroad Premises during the remainder of the calendar year, and the anticipated cost of such items to ensure that the Railroad Premises are maintained in accordance with the Authority Standards.

(2) The Operator will review the Annual Maintenance Program with the Authority's Staff and Track Consultant who shall review and amend the same to ensure that it complies with the Authority Standards not later than March 1 of said year.

(3) The Operator shall at its own cost be responsible for maintaining the Railroad Premises in accordance with the Authority Standards as set forth in the Annual Maintenance Program approved by the Authority's Track Consultant.

(4) The Authority's Track Consultant shall inspect the Railroad Premises at least twice each calendar year to ensure that the Operator is maintaining the same in accordance with the Annual Maintenance Program adopted by the Authority and the Operator for the Railroad Premises. Any deficiencies noted by the Track Consultant or by inspectors from the FRA or the PUC in routine inspections of the Railroad Premises shall be promptly remedied by the Operator at its sole cost and expense.

(b) Any and all rails, ties or other items of track and signaling equipment removed and replaced by the Operator in the performance of required maintenance (the "Replaced Materials") shall become the property of the Operator, regardless of whether such removed property is sold or retained by the Operator as materials and supplies, provided the Operator purchased the material used in the replacement.

(c) Operator shall comply with the Authority's Guidelines for Asset Upgrades (the "Guidelines"), also attached at **Exhibit B** hereto, except where compliance with such Guidelines would be inconsistent with the requirements of this Agreement.

(d) In the event of damage to the Railroad Premises as a result of flood, landslide, geological disturbance, or natural disaster, the Operator shall be responsible for payment of the first \$50,000 of costs of repairing the Railroad Premises to the condition that they were in prior to such damage, and thereafter up to 50% of any additional costs of repairing such damage to the Railroad Premises resulting from such disaster, up to a

maximum of \$100,000 per occurrence, except where the cost of such repairs are fully reimbursed by any local, state or federal government agency.

Section 14. Capital Improvements. The Operator shall have the right, but not the obligation, with the prior written approval of the Authority, to make, at its own expense, Capital Improvements for railroad purposes on the Railroad Premises during the Term of this Agreement. In such voluntary Capital Improvements, the Operator shall be required to pay the cost of removal of appurtenant structures, excluding track improvements, where required by the Authority. Where such Operator-financed Capital Improvements require or involve the replacement of an asset in place, the Operator and the Authority shall agree in writing in advance of installation of the replacement asset which of the Operator or the Authority will have ownership of the assets to be removed from the Railroad Premises, and in the absence of such written agreement such assets will belong to the Authority. The Operator shall have no other obligations to finance or pay for any Capital Improvement to the Railroad Premises under the terms of this Agreement.

Section 15. Railroad Operations. Operator shall at all times during the Term of this Agreement:

(a) Pay all charges and fees required to be paid under this Agreement, including, but not limited to the Operating Fees, at such time as the same are due and payable, which charges and fees may be recovered by the Authority in the same manner as any charge or fee due or in arrears.

(b) Operate Rail Freight Service in accordance with all federal, state and local requirements and obtain all governmental approvals, authorizations, franchises, licenses and permits as may be prerequisite to the rendering of such service.

(c) Observe and comply with any and all requirements of all constituted public authorities, including, but not limited to, any inspections of the Operator's equipment or facilities, and with all federal, state and local statutes, ordinances, regulations and standards applicable to the Operator or its use of the Railroad Premises.

(d) Maintain and operate, at its own expense, the Railroad Premises, including any buildings used or leased by the Operator thereon, in good operating condition and repair in a manner consistent with sound, accepted engineering practices and in accordance with Section 13 of this Agreement. Such operations shall include, but not be limited to, the removal of all wrecks and derailments within five (5) days following any such occurrence, restoration of the derailment site to safe operating condition within five (5) days following such occurrence, and restoration of a derailment site to its original condition or better within thirty (30) days following the occurrence, unless the Authority otherwise agrees to extend such deadlines for good cause shown by the Operator.

(e) Operate Rail Freight Service on the rail lines of the Authority at such levels and at such frequency as reasonably acceptable to the Authority, subject to the following guidelines:

(1) The Operator shall provide Rail Freight Service a minimum of twice per week. Nothing herein shall require the Operator to operate a scheduled train when there are no cars to be picked up from or delivered to shippers on the Railroad Premises. The failure to provide Rail Freight Service for five (5) days

(exclusive of Saturdays, Sundays, and holidays) after need for such Rail Freight Service has been established, according to subsection (e)(2) hereof, shall constitute default by the Operator.

(2) Shipments destined to and from stations on the Railroad Premises shall be handled in accordance with applicable rail transportation contracts or delivered to consignee not later than the third day (exclusive of Saturdays, Sundays, and holidays) after arrival of the shipment in the yard serving the line with adequate billing information, unless consignee notifies the supervisor in charge of the Operator's Rail Freight Service of the shipment's imminent arrival on the lines of the Operator, in which case the consignee can request a prompt placement date. The Operator shall exercise reasonable efforts to provide prompt empty car placement whenever the consignor notifies the Operator's supervisor three (3) days prior to the day on which the empty car(s) shall be placed for loading, specifying the date for the placement of the empty car(s) for movement to the destination. However, nothing in this paragraph contemplates the Operator's providing better levels of Rail Freight Service for certain customers with similar, but not identical, characteristics without collection of the applicable contract or appropriate published charges for such special Rail Freight Service. Nothing in this paragraph precludes the Operator from providing more frequent Rail Freight Service than that agreed upon in accordance with subsection (e)(1) above.

(3) The Operator shall provide safe and efficient Rail Freight Service, including, but not limited to: (i) delivery and access to empty rail cars subject to car availability; (ii) prompt handling of loaded rail cars with reasonable dispatch to and from points of interchange with other carriers; and (iii) maintenance and repairs, snow removal, and clearing of train derailments and wrecks on the Railroad Premises, all as specified in this Agreement. The Operator shall provide the name, address, telephone number, and point of contact of the shippers that are served on the Railroad Premises to the Authority within thirty (30) days from the date of execution of this Agreement and within thirty (30) days of acquiring additional shipper customers. The Authority will survey shippers during the Term of this Agreement to determine quality of Rail Freight Service provided by the Operator, provided, however, that such survey shall not seek information concerning confidential rail transportation contracts, rates or price negotiations for Rail Freight Service by the Operator or its connecting carriers, and the survey results will be provided to the Operator.

(4) The Operator shall have exclusive control of the operation, performance and pricing of the Rail Freight Service, including, but not limited to, the dispatching and control of trains, assignment of available cars in good order, assignment of crews and other employees, and assignment and use of power. The Operator shall use its best efforts to provide such Rail Freight Service in an efficient manner.

(5) The Operator shall have the exclusive authority to promulgate and adopt rules, regulations and tariffs that are consistent with regulations issued by the STB and FRA and the provisions of Title 49 of the United States Code, Subtitle IV, Part A.

(6) The Operator shall report any incidents, including but not limited to derailments, involving any actual or potential damage or injury to person or property occurring on the Railroad Premises or other railroad properties used by the Operator to provide Rail Freight Service under this Agreement, immediately to the Authority. The Operator shall, within three (3) days of receiving notice of any such incident, furnish a written report

to Authority including a brief statement of the facts and an estimate by the Operator as to the approximate potential claim that may arise. If a notice or claim of damage or injury is made to the Operator, then the Operator shall promptly furnish the Authority with a copy of each such notice or claim. Thereafter, the Operator shall provide Authority with copies of any further records or reports involving such incident and shall periodically report to the Authority concerning the status of the incident and, upon resolution, the final disposition of the matter.

(f) Notify the Authority in writing within ten (10) days of any management and supervisory personnel changes. In the event that any member of the Operator's management or supervisory personnel is no longer part of the Operator's organization, the Operator shall advise the Authority of the action taken to ensure that it will continue to be able to provide Rail Freight Service under this Agreement.

(g) Perform marketing and sales activities pursuant to a marketing plan prepared by the Operator and periodically reviewed by the Authority, which shall include the following:

(i) establishment of a local marketing department and/or employment of personnel experienced in and dedicated to marketing activities in the region served by the Authority;

(ii) frequent contact with prospective customers through no less than five (5) marketing solicitations per month;

(iii) preparation and distribution of marketing pamphlets and materials;

(iv) preparation and distribution of monthly reports to the Authority concerning the Operator's marketing activities, subject to the confidentiality provisions of this Agreement;

(v) preparation and distribution of periodic reports to economic development agencies in the region concerning the Authority's and Operator's activities in the region;

(vi) proactive support to economic development agencies, the Authority's member counties, the Commonwealth of Pennsylvania, and the Authority in the recruitment of industry to the Authority's service area; and

(vii) other activities to promote increased rail traffic to and from the Railroad Premises, and to support the Authority's mission of furthering economic development through the retention, improvement and expansion of rail infrastructure and rail service.

(h) Annually, on the anniversary date of this Agreement, provide the Authority with the following information, which to the extent possible under applicable law and this Agreement, shall be maintained by the Authority in confidence:

(1) Complete listing of names and addresses of all officers, directors and other senior management of the Operator.

(2) Complete listing of names and addresses of all owners (whether stockholders, members, partners, or other owners) in the Operator, including the total ownership interest owned by each owner.

(i) Provide one hundred twenty (120) days written notice of any proposed Change in Control of the Operator. The Authority shall have the right to approve or disapprove any such Change in Control and shall have the right to terminate this Agreement if any actual Change in Control occurs without Authority approval.

(j) Provide and maintain unencumbered minimum working capital in the amount of \$100,000.00.

(k) Prepare a proposed annual budget setting forth the estimated revenue and expenditures for the upcoming calendar year (the "Annual Budget"). The Annual Budget shall be made available to the Authority for review by the Authority's staff and Operating Agreement Consultant on or before January 15 of each year. The Annual Budget shall include projected expenditures for the Operator's transportation and Rail Freight Service operations and a preliminary estimate of projected expenditures to meet the Operator's maintenance obligations, among other items.

(1) On or before February 1 of the year to which the Annual Budget relates, the Operator will review the Annual Budget with the Authority's staff and/or the Operating Agreement Consultant at the Operator's offices. The Authority's staff and/or the Operating Agreement Consultant shall review (A) the Rail Freight Service operations portion of the Annual Budget, to evaluate whether the Operator is making an appropriate investment in Rail Freight Service operations in light of the Operator's requirements under this Agreement, to be determined in accordance with such methodology and/or formulae utilized by the Operating Agreement Consultant, including ratios for transportation and maintenance of way expenditures, and (B) the maintenance portion of the Annual Budget in light of the Annual Maintenance Program requirements under Section 13 of this Agreement; provided, however, this review of the maintenance portion of the Annual Budget shall be secondary to the Annual Maintenance Program review performed by the Authority's Track Consultant who may, but shall not be obligated to, consider the results of the Annual Budget review in connection with his review of the Annual Maintenance Program as required by Section 13 of this Agreement. The Authority's staff and the Operating Agreement Consultant may propose reasonable modifications to the Annual Budget to promote good faith efforts by the Operator to meet the requirements of this Agreement for the particular calendar year. The Operator shall, in good faith, revise the Annual Budget to incorporate the Authority's proposed modifications. The Operating Agreement Consultant shall make a report of his review to the Authority at its January board meeting.

