Wisconsin Central Group
An ad hoc Rail Freight Stakeholders Coalition
www.centralcorridors.com/wcg/

Lake States Shippers Association
A Classic Co-op Shippers Association
www.centralcorridors.com/lssa/

John Duncan Varda, Counsel
DeWitt LLP
2 E. Mifflin Street, Suite 600
Madison, WI 53703
608-212-1103
jdvarda@dewittllp.com

February 7, 2020

Funding Participation Agreement 2020
North Central Wisconsin Regional Planning Commission
WI Freight Rail Infrastructure Improvement Program – Intermodal
Initial Provisional Application Filed February 3, 2020

Purpose of This Agreement, WI FRIIP-Intermodal Funding Objectives.

1. Wisconsin Central Group ("WCGroup" or "WCG"), since 2010, an ad hoc rail freight stakeholders coalition, and Lake States Shippers Association ("LSSA") are non for profit voluntary associations, dedicated to increasing economic opportunity and competitiveness throughout the Great Lakes Forests Region ("GLFR") principally by working collaboratively to increase freight on the region's lighter density rail lines and otherwise to reinstate competitive rail service throughout the Region.

2. The purpose of the funding is to provide matching funds for the application of the North Central Wisconsin Regional Planning Commission ("NCWRPC") to Wisconsin Department of Transportation ("WisDOT") for project grant funding for NCWRPC's Wisconsin Freight Rail Infrastructure Improvement Program – Intermodal ("FRIIP-Intermodal) project as described in the NCWRPC's Provision Application filed February 3, 2020 ("NCWRPC Intermodal Project" or "Project").

3. NCWRPC's FRIIP-Intermodal Project seeks to establish the feasibility and economic viability components for access for freight along the Union Pacific Rail Corridor (see map, a/k/a UP route I90/94 Rail Corridor) between the Twin Cities and the Chicago and beyond connections including intermodal freight access at intermediate points along the rail corridor. One of the potential intermediate intermodal access points is at or near Necedah, WI on Union Pacific or north of it or near Wisconsin Rapids or Stevens Point, WI over existing or potentially expanded Union Pacific trackage rights or potentially extend trackage right for location further north. The Project is likely to contribute foundational data and information to support a federal grant application for approximately $30 million (engineering analysis previously, separately developed) of federal grant funds double stack clearances on Union Pacific between Milwaukee and the Wisconsin/Illinois State Line.

4. NCWRPC's funding objective is up to $30,000 for a total of $40,000 of matching funds to support an FRIIP-intermodal grant of $200,000 for total Project funding of $240,000.

Funding Contributions.

5. A "Contributor" under this Agreement means a person or entity that remits, as provided in the "Remittance Form," a minimum suggested contribution payment of $2,500. If the Contributor desires to contribute more than $2,500, LSSA will invoice the Contributor for the excess in the manner requested by the Contributor. Each Contributor is entitled to designate one or more contact persons to whom LSSA and/or NCWRPC will report periodically on activities and progress on the NCWRPC Intermodal Project.

Agreement to Provide Services.

6. DeWitt LLP ("DeWitt"), subject to contribution of sufficient funds to carry out the purposes of this Agreement, agrees to provide, at no charge, DeWitt Trust Account services for collection and distribution to the North Central Regional Planning Commission to carry out the funding purposes of this Agreement or as otherwise provided herein and, at no charge, the personal services of Attorney John Duncan Varda and/or other qualified attorneys and staff to provide such Trust Account Services and to monitor the funding activity in a manner consistent with the WCGroup/LSSA Antitrust Compliance Guideline and, except as provided otherwise herein, DeWitt's General Terms and Conditions.

Itemized Reports on Contributions, Disbursements and DeWitt No Charge Services.

7. DeWitt shall periodically provide to each Contributor representative, addressed to the Contributor's representative(s), via either U.S. Mail, express, or e-mail, monthly (unless the accrued charges for a given month are nominal), an itemized statement of receipts from Contributors and application of such funds to the Project and an itemized list of services provided by DeWitt at no charge.

Application of Funds Held in Trust Account.

8. Funds received from Contributors shall be deposited in the Dewitt Trust Account until withdrawal is authorized as provided in this Agreement.

Return of Excess Funds to Contributors.

