



October 20, 2023

Craig Prater  
**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**  
125 Lisle Industrial Ave Suite 180  
Lexington, Kentucky, 40511

**RE: Proposed Installation and Construction of Transverse Underground 18-inch PVC Gravity Sewer In A 30-inch Steel Casing Pipe**

**Midwest Division, at Mile Post 76.70  
Lexington, Fayette, Kentucky  
Latitude 38.109889, Longitude -84.526944  
NS Activity No. 1310998**

Dear Craig Prater:

RailPros, as consultant for Norfolk Southern Railway Company ("Railway"), has reviewed the above-referenced request. Based on the information and documentation presented, Railway has no objections to the proposed work.

Attached you will find the requested offer of agreement for execution, by an official authorized to execute contract agreements on behalf of the Licensee. Please have the agreement executed via DocuSign. Note, however, that the attached offer of agreement does not constitute a binding contract, unless or until it is executed by both the Licensee and Railway.

In order for Railway to countersign the document, the following items are needed for review:

1. **Payment of the License Fee** in the amount of **\$21,315.00** within the **Application System**;
2. **A Certificate of Insurance** as required in the agreement, is to be submitted within the Application System (See attached Example).
3. **Payment of the Risk Management Fee** of **\$1,900.00** adds the specific project/activity to the Norfolk Southern Master Railroad Protective insurance policy, and as such no further railroad protective liability insurance coverage is necessary or requested. – **Invoice in portal**

**NOTE: No work shall be permitted on or about the Railway's property until the agreement becomes binding, and the Division Engineer or their authorized representative has reviewed and approved field services** for the project, such as *flagging protection, construction monitoring, and post-construction inspection services*. Once the above items are received, the fully executed agreement will be sent, along with the name and contact information for field service coordination.

If we have not received the executed agreement and corresponding payments and/or documents within sixty (60) days from the date of this letter, we reserve the right to cancel this request.

If you have any questions, please contact me within the messages tab of the application portal or by calling the number listed below.

Sincerely,

*Ana McDowell*  
Ana McDowell  
Real Estate Specialist

11819 Miracle Hills Dr. Ste, 102  
PO Box 642270  
Omaha, NE 68164

**P:** (402) 965-0539 **F:** (866) 762 - 7619

**www.railpros.com**

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
Insured The Named Insured needs to match the Licensee identified on the agreement	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

