

AGREEMENT  
FOR  
REHABILITATION AND IMPROVEMENT OF TRACK  
AT INTERMODAL YARD AND WEST CLASSIFICATION YARD  
PORT OF MILWAUKEE

IDENTIFICATION NUMBER 0499-70-79

BY AND BETWEEN  
PORT OF MILWAUKEE

AND  
THE WISCONSIN DEPARTMENT OF TRANSPORTATION

MAY 2019

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PREAMBLE

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Milwaukee Board of Harbor Commissioners d/b/a the Port of Milwaukee (hereinafter called “Port”) and the Wisconsin Department of Transportation (hereinafter called “WisDOT”).

WITNESSETH

WHEREAS, the Port of Milwaukee owns and maintains 15 miles of railroad trackage within the port facility, and such track is used for the purpose of connecting each port terminal to the national railroad system and transloading cargo between rail cars and ships; and

WHEREAS, the Port has agreements with the Class I railroads serving the Port to provide service over the trackage owned by the Port:

WHEREAS, under their agreement with the railroads the Port retains the responsibility for maintaining the track owned by the Port; and

WHEREAS, as a public entity under the City of Milwaukee, the Port is eligible for grant funds under the Wisconsin Freight Railroad Preservation Program; and

WHEREAS, by action taken by the Common Council of the City of Milwaukee dated \_\_\_\_\_ the Port has been authorized to apply for and accept funds from WisDOT for railroad track improvements.

NOW, THEREFORE, the parties do hereby mutually agree as follows:

## ARTICLE 1.0 DEFINITIONS

1. "Date of Default" means the date of delivery of a declaration of default under this agreement or the date Port's insurance coverage ceased or the date of filing for bankruptcy, whichever first occurs.
2. "FRIIP" means the Department of Transportation's Freight Railroad Infrastructure Improvement Program.
3. "FRPP" means the Department of Transportation's Freight Railroad Preservation Program.
4. "Port" means the City of Milwaukee Board of Harbor Commissioners d/b/a the Port of Milwaukee, Milwaukee, Wisconsin.
5. "Project Property" means that portion of the Port's railroad system identified as the Intermodal Yard and West Classification Yard in the South Harbor Tract at the Port of Milwaukee, Milwaukee, Wisconsin.
6. "Project Work" means the work necessary to rehabilitate and improve the Project Property as described in the Statement of Work to be attached hereto as Attachment IV.
7. "RHS" means WisDOT's Railroads and Harbors Section.
8. "State Share" means a fraction, the numerator of which is the sum of WisDOT's funds determined in accordance with the terms of the Acquisition Agreement plus WisDOT's funds determined in accordance with Section 2.2 of this Agreement and the denominator of which is the sum of WisDOT's funds and Consortiums funds provided in accordance with the Acquisition Agreement ) plus WisDOT's funds provided in accordance with Section 2.2 of this Agreement and Consortium's funds and Operator's funds provided in accordance with Section 2.3 of this Agreement.

ARTICLE 2.0 THE APPROVED REHABILITATION PROJECT GRANT AND MATCH AMOUNTS

Section 2.1 The Approved Project

(a) Port shall complete the rehabilitation and improvement work shown in Attachment IV on the Project Property, Port of Milwaukee, Milwaukee, Wisconsin.

(b) The materials used shall conform to the specifications contained in Attachment II. The work performed shall be in compliance with the standards contained in Attachment II.

(c) The Project Work shall be completed not later than December 31, 2020.

Section 2.2 Project Grant

(a) In consideration of the Project Work performed by Port, WisDOT shall: (i) grant, in cash and material, to Port an amount equal to 80% of actual allowable rehabilitation costs. The amount to be granted to Port for the rehabilitation portion of the Project Work shall in no event exceed Two Million, Nine Hundred and Ninety-Three Thousand, Nine Hundred and Twenty Dollars (\$2,993,920).

(b) The grant amount, and the project budget are based upon a gross project cost estimate subject to both revision and the availability of matching funds from the Port.

Section 2.3 Port's Required Match Amount for the Project Work.

(a) In consideration of the grant provided by WisDOT, Port shall perform or cause to be performed the Project Work set forth in Attachment IV and shall provide an amount, in cash, equal to no less than 20.00% of actual allowable rehabilitation project costs. The amount to be provided by Port for the rehabilitation portion of the Project Work identified in Attachment IV is estimated to equal Seven Hundred Forty-Eight Thousand, Four Hundred Eighty Dollars (\$748,480).

(b) In the event that elements of the Project Work let to contract under competitive bid or

price quotation result in costs less than those estimated for the element, the amount of the Grant and Port match shall be reduced proportionately without need of written amendment hereto.

## ARTICLE 3.0 PROJECT PERFORMANCE AND MANAGEMENT

### Section 3.1 Method of Performance

Port shall cause the Project Work to be performed using its own forces and one or more contractors chosen by competitive bidding and approved by WisDOT. Port's performance and project operations shall comply with the terms set forth in Attachment II, titled General Project Specifications and Inspections, and in Attachment III, titled Project Operations, Accounts, and Reports, which are made part of this Agreement by attachment.

### Section 3.2 Project Manager

(a) The Project Manager must be qualified in all phases of Project Work to be performed under this Agreement. Before any work is started, Port shall identify the individual chosen to be Project Manager by name and provide a statement of qualifications of the individual to WisDOT. WisDOT shall have the right to approve or disapprove the use of the selected individual or any subsequent individual selected as Project Manager on this project.

(b) WisDOT shall review and approve or disapprove the contract, if any, between Port and Project Manager.

#### (c) Responsibilities of Project Manager:

(1) The Project Manager is required to perform inspection of the Project Work, daily if necessary, to assure that the work is performed in compliance with the terms of this Agreement.

(2) The Project Manager shall document both the quantity and quality of all Project Work performed whether by Port's own forces or its contractor.

Documentation shall be made in a manner and using forms supplied or approved by WisDOT.

(3) The Project Manager shall be responsible for daily production quantity

and quality, to include production goals, schedule and all tasks associated with crossings, switches, rail, distressing, anchoring, quality control surfacing and aligning.

(4) The Project Manager shall be responsible for the preparation of all progress reports, invoices for reimbursement, requests for change orders, variances or amendments affecting the project scope of Project Work or funding.

(5) The Project Manager shall retain all project documents (vendor invoices, time sheets, specifications, etc.) at a project office. Said documents shall be made accessible to WisDOT or its representative during normal business hours.