9. Unless otherwise directed by the Contributor, in the event that the Project is not funded by WisDOT, the contributed funds will be returned to each Contributor within thirty (30) days of denial of the grant or a determination by NCWRPC that there are insufficient matching funds to satisfy WisDOT's grant terms and conditions.

10. Unless otherwise directed by the Contributor, in the event that matching funds contributed for the Project from all sources exceed the amount required to satisfy WisDOT's grant terms and conditions, the excess funds in the DeWitt Trust Account contributed for the Project, proportionally to the each Contributor's contribution, shall be returned to each Contributor.

Right of Independent Action Preserved.

11. Contributor's right of independent action including, but not limited to, actions inconsistent or adverse to actions or positions of this Agreement is preserved and may be exercised at any time.

Attorney-Client Relationship, When and How Created.

12. Entry into this Agreement, in and of itself, does **not** create an attorney-client relationship between a Contributor and either DeWitt or any attorney employed by DeWitt. An attorney-client relationship does exist between DeWitt and LSSA and WCGroup. One or more, and possibly many, of the Contributors may have otherwise established attorney-client relationships with DeWitt. In the course of these, specific attorney-client relationships may be established between Dewitt and one or more of the Contributors, individually or jointly; provided, however, no such attorney-client relationship shall be established except in writing and without provisions to avoid prejudice to the interests of LSSA and/or WCGroup.

Potential Conflicts, Conflict Avoidance.

13. DeWitt shall endeavor to identify potential conflicts of interest that may arise between or among WCG/LSSA, WCG/LSSA Contributors, and other DeWitt clients and shall report such potential conflicts to the interested parties. Contributors authorize the WCG/LSSA Steering Committee (a/k/a LSSA Focus Group) to waive such conflicts or potential conflicts between WCG/LSSA and other clients of DeWitt, upon the advice of independent counsel, if it is feasible and reasonable to do so, and subject to such reasonable conditions as may be appropriate to protect the interests of WCG/LSSA. Contributors who are otherwise clients of DeWitt agree to waive such conflicts or potential conflicts between or among them, WCG/LSSA, other WCG/LSSA Contributors under this Agreement, and/or other clients of DeWitt, upon the advice of independent counsel, if it is feasible and reasonable to do so, and subject to such reasonable conditions as may be appropriate to protect their respective interests.

Confidentiality, Generally; Attorney-Client Privilege.

14. Subscribers and Contributors agree to endeavor to maintain in confidence, among themselves in the customary manner of maintaining the confidentiality of sensitive, proprietary business information, communications and documents created by or for LSSA and WCGroup or in conjunction with activities by or on behalf of LSSA and/or WCGroup, the disclosure of which would tend to undermine or diminish the effectiveness of LSSA and/or WCGroup and/or initiatives or projects endorsed or promoted by LSSA and/or WCGroup. These include, but are not limited to, LSSA’s and WCGroup's budgets, compiled membership lists, and the password to and documents posted only on the “members only” sections of the LSSA’s WCGroup's websites or otherwise designated as confidential to LSSA and/or WCGroup.

15. DeWitt shall endeavor to identify to WCG/LSSA participants which communications, documents and subject matters are deemed sensitive and subject to the confidentiality provision of this Agreement and/or which are subject to attorney-client privilege and which attorney-client relationship applies.

Antitrust.

16. DeWitt shall provide for the invocation of WCG/LSSA Antitrust Compliance Guidelines at the outset of every meeting and shall endeavor to monitor such meetings and documents created and communications which occur for or on behalf of LSSA and/or WCGroup or in conjunction with its activities, for potential deviations from LSSA's Antitrust Compliance Guidelines. DeWitt shall report substantive violations or deviations from the Guidelines to the Steering Committee and/or the appropriate officer of any LSSA participant who is involved.

DeWitt LLP Law Firm

Engagement and Fee Agreement
DeWitt's General Terms and Conditions
January 1, 2020

1. **Scope of the Engagement.** The scope of our work, legal services to be provided to you, is described in the Engagement and Fee Agreement letter ("Agreement") which incorporates these "DeWitt's General Terms and Conditions" and may be specifically limited in scope in accord with the Rules of Professional Conduct for Attorneys, in Wisconsin, SCR:1.2(c). The scope will include such other work as may be dictated by the course of our representation of you, agreed upon in consultation with you and confirmed in writing.