**COVERAGES**

**CERTIFICATE NUMBER:** 1156486253

**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

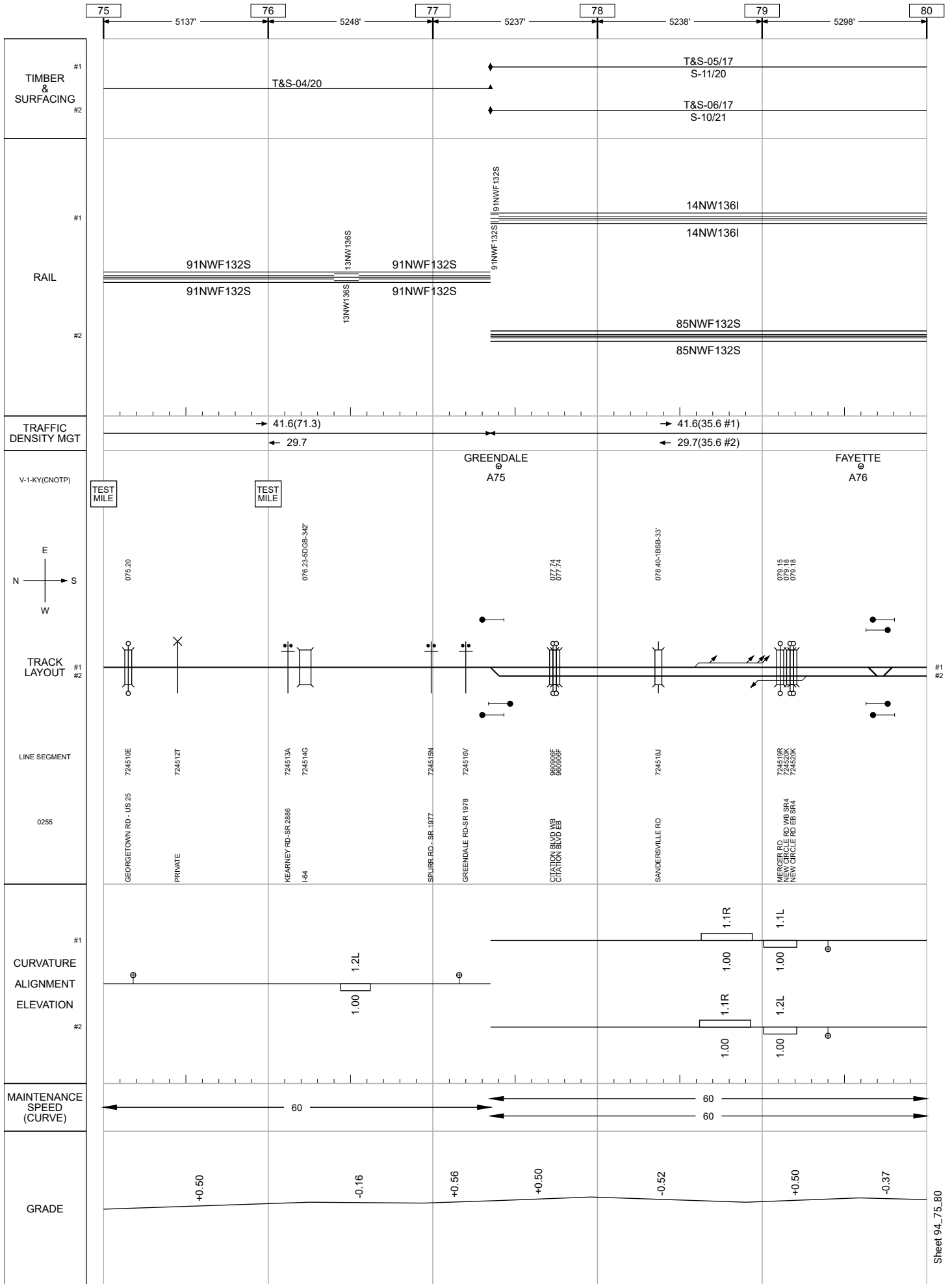
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE   <input checked="" type="checkbox"/> OCCUR	Y	Y	ABC123456			EACH OCCURRENCE    \$ \$2,000,000 <span style="color: red;">Note 1</span> \$ \$ \$ \$ \$
A	AUTOMOBILE LIABILITY	Y	Y	123456ABC			COMBINED SINGLE LIMIT    \$ \$1,000,000 \$ \$ \$ \$
B	<input type="checkbox"/> UMBRELLA LIAB   <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB   <input type="checkbox"/> CLAIMS-MADE DED   <input checked="" type="checkbox"/> RETENTION \$	Y	Y	XYZ12345	Note 1: Any portion of the requirement may be satisfied by a combination of General Liability and/or Excess/Umbrella Liability		\$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N <input checked="" type="checkbox"/> N		N/A				<input checked="" type="checkbox"/> PER STATUTE   <input type="checkbox"/> OTHER E.L. EACH ACCIDENT    \$ \$1,000,000 \$ \$

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 Norfolk Southern Corporation, Subsidiaries, and Affiliates, as Certificate Holder has been endorsed to be additional insured to all applicable policies as required by written contract. All policies maintained and in which Norfolk Southern Corporation, Subsidiaries and Affiliates have been endorsed as additional insured shall include a waiver of subrogation and shall be primary and non-contributory. All policies have been endorsed to provide Norfolk Southern Corporation, Subsidiaries and Affiliates 30 days' notice of cancellation.

**CERTIFICATE HOLDER**

**CANCELLATION**

Norfolk Southern Corporation, Subsidiaries, and Affiliates 650 W Peachtree Street NW, Box 46 Atlanta GA 30308	<p style="text-align: center;"><b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b></p> <p style="text-align: center;">AUTHORIZED REPRESENTATIVE</p>
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## PIPE DATA SHEET

	CARRIER PIPE	CASING PIPE
CONTENTS TO BE HANDLED	Sewage	N/A
MAX. ALLOWABLE OPERATING PRESSURE	N/A	N/A
NOMINAL SIZE OF PIPE	18"	30"
OUTSIDE DIAMETER	18.701"	30"
INSIDE DIAMETER	18.202"	28.75"
WALL THICKNESS	0.499"	0.625"
WEIGHT PER FOOT	21.43 lbs	196.1 lbs
MATERIAL	PVC	Steel
PROCESS OF MANUFACTURE	N/A	Smooth wall or spiral welded
SPECIFICATION	ASTM F679	ASTM A53
GRADE OR CLASS (Specified Minimum Yield Strength)	PS46	Grade B
TEST PRESSURE	4 psi	N/A
TYPE OF JOINT	Gasket	Welded
TYPE OF COATING	N/A	N/A
DETAILS OF CATHODIC PROTECTION	N/A	N/A
DETAILS OF SEALS OR PROTECTION AT END OF CASING	Sealed	Sealed
CHARACTER OF SUBSURFACE MATERIAL	Huntington Silt Loam	Huntington Silt Loam
APPROXIMATE GROUND WATER LEVEL	N/A	N/A
SOURCE OF INFORMATION ON SUBSURFACE CONDITIONS	USGS	USGS