(2) The Operating Agreement Consultant shall also, on a quarterly basis, review the Operator's financial performance in comparison to the Annual Budget. The Operator shall make such information available to the Operating Agreement Consultant as he reasonably requires in order for him to conduct this review. If the Operating Agreement Consultant determines that there is a variance in the estimated expenditures in the Annual Budget and the actual expenditures for the applicable quarter, then the Operator shall be given an opportunity to explain the reason for the variance. In addition, if the Operating Agreement Consultant determines that the Operator is otherwise failing to meet the requirements of Section 15 of this Agreement, the Operator shall provide an explanation of the reason for such failure. The Operating Agreement Consultant shall make a report of his findings quarterly to the Authority.

(3) As part of its submission of the Annual Budget, the Operator shall also submit a proposed timetable for Rail Freight Service operations on the Railroad Premises for the upcoming year, which shall be subject to Authority approval.

(l) Obtain and maintain for the Term of this Agreement an irrevocable standby letter of credit (the "Letter of Credit") with a lending institution acceptable to the Authority securing Operator's faithful performance of its obligations under this Agreement. The Letter of Credit shall be subject to approval by the Authority, shall be in an amount of not less than One Million Dollars (\$1,000,000), and shall name the Authority as beneficiary. The Authority shall have the right to draw upon the Letter of Credit in the event the Authority incurs any out-of-pocket expenses resulting from a default by the Operator, including but not limited to, costs incurred by the Authority in restoring Rail Freight Service on the Railroad Premises and claims brought against the Authority by third parties, including shippers, that arise out of the Operator's failure to perform its obligations under this Agreement. This right would be in addition to, and not in lieu of, any other rights and remedies available to the Authority under this Agreement or otherwise at law.

Section 16. Restrictions. The Operator further agrees that it will not:

(a) Occupy the Railroad Premises in any way or for any purposes unrelated to the provision of Rail Freight Service.

(b) Assign, mortgage, pledge or encumber the Railroad Premises or any part thereof or assign all or any part of its obligations under this Agreement without the prior written consent of the Authority.

(c) Permit to be created or knowingly allow to exist upon the Railroad Premises any use or storage (except as necessary for the provision of Rail Freight Service), or the disposal or release of Hazardous Materials, public or private, and the Operator shall indemnify, protect, defend and hold harmless the Authority in accordance with Section 17 for any Losses arising out of same. Operator shall comply with all applicable federal, state and local laws, rules and regulations pertaining to air, water, noise and wastes and other pollution or relating to the storage, transport, disposal or release of Hazardous Materials, and shall bear the expense of any and all pollution control structures, devices or equipment which are required during the Term of this Agreement under applicable laws, ordinances or governmental regulations as a result of Operator's provision of Rail Freight Service. Operator shall exercise due care in its use and operation of the Railroad Premises, including taking precautions against reasonably foreseeable acts or omissions or the release of Hazardous Materials into the environment.

(d) Initiate or conduct rail passenger service or excursions over the Railroad Premises without the prior written approval of the Authority.

(e) Except upon the Authority's prior written consent, enter into negotiations or agreements with any other railroad, including, specifically, Class I railroads, which in the reasonable opinion of the Authority affects the interests of the Authority, including: (i) the competitive access of the shippers within the constituent counties of the Authority to Class I rail services; (ii) the proper maintenance of the Railroad Premises; or (iii) the carrying out of the Authority's stated mission to preserve rail service in Central Pennsylvania and to further economic development through the retention, improvement and expansion of rail infrastructure.

(f) Enter into a contract or agreement with an Affiliate or Subsidiary of the Operator having a value in excess of \$5,000, except upon the Authority's prior written consent, which consent will not be withheld if the transaction is determined by the Authority to be commercially reasonable. The Authority will hereinafter be

supplied with an annual summary of each contract or agreement as to which the Authority has consented as part of the Annual Report provided under Section 21 and each contract or agreement shall be subject to audit and inspection.

(g) Except upon the Authority's prior written consent, enter into negotiations or agreements with any third parties for the lease or acquisition of rail lines located within the counties comprising the membership of the SEDA-Council of Governments or the Authority, or counties within which the Authority owns property of any kind, or which directly connect with the Railroad Premises, it being the express understanding of the Authority and the Operator that the Authority shall have the right of first refusal and option to acquire any such lines.

(h) Amend, modify, cancel or terminate any interchange agreement with any Class I railroad which relates to Rail Freight Service on the Railroad Premises without prior notice to the Authority.

Section 17. Indemnification.

(a) The Operator, and its parents, Subsidiaries, and Affiliates, jointly and severally agree to indemnify, protect, defend and hold harmless the Authority and the Authority's members, directors, officers, agents and employees (each, an "Indemnified Party") from and against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments, awards, costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs through appeal (collectively, "Losses"), arising out of or related to any act or omission of the Operator, or its agents, employees or contractors, including, but not limited to: (i) any bodily injury, death or damage to tangible property to the extent caused by the Operator or relating to or arising out of the Operator's performance of this Agreement; (ii) any collision or derailment; (iii) any claims, grievances or lawsuits brought by or on behalf of the Operator's own employees or their representatives, pursuant to any state or federal law, including, but not limited to, the Federal Employer's Liability Act, or pursuant to employee protective conditions imposed by a governmental agency or a collective bargaining agreement arising out of the Operator's operations hereunder; (iv) any Environmental Contamination on the Railroad Premises (whether arising out of any environmental protection or pollution law, or any liability in tort (strict liability or otherwise); or (v) any default under this Agreement or failure of Operator to perform any obligation under this Agreement. Provided, however, the Operator's obligation to indemnify under this Section shall be proportionately reduced to the extent any such Loss is judicially determined to be attributable to the negligence or willful misconduct of the Authority.

(b) An Indemnified Party seeking indemnification under this Agreement shall: (i) give the Operator prompt written notice of the claim; (ii) cooperate with the Operator in connection with the defense and settlement of the claim; and (iii) permit the Operator to control the defense and settlement of the claim; provided that the Operator will not settle the claim without the prior written consent of the Indemnified Party, which consent will not be unreasonably withheld.

(c) The Authority does not in any manner waive its rights and immunities provided by applicable federal or state law and/or regulation under this Section or otherwise under this Agreement.

(d) The Operator's obligations under this Section shall survive termination or expiration of this Agreement.

Section 18. Insurance. During the Term of this Agreement, Operator shall maintain, at its own cost and expense, the following minimum insurance, which shall be with reputable companies with a rating of investment grade or better by a nationally-recognized rating agency, as reasonably acceptable to the Authority:

	<u>Type</u>	<u>Limits</u>
(1)	Comprehensive General Liability insuring against claims for bodily injury, death and property damage	\$15,000,000, combined single limit per occurrence, \$25,000 per deductible
(2)	Federal Employer's Liability Act/ Workers' Compensation	\$1,000,000 or such other amount as required by law.
(3)	Cargo Legal Liability	Covered by blanket policy noted in (1)
(4)	Foreign Rolling Stock	Covered by blanket policy noted in (1)
(5)	Automobile Liability	\$3,000,000, combined single limit per occurrence
(6)	Pollution Legal Liability including coverage for environmental damage and related remediation and cleanup costs	\$15,000,000 per occurrence, \$25,000 per deductible

The Operator shall cause the Authority to be named as an additional insured under each such policy (other than Employer's Liability) and furnish the Authority appropriate certificates of such insurance which shall specifically provide that the insurance company shall furnish to the Authority at least thirty (30) days prior notice of any lapse or material changes in such insurance. The insurance above shall be specifically endorsed to be primary over any insurance maintained by the Authority.

Section 19. Relationship between the Operator and the Authority. The Authority is a Pennsylvania municipal authority incorporated under the Pennsylvania Municipality Authorities Act of 1945, as amended, 53 Pa. C.S.A. § 5601 et seq. The Operator is a private _____, and an independent contractor, and is not an agent of the Authority. Whenever the Operator requires written approval from the Authority, the signature of the Executive Director will suffice to validate such written approval. Whenever the Authority requires written approval from the Operator, the signature of the President or other highest ranking officer will suffice to validate the written approval of the Operator. The Operator shall inform the Authority and affected shippers of any action or event that may limit Rail Freight Service as soon as the Operator knows of such action or event. The Authority will inform the Operator of any problems or concerns related to the Rail Freight Service of which it receives notice.

Section 20. Conflicts of Interest. The Operator represents that it has completely disclosed to the Authority all facts bearing upon any possible interests, direct or indirect, that the Operator believes any member, director,

officer, employee or agent of the Authority presently has, or will have, in this Agreement or in the performance of this Agreement. The Operator shall comply with all codes of conduct and/or conflict of interest policies adopted by the Authority. The Operator covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of its obligations under this Agreement. The Operator represents to the Authority that Operator has no present, and will have no future, conflict of interest between providing the Authority the services contemplated by this Agreement and any interest the Operator may presently have, or will have in the future, with respect to any other person or entity that has any interest adverse or potentially adverse to the Authority, as determined in the reasonable judgment of the Authority. The provisions of this Section shall remain fully effective indefinitely after the expiration or termination of this Agreement.

Section 21. Annual Reporting.

(a) During the Term, the Operator shall prepare an annual report specific to the Rail Freight Services provider hereunder (the “Annual Report”) including, at a minimum, (1) the number of revenue producing carloads, (2) the number of reportable accidents as defined by FRA and their location, (3) reportable derailments as defined by FRA and their location, (4) financial statements audited by an accounting firm acceptable to the Authority, (5) construction and maintenance expenses, (6) FRA, PUC, and/or Authority inspection reports with corrective action taken or planned, (7) a report of other occurrences having a significant impact on the condition of the Railroad Premises or the rail traffic handled thereon, (8) a current list of all Subsidiaries and Affiliates, (9) an organizational chart setting forth the current ownership of the Operator, and (10) a proactive risk management program and emergency response plan. Federal and state income tax returns for the Operator and any Subsidiaries and Affiliates shall be made available to the Authority’s auditors to confirm the summary of income tax information provided in the Annual Report. The Annual Report shall cover the Operator’s fiscal years or parts of fiscal years from the date of execution of this Agreement to its termination. The Annual Report shall be submitted to the Authority within three (3) months after the close of each fiscal year, provided Operator’s tax filings are completed by that time, and shall be submitted to the Authority subsequent to a deferred tax filing upon completion by Operator’s accountant, in which instance a preliminary Annual Report shall be submitted within three (3) months after the close of the Operator’s fiscal year.

(b) Upon reasonable notice, the Operator will allow the auditors of the Authority to audit all the records of the Operator that were used to determine the revenues and costs related to the Annual Report. All such records shall be kept for a period of four (4) years after the issuance of the related Annual Report. The Operator will also allow inspection of the Railroad Premises and the equipment used thereon by the authorized representatives of the Authority upon reasonable notice.

