

PAYMENT IN LIEU OF TAX AGREEMENT

THIS AGREEMENT, dated as of December 29, 1995 by and between ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a New York public benefit corporation having an office at 5900 Airport Road, Suite 200, Oriskany, New York 13423 (the "Agency"), and GENESEE & MOHAWK VALLEY RAILROAD CO., INC., 8346 Lewiston Road, Batavia, New York 14020, a New York corporation (the "Company").

WHEREAS, the Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, (the "Enabling Act"), and Chapter 372 of the 1970 Laws of New York, as amended, constituting Section 901 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of, among others, industrial facilities for the purpose of promoting, attracting and developing economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Company is the owner of the Facility (as defined in the hereinafter described Lease Agreement); and

WHEREAS, the Agency will acquire from the Company the Facility and lease the Facility to the Company pursuant to a Lease and Operating Agreement (the "Lease Agreement") dated as of December 29, 1995 between the Agency and the Company; and

WHEREAS, all defined terms herein as indicated by the capitalization of the first letter thereof and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Lease Agreement; and

WHEREAS, by resolution adopted _____, 1995 (the "Resolution"), the Agency indicated its intent to acquire the Facility; and

WHEREAS, the Agency has agreed to accept title to the Facility in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Facility will be exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company commencing March 1, 1996 (the "Exempt Taxes"), because the Facility is, or will be, under the jurisdiction, supervision and/or

such Authority no later than the last day during which such Exempt Taxes could otherwise be made without penalty as if the Facility was owned by the Company and not by the Agency. Any payment made after such date shall be subject to such interest and penalties that would be payable if the Company and not the Agency was the owner of the Facility.

4. The Pilot Payments to be made by the Company pursuant to this Agreement are intended to be in lieu of all Exempt Taxes that would have to be paid on the Facility leased to the Company by the Lease Agreement.

5. If by reason of a change in the Constitution or laws of the State of New York, or an interpretation of the Constitution or laws of the State of New York by the Court of Appeals (or such lower court from which the time to appeal has expired) of the State of New York, or for any other reason, the Company is required to pay any tax which the payments specified herein are intended to be in lieu of, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of such taxes and need only pay the difference. Furthermore, inasmuch as the Pilot Payments herein agreed to be made by the Company are intended to be in lieu of all Exempt Taxes, it is agreed that said payments shall not, as to any Exemption Year, be in an amount greater than would be payable for such year for such Exempt Taxes, in the aggregate, by a private corporation on account of its ownership of the Facility.

6. This Agreement shall be binding upon the successors and assigns of the parties.

7. It is the intent of the parties that the Company will have all the rights and remedies of a taxpayer with respect to any real property or other tax, service charge, special benefit, ad valorem levy, assessment or special assessment or service charge because of which, or in lieu of which, the Company is obligated to make a payment hereunder, as if and to the same extent as if the Company were the owner of the Facility. It is the further intent of the parties that the Company will have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility with respect to any proposed assessment or change in assessment concerning the property, or any portion thereof, whether through an assessor, board of assessment review, court of law, or otherwise and likewise will be entitled to protest before and be heard by such assessor, board of assessment review, court of law or otherwise and will be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any taxes that would have been payable but for the provisions hereof. In the event, however, that a court of competent jurisdiction shall enter an order or judgment determining or declaring that, by reason of the Agency's ownership of the Facility, the Company does not have the right to bring a proceeding to review such assessment under the Real Property Tax Law or any

control of the Agency and used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including Section 874 of the New York State Industrial Development Agency Act, Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of the State of New York, as amended (the "Enabling Act"), provided, however, such exemption will not extend to special assessments or ad valorem levies; and

WHEREAS, the Company understands that it, as lessee of the Facility leased by the Agency, will, in fact, have no Exempt Taxes to pay under the provisions of the Lease Agreement from March 1, 1996, the taxable status date, through the term of the Lease Agreement (the "Exemption Term") (each year measured by the twelve month period commencing with March 1, 1996, herein referred to as an "Exemption Year"); and

WHEREAS, the Agency has indicated a reluctance for the taxing authorities (the "Authorities" or an "Authority") to lose all tax revenues from the Exempt Taxes during the Exemption Term which would otherwise be received by the Authorities if the Facility were owned by the Company.