Proposed method of installation (refer to NSCE-8 Specification):

- Bore & Jack
- Jacking
- Tunneling (with Tunnel Liner Plate)
- Directional Bore/Horizontal Direction Drilling – Method A
- Directional Bore/Horizontal Direction Drilling – Method B
- Open Cut – *All installations directly under any track must be designed as a bored installation. Open cut installations will be considered on a case-by-case basis by Norfolk Southern's Division Superintendent at the time of installation.*
- Other – Please Specify: \_\_\_\_\_

## LICENSE AGREEMENT

**THIS LICENSE AGREEMENT** (this “Agreement”), dated as of \_\_\_\_\_ (the “Effective Date”) is made and entered into by and between

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY**, a Virginia corporation, whose mailing address is 650 West Peachtree St. Box 22, Atlanta, Georgia 30308 (hereinafter called “Railway”), and **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, a(n) Kentucky Government Entity, whose mailing address is 125 Lisle Industrial Ave Suite 180, Lexington, Kentucky 40511 (hereinafter called “Licensee”).

### WITNESSETH

**WHEREAS**, Licensee has submitted to Railway an Application (as defined herein) related to the **proposed installation and construction of transverse underground 18-inch PVC gravity sewer in a 30-inch steel casing pipe** (hereinafter called the “Facilities”) located in, over or under, and across the right-of-way or property and any tracks of Railway at or near:

- Milepost 76.70, Midwest Division
- Latitude 38.109889, Longitude -84.526944
- Lexington, Fayette County, Kentucky

the same to be located in accordance with and limited to the installation shown on the diagram set forth in **EXHIBIT A** attached hereto and made a part hereof (such right-of-way or property of Railway, collectively, the “Premises”); and

**WHEREAS**, Railway has approved the Application for the initial installation and construction of the Facilities; and

**WHEREAS**, Licensee desires a license to use such right-of-way or property of Railway for the installation and construction, as well as the subsequent maintenance, operation and removal, of the Facilities.

**NOW, THEREFORE**, Railway and Licensee agree as follows:

1. Grant; Consideration; Term. Subject to Section 2(b) below, Railway hereby grants to Licensee, insofar as Railway has the right to do so, without warranty and subject to all encumbrances, covenants and easements to which the Railway’s title may be subject, the right to use and occupy so much of the Premises as may be necessary for the installation, construction, maintenance, operation and removal of the Facilities (collectively, “Operate” or “Operations”). Upon execution of this Agreement, Licensee shall pay to Railway (i) a non-refundable, non-assignable, one-time license fee in the amount of **TWENTY-ONE THOUSAND THREE HUNDRED AND FIFTEEN AND 00/100 DOLLARS (\$21,315.00)**, and (ii) if applicable as determined by Railway pursuant to Section 12 below, the Risk Financing Fee (as defined in Section 12). The term of this Agreement shall commence on the Effective Date and shall continue for a period of twenty (20) years, subject to prior termination as hereinafter described (the “Term”).

2. Use and Condition of the Premises.

(a) The Premises shall be used by Licensee only for Operations and for no other purpose. Licensee accepts the Premises in their current “as is” condition, as suited for Operations, and without the benefit of any improvements to be constructed by Railway.

(b) With respect to each Operations project that requires access to the Premises after the initial installation and construction of the Facilities, Licensee shall submit to Railway an application conforming to Railway’s then-current standards and procedures (an “Application”) for review and approval.

3. Installation of the Facilities; Railway Support. Licensee shall, at its expense, Operate the Facilities (i) on a lien-free basis and in such a manner as will not interfere with the operations of Railway, or endanger persons or property of Railway and (ii) in accordance with (a) the plans and specifications (if any) shown on the prints attached hereto and any other specifications prescribed by Railway, (b) applicable laws, regulations, ordinances and other requirements of federal, state and local governmental authorities, and (c) applicable specifications adopted by the American Railway Engineering and Maintenance-of-Way Association, when not in conflict with the applicable plans, specifications, laws, regulations, ordinances or requirements mentioned in clauses (a) and (b) above. All underground pipes must have secondary pipe containment if the material flowing through the pipeline poses a safety or environmental hazard. Any change to the character, capacity or use of the Facilities shall require execution of a new agreement. In the event it becomes necessary for Licensee to deviate from the approved plans and specifications, Licensee shall seek prior approval from Railway’s Division Engineer or his or her authorized representative and, when applicable, an authorized representative of the Division Engineer in the field during Construction Monitoring. Licensee shall provide Railway with complete as-built drawings of the Facilities in an electronic format within thirty (30) days of (i) completion of the initial installation and construction of the Facilities and (ii) completion of any material change to the Facilities.