Section 22. Confidentiality.

(a) The Operator and the Authority acknowledge that this Agreement requires the Operator to provide certain records, documents or instruments (collectively, “records”) that may include proprietary or confidential information, the disclosure of which to third parties may be damaging to the Operator or other third

parties who contract with the Operator. At the time of providing such records, the Operator's highest-ranking officer shall certify in writing as to the confidentiality of any such records submitted to the Authority that are deemed confidential and proprietary by the Operator, and include a statement concerning the legal basis for treating such records as confidential and proprietary. To the extent possible under law, the Authority shall hold such records and information in strict confidence and shall use such records and information only in connection with this Agreement, except where required to be disclosed under the Pennsylvania Right-To-Know Law, 65 P.S. § 67.101 et seq. (the "RTK Law") or the Pennsylvania Sunshine Act, 65 Pa. C.S.A. § 701 et seq. (the "Sunshine Act"), and/or any other applicable federal or state law requiring public disclosure of information relating to the business of the Authority or any order of a court or public agency having jurisdiction (including the Pennsylvania Office of Open Records) requiring disclosure. The Operator acknowledges that the Authority is considered a "local agency" for purposes of the RTK Law and is required to disclose certain public records in the possession of the Authority. Accordingly, Operator agrees that in the event a request for records of the Operator is received by the Authority, the Operator shall cooperate with the Authority in responding to the request in accordance with the RTK Law, including providing written input to the Authority's Open-Records Officer concerning the release of the records and/or the redaction of certain information in the records. The Operator shall comply with any policy or policies adopted by the Authority from time to time concerning the treatment of confidential information of third parties provided to the Authority. The Operator further agrees that the Authority shall not be subject to any liability for its good faith compliance with the RTK Law and the Sunshine Act.

(b) Any publicity or press releases with respect to this Agreement shall be under the Authority's sole discretion and control. The Operator shall not discuss this Agreement, or any matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without the Authority's prior written consent. The Operator shall have the right, however, without the Authority's further consent, to communicate with persons (including third parties) or public bodies where necessary to perform under this Agreement.

Section 23. Performance Audit. The Authority may at its expense, from time to time, conduct a performance audit of marketing, operating, maintenance, and other obligations and functions of the Operator, and the Operator shall cooperate with the Authority in the performance of the audit.

Section 24. Non-Operating Properties. The Authority is solely responsible for entering into, extending, or terminating all non-operating leases, licenses, and easements on all Authority property, including the Railroad Premises. The Authority shall receive any and all payments arising from any leases, private crossings, easements, licenses and occupations or renewals thereof on any portion of the Railroad Premises, including, but not limited to, rents, license fees, crossing fees, easement fees, and other revenues paid by any party occupying a portion of the Railroad Premises with poles and wire, and rentals and fees for signboards, platform locations, driveways, storage facilities, side tracks, pipe lines, water rights, fiber optics, land rents, building rents and water tank rents, among other things. The Authority shall collect such amounts as they become due and such amounts shall not accrue to the

Operator unless otherwise agreed by the Authority and the Operator in writing. The Authority shall determine the properties classified as “Non-Operating Properties,” except that any such designation shall not interfere with Operator’s ability to fulfill its obligations under this Agreement. In addition, the Authority shall have the unilateral right to withdraw such portions of the Railroad Premises from the provisions of this Agreement, including any tracks, railroad lines, buildings, land or any other property, as it deems appropriate so long as such withdrawal will not unreasonably interfere with Operator’s ability to fulfill its common carrier obligations and to provide Rail Freight Service to customers under this Agreement. Furthermore, the Authority may add additional premises to the Railroad Premises as it reasonably determines are necessary for the Operator’s performance of this Agreement, in its sole discretion. In such event, Operator and Authority will cooperate in obtaining approval of the STB and any other applicable governmental agencies, to the extent required, to include such additional premises within the Railroad Premises under this Agreement.

Section 25. Public Crossings. During the Term of this Agreement or any renewal thereof, the Operator shall assume and shall indemnify the Authority for and against all obligations with respect to all public crossings by public highways, pedestrian walkways and bikeways, bridges, or utilities, including such obligations as presently exist or which may be hereinafter imposed under the provisions of Pennsylvania Public Utility Code, 66 Pa. C.S.A. § 101 et seq., as amended and supplemented, and any orders issued thereunder with respect to the Railroad Premises, except those “Non-Operating Properties” for which the Authority has sole responsibility under Section 24 of this Agreement.

Section 26. Condemnation of Railroad Premises. If the Authority’s ownership interest in the Railroad Premises, or any portion thereof, are condemned or taken by any competent authority for public use, the award for payment of damages resulting therefrom, or any amount paid in settlement thereof, shall be paid to and retained by the Authority, except as hereinafter provided. If the Operator’s occupancy interest in the Railroad Premises or any portion thereof are condemned or taken by any competent authority for public use, the award or payment of damage resulting or any amount paid in settlement thereof shall be paid to and retained by the Operator. If the entire Railroad Premises are so taken or such substantial part thereof as shall materially impair or interfere with the Operator’s proper use and enjoyment thereof, this Agreement shall automatically terminate as of the date of the taking. If only such portion of the Railroad Premises is taken as shall not materially impair or interfere with the Operator’s proper use and enjoyment thereof, this Agreement shall continue in full force and effect, and all proceeds of the condemnation award or payment to either party shall first be used as may be required for the restoration of the Railroad Premises in such manner as will enable the continuing operation thereof for Rail Freight Service hereunder.

Section 27. Termination. Upon the occurrence of an Event of Default (as hereinafter defined), and subject to subsection (b) below, this Agreement may be terminated by the Authority by written notice to the Operator in accordance with this Section.

(a) Any one or more of the following events shall constitute an event of default under this Agreement (an “Event of Default”):

(i) The Operator’s failure to pay any Operating Fees due to the Authority within fifteen (15) days of the date due and payable hereunder.

(ii) The Operator’s failure to observe and perform any of the terms, covenants, conditions, limitations or commitments under this Agreement on the Operator’s part to be observed or performed (other than payment of Operating Fees).

(iii) The Operator shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangements, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy or insolvency statute or law (collectively, “insolvency laws”), or shall seek, consent to or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver or liquidator of the Operator or of all or any substantial part of its properties.

(iv) The commencement of any action, case or proceeding against the Operator seeking (A) any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any insolvency laws, or (B) the appointment, without the consent or acquiescence of the Operator, of any trustee, receiver or liquidator of the Operator or of all or substantially all of its properties, and such proceeding shall continue un-dismissed for a period of sixty (60) days.

(v) The Operator shall discontinue service or vacate any portion of the Railroad Premises without the Authority’s prior written consent.

(vi) A federal or state tax lien is filed against the Operator affecting the Railroad Premises and remains undischarged within sixty (60) days after its filing.

(vii) A final judgment for the payment of money in excess of \$25,000 shall be rendered against the Operator and such judgment shall remain undischarged for a period of sixty (60) days during which execution shall not be effectively stayed.

(viii) A Change in Control of the Operator shall occur without the Authority’s prior written consent.

(b) Notwithstanding the preceding subsection (a), upon an Event of Default described only in subsection (a)(ii) above, such Event of Default may be cured (and no Event of Default will be deemed to have occurred) if the Operator, after receiving written notice from Authority demanding cure of such default: (1) either cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates to cure the default within thirty (30) days to the satisfaction of the Authority and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical, but in no event later than one hundred twenty (120) days after written notice demanding cure of such default was delivered.

(c) In the event the Operator commits an Event of Default, which Event of Default is not timely cured (to the extent curable as provided in subsection (b) above), then the Authority shall have the right, in

addition to any other rights and remedies available at law or equity, which shall not be limited, to immediately terminate this Agreement upon written notice to the Operator.

(d) Upon termination of this Agreement, the Authority will use its best efforts to engage a replacement operator to provide Rail Freight Service on the Authority's rail lines. The Operator agrees to fully cooperate with the Authority in transitioning operations on the Authority's rail lines to the replacement operator. In the event no replacement operator can be engaged by the Authority, and in the event the Railroad Premises are abandoned by the Authority by reason of such termination, the Operator shall cooperate fully with the Authority in settling any and all claims sought by any party as a result. Furthermore, in the event such replacement operator must be subsidized by the Authority, and this Agreement was terminated by Authority for any reason above, then the Authority will bill the Operator for the subsidy amount and the Operator shall remit payment to the Authority within thirty (30) days of the date of the invoice.

Section 28. Force Majeure. In no event shall any party be deemed in default of this Agreement for any loss, damage, injury, delay, failure or inability to meet all or any portion of its commitments hereunder caused by or arising from any cause which is unavoidable or beyond its reasonable control, including without limitation, war, hostilities, invasion, insurrection, riot, terrorist activities the order of any competent civil or military government, explosion, fire, strikes, lockouts, AAR service orders, actions of other carriers that materially affects Operator's operations, labor disputes, perils of water including floods, ice, breakdowns, Acts of God including storms or other adverse weather conditions, washouts, wrecks or derailments that cannot be removed within thirty (30) days pursuant to Section 15(d) or other causes of a similar or dissimilar nature which wholly or partially prevent a party from carrying out the terms of this Agreement; provided that such party experiencing a force majeure event shall promptly give to the other party written notice that the disabling effect of such force majeure shall be eliminated as soon as and to the extent reasonably possible and that either party shall have the right to determine and settle any strike, lockout and labor dispute in which the party may be involved in its sole discretion. In the event that a party's performance is suspended in whole or in part by force majeure, its obligation to perform hereunder shall be suspended or commensurately reduced for the duration of the force majeure and for such additional reasonable period as may be required because of the existence of the force majeure. In the event that a party's performance hereunder is suspended by force majeure and cannot be resumed within a reasonable period of time, either party shall have the right to seek STB authorization to abandon and/or seek a discontinuance of service with respect to that portion of the Railroad Premises adversely affected by the force majeure condition and upon receipt of such authorization to terminate this Agreement with respect thereto.

Section 29. Discontinuance of Operations. Upon expiration or termination of this Agreement for any reason, the Operator shall immediately file for discontinuance with the STB and shall cease operations on the Railroad Premises promptly upon grant of discontinuance authority or qualification of a successor pursuant to a change in operator filing with the STB, and shall assist the Authority in making the transition to a new operator. Notwithstanding the foregoing, in the event the Operator contests any asserted termination by reason of default and

demand arbitration in accordance with Section 34 of this Agreement, the Operator shall not be required to file for discontinuance of Rail Freight Service until such date as such arbitration has been concluded and a determination has been rendered by the arbitrators that the Operator has defaulted under this Agreement. At expiration or termination of this Agreement, the Operator shall peacefully deliver up and surrender possession of the Railroad Premises to the Authority in the condition described in Section 11 of this Agreement.

Section 30. Notice. Any notice required or provided for in this Agreement shall be sufficient if sent by certified mail postage prepaid, or commercial overnight delivery service requiring execution of a receipt indicating delivery, as follows:

To the Authority:

SEDA-COG JOINT RAIL AUTHORITY
201 Furnace Road
Lewisburg, PA 17837
Attn: Executive Director

To the Operator:

or to such other address as either party may, from time to time designate to the other in writing.