2. **Fees, Hourly Rates and Budget Estimates.** You agree to pay DeWitt LLP ("DeWitt") all fees, costs and disbursements charged or incurred in our firm's representation of you. Our fees are generally based on hourly rates for the actual time our attorneys, law clerks, paralegals or legal assistants are engaged in providing professional legal services in your representation. The hourly rates are described in the Agreement. These rates are normally revised annually as of January 1 of each calendar year to reflect increased experience of the attorneys and paralegals and inflationary cost increases affecting our practice. Such revised rates are implemented immediately and will be reflected in your monthly invoices. We will be pleased to provide you with an updated schedule of rates upon your request. As circumstances warrant or on your request, we will provide an estimate of the fees and disbursements that will be incurred in the representation, including, as may be appropriate, detailed budget estimates for the representation or various components or tasks likely to be involved in the representation. If, during the course of the representation, as a result of changing or other circumstances, any such written estimate becomes substantially inaccurate, we will timely provide to you a revised estimate or estimates.

3. **Disbursements.** In addition to attorneys fees, we will invoice charges and disbursements such as filing fees, court reporter fees, photocopying, mileage, overnight mail, exceptional computer assisted research (*e.g.*, involving access to specialized, proprietary data bases) and secretarial or other support services overtime. Disbursements for out-of-pocket expenses shall be invoiced at cost and expenses for internal items, at the customary charge therefor, predicated on a reasonable approximation of firm's fully allocated cost for such disbursement items or comparable market rate, whichever is less. After consultation with you and with your consent, we may hire outside consultants, experts, accountants, or other professional persons on your behalf. We may require that you pay these persons or firms directly. In some circumstances, we may forward invoices for significant disbursement expenses to you for direct payment.

   For electronic discovery (e-discovery), DeWitt uses Relativity® as its platform through its vendor, Compliance Discovery Solutions ("Compliance"). If we agree that use of this service is appropriate in DeWitt's representation of you, you agree to pay the monthly per Gigabyte ("GB") for its active data in Relativity® with such cost including tools for Brainspace Analytics, OCRing, deNisting, filtering, searching, deduping, near deduping, clustering/concept analysis, and processing productions. The cost is $11 per month per active GB in 2019 and $12 per month per active GB in 2020. This is DeWitt's cost for these e-discovery tools, without markup. Each of these tools would be typically charged by a vendor at significantly greater cost and DeWitt is able to reduce cost to clients for e-discovery tasks through its relationship with Compliance. The monthly per GB cost is in addition to e-discovery legal services which are billed at the hourly rates set forth above. In the event that DeWitt were to utilize Compliance to provide e-discovery services in representing you, the hourly rate charged will be $175 per hour for Project Managers and $115 per hour for Technical Specialists. Additional details are available on request.

4. **Monthly Invoices and Statements.** We will provide you each month (unless amounts for the month are *de minimus*) an itemized invoice for services rendered and disbursements reported and a statement of the account. The itemization will indicate, among other things, the date on which the work was performed, general description of the work performed, time expended, and the identity of the individual performing the work. Smaller disbursements may be grouped but all significant disbursements will be itemized. DeWitt invoices are due and payable within the month following their receipt by the client.

5. **Advanced Funds and Trust Account Deposit.** At the outset of the representation or from time-to-time thereafter, particularly in initial representations or representation involving litigation or substantial resources of the firm, we may request that you deposit advanced funds with us for payment of our invoices. Requests for advanced funds or additional advanced funds will be based, as best we can estimate given the uncertainties of litigation or the representation, on our projection of activity on the engagement for the succeeding ninety (90) days, which we will communicate to you with our request for the advanced funds deposit. Such deposits shall be made within ten (10) days of our request payable to the DeWitt LLP Trust Account. Any balance of advanced funds in our Trust Account which is not consumed in the engagement will be promptly returned to you.