(6) The Project Manager shall be responsible for preparation and revision of schedules, worker productivity, marking defective ties, and inspecting material.

(7) The Project Manager shall spend no less than 100% of his working days on the project. Project Manager's compensation shall be reduced by a percentage equivalent to the percentage of on-site project time below 100%.

### Section 3.3 Project Labor

(a) Port shall employ sufficient quantity of labor to efficiently complete the Project Work within the limits of the project budget shown in Attachment I.

(b) Port shall require Project Manager to prevent the use of laborers employed for Project Work for non-Project Work and shall not permit any Port employees to charge the project for work performed by Port's employees. Any Port employee working during any given day or portion of the day on non-Project Work cannot be charged to the project for any time during that day.

(c) Verification of the use of labor shall be through review of time sheets, which shall be submitted with requests for payment.

(d) Payment of premiums for overtime work in excess of four hours per week per person is not an allowable cost of the project eligible for reimbursement unless approved by WisDOT's Project Inspector at least 24 hours in advance of the overtime period.

(e) Port shall obtain required coverage and make required payments associated with workers compensation and unemployment benefits on behalf of its employees assigned to work performed under this Agreement.

## ARTICLE 4.0 RAILROAD SERVICE OPERATION AND MAINTENANCE



Port shall provide railroad service over and maintenance of the Property.

## ARTICLE 5.0 PROPERTY TRANSACTIONS

### Section 5.1 Conditions for Transfer of Ownership

Port may transfer ownership of Property rehabilitated or improved with the proceeds of this grant only upon receiving concurrence and written approval from WisDOT.

### Section 5.2 Sale to Local Units of Government

A WisDOT approved sale of the rehabilitated Project Property in place and usable for railroad transportation to another local unit of government requiring continuation of railroad service and subject to the terms of this Agreement and the Grant Agreement shall not constitute default of this Agreement and shall not require repayment of grant funds paid by WisDOT to Port under this Agreement. Repayment of funds and interest is required unless another local unit of government assumes the obligation.

### Section 5.3 Sale to Others

Subject to Section 5.1 of this Agreement, sale of the rehabilitated Project Property to a non-government agency for the purpose of continued rail service in accordance with the Grant Agreement shall require Port to repay to WisDOT the grant funds paid by WisDOT to Port under this Agreement.

### Section 5.4 Sale for Non-Railroad Service Purpose

Disposal of any or all the Project Property for uses other than continued railroad service shall require immediate repayment by Port to WisDOT of the state and federal share of the sale proceeds as determined in accordance with Attachment N to OMB Circular A-102.

### Section 5.5 State's Lien as Security

(a) The terms, provisions, and conditions of this Agreement to be observed and performed by the Port shall create a first priority lien in favor of WisDOT on the material and equipment purchased in whole or in part with the proceeds of this Agreement and installed on the Project Property until the terms of this Agreement have been fully performed by the Port.

### Section 5.6 Security for Borrowing

(a) Port shall not use nor permit any other entity or individual to use the value of the rehabilitation and improvement materials and equipment acquired with any portion of the proceeds of this grant as security or collateral for any loan or other borrowing.

(b) Port shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the materials or equipment purchased in whole or in part with the proceeds of this Agreement except for any WisDOT approved claim by Port created under subsection 3.3 herein. Port will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest or claim if same shall arise at any time.

## ARTICLE 6.0 DEFAULT AND TERMINATION

### Section 6.1 Declaration of Default

(a) A condition of default exists under this Agreement when:

- (1) either party to this Agreement fails to abide by or perform according to any one or more of its terms and conditions or,
- (2) Port's or Port's Contractor's liability insurance coverage required under Article 9.0 lapses, is suspended or is canceled or,
- (3) Port or Port's Contractor files for protection under any bankruptcy statute.

(b) A declaration of default of this Agreement shall be made in writing and delivered to the alleged defaulting party as specified in Section 10.1. The letter shall identify the action or inaction constituting the default and reference the portion of this Agreement under which the default occurs.

### Section 6.2 Termination for Default

In the event of any default described in Section 6.1 above, the non-defaulting party shall have the right, at its option, after first giving the required notice to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof or concurrent breach, to terminate this Agreement, unless the breach is cured within the period set forth in Section 6.3 below. The exercise of this right shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery

of damages.

### Section 6.3 Ability to Cure Default

(a) Removal of Port Default. Port shall have ten (10) calendar days from the date of default to remove the cause of the default. Such correction shall be completed and available for WisDOT review within the ten (10) day period. Upon written petition by Port, WisDOT may extend the period for removal of a default condition. Such extension shall not be unreasonably withheld. If remedial action is satisfactory, WisDOT shall provide appropriate written notice to Port within three (3) working days.

(b) Removal by Port of Port Default. If for any reason Port is in default of an agreement with WisDOT affecting the project property, WisDOT shall so notify Port. Port shall have ten (10) days from the date of notification of Port to remove the default on behalf of Port and shall have the right to quiet enjoyment of the project property within the allowed time period until the condition of default is resolved.

### Section 6.4 Expenses of Termination

Port shall mitigate the expenses of termination to the greatest extent possible, and shall pay those that do occur if default is caused by action or inaction of Port or its contractor.

WisDOT shall mitigate the expenses of termination to the greatest extent possible, and shall pay those that do occur if default is caused by action or inaction of WisDOT.

### Section 6.5 Return of Project Property Upon Bankruptcy Default

If this Agreement shall terminate, Port shall:

- (1) repay to WisDOT within 90 days all funds granted to Port under this Agreement, or
- (2) forthwith deliver possession of the Project Property to WisDOT. Project Property so delivered shall be in the same or better operating order, repair and condition as when originally delivered to Port, reasonable wear and tear in service excepted.

### Section 6.6 Force Majeure

The parties hereto will be excused from performance of any of their respective obligations hereunder, for the duration of any interruption occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include, without limitation: Acts of God; strikes or other labor troubles; other causes, except the unavailability of insurance coverage in accordance with Article 8.0 of this Agreement or any amendment to either of them, beyond the reasonable control of the parties; interruption of rail freight service caused by explosion, fires, vandalism, malicious mischief; unavoidable interruption or cessation of rail freight service for a period of less than 120 days caused by a connecting railroad; or other causes beyond the reasonable control of the parties;

#### ARTICLE 7.0 REPRESENTATIONS AND WARRANTIES

##### Section 7.1 WisDOT

WisDOT represents and warrants the following:

- (a) WisDOT has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.
- (b) To the best of WisDOT's knowledge, the execution of the Agreement will not violate any statute, rule, regulation, order, writ, injunction, or decree of any court, administrative agency or governmental body.

