

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is made this first day of August, 2012, between the Hennepin County Regional Railroad Authority ("HCRRA"), a political subdivision of the State of Minnesota, 300 South Sixth Street, Minneapolis, Minnesota 55487, and Twin Cities & Western Railroad Company, 2925 12th Street, East, Glencoe, Minnesota, 55336 ("TCW"), collectively the "Parties."

WHEREAS, HCRRA and TCW are parties to that certain Trackage Rights Agreement dated on or about August 3, 1998, denominated HCRRA A18158, as amended from time to time ("1998 Agreement"); and

WHEREAS, pursuant to the 1998 Agreement, TCW has certain non-exclusive rights to conduct railroad operations over the Rail Line within the Rail Corridor, as those terms are defined in the 1998 Agreement; and

WHEREAS, the Parties wish to fully and finally resolve disputes over the responsibility for replacing certain rail within the Rail Corridor and payment for same; and

WHEREAS, the Parties also wish to fully and finally resolve disputes over certain expenses arising out of a derailment that occurred on October 2, 2010 (the "Derailment"),

Now, therefore, in consideration of the covenants and other obligations provided herein, the Parties make this Settlement Agreement as follows:

1. **One-Time Replacement of Rails.** The Parties agree that they will cooperate to replace the rails in the Rail Corridor on a one-time only basis per the following:
 - a. The rails will be replaced in the following location: In the Kenilworth Corridor where TCW presently conducts rail operations, in an area from the junction with the BNSF line near the I-394 freeway in the vicinity of Cedar Lake in the City of Minneapolis running approximately 2.5 miles southwest to where the existing rail joins the easterly section of CP trackage near Lake Street in the City of Saint Louis Park (the "Rail Replacement Project").
 - b. The rails will be replaced with rails of the following type: 115 lb. welded rail.
 - c. The rails will be replaced no later than December 31, 2012.
 - d. Except as may otherwise be specifically provided herein, TCW is fully responsible for all matters relating to the replacing of the rails, including but not limited to procuring the rails and any other necessary supplies or material; installing the rails; personnel; scheduling; coordination with other users of the corridor, if any; and insurance, bonding and liability.

- e. Within fifteen business days of TCW's request, HCRRA will remit money for labor and materials to TCW in an amount equal to the cost of the Rail Replacement Project (but not to exceed \$1.25 million). HCRRA shall have no other responsibility with respect to any matters relating to the replacement of the rails.
 - f. HCRRA will receive all revenues from sale of existing 100# track as scrap (either directly as net sale revenues or as a reduction in the cost of the Rail Replacement Project, depending on procurement method).
 - g. Prior to beginning the replacement of the rails as provided in this Section, TCW shall provide information and otherwise cooperate such that HCRRA may make reasonable and accurate notification of interested parties regarding the work.
 - h. If, at some future time, the Metropolitan Council determines to relocate freight operations from the Kenilworth corridor attendant to the Southwest Light Rail Transit project, TCW guarantees to purchase the 115# Kenilworth rail installed in the Rail Replacement Project from HCRRA at a price not less than thirty five percent of the original purchase price less costs for removal and transportation. In the event that the market price for the Kenilworth rail is greater than thirty five percent of the original purchase price, HCRRA will offer TCW the first right to purchase the material at the market price and, if TCW declines, HCRRA will retain the right to sell to another party. The rail repurchase agreement between HCRRA and TCW will be executed within 90 days following the commencement of rail operations by TCW on the final freight alignment determined by the Metropolitan Council.
2. **Derailment Damages, Costs or Expenses.** HCRRA agrees to reimburse TCW \$65,000 for expenses resulting directly or indirectly from the Derailment.
3. **Waiver and Release of Claims.** TCW forever waives and releases all claims, counterclaims, third party actions or any other claims or causes or action of any kind, whether, past, present and future, known and unknown, for any damages or costs against HCRRA (including but not limited to HCRRA's board members, employees, consultants and agents) alleging that (1) HCRRA was or is responsible for replacing or paying for the replacement of the rails in the Rail Replacement Project or reimbursing TCW for such replacement, whether on account of the 1998 Agreement or otherwise; and (2) that HCRRA was or is responsible for any damages or costs or expenses of any kind relating to the Derailment. This waiver and release is effective the earliest of (1) November 1, 2012, or (2) completion of the Rail Replacement Project including payment by HCRRA pursuant to Section 1 of this Settlement Agreement, and payment by HCRRA of TCW's claims for damages arising from the Derailment pursuant to Section 2 of this Settlement Agreement,

4. **No Admission or Evidence of Responsibility, Liability or Damages.** In any future judicial, administrative, arbitration, or other proceeding, the parties expressly agree that no obligation, undertaking, benefit or burden of either party in this Settlement Agreement or the fulfillment of same is admissible against either party to show liability or damages or for any other purpose except to enforce the rights, duties, obligations and agreements of this Settlement Agreement. HCRRA expressly denies liability for any of the matters for which HCRRA is obligated under this Settlement Agreement, and HCRRA makes this Settlement Agreement solely as an expeditious way of resolving various disputed matters addressed herein on a one-time basis.
5. **Allocation of Responsibility for Future Replacement of Rails.** TCW agrees that replacement of rails, and all costs therefore, in the future after the replacement set forth in Section 1 is completed shall be borne by TCW and not be subject to any reimbursement obligation or any other obligation on the part of the Authority, and that this obligation undertaken by TCW herein supersedes any alleged obligation of HCRRA under the 1998 Agreement or otherwise, which obligation HCRRA denies..
6. **Binding Obligations.** The rights, duties and obligations granted and undertaken in this Settlement Agreement are binding on the Parties and any employees, directors, consultants, agents, heirs or successors of or to the Parties.
7. **Effective Date of Agreement.** This Settlement Agreement is effective upon execution by the Parties hereto, except that the waiver and release provided in Section 3 of this Settlement Agreement is effective as provided in that Section.

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AUTHORITY BOARD AUTHORIZATION

HENNEPIN COUNTY REGIONAL
RAILROAD AUTHORITY
STATE OF MINNESOTA

Reviewed by the County
Attorney's Office

Howard R. At
Date: 8/1/12

By: *Peter M. [Signature]*
Chair of Its Board
Date: 8/1/12

ATTEST: *Ys Clark*
Deputy/Clerk of County Board
Date: 8/1/12

By: *Richard P. Johnson*
Executive Director
Date: 8-1-12

By: *Debra P. Brix*
Deputy Executive Director
Date: 8/2/2012

Recommended for Approval:
Julie E. [Signature]
Department Director, Housing, Community
Works and Transit
Date: 8-1-12

**TWIN CITIES & WESTERN
RAILROAD COMPANY**

TC&W verifies that the person who executed this Agreement is authorized to do so on behalf of TC&W as required by applicable articles, bylaws, resolutions or ordinances.

By: Mark J. Wegner

Printed Name: MARK J. WEGNER

Printed Title: PRESIDENT

Date: 8-1-12