4. Railway Support. With respect to each Operations project that requires access to the Premises, Railway shall, at Railway’s option, furnish, at the sole expense of Licensee, Support Services. The term “Support Services” means such materials and services as necessary, in Railway’s sole judgment, to support Railway’s tracks and to protect Railway’s traffic, including without limitation flagging services and Construction Monitoring during Operations that require access to the Premises. Support Services shall be provided unless Railway’s Division Engineer or his or her authorized representative provides to Licensee a written waiver of Support Services, whether in whole or in any part, in a given instance. The term “Construction Monitoring” means services comprised of one or more Railway representatives being assigned and present to monitor construction activities of Licensee, which may include a preconstruction site assessment and a post-construction site assessment.

5. Electronic Interference. If the Facilities cause degradation of Railway’s signal, communications and other electronic systems (hereinafter collectively called the “Electronic Systems”) or endanger Railway’s personnel or other individuals entitled to be on or about the Premises, through inductive or electrostatic interference or otherwise, Licensee, at its expense, will

modify the Facilities to the satisfaction of Railway so as to eliminate such degradation or danger. Such modifications may include, without limiting the generality of the foregoing, transposing circuits or providing additional shielding, reactance or other corrective measures deemed necessary by Railway. The provisions of this Section 5 shall apply to the Electronic Systems existing as of the date of this Agreement and to any Electronic Systems that Railway may install in the future.

6. Corrective Measures. If Licensee fails to take any corrective measures requested by Railway in a timely manner, or if an emergency situation is presented which, in Railway's judgment, requires immediate repairs to the Facilities, Railway, at Licensee's expense, may undertake such corrective measures or repairs as it deems necessary or desirable.

7. Railway Changes. If Railway shall make any changes, alterations or additions to the line, grade, tracks, structures, roadbed, installations, right-of-way or works of Railway, or to the character, height or alignment of the Electronic Systems, at or near the Facilities, Licensee shall, upon not less than thirty (30) days prior written notice from Railway and at Licensee's sole expense, make such changes in the location and character of the Facilities as, in the opinion of the chief engineering officer of Railway, shall be necessary or appropriate to accommodate any construction, improvements, alterations, changes or additions of Railway.

8. Assumption of Risk. Unless caused solely by the negligence of Railway or caused solely by the willful misconduct of Railway, and to the extent permitted by law and without waiving the defense of sovereign immunity to claims by third parties, Licensee hereby assumes all risk of damage to the Facilities and Licensee's other property relating to its use and occupation of the Premises or business carried on the Premises and any defects to the Premises; and Licensee, and to the extent permitted by law and without waiving the defense of sovereign immunity to claims by third parties, hereby indemnifies Railway, its officers, directors, agents and employees from and against any liability for such damage.

9. Entry Upon Premises. Licensee shall enter the Premises in any given instance only pursuant to an approved Application. Prior to commencement of any work to be performed on or about the Premises, Licensee shall notify the appropriate Division Engineer or their authorized representative for the scheduling of Support Services as determined pursuant to Section 4 above. Within seventy-two (72) hours after the Division Engineer's actual receipt of such notification, the Division Engineer shall review the necessity and availability of flagmen for the proposed work and advise Licensee of such matters and the estimated cost of Support Services. In the event of an emergency, Licensee shall call the Railway police emergency line at (800) 453-2530. No work shall be permitted on or about the Premises without the presence of Railway's flagman or the Division Engineer's waiver of the requirement for flag protection. Entry on or about the Premises or any other Railway right-of-way without the Division Engineer's prior approval shall be deemed trespassing. Licensee agrees to pay Railway, within thirty (30) days after delivery of an invoice therefor, for the cost of Support Services provided by or on behalf of Railway.

