



AMY MCBETH
Director, Public Affairs

BNSF Railway Company

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March 9, 2016

Jeff Schott
Captain, La Crosse Fire Department
726 5th Ave South
La Crosse, WI 54601

VIA Email to schottj@cityoflacrosse.org

DONATION AGREEMENT

BNSF Railway Company (hereinafter called, "BNSF") hereby agrees to donate to the **La Crosse Fire Department** (hereinafter called, "Donee") the following item(s) (hereinafter called, the "Item(s)") on the terms and conditions set forth below:

One scrap tank car cleaned and free from residue, BNSF 880246

In consideration of the donation described in this Donation Agreement, Donee and BNSF agree as follows:

- 1) **Compliance with Laws.** Donee and its contractors shall comply with all applicable federal, state and local laws and regulations (environmental or otherwise) concerning the use, disposition and condition of the Item(s). Donee shall, immediately upon demand, indemnify, defend and hold harmless, BNSF of, from and against all claims, liabilities, obligations, actions, causes of action, damages or legal proceedings, and including legal fees and expenses incurred with respect to investigation or defending any of same, which arise out, relate to or are incurred in connection with the use, disposition or condition of the Item(s) or any breach, nonobservance, nonperformance or violation, actual or alleged by Donee, or anyone acting on its behalf or being under its direction or control, of any of the terms or provisions of this Donation Agreement.
- 2) **Access to BNSF Property.** Donee acknowledges that through this Donation Agreement, Donee has no right to enter BNSF property.

- 3) **Disclaimer of Warranties.** BNSF expressly disclaims any past, present or future warranty (express, implied or statutory), guaranty, or representation (oral or written) as to or concerning the Item(s), including, without limitation, the condition of the Item(s), the value or whether the Item(s) is/are in compliance with any laws, rules, ordinances or regulations of any city, county, state, regulatory and/or other governmental entity. **PURSUANT TO THIS DONATION AGREEMENT, BNSF IS DONATING THE PROPERTY TO DONEE "AS IS", "WHERE IS" AND "WITH ALL FAULTS". DONEE EXPRESSLY ACKNOWLEDGES THAT BNSF MAKES NO REPRESENTATION OR WARRANTY TO DONEE, EXPRESS, IMPLIED OR STATUTORY, OR ARISING BY OPERATION OF LAW, AND INCLUDING, BUT WITHOUT LIMITATION, ANY WARRANTY OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Donee acknowledges that it is sophisticated in the purchase of personal property and is entering into this Donation Agreement in reliance on its own abilities and investigation and not on any representation, warranty or agreement of BNSF. Donee acknowledges that no representations have been made by BNSF or its agents or employees to induce Donee to enter into this transaction. Additionally, Donee acknowledges that it has made such investigations of the Property and performed such due diligence with respect thereto as it deemed necessary or advisable, and accepts such Property in its present condition. This Section shall survive donation contemplated herein and the termination of this Donation Agreement.
- 4) **Transfer of Risk.** Upon the departure of the Item(s) from BNSF property, title to the Item(s) and all risk of loss to the Item(s) will transfer to Donee, along with all responsibility for claims arising in any manner from Donee's ownership or use of the Item(s). **DONEE SHALL INDEMNIFY BNSF FOR ALL CLAIMS, LIABILITIES, FINES, PENALTIES, DEMANDS, SUITS, AND ANY OTHER EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING FROM OR RELATED TO THE ITEM(S) FOLLOWING THE TRANSFER OF TITLE TO THE ITEM(S) TO THE DONEE, EXCEPT TO THE EXTENT SUCH CLAIMS ARISE FROM THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF BNSF.** This Section will survive any termination of this Donation Agreement.
- 5) Donee and BNSF agree to indemnify and hold each other harmless from and against any and all liabilities, damages, claims, costs and expenses caused by, contributed to, or arising out of each of their respective uses of the Item(s). Nothing in this Donation Agreement will be construed to waive either party's limitations of liability and/or immunities available under Wisconsin Statutes or other applicable state or federal law.
- 6) **Indemnification.** Donee and BNSF agree to indemnify and hold each other harmless from and against any and all liabilities, damages, claims, costs and expenses caused by, contributed to, or arising out of each of their respective uses of the Item(s). Nothing in this Donation Agreement will be construed to waive either party's limitations of liability and/or immunities available under Wisconsin Statutes or other applicable state or federal law.
- 7) **General Provisions**
 - a) **Entire Agreement.** This Donation Agreement (including any exhibits) contains the entire agreement between BNSF and Donee. Oral statements or prior written matter not specifically incorporated into this Donation Agreement have no force and effect. No variation, modification, or change to this Donation Agreement binds either party unless set forth in a document signed by the parties or their duly authorized agents, officers, or representatives.

b) Assigns. This Agreement inures to the benefit of and binds the parties and their respective legal representatives, successors, and permitted assigns. Donee may not assign its rights or obligations under this Agreement without BNSF's prior written consent, which BNSF may withhold in its sole discretion. If Donee assigns its rights and obligations under this Agreement in accordance with this Section, Donee will nevertheless remain liable for the performance of all covenants and obligations of Donee under this Agreement.

c) Governing Law. All questions concerning the interpretation or application of provisions of this Donation Agreement (including any exhibits or schedules attached to or referred to in this Donation Agreement) shall be decided according to the substantive laws of the State of Wisconsin without regard to conflicts of law provisions. Donee acknowledges and stipulates that this Donation Agreement (including any exhibits or schedules attached hereto) has been executed or delivered in La Crosse County, Wisconsin, and that the place of performance of all obligations hereunder is deemed to be La Crosse County, Wisconsin.

d) Venue. The parties consent that venue of any action brought under this Agreement will be in La Crosse County, Wisconsin.

e) Severability. If any provision in this Donation Agreement is found to be invalid, illegal, or unenforceable, its invalidity, illegality, or unenforceability will not affect any other provision, and this Donation Agreement must be construed as if the invalid, illegal, or unenforceable provision had never been included.

IN WITNESS WHEREOF, the parties hereto have caused this Donation Agreement to be executed as of the date first written above.

DONEE: La Crosse, WI Fire Department

By: *Gregg A. Cleveland*
Printed Name: Gregg A. Cleveland
Title: FIRE CHIEF

BNSF RAILWAY COMPANY

By: *Amy McBeth*
Amy McBeth
Title: Director, Public Affairs