Section 31. Regulatory Jurisdiction. This Agreement is subject to the orders, rules and regulations of appropriate regulatory authorities, including the STB and the PUC, having jurisdiction over the Operator and the Authority. In the event that either party determines that it is necessary to participate in an administrative or judicial proceeding or to take a position before any governmental body which may affect the interests of the other or the Rail Freight Service provided hereunder, each party shall provide the other party reasonable advance notice of its intent to do so and the nature of the interest or position it will assert. In such case, the parties shall use their best efforts to communicate and coordinate their participation and/or positions.

Section 32. Access to Records. The Operator shall establish and maintain all necessary accounting services appropriate to conducting business as a railroad and complying with its obligations under this Agreement. The Operator shall maintain sufficient records and reports to permit the Authority to fully verify statements of traffic, revenue, and expenditures furnished to the Authority by the Operator. The Authority shall maintain the information contained in such records and reports in confidence to the extent possible under applicable law and under Section 22 of this Agreement. The Authority, or its agents, including the Operating Agreement Consultant, shall have full access to these records and reports during normal business hours and the right to make copies at the Operator's office upon 48 hours written notice, duly given to the Operator.

Section 33. Labor Conditions. If during the Term of this Agreement or renewal thereof, any labor protective conditions should be imposed as a result of an STB order or pursuant to the federal Railway Labor Act, 45 U.S.C. § 151 et seq., as amended and supplemented, the Operator agrees to fully indemnify the Authority from the costs of such labor protective conditions.

Section 34. Dispute Resolution. The Operator and the Authority agree that each will, in good faith, and prior to submitting any dispute to arbitration under this Section, present any issue which may give rise to a potential dispute under this Agreement to the Authority's Operating Agreement Committee for consideration. Upon hearing the relevant facts and circumstances, the Operating Agreement Committee will in good faith attempt to resolve the issue in a timely manner. In the event a dispute arises between the Authority and the Operator that cannot be resolved by the Operating Agreement Committee within ninety (90) days of the date such dispute was submitted to the Operating Agreement Committee for review, then such dispute shall be settled by arbitration in Lewisburg, Pennsylvania, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The dispute will be submitted to three (3) arbitrators, one of whom shall be appointed by the Authority and the other by the Operator. The third arbitrator shall be appointed by the first two arbitrators, and if they cannot agree, by a Union County Court of Common Pleas judge. The decision of the arbitrators shall be final and conclusive upon the parties hereto, and each party agrees that upon the rendering of such decision, it will conform to and comply with such decision. The decision of the arbitrators shall be enforceable in a court of competent jurisdiction. Each party will pay the costs of its witnesses, attorneys, and the arbitrator appointed by it, and the cost of the third arbitrator will be borne equally by the parties. The arbitrators shall not have the power to award consequential or punitive damages or to determine violations of criminal law or antitrust law. Furthermore, the arbitrators shall have the right to refer any rail regulatory issues to the STB for an advisory opinion. Notwithstanding the foregoing, if both the Operator and the Authority agree, prior to submitting the dispute to arbitration, but after the dispute shall have been reviewed by the Operating Agreement Committee, the dispute may be submitted to non-binding mediation for resolution. Should the parties elect to mediate the dispute, then the parties will set forth their mutual agreement to mediate in writing, and the mediator, time and location of the mediation, will be determined by the mutual agreement of the parties and set forth in such writing. Both parties shall share equally in the cost of mediation.

Section 35. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. However, this provision shall not be construed to confer on the Operator any right or authority to assign all or any part of this Agreement without the Authority's prior consent. It is expressly agreed that the Authority shall have the right to assign its interest in this Agreement to a lending institution for purposes of financial security.

Section 36. Entire Agreement. This Agreement, including any exhibits or other agreements expressly incorporated herein by reference, contains the entire understanding of the parties with respect to its subject matter. It is expressly understood that this Agreement shall supersede and replace any other agreements for Rail Freight Service on the Railroad Premises. No oral statement or prior written matter shall have any force or effect. The

parties hereby acknowledge that they are not relying on any representations or agreements other than those contained in this Agreement. This Agreement shall not be amended or modified except by a written instrument executed by the Operator and the Authority.

Section 37. Severability. If any term, covenant, condition or provision (or part thereof) of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be judicially determined to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. It is understood that the Authority shall not be subject to any liability to the Operator in the event any term herein is found to be invalid or unenforceable.

Section 38. Nondiscrimination. The Operator shall comply with the nondiscrimination clause attached hereto and incorporated herein as **Exhibit E**.

Section 39. Applicable Law. This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties hereto have caused this Operating Agreement to be executed by themselves or by their respective duly authorized officers as of the date and year first above written.

ATTEST:

SEDA-COG JOINT RAIL AUTHORITY

By: _____

By: _____

ATTEST:

OPERATOR:

By: _____

By: _____

Exhibit A

Description of Railroad Premises

The Railroad Premises shall include all of the property of every kind and description, real, personal, and mixed, including the right-of-way, roadbed, track, track materials, poles, wire lines, signals, and other facilities, buildings, and appurtenances for the following lines, except as otherwise defined or provided for in this Agreement. These Railroad Premises are more fully described in certain deeds from the Consolidated Rail Corporation to the Authority and include the following:

Track Segments in Blair-Centre-Clinton Counties (currently referred to as the “Nittany & Bald Eagle Rail Line”):

Bald Eagle Branch from M.P. 1.0W to M.P. 54.3 (Lock Haven to Tyrone)
Gray Yard adjacent to M.P. 222.2 to M.P. 223.2 (Norfolk Southern Pittsburgh line M.P. numbers)
Lock Haven Yard adjacent to M.P. 194.3 to M.P. 195.1 (Norfolk Southern Buffalo line M.P. numbers)
Pleasant Gap Industrial Track from M.P. 0.0 to M.P. 3.0
Bellefonte Branch from M.P. 30.8 to M.P. 42.5 (Milesburg to Lemont)
Bellefonte Sunnyside Yard M.P. 32.4 to M.P. 33.1
“Shop” Track from M.P. 0.0 to M.P. 1.0
All operating remnants of the Mill Hall Industrial Track (N&BE main line M.P. 51.9)
Mill Hall Industrial Track - starting at M.P. 13 (Draketown) and extending east 1.9 miles to end of track (Castanea)

Track Segments in Northumberland-Montour-Columbia-Luzerne Counties (currently referred to as the “North Shore Rail Line”):

North Shore Railroad from M.P. 213.45 to M.P. 176.97
Berwick Yard M.P. 178.7
BIDA Complex from NSHR M.P. 176 up the Hill Track to and including all track within the BIDA Complex

Track Segments in Northumberland County (currently referred to as the “Shamokin Valley Rail Line”):

Shamokin Valley Main from M.P. 0.0 to M.P. 25.2
Carbon Run Branch from M.P. 0.0 to M.P. 1.5
SAIC Industrial Park Track from M.P. 0.0 to M.P. 1.0

Track Segments in Clinton-Lycoming Counties (currently referred to as the “Lycoming Valley Rail Line”):

Grumman Lead from M.P. 199 to M.P. 200
Lycoming Secondary from M.P. 199.8 to M.P. 181.1
Newberry Yard M.P. 181.1 to M.P. 179.4
Avis branch from M.P. 179.4 to M.P. 166.0 at Avis
All operating remnants of the Williamsport Industrial Track
Antlers Running Track M.P. 179.4 to M.P. 178.7

Track Segments in Mifflin County (currently referred to as the “Juniata Valley Rail Line”):

Lewistown Yard M.P. 0.2
Maitland Industrial Track from M.P. 0.0 to M.P. 7.4
Burnham Branch from M.P. 0.0 to M.P. 4.0
MCIDC Plaza Track
West Park Track - Granville Township from the NS Pittsburgh Main north to and including all track within the MCIDC West Park

Exhibit B

Authority Track Maintenance Standards and Guidelines for Asset Upgrades

SEDA-COG JOINT RAIL AUTHORITY Track Maintenance and Safety Standards

CFR Title 49: Transportation, PART 213—Modified TRACK SAFETY STANDARDS

The following subparts have been extracted from the U.S. Department of Transportation's Code of Federal Regulations Title 49: Track Safety Standards - Part 213 and have been modified to provide enhanced track standards to be utilized by the Operator/s for the Railroad Premises owned by the SEDA-COG Joint Rail Authority (JRA). Applicable Subparts that have been modified from the FRA Track Safety Standards for the Authority include the following Subparts: B-Roadbed, C-Track Geometry, D-Track Structure, and E-Track Appliances and Track Related Devices. An additional subpart, JRA Maintenance of Way General Requirements, has been added to include general items pertaining to the Operators' responsibilities to the Authority under the Agreement regarding reporting and Operators' response to identified defects.

Applicable Subparts have been identified with the prefix lettering JRA to distinguish the Subpart from the FRA Track Safety Standards. FRA Subparts not listed or modified have not been incorporated into this document for the sake of brevity. All other FRA Track Safety Standard Subparts, any other Federal, State, or local regulatory requirements and AREMA track standards shall apply to the Railroad Premises and shall be followed by the Operators in the maintenance thereof.

FRA Section Contents Modified for the SEDA-COG Joint Rail Authority:

Subpart A—JRA Maintenance of Way General Requirements

~~[§ JRA 200 Operator's Responsibilities.](#)~~

~~[§ JRA 201 Reporting.](#)~~

~~[§ JRA 202 Annual M/W Plan.](#)~~

~~[§ JRA 203 Response to Identified Defects.](#)~~

Subpart B—Roadbed

[§ JRA 213.31 Scope.](#)

[§ JRA 213.33 Drainage.](#)

[§ JRA 213.37 Vegetation.](#)

Subpart C—Track Geometry

[§ JRA 213.51 Scope.](#)

[§ JRA 213.53 Gage.](#)

[§ JRA 213.55 Alinement.](#)

[§ JRA 213.57 Curves; elevation and speed limitations.](#)

[§ JRA 213.59 Elevation of curved track; runoff.](#)

[§ JRA 213.63 Track surface.](#)

Subpart D—Track Structure

[§ JRA 213.101 Scope.](#)

[§ JRA 213.103 Ballast; general.](#)

[§ JRA 213.109 Crossties.](#)

[§ JRA 213.110 Gage restraint measurement systems.](#)

[§ JRA 213.113 Defective rails.](#)
[§ JRA 213.115 Rail end mismatch.](#)
[§ JRA 213.119 Continuous welded rail \(CWR\); general.](#)
[§ JRA 213.121 Rail joints.](#)
[§ JRA 213.122 Torch cut rail.](#)
[§ JRA 213.123 Tie plates.](#)
[§ JRA 213.127 Rail fastening systems.](#)
[§ JRA 213.133 Turnouts and track crossings generally.](#)
[§ JRA 213.135 Switches.](#)
[§ JRA 213.137 Frogs.](#)
[§ JRA 213.139 Spring rail frogs.](#)
[§ JRA 213.141 Self-guarded frogs.](#)
[§ JRA 213.143 Frog guard rails and guard faces; gage.](#)

Subpart E—Track Appliances and Track-Related Devices

[§ JRA 213.201 Scope.](#)
[§ JRA 213.205 Derails.](#)

Subpart A—JRA Maintenance of Way General Requirements

Subpart B—Roadbed

§ JRA 213.31 Scope.