10. Liens; Taxes. Licensee will not permit any mechanic's liens or other liens to be placed upon the Premises, and nothing in this Agreement shall be construed as constituting the consent or request of Railway, express or implied, to any person for the performance of any labor

or the furnishing of any materials to the Premises, nor as giving Licensee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that could give rise to any mechanic's liens or other liens against the Premises. In addition, Licensee shall be liable for all taxes levied or assessed against the Facilities and any other equipment or other property placed by Licensee within the Premises. In the event that any such lien shall attach to the Premises or Licensee shall fail to pay such taxes, then, in addition to any other right or remedy available to Railway, Railway may, but shall not be obligated to, discharge the same. Any amount paid by Railway for any of the aforesaid purposes, together with related court costs, attorneys' fees, fines and penalties, shall be paid by Licensee to Railway within ten (10) days after Railway's demand therefor.

11. Indemnification. To the extent permitted by law and without waiving the defense of sovereign immunity to claims by third parties, Licensee hereby agrees to indemnify and save harmless Railway, its officers, directors, agents and employees, from and against any and all liabilities, claims, losses, damages, expenses (including attorneys' fees) or costs for personal injuries (including death) and property damage to whomsoever or whatsoever occurring (hereinafter collectively, "Losses") that arise in any manner from (a) the presence of the Facilities on or about the Premises, (b) any Operations or any failure to conduct Operations properly, or (c) any act, omission or neglect of Licensee, its agents, servants, employees or contractors in connection therewith, unless caused solely by the negligence of Railway or caused solely by the willful misconduct of Railway.

12. Insurance.

(a) Insurance Requirements. Without limiting in any manner the liability and obligations assumed by Licensee under any other provision of this Agreement, and as additional protection to Railway, Licensee shall comply with the following provisions:

(i) Subject to subsection (ii) below, upon execution of this Agreement, Licensee shall pay Railway a risk financing fee of \$1,900 (the "Risk Financing Fee") to provide Railroad Protective Liability Insurance or such supplemental insurance (which may be self-insurance) as Railway, in its sole discretion, deems to be necessary or appropriate with respect to the initial construction and installation of the Facilities.

(ii) Prior to commencement of each Operations project that requires access to the Premises, unless Railway elects to make available and Licensee pays the then-current Risk Financing Fee for a given Operations project, Licensee shall furnish Railway with an original Railroad Protective Liability ("RPL") Insurance Policy naming Railway as the named insured and having a limit of (1) not less than a combined single limit of \$2,000,000 each occurrence and \$6,000,000 aggregate, or (2) if the value of a given operations project exceeds \$350,000, not less than a combined single limit of \$5,000,000 per occurrence and \$10,000,000 in the aggregate. Each RPL policy shall conform to CG 00 35 04 13 or equivalent and include coverage for Terrorism and the Physical Damage to Property Endorsement and shall name Norfolk Southern Corporation and its affiliates and subsidiaries as the insured. Licensee shall ensure that the project location, Licensee identification and work description appear on the declaration pages of



a given RPL policy. Licensee shall provide an electronic copy of each RPL policy (and not merely the binder) to Railway at [ns.permitting@railpros.com](mailto:ns.permitting@railpros.com) for review and approval prior to commencing any work on the associated Operations project. Licensee may submit inquiries about RPL issues at [ns.permitting@railpros.com](mailto:ns.permitting@railpros.com).

(iii) Licensee shall maintain a Commercial General Liability (“CGL”) policy containing products and completed operations and contractual liability coverage, with a combined single limit of not less than \$2,000,000 for each occurrence. Any portion of this requirement may be satisfied by a combination of General Liability and/or Excess/Umbrella Liability Coverage. The policy shall not deny any obligation of any insured under the Federal Employer’s Liability Act, as amended. The CGL policy shall provide additional insured coverage equivalent to ISO CG 20 10 11/85.

(iv) Licensee shall maintain Automobile Liability Insurance with a current ISO occurrence form policy (or equivalent) and apply on an “any auto” (Symbol 1) basis, including coverage for all vehicles used in connection with the Work or Services on the leased property, providing annual limits of at least \$1,000,000 per occurrence for bodily injury and property damage combined including uninsured and underinsured motorist coverage, medical payment protection, and loading and unloading.

(v) Licensee shall maintain Workers’ Compensation Insurance to meet fully the requirement of any compensation act, plan or legislative enactment applicable in connection with the death, disability or injury of Licensee’s officers, agents, servants or employees arising directly or indirectly out of the performance of this Agreement;

(vi) Licensee shall maintain Employers’ Liability Insurance with limits of not less than \$1,000,000 each accident \$1,000,000 policy limit for disease, and \$1,000,000 each employee for disease;

(b) General Insurance Requirements. Each insurance policy referred to in subsection (a) above shall also comply with the following requirements:

(i) Licensee’s Coverage Primary and Without Right to Contribution. All policies secured by Licensee, whether primary, excess, umbrella or otherwise, and providing coverage to the Railway as an additional insured (1) are intended to take priority in responding and to pay before any insurance policies Railway may have secured for itself must respond or pay and (2) may not seek contribution from any policies the Railway may have secured for itself.