##### Section 7.2 Port

Port represents and warrants the following:

- (a) Port has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.
- (b) To the best of Port's knowledge, the entering into and the performance of this Agreement on the part of Port does not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.

ARTICLE 8.0 INSURANCE

(a) The Port is self-insured. However, the Port, shall cause its contractor furnish general liability insurance, property damage and worker's compensation insurance for all Project Work hereunder. Contractor shall have all of the Operations incident to the completion of the Project Work required under this Agreement covered by general liability, property damage and worker's compensation insurance in order that the general public or any representative of WisDOT may have recourse against a responsible party for inquiries or damages sustained as a result of said Project Work operations. This requirement shall apply with equal force whether the work is performed by Port, by a Port subcontractor or by anyone directly or indirectly employed by either of them.

(b) The amount of general liability insurance shall be not less than two million dollars. The terms of the policy shall be provided to WisDOT for its approval prior to the start of any Project Work under this Agreement.

(c) The amount of worker's compensation insurance, if needed, shall be at a level sufficient to meet the requirements of Chapter 102, Wis. Stats.

ARTICLE 9.0 GENERAL CONDITIONS

Section 9.1 Notice

(a) Any notice required or permitted under this Agreement shall, at the election of the person given notice, be personally served or mailed by certified United States mail, return receipt requested, postage prepaid, to the following addressed persons at the following addresses as the parties shall direct by notice pursuant to this section:

Chief  
Railroads and Harbors Section  
Wisconsin Dept. of Transportation  
4822 Madison Yards Way, 6<sup>th</sup> Floor S  
P. O. Box 7913  
Madison, WI 53707-7913

Director  
Port of Milwaukee  
2323 S. Lincoln Memorial Dr.  
Milwaukee, WI 53207

Section 9.2 Transfer of Rights Under this Agreement

This Agreement shall be binding upon and inure to the benefit of the parties hereto. This Agreement is personal to the Port and shall not pass to its successors and assigns. Port's rights

hereunder shall not be assignable whether by way of assignment, sublease or otherwise, directly or indirectly, without WisDOT's prior written approval. This Agreement shall not create rights of any sort in Port to assign, sublease, or transfer, in any fashion whatsoever, its rights under this Agreement to any other person including any affiliated person. Port shall not obtain any interest or estate of any kind or extent whatsoever in the Project Property by reason of this Agreement.

### Section 9.3 Severability

If any term, covenant, condition or provision (or part thereof) of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision (or remainder thereof) to parties or circumstances other than those as to which it is held to be 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.

### Section 9.4 Amendment

No term or provision of this Agreement, or any of the attachments to which WisDOT is party, may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by both parties of this Agreement.

### Section 9.5 Officials

(a) Officials authorized to execute this Agreement and amendments or modifications to this Agreement on behalf of WisDOT are the Secretary of Transportation, or the Deputy Secretary, or the Director of the Bureau of Transit, Local Roads, Railroads and Harbors, or the Chief of the Railroads and Harbors Section or a designee.

(b) Official authorized to execute this Agreement and amendments or modifications to this Agreement on behalf of Port is its Director.

### Section 9.6 Handicapped

No otherwise qualified handicapped individual in the United States, as defined in Section 706(6) of Title 29 USC, and subchapter II of Chapter 111, Wis. Stats., shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to

discrimination under any program or activity receiving benefits under this Agreement.

#### Section 9.7 Environmental Protection

(a) Port agrees to conduct work under this Agreement in compliance with all applicable Wisconsin environmental requirements. Port will complete a Wisconsin Department of Transportation Programmatic Environmental Report (PER) and provide WisDOT with copies of approval letters from the DNR, State Historical Society, or other state or federal agency who may have reviewed this project for environmental reasons, prior to execution of this agreement by WisDOT. This report and letters shall become part of this agreement.

(b) Facilities or equipment shall not be acquired, constructed, or improved as a part of approved projects unless such facilities or equipment are designed and equipped to limit water and air pollution in accordance with all applicable state and federal standards, statutes, and regulations.

(c) Approved projects shall be conducted in compliance with all the requirements of Section 114 of the Clean Air Act, 42 USC 7414 and Section 308 of the Federal Water Pollution Control Act, 33 USC 1318, and all applicable regulations issued under said Acts.

(d) The Port certifies that no facilities which will be utilized or improved as part of an approved project are listed on the Environmental Protection Agency ("EPA") List of Violating Facilities ("List").

(e) The Port stipulates that it will notify WisDOT as soon as it or any subcontractor receives any communication from the EPA indicating that any facility which will be utilized or improved as part of an approved project is under consideration to be listed on the EPA List.

(f) No publicly-owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance as determined by the federal, state, or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance as so determined by such officials, may be used for an approved project without the prior concurrence of the Administrator of the EPA and the State Historical Preservation Officer.

#### Section 9.8 Standards for Approved Project Procurement

(a) Port shall perform all contracting in accordance with Chapter 85.077, Chapter 59, Wis. Stats. and Chapter 66, Wis. Stats.

(b) WisDOT has the right to review and approve or disapprove the contracting system of the Port. Port shall assure that WisDOT has the right to review and approve or disapprove the contracting and procurement system of each of Port's contractors. These purchasing and contracting procedures of Port, and Port's contractors to obtain goods and services for use in connection with this Agreement, are subject to review by WisDOT upon reasonable notice.

(c) When solicitation on a competitive basis is found not to be practicable; or solicitation of all known contractors is found not to be practicable; or competitive bids or proposals are received and a contract or subcontract is to be issued to other than the low bidder, actions taken by Port shall be in compliance with Section 66.29, Wis. Stats., and the facts supporting this determination shall be reduced to writing and retained with the contract records.

(d) Port shall provide for WisDOT's review and written approval of all contracts to be paid in whole or in part with funds provided under this Agreement. Port shall obtain WisDOT approval prior to executing the contract. Failure to obtain prior written approval from WisDOT shall invalidate costs incurred under the contract for reimbursement with grant funds provided under this Agreement.