This subpart prescribes minimum requirements for roadbed and areas immediately adjacent to roadbed within the Railroad Premises.

§ JRA 213.33 Drainage.

Each drainage or other water carrying facility under or immediately adjacent to the roadbed shall be maintained and kept free of obstruction to accommodate expected water flow for the area concerned.

Special attention shall be given to maintaining drainage flow away from the track structure at turnouts and grade crossings.

§ JRA 213.37 Vegetation.

Vegetation on railroad property which is on or immediately adjacent to roadbed shall be controlled so that it does not—

- (a) Become a fire hazard to track-carrying structures;
- (b) Obstruct visibility of railroad signs and signals:
 - (1) Along the right-of-way, and
 - (2) At highway-rail crossings;
- (c) Interfere with railroad employees performing normal trackside duties;
- (d) Prevent proper functioning of signal and communication lines; or
- (e) Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

Subpart C—Track Geometry

§ JRA 213.51 Scope.

This subpart prescribes requirements for the gage, alinement, and surface of track, and the elevation of outer rails and speed limitations for curved track.

§ JRA 213.53 Gage.

(a) Gage is measured between the heads of the rails at right-angles to the rails in a plane five-eighths of an inch below the top of the rail head.

(b) Gage shall be within the limits prescribed in the following table—

Class of track	The gage must be at least-	But not more than-
Excepted track	NA	4' 10"
Class 1 track	4' 8"	4' 10"
Class 2 and 3 track	4' 8"	4' 9 ³ / ₄ "
Class 4 and 5 track	4' 8"	4' 9 ¹ / ₂ "

§ JRA 213.55 Alinement.

Alinement may not deviate from uniformity more than the amount prescribed in the following table:

Class of track	Tangent track	Curved track	
	The deviation of the mid-offset from a 62 foot line ¹ may not be more than – (inches)	The deviation of the mid-ordinate from a 31 foot chord ² may not be more than – (inches)	The deviation of the mid-ordinate from a 62 foot chord ² may not be more than – (inches)
Class 1 track	3	NA ³	3
Class 2 track	2	NA ³	2
Class 3 track	1 ¹ / ₂	1 ¹ / ₄	1 ¹ / ₂
Class 4 track	1 ¹ / ₂	1	1 ¹ / ₂
Class 5 track	³ / ₄	¹ / ₂	³ / ₄

¹The ends of the line shall be at points on the gage side of the line rail, five-eighths of an inch below the top of the railhead. Either rail may be used as the line rail, however, the same rail shall be used for the full length of that tangential segment of track.

²The ends of the chord shall be at points on the gage side of the outer rail, five-eighths of an inch below the top of the railhead.

³N/A- Not Applicable.

§ JRA 213.57 Curves; elevation and speed limitations.

(a) The maximum crosslevel on the outside rail of a curve may not be more than **6** inches on track Classes 1 and 2; and **6** inches on Classes 3 through 5. Except as provided in §213.63, the outside rail of a curve may not be lower than the inside rail.

(b)(1) The maximum allowable operating speed for each curve is determined by the following formula—

$$V_{\max} = \sqrt{\frac{E_a + 3}{0.0007D}}$$

Where—

V_{\max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches).¹

¹ Actual elevation for each 155 foot track segment in the body of the curve is determined by averaging the elevation for 10 points through the segment at 15.5 foot spacing. If the curve length is less than 155 feet, average the points through the full length of the body of the curve.

D = Degree of curvature (degrees).²

² Degree of curvature is determined by averaging the degree of curvature over the same track segment as the elevation.

(2) Table 1 of Appendix A is a table of maximum allowable operating speed computed in accordance with this formula for various elevations and degrees of curvature.

(c)(1) For rolling stock meeting the requirements specified in paragraph (d) of this section, the maximum operating speed for each curve may be determined by the following formula—

$$V_{\max} = \sqrt{\frac{E_a + 4}{0.0007D}}$$

Where—

V_{\max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches).¹

D = Degree of curvature (degrees).²

(2) Table 2 of Appendix A is a table of maximum allowable operating speed computed in accordance with this formula for various elevations and degrees of curvature.

§ JRA 213.59 Elevation of curved track; runoff.

(a) If a curve is elevated, the full elevation shall be provided throughout the curve, unless physical conditions do not permit. If elevation runoff occurs in a curve, the actual minimum elevation shall be used in computing the maximum allowable operating speed for that curve under §213.57(b).

(b) Elevation runoff shall be at a uniform rate, within the limits of track surface deviation prescribed in §213.63, and it shall extend at least the full length of the spirals. If physical conditions do not permit a spiral long enough to accommodate the minimum length of runoff, part of the runoff may be on tangent track.

§ JRA 213.63 Track surface.

The Operators shall maintain the surface of its track within the limits prescribed in the following table:

Track surface	Class of track				
	1 (inches)	2 (inches)	3 (inches)	4 (inches)	5 (inches)
The runoff in any 31 feet of rail at the end of a raise may not be more than.....	3 ½	3	2	1 ½	1
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than.....	2¾	2¾	2¼	2	1¼
The deviation from zero crosslevel at any point on tangent or reverse crosslevel elevation on curves may not be more than.....	3	2	1¾	1¼	1
The difference in crosslevel between any two points less than 62 feet apart may not be more than* ¹ ₂	3	2¼	2	1¾	1½
*Where determined by engineering decision prior to the promulgation of this rule, due to physical restrictions on spiral length and operating practices and experience, the variation in crosslevel on spirals per 31 feet may not be more than.....	2	1¾	1¼	1	¾

¹Except as limited by § 213.57(a), where the elevation at any point in a curve equals **or exceeds** 6 inches, the difference in crosslevel within 62 feet between that point and a point with greater elevation may not be more than 1½ inches.

²However, to control harmonics on Class 2 through 5 jointed track with staggered joints, the crosslevel differences shall not exceed 1¼ inches in all of six consecutive pairs of joints, as created by 7 low joints. Track with joints staggered less than 10 feet shall not be considered as having staggered joints. Joints within the 7 low joints outside of the regular joint spacing shall not be considered as joints for purposes of this footnote.

Subpart D—Track Structure

§ JRA 213.101 Scope.

This subpart prescribes minimum requirements for ballast, crossties, track assembly fittings, and the physical conditions of rails.

§ JRA 213.103 Ballast; general.

Unless it is otherwise structurally supported, all track shall be supported by material which will —

- (a) Transmit and distribute the load of the track and railroad rolling equipment to the subgrade;
- (b) Restrain the track laterally, longitudinally, and vertically under dynamic loads imposed by railroad rolling equipment and thermal stress exerted by the rails;
- (c) Provide adequate drainage for the track; and
- (d) Maintain proper track crosslevel, surface, and alinement.

§ JRA 213.109-A Crossties.

- (a) Crossties shall be made of a material to which rail can be securely fastened.
- (b) Each 39 foot segment of track shall have—
 - (1) A sufficient number of crossties which in combination provide effective support that will—
 - (i) Hold gage within the limits prescribed in §213.53(b);
 - (ii) Maintain surface within the limits prescribed in §213.63; and
 - (iii) Maintain alinement within the limits prescribed in §213.55.
 - (2) The minimum number and type of crossties specified in paragraphs (c) and (d) of this section effectively distributed to support the entire segment; and
 - (3) At least one crosstie of the type specified in paragraphs (c) and (d) of this section that is located at a joint location as specified in paragraph (f) of this section.
- (c) Each 39 foot segment of: Class 1 track shall have seven crossties; Classes 2 and 3 track shall have eleven crossties; and Classes 4 and 5 track shall have 14 crossties, which are not:
 - (1) Broken or split through;
 - (2) Split or otherwise impaired to the extent the crossties will allow the ballast to work through, or will not hold spikes or rail fasteners in place;

(3) So deteriorated that the tie plate or base of rail can move laterally more than 1/2 inch relative to the crossties; or

(4) Cut by the tie plate through more than 10 percent of a ties' thickness.

(d) Each 39 foot segment of track shall have the minimum number and type of crossties as indicated in the following table:

Class of track	Tangent track and curves less than or equal to 2 degrees	Turnouts and curved track over 2 degrees
Class 1 track	7	8
Class 2 track	11	13
Class 3 track	11	13
Class 4 and 5 track	14	15

(e) Crossties counted to satisfy the requirements set forth in the table in paragraph (d) of this section shall not be—

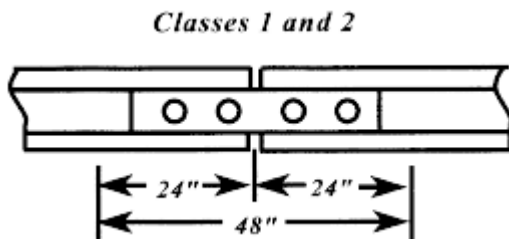
(1) Broken or split through;

(2) Split or otherwise impaired to the extent the crossties will allow the ballast to work through, or will not hold spikes or rail fasteners in place;

(3) So deteriorated that the tie plate or base of rail can move laterally 1/2 inch relative to the crossties; or

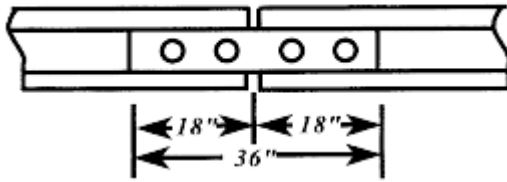
(4) Cut by the tie plate through more than 10 percent of a crosstie's thickness.

(f) Class 1 and Class 2 track shall have one crosstie whose centerline is within 24 inches of each rail joint location, and Classes 3 through 5 track shall have one crosstie whose centerline is within 18 inches of each rail joint location or, two crossties whose centerlines are within 24 inches either side of each rail joint location. The relative position of these ties is described in the following diagrams:

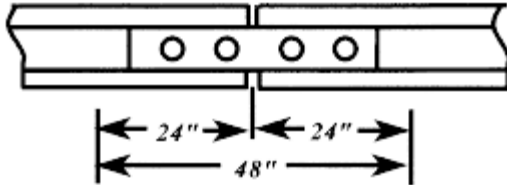


Each rail joint in Classes 1 and 2 track shall be supported by at least one crosstie specified in paragraphs (c) and (d) of this section whose centerline is within 48&inch; shown above.

Classes 3 through 5



Each rail joint in Classes 3 through 5 track shall be supported by either at least one crosstie specified in paragraphs (c) and (d) of this section whose centerline is within 36&inch; shown above, or:



Two crossties, one on each side of the rail joint, whose centerlines are within 24&inch; of the rail joint location shown above.

Curves greater than 2 degrees on Classes 2 through 5 track shall have the high side joints supported by effective ties on each side of the rail joint.

