

CITY AGREEMENT

This Agreement (this "Agreement") is made this 15th day of October, 2002, by and between the City of Oelwein, an Iowa municipal corporation, having its principal place of business at 20 - 2nd Avenue SW, Oelwein, Iowa (the "Municipality") and D&W Railroad, Inc., a Delaware corporation, having its principal place of business at 55 East Jackson Boulevard, Suite 2100, Chicago, Illinois ("D&W").

WITNESSETH:

WHEREAS, Union Pacific Railroad Company, a Delaware corporation ("UP"), has heretofore operated as part of its business that certain line of railroad between Milepost 332.0 at Dewar, Iowa and Milepost 354.3 at Oelwein, Iowa, together with sidings and certain other facilities, including that certain railroad yard located in Oelwein, Iowa (collectively, the "Oelwein Line");

WHEREAS, UP has indicated that it desires to abandon the Oelwein Line; and

WHEREAS, a certain viaduct structure supporting a portion of the Oelwein Line and certain various public right-of-ways and rail crossings on and across the Oelwein Line are now, or may hereafter be, located within the Municipality;

WHEREAS, D&W has indicated to the Municipality that D&W may be willing to purchase the Oelwein Line and arrange for continued freight railroad service to be available on the Oelwein Line if, among other things, the Municipality agrees to be responsible for such viaduct and for all road crossings now or hereafter affecting the Oelwein Line within the municipal boundaries of the Municipality; and

WHEREAS, the Municipality has determined that its best interest will be served by inducing D&W to purchase the Oelwein Line and accordingly, on and subject to the terms of this Agreement, the Municipality is willing to agree to such responsibility;

WHEREAS, D&W and the Municipality desire to set forth their respective responsibilities and obligations with respect to the inspection, maintenance and repair of such viaduct, right of ways and rail crossings;

NOW, THEREFORE, in consideration of the promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, it is hereby agreed as follows:

1. Grade Crossing Surface Maintenance. Municipality hereby agrees that, at its sole cost and expense, it shall keep and maintain in good, safe and usable order, condition and repair the grade crossing road surfaces of each and every now existing or hereafter created public right-of-way road crossing traversing the Oelwein Line, whether now or hereafter existing, which is located within the Municipality's boundaries (collectively, the "Right-of-Ways and Rail Crossings"), which shall include, without limitation, keeping the Right-of-Ways and Rail Crossings free and clear of all ice, snow, debris and other materials which may in any way affect or interfere with vehicle or railroad operations thereon. Municipality shall be responsible for

inspecting and keeping itself informed of the condition of the Right-of-Ways and Rail Crossings to the extent necessary to remain currently informed about the condition thereof, and at its sole cost and expense, Municipality shall repair, or cause to be repaired, in an expeditious and timely manner the Right-of-Ways and Rail Crossings as necessary maintain the same in a safe and good operating condition and in compliance with all applicable laws, rules and regulations. If any repair or maintenance of the Right-of-Ways and Rail Crossings or any portion or part thereof shall be deemed reasonably necessary by D&W in order that the same shall be in a safe and good operating condition, then upon written notice by D&W, Municipality, at its sole cost and expense, shall take such actions as are reasonably necessary to correct any unsafe or unsatisfactory part thereof; provided that nothing contained herein shall be construed as requiring D&W, its officers, agents, employees or contractors, to inspect the Right-of-Ways and Rail Crossings or to advise Municipality of the need for any repairs thereto. Prior to the commencement of any work on or about any Right-of-Way and Rail Crossing, Municipality shall provide written notice thereof to D&W. Except in emergencies, such notice shall be provided not less than thirty (30) days in advance of commencing such work.

As between them, D&W and not Municipality shall be responsible for the care and maintenance of the rails, ties, and rail bed; crossing signals; and, crossing signage with respect to Rail Crossings, however, D&W may arrange with one or more third parties for said inspection and maintenance.

2. Viaduct Maintenance. Municipality hereby further agrees that, at its sole cost and expense, it shall keep and maintain in good, safe and usable order, condition and repair that certain viaduct structure located at Charles Street, Oelwein, Iowa and the road and public right-of-way under passing such viaduct structure (collectively, the "Viaduct and Underpass"), which shall include, without limitation, keeping the Viaduct and Underpass free and clear of all ice, snow, debris and other materials which may in any way affect or interfere with vehicle use thereunder. Municipality shall be responsible for inspecting and keeping itself informed of the condition of the Viaduct and Underpass to the extent necessary to remain currently informed about the condition thereof, and at its sole cost and expense, Municipality shall repair or cause to be repaired in a timely manner the Viaduct and Underpass as necessary to maintain the same in a safe and good condition and in compliance with all applicable laws, rules and regulations. If any repair or maintenance of the Viaduct and Underpass or any portion or part thereof shall be deemed reasonably necessary by D&W in order that the same shall be in a safe and good operating condition, then upon written notice by D&W, Municipality, at its sole cost and expense, shall take such actions as are reasonably necessary to correct any unsafe or unsatisfactory part thereof; provided that nothing contained herein shall be construed as requiring D&W, its officers, agents, employees or contractors, to inspect the Viaduct and Underpass or to advise Municipality of the need for any repairs thereto. Prior to the commencement of any work on or about the Viaduct and Underpass, Municipality shall provide written notice thereof to D&W. Except in emergencies, such notice shall be provided not less than thirty (30) days in advance of commencing such work.

