



CONFIDENTIALITY AGREEMENT GOVERNING RESPONSES TO WisDOT'S NORTHWOODS RAIL LINES BUSINESS POTENTIAL QUESTIONNAIRE

THIS CONFIDENTIALITY AGREEMENT ("Agreement") is made as of January 1, 2018 (the "Effective Date"), by and between Wisconsin Department of Transportation's Rail Advisors Tim Eklund, Ed Robinson and David Stuebner ("WisDOT's Rail Advisors" or "Rail Advisors"), on the one hand, and DeWitt LLP on behalf of Lake States Shippers Association ("DeWitt" or "LSSA"), on the other. WisDOT's Rail Advisors and LSSA are individually referred to herein as a "Party" and collectively as "Parties". In consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. On behalf of the State of Wisconsin Department of Transportation ("Department" or "WisDOT") the Rail Advisors are engaged to advise the Department of the freight business potential of Northwoods Wisconsin rail lines including to gather, assess and retain the information provided by those persons responding ("Respondents") to the WisDOT's "Northwoods Rail Lines Business Potential Questionnaire" dated April 27, 2020 ("Questionnaire") and due May 12, 2020, a copy of which is attached as Exhibit A. Each Respondent may disclose certain commercially sensitive, proprietary information to Rail Advisors and LSSA on a confidential basis. All information about each Respondent and/or its affiliated companies or entities furnished by such Respondent (the "Disclosing Person") or Respondent's Representatives (as defined below) provided in response to the Questionnaire or supplementing such response, whether oral or written, and regardless of the manner in which it is furnished, is referred to in this Agreement as "Information." The Disclosing Person may consider such Information commercially sensitive because the disclosure of such Information to third parties could place the Disclosing Party or others in a competitively disadvantaged situation. The Disclosing Person may consider such Information proprietary either because it has developed the Information internally, or because it has received the Information subject to a continuing obligation to maintain the confidentiality and security of the Information, or because of other reasons. The term "Receiving Party" shall mean a Party to whom Information is disclosed hereunder by a Disclosing Person.

As used in this Agreement, the term "Representative" means employees of, or persons engaged to assist a Disclosing Person or Party with respect to providing or handling the Information. As used in this Agreement, the term "person" shall be broadly interpreted to include, without limitation, any corporation, company, partnership, other entity or individual.

As used herein, the term "affiliated company" shall include a Party's ultimate parent company and any company controlled directly or indirectly by such ultimate parent company or by a Party.

2. With respect to Information disclosed under this Agreement, the Receiving Party shall:

- a. Hold the Information in confidence, exercising the same degree of care as used by the Disclosing Person to protect its own proprietary or confidential Information that it does not wish to disclose, but in no case less than a reasonable degree of care, provided that the use of such efforts shall not constitute a defense by either Party in

the event that any of the Information is not kept confidential or is used other than in accordance with the terms of this Agreement;

- b. Restrict disclosure of the Information solely to those Representatives with a need to know for the purposes stated herein and not to disclose it to any other person and then only provided (i) the Receiving Party requires such Representatives to agree in writing, for the benefit of the Disclosing Person, to be bound by the terms of this Agreement; and (ii) the Receiving Party shall be liable for any breach of this Agreement by such Representatives;
- c. Advise those Representatives to whom the Information is disclosed of their obligations with respect to the Information; and
- d. Use the Information, in the case of WisDOT's Rail Advisors, only in connection with advising the Department on matters related to the Questionnaire and consistent with the LSSA Antitrust Compliance Guidelines and, in the case of LSSA, only in a manner consistent with such Antitrust Compliance Guidelines and the terms of this Agreement.