NOW THEREFORE, to provide for certain payments to the Authorities, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Company shall pay to each Authority all

a) taxes that are due with respect to the Facility prior to the Exemption Term, and

b) special assessments and ad valorem taxes coming due and payable during the term of the Lease Agreement for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty.

2. The Company shall pay to each Authority as set forth on Schedule A attached hereto and made a part hereof an amount in lieu of the Exempt Taxes (the "Pilot Payments") during each Exemption Year as follows:

a) one third of such taxes from the first through the fifth Exemption Year, b) two thirds of such taxes from the sixth through the tenth Exemption Year, and c) one hundred percent of such taxes after the tenth Exemption Year.

Anything herein to the contrary, notwithstanding, this Agreement shall terminate on the date on which the Lease Agreement shall terminate and the Agency shall reconvey title to the Facility to the Company pursuant to the Lease Agreement.

3. The Company will make Pilot Payments to each Authority hereunder for each Exemption Year by making the required payment to

other law, then the Company shall have the right to contest such assessment in the name and as agent of the Agency, and the Agency agrees to cooperate with the Company in all respects in any such proceeding.

8. All amounts payable by the Company hereunder will be paid to the respective Authority and will be payable in such lawful money of the United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money.

9. (a) If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such term or provision will be deemed separate and independent and the remainder hereof will remain in full force and effect and will not be invalidated, impaired or otherwise affected by such holding or adjudication.

(b) This Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

(c) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the Agency or the Company, as the case may be, addressed as follows:

IF TO THE AGENCY:

Oneida County Industrial Development Agency
5900 Airport Road
Suite 200
Oriskany, New York 13424
Attention: Chairman

WITH A COPY TO:

Groben, Gilroy, Oster & Saunders
258 Genesee Street
P.O. Box 423
Utica, NY 13503-0423
Attn: James C. Oster, Esq.

IF TO THE COMPANY:

Genesee & Mohawk Valley Railroad Co., Inc.
8364 Lewiston Road
Batavia, NY 14020

With a copy to:

provided, that the Agency or the Company may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 

John T McKenna
Chairman

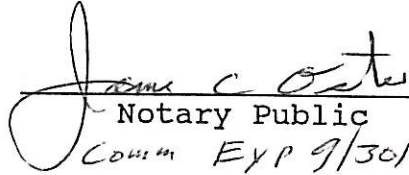
GENESEE & MOHAWK VALLEY
RAILROAD CO., INC.

By: 

David J. MonteVerde,
President

STATE OF NEW YORK)
) SS.:
COUNTY OF ONEIDA)

On this 29th day of December, 1995 before me personally came John T. McKenna, to me known, who being by me duly sworn did depose and say that he resides at Saugquoit, New York, that he is Chairman of the ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, the public benefit corporation described in the above instrument, and acknowledged that he executed the same by order of the members of such public benefit corporation.


Notary Public
Comm Exp 9/30/96

STATE OF NEW YORK)
) SS.:
COUNTY OF ~~MONROE~~ GENESEE)

On this 27th day of December, 1995 before me personally came David J. MonteVerde, to me known, who being by me duly sworn did depose and say that he resides at Scottsville, New York, that he is President of Genesee & Mohawk Valley Railroad Co., Inc., the corporation described in the above instrument, and acknowledged that he executed the same by order of the Board of Directors of such corporation.


Notary Public



RUBIE K. LEVINS
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN GENESEE COUNTY
MY COMMISSION EXPIRES 6/30/97

SCHEDULE A

1. As to the portion of the Facility located in Rome, NY

COUNTY OF ONEIDA
City of Rome Treasurer
City Hall-Liberty Plaza
Rome, NY 13440

CITY OF ROME
City of Rome Treasurer
City Hall-Liberty Plaza
Rome, NY 13440

CITY OF ROME SCHOOL DISTRICT
City of Rome Treasurer
City Hall-Liberty Plaza
Rome, NY 13440

2. As to the portion of the Facility located in Utica, NY

COUNTY OF ONEIDA
City Comptroller
City Hall-Kennedy Plaza
Utica, NY 13501

CITY OF UTICA
City Comptroller
City Hall-Kennedy Plaza
Utica, NY 13501

CITY OF UTICA SCHOOL DISTRICT
% Bank of Utica
222 Genesee St.
Utica, NY 13502