6. **Application of Advanced Funds to Pay Our Invoices.** The firm is authorized to apply funds deposited by you and held in the firm's Trust Account, in an amount sufficient to satisfy each monthly invoice; provided, however, no funds shall be withdrawn from the firm's Trust Account to satisfy such an invoice until 10 days have elapsed from the date of our forwarding such invoice to you. If, during that 10-day period, you advise us that you disagree with or dispute any part of the invoice, funds to satisfy that part of the invoice shall be retained in the firm's Trust Account until you and the firm agree on a resolution. We have an obligation to you to return any unearned advanced funds. If you so request, we will, within 30 days, submit any dispute regarding the return of unearned advanced funds, to binding arbitration. If the firm fails to provide refund of unearned advanced fees, in Wisconsin, you may file a claim with the Wisconsin Lawyer's Fund for Client Protection as provided under Wisconsin Supreme Court Rule, SCR 12.04.

7. **Client's Responsibility.** You agree to (a) be truthful and cooperative with us; (b) keep us informed of developments; (c) abide by this Agreement; (d) pay our monthly invoices on time; (e) promptly provide us with the information and documents that you have relating to matters we are handling; (f) be available to confer with us on matters related to our representation of you; and (g) assist and cooperate with us as appropriate in dealing with the matter.

8. **Client-Attorney Communications.** The client-attorney relationship is one of mutual trust and confidence. Therefore, we encourage you to discuss with us the progress of work performed for you, any questions or comments regarding our services or representation of you and communications with you, our billing policies or any matter relating to our monthly statements that are in any way unclear or appear unsatisfactory.

9. **Outcome.** Nothing in this Agreement and nothing in our statements to you is to be construed as a promise or guarantee about the outcome of any matters, and we make no promises or guarantees as to any particular result. Any opinions or beliefs we express to you about the outcome of a legal matter

are only our best professional estimates and are necessarily limited by our knowledge of the facts and law at the time expressed.

10. **Termination by Client.** You may terminate our engagement with or without cause at any time on written notice to us. We will return all your papers and property upon terminating our engagement. We may retain our internal notes and memoranda, our work product and any duplicate materials, including copies of materials you provided us. Termination of our services will not affect your responsibility to pay our fees or all costs incurred up to the date when we receive notice of termination, and for any further work required of us in order to facilitate an orderly turnover of matters in process at the time of termination.

11. **Withdrawal by Firm.** Our firm also reserves the right to withdraw from representation of you consistent with the Rules of Professional Conduct for Attorneys, in Wisconsin, SCR 20:1.16, which requires, among other things, that withdrawal from a representation be, insofar as possible, without prejudice to the client's interests. Such withdrawal may be required by the Rules of Professional Conduct for Attorneys in the event of a conflict between you and our firm as to the manner in which we propose to handle the representation, or the breach of obligations under this Agreement by you. If the engagement involves litigation, the firm may only withdraw upon leave of the court or other tribunal having jurisdiction over the action. Thus, it is understood and agreed that the firm may be required to continue to render legal services for some period of time following notice of withdrawal in such circumstances. If we withdraw, we shall promptly return all property and papers to which you are entitled. We may retain our internal notes and memoranda, our work product and any duplicate materials, including copies of materials you provided us. We will be entitled to a fee based upon the services we have provided to you up to the time of our withdrawal.

    If the balance on our monthly statement remains outstanding beyond 45 days, we reserve the right, and have your permission, to withdraw from our representation of you. In the event of non-payment of additional advanced funds as requested, the firm, at its sole discretion, may agree to accept other security or guarantees of payment; however, we reserve the right, and have your permission, to withdraw from our representation of you.

12. **Wisconsin Mandatory Disclosure.** The Wisconsin Supreme Court has directed that law firms which are incorporated or operated as a limited liability entity, such as DeWitt LLP, advise clients of such status. This means that in the event of an error, the law firm and its insurer may be liable as well as the attorneys who worked on or directly supervised the matter, but other attorneys in the firm would not be liable. The Supreme Court also requires that a law firm incorporated or otherwise operating as a limited liability entity register annually with the State Bar of Wisconsin and carry certain minimal liability insurance coverage. DeWitt LLP has complied with these requirements.

We have found that client-attorney relationships benefit from a clear understanding of the arrangements between the attorney and the client. By acknowledging agreement or signing a copy of the Agreement, you are confirming your understanding and agreement to the scope and terms of this Engagement Agreement and, in the case of a client entity or entitles, you are warranting that you have the authority to bind such entities.