3. The Information shall be deemed the property of the Disclosing Person and, upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Person or will destroy all such Information at the Disclosing Person's direction. If either Party loses or makes an unauthorized disclosure of Information it has received, it shall notify the Disclosing Person immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed Information. To avoid doubt, notwithstanding anything in this Agreement to the contrary, upon the termination of discussions between the Parties with respect to the Subject Matter, any materials generated by the Receiving Party or its Representatives from Information received from the Disclosing Person shall be destroyed by the Receiving Party, and the Disclosing Person shall be entitled to a certificate attesting to such destruction from the Receiving Party.

4. The Receiving Party shall have no obligation to keep confidential or to preserve the proprietary nature of any Information that:

- a. Was previously known to the Receiving Party prior to its disclosure by the Disclosing Person or previously developed by the Receiving Party independent of any Information furnished by the Disclosing Person under this Agreement;
- b. Is or becomes generally available to the public through no wrongful act of the Receiving Party;
- c. Is developed by or on behalf of the Receiving Party independent of any Information furnished by the Disclosing Person under this Agreement;
- d. Is received from a third party, provided that such source is not, to the knowledge of the receiving party, bound by a confidentiality agreement with the Disclosing Person or its Representatives; or
- e. Is disclosed pursuant (in legal counsel's opinion) to the requirement or request of a court of competent jurisdiction and reasonable notice is given by the Receiving

Party to the Disclosing Person of any such requirement or request so as to permit the Disclosing Person to seek an appropriate protective order or exemption from such requirement or request.

5. Each Party and Disclosing Person understands that no agreement relating to the Questionnaire or otherwise providing for any business relationship shall be deemed to exist between the Parties or Disclosing Persons hereto unless and until a definitive agreement relating to the Information has been executed and delivered by the Parties or Disclosing Persons hereto, and each Party and Disclosing Person hereby waives, in advance, any claims (including without limitation breach of contract) in connection with the Information unless and until such agreement shall have been executed and delivered and then only to the extent provided for therein. The Parties agree that unless and until a definitive agreement is executed and delivered, neither Party will be under any legal obligation of any kind whatsoever by virtue of this or any written or oral expression with respect to the Information except for the matters specifically agreed to herein. Each Party and Disclosing Person further reserves the right, in its sole discretion, to reject any and all proposals made by the other Party or a Disclosing Person with regard to the Information and to terminate discussions related thereto at any time.

6. This Agreement shall benefit and be binding upon the Parties and for the benefit of the Disclosing Parties and their respective successors and assigns.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin without regard to choice of law principles.

8. This Agreement shall become effective as of the date set forth above ("Effective Date"). The obligations of the Parties contained in this Agreement shall continue and survive for a period of three (3) years unless terminated as provided herein.

9. The Parties acknowledge that in the event of an unauthorized disclosure, without waiver of any right a Party or Disclosing Person may have against a Party, the damages incurred to a Disclosing Person due to the disclosure of any of its Information may be difficult if not possible to ascertain, and that such Disclosing Person may seek injunctive relief as well as monetary damages against a Receiving Party that breaches this Agreement.

10. This Agreement constitutes the entire understanding between the Parties and with the Disclosing Persons with respect to the subject matter hereof. No amendment or modification of this Agreement shall be valid or binding on the Parties or a Disclosing Person unless made in writing and executed on behalf of each Party by its duly authorized representative and with notice to each Disclosing Person.

11. Neither Party is responsible or liable for any business decisions made or inferences drawn by the other Party in reliance on this Agreement or in reliance on actions taken or disclosures made pursuant to this Agreement. Neither Party makes any warranty, express or implied, with respect to the accuracy or completeness of any Information. Neither Party shall be liable to the other or a Disclosing Person hereunder for amounts representing loss of profits, loss of business, or indirect, special, consequential, or punitive damages.

12. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible, and the unenforceable provision shall be deemed modified to the

limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

13. No licenses or rights under any patent, copyright, or trademark are granted or are to be implied by this Agreement.

14. This Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Facsimile signatures to this Agreement shall be deemed to be binding upon the Parties.

15. Failure to enforce any provisions of this Agreement shall not constitute a waiver of any of the terms and conditions hereof.