#### Section 9.9 Prohibited Interests in the Proceeds of Approved Project

##### (a) Conflicts of Interest:

(1) Neither Port nor any of its contractors shall enter into any contract, subcontract, or agreement in connection with a project or any property included or planned to be included in approved projects in which any director, officer or employee of Port during his tenure or for one (1) year thereafter has any interest, direct or indirect except as permitted under Sec. 946.13(2), Wis. Stats.

(2) The provisions of this subsection shall not be applicable to any agreement between Port and its fiscal depositories or to any agreement for utility services for which rates are fixed by government regulation.

(b) No member of or delegate to Congress shall be admitted to any share of any benefit that may arise from this Agreement, but this subsection shall not restrict the making of any contract with a corporation for the general benefit of such corporation.

#### Section 9.10 Non-Discrimination



(a) In connection with the performance of work under this contract, Port agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5), sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities. Port agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

(b) Port shall comply with the following laws, policies, regulations, and pertinent directions as may be applicable and will require its subcontractors through contractual agreement to similarly comply.

\*Title VI of the Civil Rights Act of 1964, 78 Stats. 252, 42 U.S.C. 2000d et seq.

\*Subchapter II of Chapter 111, Wis. Stats.

\*Section 16.765, Wis. Stats.

(c) Port, in its procurement process, shall not discriminate against minority owned or operated firms qualified to bid and perform on contracts, subcontracts, or materials procurement connected with the work performed under this Agreement.

#### Section 9.11 Assurances

(a) Port assures that funds received under this Agreement will be used solely for the purposes for which the assistance is granted and in conformance with any limitations on any allowable expenditures set forth under state laws and regulations applicable to the funds granted.

(b) Port assures that it will accept all attendant responsibilities and liabilities associated with its use of grant funds including, but not limited to, liability for accidents, erection and maintenance of fencing and other safety and protective devices, and the general maintenance of the Property.

(c) Port shall require any contractor to provide a payment and performance bond to insure the completion of the work scheduled under the provisions of this Agreement and the payment in full of any employees, suppliers and subcontractors.

(d) Port assures that it has match funds required under Section 2.3.

Section 9.12 Specific Performance

WisDOT and Port shall have the right, as provided by law, to require specific performance by the other party of the other party's obligations under this Agreement. This right may be asserted at any time after thirty (30) days of WisDOT or Port notifying of the other party of the other party's obligation to perform.

Section 9.13 Entire Agreement

This Agreement, and the attachment(s) hereto contain the entire rehabilitation and improvement agreement of the parties.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and witnessed by their duly authorized officers on the date and year designated in the Preamble to this Agreement.

WITNESS: THE PORT OF MILWAUKEE

\_\_\_\_\_ By: \_\_\_\_\_  
Adam Schlicht, Municipal Port Director

WITNESS: CITY OF MILWAUKEE

\_\_\_\_\_ By: \_\_\_\_\_  
Martin Matson, City Comptroller

Approved as to form and execution by: \_\_\_\_\_  
Jeremy Mckenzie, City Attorney

WITNESS: WISCONSIN DEPARTMENT OF  
TRANSPORTATION

\_\_\_\_\_ By: \_\_\_\_\_  
Lisa A. Stern, P.E.  
Chief of Railroads and Harbors

AGREEMENT NO. 0499-70-79  
ATTACHMENT I  
PROJECT BUDGET

1.0 Project Description

The following is the budget for rehabilitation and improvement of approximately 10,400 feet of track, including all labor and materials required for installing new ballast, ties, turnouts and 115-lb. rail at the Intermodal Yard and West Classification Yard at the Port of Milwaukee, Milwaukee, Wisconsin.

This budget includes line item amounts for the necessary materials, labor, equipment, transportation, work train, and project management cost to complete the Project Work planned to the standards set under this Agreement.

2.0 Budget Line Items and Funding Sources

(a) Budget Items.

<b>Item</b>	<b>Description</b>	<b>Amount</b>
1	Track Work	\$2,993,920.00
2	Engineering/design	\$187,120.00
3	Project management	\$187,120.00
4	Contingency	\$374,240.00
	<b>TOTAL</b>	<b>\$3,742,400.00</b>

The amount shown above for Contingency may only be expended with prior written approval from WisDOT for work identified in Attachment IV.

(b) Funding Sources

Port of Milwaukee Match (20%)	\$ 748,480.00
WisDOT Grant (80%)	\$ 2,993,920.00
<b>Total</b>	<b>\$ 3,742,400.00</b>

ATTACHMENT II  
PROJECT NO. 0499-70-79  
GENERAL PROJECT REHABILITATION AND MAINTENANCE  
SPECIFICATIONS AND INSPECTIONS

1.0 General Project Description

The purpose of this project is to surface, rehabilitate or construct a total of approximately 10,400 feet of track, installing new ballast, ties, and 115-lb. rail, and installing 13 new turnouts in the West Classification Yard and Intermodal Yard at the Port of Milwaukee, Milwaukee, Wisconsin.

2.0 Quality Specifications for Materials

2.1 General

- (a) The materials used on this project shall meet the specifications contained in:
  - (i) WisDOT Standard Specifications for Railroad Track Construction dated January 2014; and
  - (ii) American Railway Engineering and Maintenance of Way Association (AREMA) Manual for Railway Engineering, latest edition.
- (b) The above specifications are incorporated herein by reference. In the event of conflict between WisDOT specifications and AREMA recommendations, the WisDOT specifications shall govern.
- (c) The specification for any item of material proposed for installation in the project which is not identified in Section 2.2 below, shall be determined by reference to the specification documents identified in this section in the order in which they are listed. If a specification cannot be determined by reference to the specification documents in this section, WisDOT shall be requested to provide a specification.