(g) For track constructed without crossties, such as slab track, track connected directly to bridge structural components, and track over servicing pits, the track structure shall meet the requirements of paragraphs (b)(1)(i), (ii), and (iii) of this section.

§ JRA 213.109-B Switch Timber.

§ JRA 213.113 Defective rails.

(a) When the Operators learn, through inspection or otherwise, that a rail in that track contains any of the defects listed in the following table, a person designated under §213.7 shall determine whether or not the track may continue in use. If he determines that the track may continue in use, operation over the defective rail is not permitted until—

- (1) The rail is replaced; or
- (2) The remedial action prescribed in the table is initiated.

REMEDIAL ACTION

Defect	Length of defect (inch)		Percent of rail head cross-sectional area weakened by defect		If defective rail is not replaced, take the remedial action prescribed in note
	More than	But not more than	Less than	But not less than	
Transverse fissure			70 100	5 70 100	B. A2. A.
Composed fissure			70 100	5 70 100	B. A2. A.
Detail fracture Engine horn fracture Defective weld			25 50 100	5 25 80 100	C. D. [A2] or [E and H]. [A] or [E and H].
Horizontal split head Vertical split head Split web Flipped rail Head web separation	1 2 4 (¹)	2 4 (¹)			H and F. I and G. B. A.
Bolt hole crack	1/2 1 1 1/2 (¹)				H and F. H and G. B. A.
Broken base	1 6				D. [A] or [E and H].
Ordinary break					A or E.
Damaged rail					D.
Flattened rail	Depth > 3/8 and Length > 8				H.

(¹) Break out in rail head.

Notes A. Assign person designated under §213.7 to visually supervise each operation over defective rail.

A2. Assign person designated under §213.7 to make visual inspection. After a visual inspection, that person may authorize operation to continue without continuous visual supervision at a maximum of 10 m.p.h. for up to 24 hours prior to another such visual inspection or replacement or repair of the rail.

B. Limit operating speed over defective rail to that as authorized by a person designated under §213.7(a), who has at least one year of supervisory experience in railroad track maintenance. The operating speed cannot be over 30 m.p.h. or the maximum allowable speed under §213.9 for the class of track concerned, whichever is lower.

C. Apply joint bars bolted only through the outermost holes to defect within 20 days after it is determined to continue the track in use. In the case of Classes 3 through 5 track, limit operating speed over defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under §213.9 for the class of track concerned, whichever is lower. When a search for internal rail defects is conducted under §213.237, and defects are discovered in Classes 3 through 5 which require remedial action C, the operating speed shall be limited to 50 m.p.h., or the maximum allowable speed under §213.9 for the class of track concerned, whichever is lower, for a period not to exceed 4 days. If the defective rail has not been removed from the track or a permanent repair made within 4 days of the discovery, limit operating speed over the defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under §213.9 for the class of track concerned, whichever is lower.

D. Apply joint bars bolted only through the outermost holes to defect within 10 days after it is determined to continue the track in use. In the case of Classes 3 through 5 track, limit operating speed over the defective rail to 30 m.p.h. or less as authorized by a person designated under §213.7(a), who has at least one year of supervisory experience in railroad track maintenance, until joint bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under §213.9 for the class of track concerned, whichever is lower.

E. Apply joint bars to defect and bolt in accordance with §213.121(d) and (e).

F. Inspect rail 90 days after it is determined to continue the track in use.

G. Inspect rail 30 days after it is determined to continue the track in use.

H. Limit operating speed over defective rail to 50 m.p.h. or the maximum allowable speed under §213.9 for the class of track concerned, whichever is lower.

I. Limit operating speed over defective rail to 30 m.p.h. or the maximum allowable speed under §213.9 for the class of track concerned, whichever is lower.

(b) As used in this section—

(1) *Transverse fissure* means a progressive crosswise fracture starting from a crystalline center or nucleus inside the head from which it spreads outward as a smooth, bright, or dark, round or oval surface substantially at a right angle to the length of the rail. The distinguishing features of a transverse fissure from other types of fractures or defects are the crystalline center or nucleus and the nearly smooth surface of the development which surrounds it.

(2) *Compound fissure* means a progressive fracture originating in a horizontal split head which turns up or down in the head of the rail as a smooth, bright, or dark surface progressing until substantially at a right angle to the length of the rail. Compound fissures require examination of both faces of the fracture to locate the horizontal split head from which they originate.

(3) *Horizontal split head* means a horizontal progressive defect originating inside of the rail head, usually one-quarter inch or more below the running surface and progressing horizontally in all directions, and generally accompanied by a flat spot on the running surface. The defect appears as a crack lengthwise of the rail when it reaches the side of the rail head.

(4) *Vertical split head* means a vertical split through or near the middle of the head, and extending into or through it. A crack or rust streak may show under the head close to the web or pieces may be split off the side of the head.

(5) *Split web* means a lengthwise crack along the side of the web and extending into or through it.

(6) *Piped rail* means a vertical split in a rail, usually in the web, due to failure of the shrinkage cavity in the ingot to unite in rolling.

(7) *Broken base* means any break in the base of the rail.

(8) *Detail fracture* means a progressive fracture originating at or near the surface of the rail head. These fractures should not be confused with transverse fissures, compound fissures, or other defects which have internal origins. Detail fractures may arise from shelly spots, head checks, or flaking.

(9) *Engine burn fracture* means a progressive fracture originating in spots where driving wheels have slipped on top of the rail head. In developing downward they frequently resemble the compound or even transverse fissures with which they should not be confused or classified.

(10) *Ordinary break* means a partial or complete break in which there is no sign of a fissure, and in which none of the other defects described in this paragraph (b) are found.

(11) *Damaged rail* means any rail broken or injured by wrecks, broken, flat, or unbalanced wheels, slipping, or similar causes.

(12) *Flattened rail* means a short length of rail, not at a joint, which has flattened out across the width of the rail head to a depth of 3/8 inch or more below the rest of the rail. Flattened rail occurrences have no repetitive regularity and thus do not include corrugations, and have no apparent localized cause such as a weld or engine burn. Their individual length is relatively short, as compared to a condition such as head flow on the low rail of curves.

(13) *Bolt hole crack* means a crack across the web, originating from a bolt hole, and progressing on a path either inclined upward toward the rail head or inclined downward toward the base. Fully developed bolt hole cracks may continue horizontally along the head/web or base/web fillet, or they may progress into and through the head or base to separate a piece of the rail end from the rail. Multiple cracks occurring in one rail end are considered to be a single defect. However, bolt hole cracks occurring in adjacent rail ends within the same joint must be reported as separate defects.

(14) *Defective weld* means a field or plant weld containing any discontinuities or pockets, exceeding 5 percent of the rail head area individually or 10 percent in the aggregate, oriented in or near the transverse plane, due to incomplete penetration of the weld metal between the rail ends, lack of fusion between weld and rail end metal, entrainment of slag or sand, under-bead or other shrinkage cracking, or fatigue cracking. Weld defects may originate in the rail head, web, or base, and in some cases, cracks may progress from the defect into either or both adjoining rail ends.

(15) *Head and web separation* means a progressive fracture, longitudinally separating the head from the web of the rail at the head fillet area.

§ JRA 213.115 Rail end mismatch.

<i>Class of track</i>	<i>Any mismatch of rails at joints may not be more than the following -</i>	
	<i>On the tread of the rail ends (inches)</i>	<i>On the gage side of the rail ends (inches)</i>
Class 1 track	$\frac{1}{4}$	$\frac{1}{4}$
Class 2 track	$\frac{1}{4}$	$\frac{3}{16}$
Class 3 track	$\frac{3}{16}$	$\frac{3}{16}$
Class 4 and 5 track	$\frac{1}{8}$	$\frac{1}{8}$

§ JRA 213.119 Continuous welded rail (CWR); general.

Each Operator with track constructed of CWR shall have in effect and comply with written procedures which address the installation, adjustment, maintenance, and inspection of CWR, and a training program for the application of those procedures, which shall be submitted to the Federal Railroad Administration. FRA reviews each plan for compliance with the following—

(a) Procedures for the installation and adjustment of CWR which include—

(1) Designation of a desired rail installation temperature range for the geographic area in which the CWR is located; and

(2) De-stressing procedures/methods which address proper attainment of the desired rail installation temperature range when adjusting CWR.

(b) Rail anchoring or fastening requirements that will provide sufficient restraint to limit longitudinal rail and crosstie movement to the extent practical, and specifically addressing CWR rail anchoring or fastening patterns on bridges, bridge approaches, and at other locations where possible longitudinal rail and crosstie movement associated with normally expected train-induced forces, is restricted.

(c) Procedures which specifically address maintaining a desired rail installation temperature range when cutting CWR including rail repairs, in-track welding, and in conjunction with adjustments made in the area of tight track, a track buckle, or a pull-apart. Rail repair practices shall take into consideration existing rail temperature so that—

(1) When rail is removed, the length installed shall be determined by taking into consideration the existing rail temperature and the desired rail installation temperature range; and

(2) Under no circumstances should rail be added when the rail temperature is below that designated by paragraph (a)(1) of this section, without provisions for later adjustment.

(d) Procedures which address the monitoring of CWR in curved track for inward shifts of alignment toward the center of the curve as a result of disturbed track.

(e) Procedures which control train speed on CWR track when—

(1) Maintenance work, track rehabilitation, track construction, or any other event occurs which disturbs the roadbed or ballast section and reduces the lateral or longitudinal resistance of the track; and

(2) In formulating the procedures under this paragraph (e), the track owner shall—

(i) Determine the speed required, and the duration and subsequent removal of any speed restriction based on the restoration of the ballast, along with sufficient ballast re-consolidation to stabilize the track to a level that can accommodate expected train-induced forces. Ballast re-consolidation can be achieved through either the passage of train tonnage or mechanical stabilization procedures, or both; and

(ii) Take into consideration the type of cross-ties used.

(f) Procedures which prescribe when physical track inspections are to be performed to detect buckling prone conditions in CWR track. At a minimum, these procedures shall address inspecting track to identify—

(1) Locations where tight or kinky rail conditions are likely to occur;

(2) Locations where track work of the nature described in paragraph (e)(1) of this section have recently been performed; and

(3) In formulating the procedures under this paragraph (f), the track owner shall—

(i) Specify the timing of the inspection; and

(ii) Specify the appropriate remedial actions to be taken when buckling prone conditions are found.

(g) The Operators shall have in effect a comprehensive training program for the application of these written CWR procedures, with provisions for periodic re-training, for those individuals designated under §213.7 of this part as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track.

(h) The Operators shall prescribe record keeping requirements necessary to provide an adequate history of track constructed with CWR. At a minimum, these records must include:

(1) Rail temperature, location, and date of CWR installations. This record shall be retained for at least one year; and

(2) A record of any CWR installation or maintenance work that does not conform with the written procedures. Such record shall include the location of the rail and be maintained until the CWR is brought into conformance with such procedures.

(i) As used in this section—

(1) *Adjusting/de-stressing* means the procedure by which a rail's temperature is re-adjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.