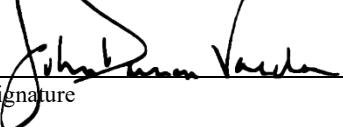
16. No amendment, modification, or waiver of the terms of this Agreement shall be binding unless placed in writing and duly executed by the Parties' authorized representatives.

17. Notices related to this Agreement, including notice amending the name or other information as to the person to receive such notice, may be effected by U.S. Mail or email to the person at the address provided hereinbelow. Any notice to a Disclosing Person shall be to the contract information provided in the Disclosing Person's response to the Questionnaire or as amended by written notice to the Parties pursuant to this section of the Agreement.

18. Consistent with "Lake States Shippers Association Antitrust Compliance Guidelines" dated July 1, 2017 ("Antitrust Compliance Guidelines"), under no circumstances shall "Sensitive Competitive Data" (as defined in Antitrust Compliance Guidelines) of any individual Respondent or Disclosing Person, shipper or group of shippers, disclosed pursuant to this Agreement be disclosed to any other Disclosing Person or other person except in strict compliance with the aggregation and related requirements set forth at Antitrust Compliance Guidelines §§ 7-22.

Each Party represents that it has caused this Agreement to be executed on its behalf as of the date written below by a Representative empowered to bind that Party with respect to the undertakings and obligations contained herein.

DeWitt LLP on behalf of Lake States Shippers Association

By: 	John Duncan Varda, Attorney	Date
Signature	Name (printed) - Title	
2 E. Mifflin Street, Suite 600 Street	Madison, WI	53703
	City, State	Zip
jdvarda@dewittross.com Email	608-212-1103	608-252-9243
	Telephone No.	Fax No.

[Signatures continue on following page.]

Wisconsin Department of Transportation Rail Advisors

By:  Tim Eklund, The Eklund Companies Name (printed) - Title _____ Date _____
Signature _____

5951 S. Olive Court Centennial, CO Zip _____
Street City, State _____ Zip _____

eklundcompanies@outlook.com 855-357-1000 Fax No. _____
Email Telephone No. _____

By: _____ Ed Robinson Name (printed) - Title _____ Date _____
Signature _____

Street _____ City, State _____ Zip _____

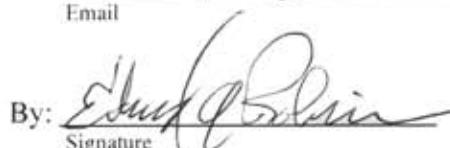
edwardrobinson@comcast.net Telephone No. _____ Fax No. _____
Email _____

By: _____ David Stuebner Name (printed) - Title _____ Date _____
Signature _____

Street _____ City, State _____ Zip _____

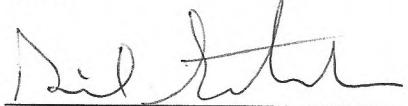
david.stuebner@aol.com Telephone No. _____ Fax No _____
Email _____

Wisconsin Department of Transportation Rail Advisors

By: _____ Signature	<u>Tim Eklund, The Eklund Companies</u> Name (printed) - Title	_____ Date
<u>5951 S. Olive Court</u> Street	<u>Centennial, CO</u> City, State	<u>80111</u> Zip
<u>eklundcompanies@outlook.com</u> Email	<u>855-357-1000</u> Telephone No.	<u>507-321-1000</u> Fax No.
		<u>4/27/2020</u> Date
By: <u>Ed Robinson</u> Signature	<u>Ed Robinson</u> Name (printed) - Title	<u>55112</u> Zip
<u>1370 Cullen Ave</u> Street	<u>Arden Hills, MN</u> City, State	— Fax No.
<u>edwardrobinson@comcast.net</u> Email	<u>(651)-308-1401</u> Telephone No.	— Fax No.
By: _____ Signature	<u>David Stuebner</u> Name (printed) - Title	_____ Date
_____ Street	_____ City, State	_____ Zip
<u>david.stuebner@aol.com</u> Email	<u>—</u> Telephone No.	<u>—</u> Fax No.