As between them, D&W and not Municipality shall be responsible for the care and maintenance of the rails, ties, and rail bed; with respect to the viaduct, however, D&W may arrange with one or more third parties for said inspection and maintenance.

City shall use all reasonable diligence in providing maintenance to viaduct to provide suitability of said viaduct to support rail service. In the event such service shall be interrupted, City shall not be liable for any damage or loss resulting from such interruption. However, City shall proceed at once to repair the viaduct and remove the cause of such interruption within a reasonable time, and, failing to do so, the limit of or exemption from liability as provided in this paragraph shall not apply, and City may be liable to D&W as though no such limit or exemption of liability had been provided.

3. Municipality shall also be responsible for the care and maintenance of all signage with respect to the Viaduct and Underpass.

4. Access. D&W hereby grants to Municipality a right of reasonable access any portion of the Oelwein Line for the purpose of keeping, inspecting, maintaining and repairing the Right-of-Ways and Rail Crossings and the Viaduct and Underpass; provided, however, that such right shall not include any right to interfere with the operations of D&W, its officers, agents, employees and contractors, or D&W's customers. Municipality agrees that it will use all reasonable efforts to conduct its activities in a manner which will not interfere with the operations of D&W, its officers, agents, employees and contractors and customers.

5. Term. The term of this Agreement shall commence as of the date hereof and shall continue for so long as D&W or any affiliate of D&W owns and actively operates the Oelwein Line.

6. Abandonment. In the event D&W or its successors and assigns shall abandon the Oelwein Line or any portion thereof located within the boundaries of the Municipality, the Municipality shall assume the ownership of the Right-of-Ways and Rail Crossings and the Viaduct and Underpass. Upon such occurrence, D&W and its successors and assigns shall have no obligation to demolish or otherwise modify any of the Right-of-Ways and Rail Crossings or the Viaduct and Underpass or any other structures or roadways related thereto, and the Municipality shall not have and shall not make any claim of any kind, legal or otherwise, against D&W or its successors and assigns in respect of any of the Right-of-Ways and Rail Crossings and the Viaduct and Underpass or for any costs or expenses associated with demolition or modification of any thereof.

7. City may arrange with one or more third parties to discharge the City's duties and obligations pursuant to the terms of this agreement.

8. Representations and Warranties.

(a) Municipality represents and warrants to D&W that (i) Municipality has the right and power and is duly authorized and empowered to enter into, execute and deliver this Agreement and perform its obligations hereunder, (ii) the execution, delivery and performance of this Agreement by Municipality do not conflict with the provisions of its organizational documents, any statute, regulation, ordinance or rule of law, or any agreement, contract or other document which may now or hereafter be binding on Municipality, (iii) the execution, delivery

(b) If to D&W: D&W Railroad, Inc.
55 East Jackson Boulevard
Suite 2100
Chicago, Illinois 60604-4166

with a copy to: Schwartz, Cooper, Greenberger & Krauss Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attn: Jay S. Berlinsky, Esq.

or to such other address as each party may designate for itself by like notice.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa.

12. No Waiver. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

13. Amendments; Changes. No change in the terms of this Agreement shall be valid unless in writing and signed by all parties hereto. Nothing contained in this Agreement shall be construed as creating any course of dealing or conduct between the parties.

14. Entire Agreement. This Agreement embodies the entire agreement and understandings between the parties and supersedes all prior written and oral agreements and understandings between the parties concerning the subject matter contained herein.

15. Governing Law; Severability. This Agreement shall be a contract made under and governed by the internal laws of the State of Iowa applicable to contracts made and to be performed entirely within such State. Whenever possible such provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any covenant or provision of this Agreement shall be adjudged void and provided that such adjudication does not invalidate covenants or provisions which cause this Agreement to fail of its essential purpose or materially alter the relationship between the parties which is contemplated hereby, then such adjudication shall not affect the validity, obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of this Agreement be adjudged void, the parties shall use their best efforts to make such other arrangements as will effect the purposes and intent of this Agreement.

16. Headings. The descriptive section headings have been inserted for convenience of reference only and do not define or limit the provisions hereof.

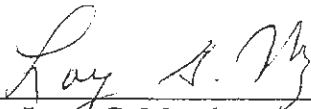
17. Counterparts. This Agreement may be executed in counterparts, each of which, when taken together, shall constitute one and the same instrument.


18. Further Assurances. Each party hereby agrees that it shall fully cooperate with the other party and agrees to execute all further instruments and documents and take all further action in order to give effect to the intent of, and carry out the purposes of, this Agreement.

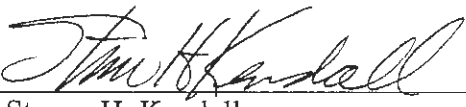
IN WITNESS WHEREOF, this City Agreement has been duly executed as of the day and year specified at the beginning hereof.

CITY OF OELWEIN

D&W RAILROAD, INC.

By: 
Name: Larry G. Murphy
Its: Mayor

By: 
Name: J. Robert Nelson
Its: President

By: 
Name: Steven H. Kendall
Its: City Administrator