2.2 Component Specific

- |                            |  |
|----------------------------|--|
| (a) Track Component        | WisDOT Spec. Governing (Rev. January 2014)   |
| (i) Cross Ties-New Graded  | See 17.1   |
| (ii) Cross Ties-Secondhand | Second hand ties will not be allowed during initial reconstruction. Second hand ties |

	conforming to 17.2 will be allowed for maintenance purposes.
(iii) Cross Ties-New Industrial	See 17.1.1
(iv) Switch Ties-New	See 18.1, plus the lengths will generally correspond with the tie being replaced. The ties shall be from 9' to 17' in length and in 1' increments.
(v) Turned Over Ties	Ties may not be turned over.
(vi) Rail #1 Relay	Relay Rail will not be allowed during initial reconstruction. Relay rail conforming to 10.1 will be allowed for maintenance purposes.
(vii) Joint Bars relay	See 13.1, plus to match rail size and drilling of rail and drilling of rail provided.
(viii) Tie Plates Relay	See 11.0
(ix) Track Bolts, Nuts & Spring Washers - New	See 14.1
(x) Track spikes - new	See 16.1, 9/16"x5-1/2" or 5/8"x6" to fit the punch size of the tie plate.
(xi) Rail Anchors - new	See 25.1
(xii) Ballast	See 19.1
(xiii) Tie Plugs – New	See 23.1
(b) Turnout Components	WisDOT Spec. Governing ( Rev. January 2014)
(i) Switch Points - New	See 12.1
(ii) Frogs & Guard Rail - New	See 12.1
(iii) Turnout Plates, Bolts, Braces, Connecting Rods or Switch Stands New	See 12.1 plus replace defective components in kind.
(c) Public Grade Crossings - The following materials shall be used in public grade crossings. The other materials are identified in (a) above.	

- (i) Welded Rail See 10.1, 54.1, 66.1.3; Welds shall be tested per WisDOT specifications. Results shall be kept on file and made available at WisDOT request. Defective welds shall be cut out and re-welded. Rails with a minimum length of 19'6" shall be used for temporary maintenance repairs. Joint bars may be used temporarily, with field welds applied within 6 months.
- (ii) Cross Ties - New Graded See 66.1.1
- (iii) Compromise Bars - New See 22.1
- (iv) Tie Plates – New or Relay New double shouldered 7-3/4" x 11" or larger to fit the size of the rail.
- (v) Asphalt See 56.1
- (vi) Engineering Fabric See 43.1
- (vii) Cross Bucks & Posts See MUTCD (latest edition)

(d) Private Grade Crossings - The following materials shall be used at private grade crossings. The other materials are identified in (a) and (c) above.

- (i) Rail See 10.1, 54.1, 66.1.3
- (ii) Cross Ties - New See 66.1.1
- (iii) Asphalt See 56.1
- (iv) Engineering Fabric None required.
- (v) Cross Bucks & Posts None required.
- (vi) Bridge Structure Components Standards of the former Railroad and/or AREMA Chapter 7 & 8.
- (vii) Culvert Structure Components Standards of the former Railroad and/or AREMA Chapter 1, Part 4.

2.3 Variances

Any deviation from these specifications shall be requested in writing by the Railroad to WisDOT Railroads and Harbors Section. Approval of a variance shall be issued in writing to the Railroad, prior to the terms of the variance being effective and prior to

any costs incurred as a result of the variance being allowable for reimbursement under this Agreement.

### 3.0 Performance Specifications for Rehabilitation Project Work

The specifications governing the project work to be performed are as follows:

#### 3.1 General

(a) The workmanship used on this project shall produce results, which are in accordance with:

- (1) WisDOT Standard Specifications for Railroad Track Construction dated January 2014; and
- (2) American Railway Engineering and Maintenance of Way Association's Manual for Railroad Engineering, latest edition.

Exhibits referred to in this section are attached at the end of this section.

- (b) Number of non-defective ties uniformly distributed per 39' of track shall be 12 on tangent track and 14 on any curve.
- (c) Rail shall be anchored in accordance with WisDOT standards for continuously welded rail.

#### 3.2 Component Specific

- |                      |   |
|----------------------|---|
| (a) Track Components | WisDOT Spec. Rev. January 2014  |
| (i) Cross Ties       | See 35.1, plus no spiking within 2" of the end of a joint bar, unless the spike is in contact with the face of the bar. Ties shall be spaced 19.5" on center for new construction or match the existing tie spacing for reconstruction. |
| (ii) Switch Ties     | See 36.1  |
| (iii) Rail           | See 29.1 and 29.2, plus any rail mismatch 1/16" or greater shall be corrected per 81.1  |
| (iv) Joint Bars      | See 32.1  |



- (v) Tie Plates See 30.1
- (vi) Track Bolts, Nuts & Spring Washers See 33.1, plus applying tension of 15,000-20,000 lbs. of torque on the nuts.
- (vii) Track Spikes See 34.1
- (viii) Rail Anchors See 46.1
- (ix) Ballast See 37.1.1
  
- (x) Tie Plugs See 41.1 and 42.1, and when spikes are pulled.
  
- (b) Track Geometry
  - (i) Track Regaging See 75.1, plus regaging when track is in excess of 1/8" wide or 1/8" narrow plus blending to current gage at ends of rail relay, turnouts, grade crossings, etc.
  - (ii) Track Surface and Alignment See 37.1.2-37.1.10
- (c) Turnout Components
  - (i) All turnout components See 31.1
  - (ii) Rebuilding of Components See 78.1 and 79.1, plus grinding so that all components comply with FRA standards 213.133, 213.135, 213.137, 213.141 and 213.143.
  - (iii) Rail Anchors See 46.1, plus minimum of every switch tie box-anchored except through switch point and frog zone.
- (d) Grade Crossings
  - (ii) Ballast See 65.0
  - (iii) Engineering Fabric See 52.1.
  - (iv) Cross Bucks & Posts See MUTCD (latest edition)
  - (v) Asphalt See 56.1.

- |   |  |
|---|--|
| (vi) Crossing Material  | Instructions per the crossing surface manufacturer.  |
| (vii) Private Crossings & Public Grade Crossings on Side Tracks | No rail joints other than insulated joints may be located within crossing limits & within 25' of edge of crossing.                 |
| (viii) Brushing   | Wis. State Statute 195.29(6). And brush cutting shall maintain the brush no closer than 14' from center of track on both sides.    |
| (e) Drainage Structures   |  |
| (i) Bridge Structure Components                                 | AREMA Chapters 7 & 8.  |
| (ii) Culvert Structure Components                               | AREMA Chapter 1, Part 4.   |
| (f) Miscellaneous   |  |
| (i) Track Zone Vegetation                                       | See 72.1; AREMA Chapter 1, Part 9 for 16 ft. Width. Cut vegetation shall not be left on ground where it may affect track drainage. |
| (ii) Brushing   | AREMA Chapter 1, Part 9; Cutting 16 ft. from Centerline of Tracks and 10" Above Ground Line.                                       |

### 3.3 Variances

Any deviation from these specifications shall be requested in writing by the Railroad to WisDOT's Railroads and Harbors Section. Approval of a variance shall be issued in writing to the Railroad, prior to the terms of the variance being effective and prior to any costs incurred as a result of the variance being allowable for reimbursement under this Agreement.