(ii) Severability of Interests (Cross Liability). No cross-liability exclusions are permitted that would apply to the additional insureds, and there may not be any restrictions in any policy that limits coverage for a claim brought by an additional insured against a named insured.

(iii) Waiver of Subrogation. To the fullest extent permitted by law, all insurance furnished by Licensee pursuant to this Agreement shall include a waiver of subrogation in favor of Railway with an appropriate endorsement to each policy.

(iv) Notice of Cancellation, Modification or Termination. Each insurance policy shall not be subject to cancellation, termination, modification, changed, or non-renewed except upon thirty (30) days' prior written notice to the additional insureds.

(v) No Limitation. Each insurance policy shall not limit any of Licensee's indemnity obligations or other liabilities under this Agreement. The insurance available to Railway and its parent, subsidiary and affiliated companies as additional insureds shall not be limited by these requirements should Licensee maintain higher coverage limits.

(vi) Any deductibles or self-insured retentions of Licensee over \$50,000 must be declared and approved by Railway. Approval of such requests shall not be unreasonably withheld. Railway hereby approves Licensee's self-insurance as compliant with the provisions provided in Section 12, except those that relate to the RPL Insurance Policy.

(vii) Licensee shall require all subcontractors who are not covered by the insurance carried by Licensee to maintain the insurance coverages set forth in subsection (a) above, except for the RPL insurance, including but not limited to additional insured status for Railway and its parent, subsidiary and affiliated companies.

(viii) Licensee shall furnish their memorandum of insurance and the RPL Insurance Policy to Railway's Managing Agent prior to execution of this Agreement at [ns.permitting@railpros.com](mailto:ns.permitting@railpros.com). The insurance coverage required herein shall in no way limit Licensee's liability under this Agreement.

13. Environmental Matters. To the extent permitted by law and without waiving the defense of sovereign immunity to claims by third parties, Licensee assumes all responsibility for any environmental obligations imposed under applicable laws, regulations, ordinances or other requirements of federal, state and local governmental authorities relating to (a) any Operations, including notification and reporting of any releases, and (b) any contamination of any property, water, air or groundwater arising or resulting, in whole or in part, from Licensee's operation or use of the Premises pursuant to this Agreement. In addition, Licensee shall obtain any necessary permits to conduct Operations. To the extent permitted by law and without waiving the defense of sovereign immunity to claims by third parties, Licensee agrees to indemnify and hold harmless Railway from and against any and all fines, penalties, demands or other Losses (including attorneys' fees) incurred by Railway or claimed by any person, company or governmental entity relating to (a) any contamination of any property, water, air or groundwater due to the use or presence of the Facilities on the Premises, (b) Licensee's violation of any laws, regulations or other requirements of federal, state or local governmental authorities in connection with the use or presence of the Facilities on the Premises or (c) any violation of Licensee's obligations imposed under this Section. Without limitation, this indemnity provision shall extend to any cleanup and investigative costs relating to any contamination of the Premises arising or resulting from, in whole

or in part, Licensee's use of the Facilities or any other activities by or on behalf of Licensee occurring on or about the Premises. Licensee further agrees not to dispose of any trash, debris or wastes, including hazardous waste, on the Premises and will not conduct any activities on the Premises which would require a hazardous waste treatment, storage or disposal permit.

14. Assignments and Other Transfers.

(a) Licensee shall not assign, transfer, sell, mortgage, encumber, sublease or otherwise convey (whether voluntarily, involuntarily or by operation of law) this Agreement or any interest therein, nor license, mortgage, encumber or otherwise grant to any other person or entity (whether voluntarily, involuntarily or by operation of law) any right or privilege in or to the Premises (or any interest therein), in whole or in part, without the prior written consent of Railway, which consent may be withheld by Railway in its sole discretion. Any such assignment or other transfer made without Railway's prior written consent shall be null and void and, at Railway's option, shall constitute an immediate default of this Agreement. Notwithstanding the foregoing, upon prior written notice to Railway, Licensee may assign this Agreement to a parent, a wholly-owned subsidiary of Licensee or a wholly-owned subsidiary of Licensee's parent without Railway's consent; provided, however, that no such assignment shall relieve Licensee of its obligations under this Agreement.

(b) Railway shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in or to the Premises. From and after the effective date of any such assignment or transfer, Railway shall be released from any further obligations hereunder; and Licensee shall look solely to such successor-in-interest of Railway for the performance of the obligations of "Railway" hereunder.