(2) *Buckling incident* means the formation of a lateral mis-alinement sufficient in magnitude to constitute a deviation from the Class 1 requirements specified in §213.55 of this part. These normally occur when rail temperatures are relatively high and are caused by high longitudinal compressive forces.

(3) *Continuous welded rail (CWR)* means rail that has been welded together into lengths exceeding 400 feet.

(4) *Desired rail installation temperature range* means the rail temperature range, within a specific geographical area, at which forces in CWR should not cause a buckling incident in extreme heat, or a pull-apart during extreme cold weather.

(5) *Disturbed track* means the disturbance of the roadbed or ballast section, as a result of track maintenance or any other event, which reduces the lateral or longitudinal resistance of the track, or both.

(6) *Mechanical stabilization* means a type of procedure used to restore track resistance to disturbed track following certain maintenance operations. This procedure may incorporate dynamic track stabilizers or ballast consolidators, which are units of work equipment that are used as a substitute for the stabilization action provided by the passage of tonnage trains.

(7) *Rail anchors* means those devices which are attached to the rail and bear against the side of the crosstie to control longitudinal rail movement. Certain types of rail fasteners also act as rail anchors and control longitudinal rail movement by exerting a downward clamping force on the upper surface of the rail base.

(8) *Rail temperature* means the temperature of the rail, measured with a rail thermometer.

(9) *Tight/kinky rail* means CWR which exhibits minute alinement irregularities which indicate that the rail is in a considerable amount of compression.

(10) *Train-induced forces* means the vertical, longitudinal, and lateral dynamic forces which are generated during train movement and which can contribute to the buckling potential.

(11) *Track lateral resistance* means the resistance provided to the rail/crosstie structure against lateral displacement.

(12) *Track longitudinal resistance* means the resistance provided by the rail anchors/rail fasteners and the ballast section to the rail/crosstie structure against longitudinal displacement.

§ JRA 213.121 Rail joints.

(a) Each rail joint, insulated joint, and compromise joint shall be of a structurally sound design and dimensions for the rail on which it is applied.

(b) If a joint bar on Classes 3 through 5 track is cracked, broken, or because of wear allows excessive vertical movement of either rail when all bolts are tight, it shall be replaced.

(c) If a joint bar is cracked or broken between the middle two bolt holes it shall be replaced.

(d) In the case of conventional jointed track, each rail shall be bolted with at least two bolts at each joint in Classes 2 through 5 track, and with at least one bolt in Class 1 track.

(e) In the case of continuous welded rail track, each rail shall be bolted with at least two bolts at each joint.

(f) Each joint bar shall be held in position by track bolts tightened to allow the joint bar to firmly support the abutting rail ends and to allow longitudinal movement of the rail in the joint to accommodate expansion and contraction due to temperature variations. When no-slip, joint-to-rail contact exists by design, the requirements of this paragraph do not apply. Those locations, when over 400 feet in length, are considered to be continuous welded rail track and shall meet all the requirements for continuous welded rail track prescribed in this part.

(g) No rail shall have a bolt hole which is torch cut or burned in Classes 2 through 5 track.

(h) No joint bar shall be reconfigured by torch cutting in Classes 3 through 5 track.

§ JRA 213.122 Torch cut rail.

(a) Except as a temporary repair in emergency situations, no rail having a torch cut end shall be used in Classes 3 through 5 track. When a rail end is torch cut in emergency situations, train speed over that rail end shall not exceed the maximum allowable for Class 2 track. For existing torch cut rail ends in Classes 3 through 5 track the following shall apply—

(1) Within one year of July 1, 2007, all torch cut rail ends in Class 5 track shall be removed;

(2) Within two years of July 1, 2007, all torch cut rail ends in Class 4 track shall be removed; and

(3) Within one year of July 1, 2007, all torch cut rail ends in Class 3 track over which regularly scheduled passenger trains operate, shall be inventoried by the track owner.

(b) Following the expiration of the time limits specified in paragraphs (a)(1), (2), and (3) of this section, any torch cut rail end not removed from Classes 4 and 5 track, shall be removed within 30 days of discovery. Train speed over that rail end shall not exceed the maximum allowable for Class 2 track until removed.

§ JRA 213.123 Tie plates.

(a) In Classes 2 through 5 track where timber cross-ties are in use there shall be tie plates under the running rails on all ties.

(b) In Classes 3 through 5 track no metal object which causes a concentrated load by solely supporting a rail shall be allowed between the base of the rail and the bearing surface of the tie plate.

§ JRA 213.127 Rail fastening systems.

Track shall be fastened by a system of components which effectively maintains gage within the limits prescribed in §213.53(b). Each component of each such system shall be evaluated to determine whether gage is effectively being maintained.

§ JRA 213.133 Turnouts and track crossings generally.

(a) In turnouts and track crossings, the fastenings shall be intact and maintained so as to keep the components securely in place. Also, each switch, frog, and guard rail shall be kept free of obstructions that may interfere with the passage of wheels.

(b) Classes 3 through 5 track shall be equipped with rail anchoring through and on each side of track crossings and turnouts, to restrain rail movement affecting the position of switch points and frogs. (c) Each flangeway at turnouts and track crossings shall be at least 1 1/2 inches wide.

(d) Turnouts shall be level laterally and properly anchored.

§ JRA 213.135 Switches.

(a) Switch points shall match flush to the stock rails with full bearing on all plates. Stock rail or switch point (lip) overflow shall be ground periodically to maintain flush closure of the switch point. Each stock rail must be securely seated in switch plates, but care shall be used to avoid canting the stock rail by overtightening the rail braces.

(b) All plates shall lie flat on all switch timber with braces drawn tight and secure without displacing the “seating” of the stock rail.

(b) Each switch point shall fit its stock rail properly, with the switch stand in either of its closed positions to allow wheels to pass the switch point. Lateral and vertical movement of a stock rail in the switch plates or of a switch plate on a tie shall not adversely affect the fit of the switch point to the stock rail. Broken or cracked switch point rails will be subject to the requirements of §213.113, except that where remedial actions C, D, or E require the use of joint bars, and joint bars cannot be placed due to the physical configuration of the switch, remedial action B will govern, taking into account any added safety provided by the presence of reinforcing bars on the switch points.

(c) Each switch shall be maintained so that the outer edge of the wheel tread cannot contact the gage side of the stock rail.

(d) The heel of each switch rail shall be secure with a complete set of all heel block bolts secured and the bolts in each heel shall be kept tight.

(e) Each switch stand and connecting rod shall be securely fastened and operable without excessive lost motion.

(f) Each throw lever shall be maintained so that it cannot be operated with the lock or keeper in place. Keepers shall be tightly secured to the headblock timber so there is no more than 1/8-inch movement in the keepers when the throw lever is manipulated.

(g) Each switch position indicator shall be clearly visible at all times.

(h) Unusually chipped or worn switch points shall be repaired or replaced. Metal flow shall be removed to insure proper closure. Switch points that are worn in excess of six inches back and 5/8" below the running surface of the stock rail shall be replaced if located on Main Line track. Welding switch points at the point of switch to the head separation shall not be permitted on Main Line Track. Switch points may be welded at the points to the head separation by a qualified track welder on Branch Lines, Industrial Tracks, and in Yards. Rail-end battered switch heels may be welded by a qualified track welder on all track.

(i) Immediate protection and prompt corrective action shall be taken if a switch point is found to stand open more than 3/16 – inch or if a switch point is found to have an unprotected flat vertical surface of 5/16-inch or more in width at a depth of 5/8-inch below the running surface of the stock rail.

(j) Tongue & Plain Mate switches, which by design exceed Class 1 and excepted track maximum gage limits, are permitted in Class 1 and excepted track.

(k) All fastenings shall be properly torqued and secured.

§ JRA 213.137 Frogs.

(a) The flangeway depth measured from a plane across the wheel-bearing area of a frog on Class 1 track shall not be less than 1 3/8 inches, or less than 1 1/2 inches on Classes 2 through 5 track.

(b) If a frog point is chipped, broken, or worn more than five-eighths inch down and 6 inches back, operating speed over the frog shall not be more than 10 m.p.h.

(c) If the tread portion of a frog casting is worn down more than three-eighths inch below the original contour, operating speed over that frog shall not be more than 10 m.p.h.

(d) Where frogs are designed as flange-bearing, flangeway depth may be less than that shown for Class 1 if operated at Class 1 speeds.

§ JRA 213.139 Spring rail frogs.

(a) The outer edge of a wheel tread shall not contact the gage side of a spring wing rail.

(b) The toe of each wing rail shall be solidly tamped and fully and tightly bolted.

(c) Each frog with a bolt hole defect or head-web separation shall be replaced.

(d) Each spring shall have compression sufficient to hold the wing rail against the point rail.

(e) The clearance between the holddown housing and the horn shall not be more than one-fourth of an inch.

§ JRA 213.141 Self-guarded frogs.

- (a) The raised guard on a self-guarded frog shall not be worn more than three-eighths of an inch.
- (b) If repairs are made to a self-guarded frog without removing it from service, the guarding face shall be restored before rebuilding the point.

§ JRA 213.143 Frog guard rails and guard faces; gage.

The guard check and guard face gages in frogs shall be within the limits prescribed in the following table—

Class of track	Guard check gage The distance between the gage line of a frog to the guard line ¹ of its guard rail or guarding face, measured across the track at right angles to the gage line ² , may not be less than -	Guard face gage The distance between guard lines ¹ measured across the track at right angles to the gage line ² , may not be more than -
Class 1 track	4' 6 ¹ / ₄ "	4' 5 1/8"
Class 2 track	4' 6 ¹ / ₄ "	4' 5 1/8"
Class 3 and 4 track	4' 6 3/8"	4' 5 1/8"
Class 5 track	4' 6 ¹ / ₂ "	4' 5"

¹A line along that side of the flangeway which is nearer to the center of the track and at the same elevation as the gage line.

²A line 5/8 inch below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure.

**SEDA-COG Joint Rail Authority
Guidelines for Asset Upgrades
February 2014**

This outline seeks to provide guidance to the SEDA-COG Joint Rail Authority (JRA) as it considers investments for upgrades to the Authority's properties. It is not intended to replace the terms and conditions of the Operating Agreement that became effective January 1, 2007, but to be merely explanatory and a guideline for negotiations with the operators. Such negotiations shall take into account the net savings in ordinary repair cost to be realized by the Operators as a result of a JRA asset upgrade. These guidelines may also be useful as a negotiating tool in instances in which the JRA makes an asset upgrade and the Operator is asked to make a contribution, but the Operating Agreement does not require either the JRA to make the improvement nor the Operator to contribute. Further, the list is not comprehensive and is simply a guide. The Rail Authority has sole discretion over the investments it chooses to make.

The overarching, but not binding, principle guiding the Rail Authority's investments in capital projects/upgrades is generally for the JRA to purchase materials and the Operator to provide the labor and equipment for installation. This approach will allow the JRA and Operator to greater impact projects through cost sharing, thus stretching the budget power of each entity and potentially increasing the scope of each project. The JRA's continued participation in a capital upgrade program positively impacts its asset by elevating the quality of the physical plant, its overall value, and safety.