Wisconsin Department of Transportation Rail Advisors

By: _____ Signature	<u>Tim Eklund, The Eklund Companies</u> Name (printed) - Title	_____ Date
<u>5951 S. Olive Court</u> Street	<u>Centennial, CO</u> City, State	<u>80111</u> Zip
<u>eklundcompanies@outlook.com</u> Email	<u>855-357-1000</u> Telephone No.	<u>507-321-1000</u> Fax No.

By: _____ Signature	<u>Ed Robinson</u> Name (printed) - Title	_____ Date
Street	City, State	Zip
<u>edwardrobinson@comcast.net</u> Email	Telephone No.	Fax No.
By:  Signature	<u>David Stuebner</u> Name (printed) - Title	<u>4-28-2020</u> Date
<u>1144 Tacoma Beach Rd</u> Street	<u>Sturgeon Bay, WI</u> City, State	<u>54235</u> Zip
<u>david.stuebner@aol.com</u> Email	<u>312-339-0150</u> Telephone No.	Fax No.



Northwoods Rail Lines Business Potential Questionnaire

Type-In Fill-in Version

The State of Wisconsin Department of Transportation Railroads and Harbors Section has hired a small group of experienced railroad executives to perform a study and potentially negotiate a purchase of some of CN rail assets to restore reliable local rail service to Northern Wisconsin. The purpose of this questionnaire is to determine the feasibility and potential rail volumes to find an operator of these underutilized rail lines to restore service and maintain a long-term competitive and viable rail service in Northern Wisconsin. Feel free to use this form for separate responses from the perspective of facilities located at different locations within Wisconsin. If possible, distinguish inbound/outbound in your responses. Your responses are subject to the [WisDOT Rail Advisor/LSSA Confidentiality Agreement](#) including the [LSSA Antitrust Compliance Guidelines](#).

Note #1: When you type-in your response, if you need more space, use the additional page at the end of the Questionnaire making reference to the Question number. Add pages if needed.

Note #2: Add your own Comments using the additional page at the end of the Questionnaire making reference to the Question number. Add pages if needed.

Note #3: Please return your Response by May 12, 2020 via email to Eklundcompanies@outlook.com and mso@dewittllp.com, subject line: "Northwoods Freight".

Company Name: _____

Location: _____

Contact: _____

Products Manufactured/Received: _____

1. Does your company currently use rail or has your company used rail: YES NO

2. When you use rail what products and tonnage(s) have you shipped or received by rail?

3. Have you shipped or received products from Northern Wisconsin using rail: YES NO

4. Why did you stop using rail?

Northwoods Rail Lines Business Potential Questionnaire

Company: _____ Page: 2
Location: _____ Contact: _____

Northwoods Rail Lines Business Potential Questionnaire

Company: _____ Page: 3
Location: _____ Contact: _____

12. If local rail service was restored or expanded to/from Northern Wisconsin, what level of service would be necessary to return your business to use rail?

**13. What type of rail rate structure would be necessary for you to make a commitment to use rail?
Please be specific in terms of "per car", "per ton" or other economic metric.**

14. If a competitive rate could be negotiated as part of the line sales from the current owner of the northern rail lines, would you be willing to make a commitment to use rail?

15. How long and what type of guarantees would you need to make a long-term commitment to use rail?

16. Would you be willing to help the consultants determine what competitive rate is needed to return your business to rail if the rate discussion is confidential?

17. Is there a cost differential of loading or unloading goods moving truck vs. rail? What is the cost differential (examples)?

Northwoods Rail Lines Business Potential Questionnaire

Company: _____ Page: 4
Location: _____ Contact: _____

Additional Comments Are Welcome

If related to a specific question above, include the Question number in your comment.