15. Meaning of "Railway". The word "Railway" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Railway. Said term also shall include Railway's officers, directors, agents and employees, and any parent company, subsidiary or affiliate of Railway and their respective officers, directors, agents and employees.

16. Default; Remedies.

(a) The following events shall be deemed to be events of default by Licensee under this Agreement:

(i) Licensee shall fail to pay the Fee or any other sum of money due hereunder and such failure shall continue for a period of ten (10) days after the due date thereof;

(ii) Licensee shall fail to comply with any provision of this Agreement not requiring the payment of money, all of which terms, provisions and covenants shall be deemed material, and such failure shall continue for a period of thirty (30) days after written notice of such default is delivered to Licensee;

(iii) Licensee shall become insolvent or unable to pay its debts as they become due, or Licensee notifies Railway that it anticipates either condition;

(iv) Licensee takes any action to, or notifies Railway that Licensee intends to file a petition under any section or chapter of the United States Bankruptcy Code, as amended from time to time, or under any similar law or statute of the United States or any State thereof; or a petition shall be filed against Licensee under any such statute; or

(v) A receiver or trustee shall be appointed for Licensee's license interest hereunder or for all or a substantial part of the assets of Licensee, and such receiver or trustee is not dismissed within sixty (60) days of the appointment.

(b) Upon the occurrence of any event or events of default by Licensee, whether enumerated in this Section or not, Railway shall have the option to pursue any remedies available to it at law or in equity without any additional notices to Licensee. Railway's remedies shall include, but not be limited to, the following: (i) termination of this Agreement, in which event Licensee shall immediately surrender the Premises to Railway; (ii) entry into or upon the Premises to do whatever Licensee is obligated to do under the terms of this License, in which event Licensee shall reimburse Railway on demand for any expenses which Railway may incur in effecting compliance with Licensee's obligations under this License, but without rendering Railway liable for any damages resulting to Licensee or the Facilities from such action; and (iii) pursuit of all other remedies available to Railway at law or in equity, including, without limitation, injunctive relief of all varieties.

17. Railway Termination Right. Notwithstanding anything to the contrary in this Agreement, Railway shall have the right to terminate this Agreement and the rights granted hereunder, after delivering to Licensee written notice of such termination no less than sixty (60) days prior to the effective date thereof, upon the occurrence of any one or more of the following events:

(a) If Licensee shall fail to install the Facilities within one (1) year from the date of the Agreement, or if Licensee shall discontinue the use or operations of the Facilities for one (1) year; or

(b) If Railway shall be required by any governmental authority having jurisdiction over the Premises to remove, relocate, reconstruct or discontinue operation of its railroad on or about the Premises; or

(c) If Railway, in the good faith judgment of its Superintendent, shall require a change in the location or elevation of its railroad on or about the location of the Facilities or the Premises that might effectively prohibit the use or operation of the Facilities; or

(d) If Railway, in the good faith judgment of its Superintendent, determines that one or more aspects of Operations unduly interfere with the operation and maintenance of the facilities of Railway, or with the present or future use of such property by Railway, its lessees, affiliates, successors or assigns, for their respective purposes.

18. Condemnation. If the Premises or any portion thereof shall be taken or condemned in whole or in part for public purposes, or sold in lieu of condemnation, then this Agreement and the rights granted to Licensee hereunder shall, at the sole option of Railway, forthwith cease and terminate. All compensation awarded for any taking (or sale proceeds in lieu thereof) shall be the property of Railway, and Licensee shall have no claim thereto, the same being hereby expressly waived by Licensee.

19. Removal of Facilities; Survival. The Facilities are and shall remain the personal property of Licensee. Upon the expiration or termination of this Agreement, Licensee shall remove the Facilities from the Premises within thirty (30) days after the effective date thereof. In performing such removal, unless otherwise directed by Railway, Licensee shall restore the Premises to the same condition as existed prior to the installation or placement of Facilities, reasonable wear and tear excepted. In the event Licensee shall fail to so remove the Facilities or restore the Premises, the Facilities shall be deemed to have been abandoned by Licensee, and the same shall become the property of Railway for Railway to use, remove, destroy or otherwise dispose of at its discretion and without responsibility for accounting to Licensee therefor; provided, however, in the event Railway elects to remove the Facilities, Railway, in addition to any other legal remedy it may have, shall have the right to recover from Licensee all costs incurred in connection with such removal and the restoration of the Premises. Notwithstanding anything to the contrary contained in this Agreement, the expiration or termination of this Agreement, whether by lapse of time or otherwise, shall not relieve Licensee from Licensee's obligations accruing prior to the expiration or termination date, and such obligations shall survive any such expiration or other termination of this Agreement.