### 4.0 Damaged Equipment and Materials

The project will not reimburse the Railroad or its subcontractor for equipment, equipment components or materials that are vandalized, stolen, maliciously or negligently damaged.

### 5.0 Work Schedule and Inspections

#### 5.1 Time for Completion

- (a) Project work is scheduled to start on or about January 21, 2019 and be completed by December 31, 2020.
- (b) The total amount of grant expenditures will not be increased solely by reason of any extension of time to complete the work scheduled for completion.

## 5.2 Project Work Inspection Procedure

WisDOT may independently conduct inspections of the project work.

## 5.3 Final Inspection

- (a) Final inspection shall be conducted within 30 days following a request by Railroad, unless snow cover makes such inspection impractical. The final inspection shall include the Railroad and WisDOT personnel.
- (b) Final inspection may be conducted upon a portion of the line segment subject to the rehabilitation work.
- (c) Following completion of a final inspection, WisDOT shall notify the Railroad of any outstanding defects identified during the final inspection. Upon the correction of the outstanding defects identified by WisDOT, Railroad shall inform WisDOT that the rehabilitation project work is complete.

## 6.0 Maintenance of Rehabilitated Track

### 6.1 Track Maintenance

Track shall be maintained to meet or exceed all applicable FRA Class 2 Track Safety Standards.

### 6.3 Turnout Ties

Turnout ties shall be maintained the same as track ties except that not less than 90 percent of the ties under the switch points and under the frog shall be sound.

## 7.0 Performance Criteria

Defects identified during any WisDOT inspection shall be corrected within 30 day of issuance of an inspection report.

Exhibit III  
Asphalt and Roadway Preparation

1. All Butt Joints shall be saw cut.
2. For Grade Crossings the base course shall be compacted base course (1 lift) prior to placing asphalt.
3. Prior to placement of any asphalt surface overlay, an asphalt tack coat shall be applied to the existing surface. The existing asphalt surface shall be prepared in accordance with subsection 211.4.5 of the State of Wisconsin, Department of Transportation standard specifications for road and bridge construction. The asphalt tack coat shall be applied at a rate of 0.1 gallons per square yard and shall be in accordance with section 402 of the State of Wisconsin, Department of Transportation standard specifications for road and bridge construction.

The asphalt pavement materials for grade crossings shall conform to the requirements designated in Sections 401 and 405 of the State of Wisconsin, Department of Transportation standard specification of road and bridge construction, current edition.

In addition, asphalt material to be used in the work shall be type AC Asphalt Penetration grade 85-100. The asphalt surface course shall be gradation No. 3, subsection 401.2.5. Asphalt to be placed in 3 lifts. Each lift is to be compacted with a roller. Finished top surface of asphalt to be 1/8" - 1/4" above crossing material.

The asphalt pavement between the rails (at the ends of the crossing) shall taper from the rail elevation to the top of ties within 1'0" of limits of road surface. Road shoulders shall be restored directed by the engineer.

4. Crossing material shall be installed as recommended by manufacturer. Top surface of crossing material shall be kept free of asphalt pavement materials.

No motor vehicles can travel on or touch the crossing material until the asphalt is to grade and has had a chance to set.

In addition to compaction equipment requirements specified in subsection 405.4.4A tandem steel-wheel vibratory roller with drum diameter of 30" and a width of approximately 40" shall be used for compaction in the area between the rails in road crossings. Roller is to gain access to area between rails without crossing over the crossing material.

The roller used in these areas shall be in first class mechanical condition, capable of being operated both forward and backward, and the operating mechanism shall be of a character and in such condition that starting, stopping or reversing direction can be accomplished smoothly without the loosening or distorting of the surface being rolled.

The roller shall be equipped with suitable devices for moistening the rolls. Petroleum or tar products shall not be used for this propose.

5. Traffic control for the crossing work responsibility of the contractor.
6. Disposal shall conform to the requirements designated in sections 205.3.10 & 205.3.11 of the State of Wisconsin Department of Transportation Standard Specifications for road and bridge construction, latest edition.

AGREEMENT NO. 0499-70-79  
ATTACHMENT III  
PROJECT OPERATIONS, ACCOUNTS, AND REPORTS

1.0 Fiscal Control

1.1 Financial Management, Audit, and Records

- (a) The Port's financial management and records systems shall include records and procedures for determining the allowability of costs incurred on the approved project or tasks in accordance with this Attachment.
  
- (b) The Port shall maintain and shall ensure that each recipient of funds under this Agreement, except funds received under a competitive bid process, whether in the form of contracts, subcontracts or other arrangements, maintains the following until the expiration of three years after the date of the submission and acceptance of the final close out accounting which shall include:
  - (1) Records that identify the sources and applications of funds for the approved project or tasks and contain information pertaining to grant awards, draw downs, obligations, unobligated balances, assets, liabilities, outlays, and income;
  - (2) Supporting source documents;
  - (3) All documentation underlying the preparation of the financial reports and the grant budget; and
  - (4) All accounting documents of the Port's pertaining to the approved projects or tasks shall be clearly identified and readily accessible to WisDOT and its designee. Port shall impose this requirement upon each of its contractors and ensure that it is imposed on each subcontractor.
  
- (c) Port and its subcontractors shall make available to the auditors of WisDOT or its designee the records of revenues and costs related to this Agreement. All such records will be kept for a period of at least three (3) years after the final acceptance of the Project Work. Any such records that are the subject of an

auditing dispute shall be kept for the term of the dispute. The Port's subcontractors shall allow inspection by the authorized agents of WisDOT of the above described records and similar records of their subcontractor, the project Property, and the equipment used thereon. Inspections shall be made during regular business hours and upon reasonable notice.