Item	Asset upgrades the JRA may consider:	Operators' Responsibilities under Agreement and related Exhibits:	Benefit
Rail	-Install CWR -Install head-hardened rail -Initial rail grinding -Install rail > 39' long -Continuous rail replacement >160'	-Individual rail replacement or continuous rail replacement <160' using existing rail section or a rail section > than existing. -Subsequent rail grinding	Ensure railroad operations are safe
Joint Removal	- Purchase rail and weld kits	- Provide all labor and equipment for installation.	Reduced maintenance and elimination of problem joints
Crossties	-In-kind crosstie renewal >600 per mile -Replace wooden crossties with steel or composite ties	-In-kind crosstie renewal <600 per mile	Maintain track gauge And longevity of surfacing cycle
Switch Timber	- Purchase timbers replaced in excess of quantity necessary to meet JRA standards.	-Install switch timber to maintain JRA standards.	Maintain safe track in one of the most derailment prone areas of a railroad.
Turnouts	- Purchase new points, frogs and stockrails when heavier rail or undercut	- Provide all labor, equipment, and incidentals for the installation of new materials.	Improve safety in one of the most derailment prone

	<p>stockrails/points are being installed.</p> <ul style="list-style-type: none"> - Purchase frogs/guardrails when existing materials are being replaced with a heavier rail frog and/or rigid bolted, spring rail, or self-guarded is being replaced with a RBM or self-guarded frog. - Purchase new switch steel and OTM when turnout is being upgraded to a heavier weight rail. -A complete Out of Face replacement with a decrease in section weight to be approved by Track Consultant. 	<ul style="list-style-type: none"> - Replace failed turnout components, in-kind, with #1 relay or better, or as approved by Track Consultant. 	<p>areas of a railroad.</p>
OTM	<ul style="list-style-type: none"> -All OTM upgrades would be asset upgrades if related to increase in track speed per timetable. -Replace conventional plates with Pandrol plates & new lag screws and clips. -Add additional bolt assemblies where missing -Initial purchase of new rail anchors to meet AREMA standards 	<ul style="list-style-type: none"> -Replace broken or bent plates with single-shoulder or double-shoulder or bars with same. -Replace ineffective bolt assemblies with new. - Maintain tight joints -Install purchased rail anchors and replace in-kind after initial installation 	<p>Ensure safe track Hold gauge Mitigate derailment potential</p>
Roadbed	<ul style="list-style-type: none"> -Major track realignment or construction of NEW drainage facilities -Construction of new retaining walls - Purchase preformed concrete block systems and/or new poured concrete retaining walls. -Sub-standard subgrade reconstruction -Purchase new pipes for replacement with new culvert(s)and new pipe locations that are deemed necessary by Bridge Engineer / Track Consultant -Major washouts as determined by Bridge Engineer/Track Consultant. 	<ul style="list-style-type: none"> -Ditching, inlet clean-out and repair or replacement of pipe outlets -Repair of existing retaining walls - Provide labor and equipment for construction of new headwalls. -Provide labor and equipment to install preformed concrete blocks or poured concrete retaining walls at existing retaining wall locations. -Repair minor washouts. 	<p>Preserve and improve integrity of track structure</p>
Surface/Ballast	<ul style="list-style-type: none"> -New ballast needed for track raise 2 inches or greater - New ballast to remove excess elevation. 	<ul style="list-style-type: none"> -New ballast needed for track raises less than 2 inches, does not include isolated surface sags that may be greater than 	<p>Improves line, surface and drainage of railroad</p>

	-New ballast for track sections that have no ballast.	2"	
Grade Crossings	-Total reconstruction with concrete panels, full depth concrete tub, or full depth rubber panels, 10 ft. cross-ties, etc. with negotiated operator contribution. -Option to cover cost differential to upgrade to high-type surface in step with Operator's M/W program.	-Repairs to timber, concrete, full depth rubber or rubber seal/asphalt crossings. -Track repairs in crossings including rail movement, track surface, roadway approach deterioration within 24" of field side of nearest rail, gauge spreading, etc. - Clear brush/vegetation to meet current industry standards.	Maintain safety of both roadway and railroad traffic
Signals	-Upgrade incandescent heads with new LED heads. -Replace old style relays with modern type - Purchase new aluminum cabinets/houses.	-Replace parts with in-kind materials - Provide labor and equipment to install new signal components.	Better visibility and reliability
Bridges	-Replace structural elements -Major substructure repairs or replacement -Major bridge painting (sandblast and repaint of majority or entire structure). -New walkway and accompanying railing installation. -Removal of existing accumulated sediment and debris as determined by Bridge Engineer/Track Consultant. -Replace super-structure elements such as girders, beams, cover plates, lateral angles, diaphragm angles, transverse plates, end and intermediate stiffeners, connection angles, bearing rockers and plates (timber or steel), and re-align bridge span and re-place anchor bolts as determined by Bridge Engineer. -Major sub-structure repairs such as rehabilitation and/or replacement of foundation encasements, sheet piling, abutments, wing walls, piers, bearing caps, and concrete repairs on all elements utilizing placed concrete or Gunite, and	-Spot safety ties as determined through bridge inspection. Initial spotting of safety ties at specified locations to maintain safe operation over the bridge as determined through bridge inspections. -Remove debris, soil and dropped ballast associated with M/W activities. -Vegetation control as determined through bridge inspections. -Minor bridge painting. -Existing walkway and railing repair. -Repair minor structural elements such as placing shims at bearings (timber or steel), weld plates on lower portion of bearing stiffeners or over web holes when done outside of a steel repair project on a bridge span. -Re-anchor bridge spans to bearing seat via added plates or anchor bolts due to corroded anchor bolts. -Bridge timber renewal – as needed to safely pass trains as determined by Bridge Engineer.	Preserve line tonnage capacity Neglected vegetation control leads to major failures and repairs of the foundation and wing/head walls Collected ballast over-dropped for surfacing cycles not cleaned off of members leads to excessive corrosion of members and/or perhaps major repairs.

	<p>other components as identified by Bridge Engineer.</p> <ul style="list-style-type: none"> -Complete structure replacement. -Bridge timber renewal defined as replacement of the entire deck or of one or more spans. -Backwall timbers and graduated ties on approaches. 	<ul style="list-style-type: none"> -Minor substructure repairs such as spot pointing stone masonry directly beneath the bearing areas less than 15% of total joints; replacing grout beneath a bearing plate; placing rip rap as required to deter scour. -Maintain ballast section on approaches. 	
Property Items	-Purchase and initial installation of gates, fences, signage and other access controls.	-Maintenance of gates, fences, signage and other access controls.	Protect both railroad and R/W from encroachments.

Exhibit C

Operating Fees

Operating Fees:

On or before the last business day of each month, Operator shall pay to the Authority the following:

(a) Gross Freight Revenues: _____ (____%) percent of the Gross Freight Revenues received by Operator during the previous calendar month or the flat fee payment of \$_____, whichever is greater. Operator shall exercise commercially reasonable efforts to collect all Gross Freight Revenues owed to the Operator by customers and other third parties in order to pay the Authority on a timely basis, including, but not limited to, invoicing customers for services rendered on the Railroad Premises on no less than a monthly basis. Authority shall have the right to audit Operator's books and records to ensure that Operator is complying with its obligations under this Agreement. Operator shall provide a written report to the Authority of any customer account in arrears along with its payment of the Operating Fee, and the Authority shall have the right to assess an Operating Fee on any customer accounts aged at least ninety (90) days or more. "Gross Freight Revenues" shall include all income produced from operations on the Authority's rail lines, including, but not limited to, freight bill revenues from complete on-line hauls, all freight revenue settlements with Class I carriers, local shipper freight charges, and surcharges. Excluded from this definition are Operator's revenues received for demurrage, car repairs, car hire, car usage and car cleaning and repair or maintenance of track not included in the Railroad Premises.

(b) Car Storage: _____ (____%) percent of the car storage rentals received by Operator during the preceding calendar month.

(c) LVRR Scale: The Authority has installed a scale in the Newberry Yard, Williamsport, Pennsylvania. The Authority and the Operator agree that such scale will be made available for use by customers of the Operator in weighing such inbound and/or outbound materials as required by such customers; provided that the Operator shall pay to the Authority \$_____ per each carload weighed on the said scale. Operator shall be solely responsible for the maintenance and repair of the said scale during the term of the Operating Agreement and will be liable, defend and indemnify the Authority for any damages, harm, or injury to the scale caused by the negligence of the Operator, its agents, or employees. Operator shall have the right to charge its customers such amounts as it determines for use of such scale.

(d) Trackage Rights: The Authority and Operator have executed a certain agreement with Norfolk Southern (referred to herein as the "Trackage Rights Agreement") providing for the grant of trackage rights to Norfolk Southern on portions of both the Nittany and Bald Eagle and Lycoming Valley Railroads (the "Subject Trackage") in consideration of the payment to Operator of compensation (referred to as "Current Charges") as set forth in the Trackage Rights Agreement. The parties agree that Operator shall be entitled to receive all compensation payable by Norfolk Southern pursuant to the Trackage Rights

Agreement; provided, however, that in addition to the Operating Fees to be paid to the Authority pursuant to Exhibit C of this Agreement, Operator agrees to pay to the Authority _____ (____%) percent of all such compensation received by it from Norfolk Southern under the terms of the Trackage Rights Agreement.

(e) Tax Credits. Fifty (50%) percent of any revenue or amount realized by Operator by virtue of the sale or assignment of any portion of the Authority's Railroad Premises permitted hereunder, or use thereof, for any federal, state or local tax credit or refund, including any sale or assignment thereof which may arise from or relate to Operator's operations, maintenance or other obligations performed pursuant to this Agreement, including, but not limited to, the federal Railroad Tax Maintenance Credit under Section 45G of the Internal Revenue Code of 1986, as amended and supplemented, and the Treasury Regulations promulgated thereto. Operator shall provide a written statement to Authority of any amounts derived from the sale or assignment described above with sufficient explanation of the amount owed to Authority under this Section.

(f) It is understood that there shall be no deduction from the Operating Fees for any payments or contributions made by a customer of the Operator or other third party to the Authority for track maintenance or capital expenditures.

Exhibit D

Jannotti Report

Exhibit E

Anti-Discrimination Clause

Anti-Discrimination Clause

During the term of the Operating Agreement, the Operator, pursuant to Presidential Executive Order No. 11246, agree as follows:

- a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Agreement or any subcontract, the Operator, subcontractor, or any person acting on behalf of the Operator or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Operator nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the Agreement on account of gender, race, creed, or color.
- c. The Operator and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated, and employees who practice it will be disciplined.
- d. The Operator shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the Agreement relates.
- e. The Operator and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the Authority for the purpose of investigation to ascertain compliance with the provisions of this Anti-Discrimination Clause.
- f. The Operator shall include the provisions of this Anti-Discrimination Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- g. The Authority may cancel or terminate the Agreement, and all money due or to become due from the Authority under the Agreement may be forfeited upon a final determination by an administrative agency or court of the Operator's noncompliance with the terms and conditions of this Anti-Discrimination Clause.