## 1.2 Allowable Costs

- (a) Costs of this project are not allowable for reimbursement under this Agreement if they are incurred prior to the execution of this Agreement unless specifically authorized in writing by WisDOT to be incurred prior to execution of this Agreement.
- (b) Discounts and Exclusions.
  - (1) Port shall, to the extent of its ability and consistent with the other provisions of this Agreement, take cash and trade discounts, tax exemptions, or other credits in connection with goods and services purchased or used on any approved project or task. Port shall impose this requirement on any contractor or subcontractor when payment is based on costs incurred.
  - (2) The sum of the allowable costs for the project set forth in Attachment I or revised after opening of bids shall be reduced by the net salvage value of any material being replaced in carrying out Project Work.
  - (3) No funds under this Agreement shall be used to pay a portion of the rental payment or acquisition price attributable to the value added to the rail Property under this Agreement or any other grant for local rail service assistance.
- (c) The costs incurred by the Port to carry out the project are allowable if they are covered by this Agreement or a contract approved by RHS in accordance with this Agreement. The Port shall show evidence that the amount shown in Attachment I is being expended in accordance with Attachment IV.

- (d) WisDOT may close out this project and not be responsible for further payment to Port one year after Port's submittal of the Project Completion Certificate or WisDOT's final field inspection, whichever occurs first.

### 1.3 Defective Work

If WisDOT or FRA determines that any material or workmanship is deficient, Port shall promptly require the replacement of materials or correction of workmanship necessary to cure the deficiency. Port shall not use or allow any grant or matching funds to pay for a replacement or correction required. Port may elect not to correct the deficiency, however, all costs associated with the deficient work (material, labor, machine charges, etc.) shall be unallowable costs and be ineligible for reimbursement under this Agreement. WisDOT, at its Option, may:

- (1) require repayment of any reimbursement paid for defective work, or
- (2) deduct a like amount from a future progress payment due the Port, or
- (3) deduct a like amount from the retainage payment due upon completion of the project.

### 1.4 Acceptance, Storage and Protection of Materials

All materials delivered to Port or its subcontractors for use in performing the Project Work shall be inspected and accounted for upon delivery and protected from theft or damage. The Port shall conduct inspections and shall reject defective material at the time of delivery to the project stockpile or work site or as soon thereafter as defects are discovered. Replacement of damaged or stolen or defective material is not an eligible cost under this Agreement. Damage or theft of material is not an acceptable reason for non-performance of Port's obligations under this Agreement.

## 2.0 Accounting

### 2.1 Financial Record Keeping and Audit

- (a) Port shall establish and maintain a separate set of accounts showing receipts and disbursements of all funds provided under this Agreement and all other funds accruing to or received on account of the approved project and shall require subcontractors to maintain a like set of accounts. This system of accounts shall permit the clear differentiation of charges to the project from expenditures made by Port for non-project work.
- (b) Failure to maintain an accounting system approved by WisDOT shall obligate Port to repay WisDOT all funds used to pay costs disallowed by WisDOT upon completion of the project close-out audit.
- (c) All costs charged to this project shall be supported by documents evidencing in detail the nature and propriety of the charges. All accounting documents pertaining to the project shall be clearly identified and readily accessible to WisDOT. Copies of all vendor invoices shall be submitted to the project inspector when reimbursement is being claimed.
- (d) Port shall make available to the auditors of WisDOT or its designee the records of revenues and costs related to the grant agreement. All such records will be kept for a period of at least three (3) years after the issuance of WisDOT's final audit report for the Project Work. Any such records that are the subject of an auditing dispute shall be kept for the term of the dispute. Port shall allow inspection of the above-described records and similar records of its subcontractor, the rail facilities, and the equipment used thereon by the authorized agents of WisDOT or FRA during regular business hours upon reasonable notice.

### 3.0 Scheduling and Reporting

#### 3.1 Construction Scheduling

Prior to starting construction on the approved project, Port shall provide WisDOT



with a schedule of anticipated work progress by month. The schedule shall be updated monthly as needed or reported as needing no change and included with the requests for payment.

### 3.2 Immediate Reporting

Port shall report to RHS immediately in writing whenever there is any change in conditions or in state or local law, or any other event, that may significantly affect:

- (a) Port's or its subcontractor's ability to perform the projects or tasks in accordance with the provisions of this Agreement, or
- (b) Port's continuing eligibility for financial assistance under this Agreement.

### 3.3 Routine Reporting

- (a) A performance report shall be filed with each invoice for payment and include the following information:
  - (1) the costs incurred to the end of the invoice period and the estimated costs to complete the phases of Project Work;
  - (2) unit costs of materials and labor charged to the project for the period covered by the report;
  - (3) the percentage of completion of each major element of the project and the estimated date of its completion;
  - (4) a narrative description of any difficulties or delays encountered, including an explanation of any cost overruns or high unit costs, and any corrective action taken or to be taken;
  - (5) an explanation of any anticipated difficulties or delays until the end of the project and the action to be taken in an effort to avoid such difficulties or delays; and
  - (6) any additional narrative necessary to explain any major change that has been made during the report period to the schedule of work.
- (b) Financial reports shall be on the same basis as Port's accounting records.

## 4.0 Payment of Grant Amounts

### 4.1 Payment Schedule

- (a) Invoices for payment may be submitted to WisDOT no more frequently than once every two weeks and at least quarterly.
- (b) Original invoices shall be submitted to Chief, Railroads and Harbors Section, Wisconsin Dept. of Transportation, Box 7913, Madison, WI 53707-7913.
- (c) Invoices and supporting documentation shall be in a format acceptable to WisDOT.

### 4.2 Payment Process

- (a) Invoice Submittal.
  - (1) Port shall prepare and submit an original invoice for the Project Work to RHS (see 4.1(b)) with a copy of the invoice and any supporting documentation to WisDOT's project inspector.
  - (2) WisDOT's project inspector shall review the submitted invoices for payment and shall discuss with Port and WisDOT's project manager any exception the project inspector may take to the amounts billed.
  - (3) WisDOT's project inspector's recommendation concerning the invoice shall be forwarded to RHS for processing.
  
- (b) Payment.
  - (1) Upon approval of an invoice by WisDOT, WisDOT shall pay to the Port not more than eighty percent (80%) of the approved invoice grant amount. The approved invoice amount shall be the invoiced amount less any amounts subject to exception.
  - (2) Payment by WisDOT shall be made to the Port's Rehabilitation Account.

### 4.3 RESERVED

#### 4.4 Payment Amount

The amount paid to Port under this Agreement shall not exceed 100% (100%) of the amount invoiced less exceptions, if any.

#### 4.5 Payment Delays

- (a) Should any element of cost billed on any invoice be questioned as to its allowability or accuracy, WisDOT may except that cost from payment until the eligibility of the cost item(s) is determined and shall pay the remainder of the invoiced amount per schedule.
- (b) Payment shall be made to Port's account only for work already completed or for delivered materials for which the Port or its contractor performing the work submits unpaid invoices. Port shall not invoice for payment for work to be performed by anyone until such work is completed.
- (c) If Port makes payment to any person prior to receipt of WisDOT's approval of a submitted invoice, and WisDOT subsequently disallows the cost paid, Port shall reimburse the project account with its own funds WisDOT's portion of the costs paid.

AGREEMENT NO. 0499-70-79  
ATTACHMENT IV

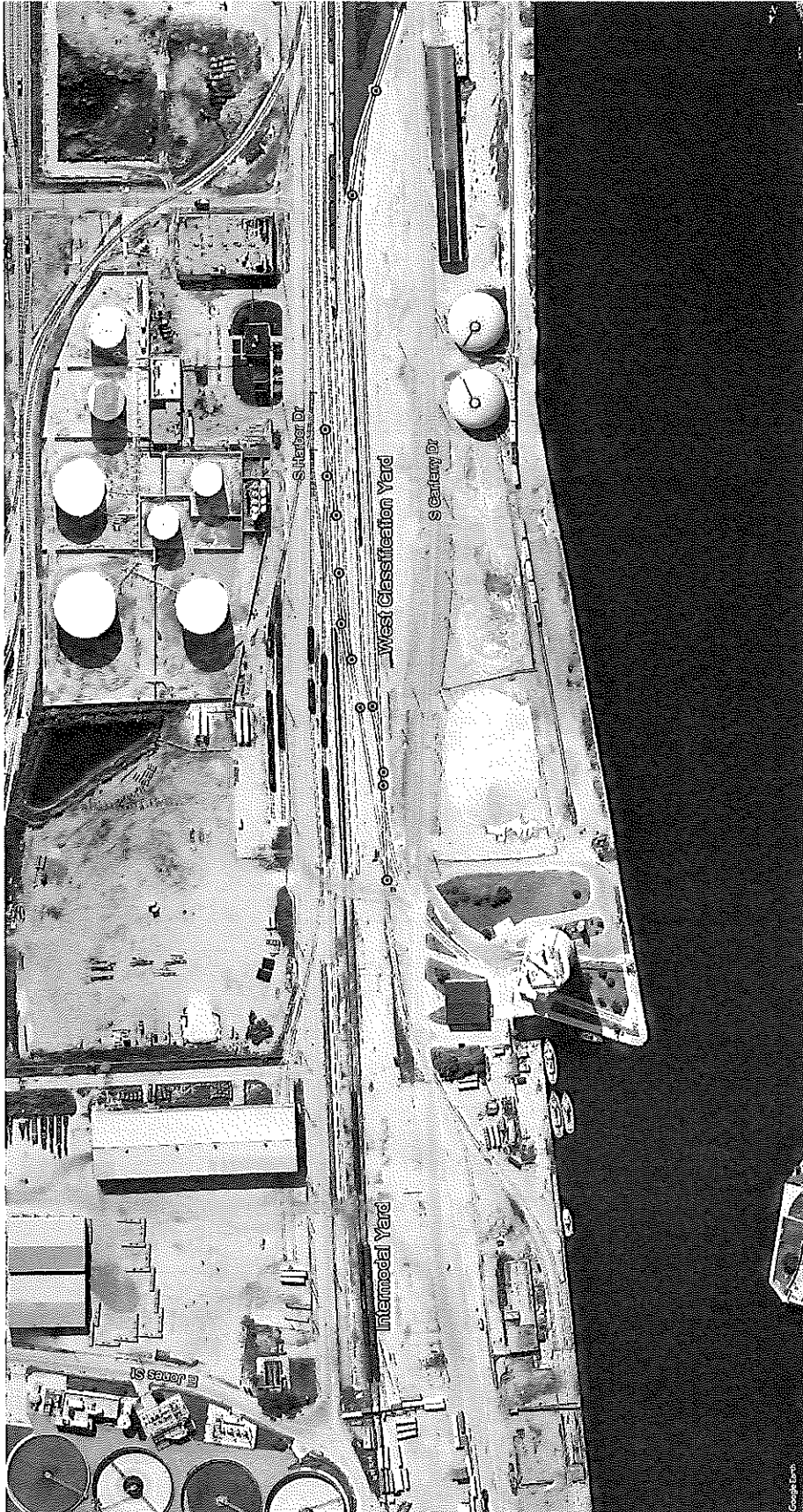
WORK PLAN FOR APPROVED PROJECT

This project consists of the construction, rehabilitation and/or improvement of approximately 10,400 feet of railroad track in the West Classification Yard and Intermodal Yard, including all labor and materials required. Work will include:

- 1) Installing new ballast, ties, 13 new turnouts, and approximately 8,000 track feet of new 115-lb. rail
  - a) Constructing approximately 1,400 feet of new track
  - b) Rehabilitating approximately 6,600 feet of existing track
- 2) Resurfacing and rehabilitating approximately 2,400 feet of asphalt-embedded track located in the Intermodal Yard, including pavement removal, gaging, tie replacement, tamping, and new asphalt pavement.

The track and turnouts to be constructed are shown on the location map.

Archaeological and Historic Commitments



**PROJECT COMPLETION CERTIFICATE**

**AGREEMENT NO: 0499-70-79**

**PROJECT NAME: Port of Milwaukee Intermodal Yard and West Classification Yard Track Rehabilitation**

**LOCATION: Port of Milwaukee, Milwaukee, Wisconsin**

**NAME OF CONTRACTOR: \_\_\_\_\_**

**DATE OF PROJECT COMPLETION: \_\_\_\_\_**

In compliance with Section 3.3.2 (a) of Attachment III, of the above agreement, I certify that the above listed project was completed in accordance with the Agreement. I further certify that the above project was constructed in accordance with the approved plans and specifications, as may have been amended by a WisDOT approved contract change order. All written lien waivers, from each vendor or supplier used on the project providing goods or services in a cumulative amount exceeding \$50,000, are attached.

\_\_\_\_\_  
Port Representative

\_\_\_\_\_  
Date

The above listed project appears to have been constructed in conformance with the approved plans and specifications, as may have been amended by the attached contract change order.

\_\_\_\_\_  
WisDOT Representative

\_\_\_\_\_  
Date