20. Entire Agreement. This Agreement contains the entire agreement of Railway and Licensee and supersedes any prior understanding or agreement between Railway and Licensee respecting the subject matter hereof, and no representations, warranties, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this Agreement shall be of any force or effect.

21. Attorneys' Fees. If Railway should bring any action under this Agreement or consult or place the Agreement or any amount payable by Licensee hereunder, with an attorney concerning or for the enforcement of any of Railway's rights hereunder, then Licensee agrees, to the extent permitted by law and without the defense of sovereign immunity to claims by third parties, to pay to Railway all costs, including but not limited to court costs and attorneys' fees, incurred in connection therewith.

22. Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the Term, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby; and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

23. Modifications; Waiver; Successors and Assigns. This Agreement may not be altered, changed or amended, except by instrument in writing signed by both parties hereto. No

provision of this Agreement shall be deemed to have been waived by Railway unless such waiver shall be in a writing signed by Railway and addressed to Licensee, nor shall any custom or practice that may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of Railway to insist upon the performance by Licensee in strict accordance with the terms hereof. The terms and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. If there shall be more than one Licensee, the obligations hereunder imposed upon Licensee shall be joint and several.

24. Notice. Any and all other notices, demands or requests by or from Railway to Licensee, or Licensee to Railway, shall be in writing and shall be sent by (a) postage paid, certified mail, return receipt requested, or (b) a reputable national overnight courier service with receipt therefor, or (c) personal delivery, and addressed in each case as follows:

If to Railway:  
c/o Norfolk Southern Corporation  
650 West Peachtree Street, Box 22  
Atlanta, Georgia 30308  
Attention: Director Real Estate

If to Licensee:  
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
125 Lisle Industrial Ave Suite 180  
Lexington, Kentucky 40511  
Attention: Craig Prater

Either party may, by notice in writing, direct that future notices or demands be sent to a different address. All notices hereunder shall be deemed given upon receipt (or, if rejected, upon rejection).

25. Miscellaneous. Time is of the essence with regard to each provision of this Agreement. This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State in which the Premises are located. Each covenant of Railway and Licensee under this Agreement is independent of each other covenant under this Agreement. No default in performance of any covenant by a party shall excuse the other party from the performance of any other covenant. The provisions of this Agreement that, by their nature, are intended to survive the expiration or earlier termination of this Agreement, including Sections 8, 10, 11, 13 and 19, shall so survive.

26. Limitations of Grant. Licensee acknowledges that the license granted hereunder is a quitclaim grant, made without covenants, representations or warranties with respect to Railway's (a) right to make the grant, (b) title in the Premises, or (c) right to use or make available to others the Premises for the purposes contemplated herein. Railway is the owner and/or holder of the Premises subject to the terms and limitations under which it is owned or held, including without limitation conditions, covenants, restrictions, easements (including any pre-existing fiber optic easements or licenses), encroachments, leases, licenses, permits, mortgages, indentures, reversionary interests, fee interests, zoning restrictions and other burdens and limitations, of record and not of record, and to rights of tenants and licensees in possession, and Licensee agrees, to the extent permitted by law and without the defense of sovereign immunity to claims by third parties, that the rights licensed hereunder are subject and subordinate to each and all of the foregoing.

Licensee accepts this grant knowing that others may claim that Railway has no right to make it, and Licensee agrees to release, hold harmless and indemnify (and, at Railway’s election, defend, at Licensee's sole expense, with counsel approved by Railway) Railway, its affiliated companies, and its and their respective officers, directors, agents and employees, from and against any detriments to, or liabilities of, any type or nature arising from such claims, including punitive damages and any forfeitures declared or occurring as a result of this grant.

27. Limitations Upon Damages. Notwithstanding any other provision of this Agreement, Railway shall not be liable for breach of this Agreement or under this Agreement for any consequential, incidental, exemplary, punitive, special, business damages or lost profits, as well as any claims for death, personal injury, and property loss and damage which occurs by reason of, or arises out of, or is incidental to the interruption in or usage of the Facilities placed upon or about the Premises by Licensee, including without limitation any damages under such claims that might be considered consequential, incidental, exemplary, punitive, special, business damages or lost profits. It is understood and agreed by Licensee that Railway cannot and will not make any warranties, representations or guarantees that Licensee's communication system (if any), as located on Railway’s property, will not be interrupted.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate, each part being an original, as of the date first above written.

Witness:

**THE CINCINNATI, NEW ORLEANS  
AND TEXAS PACIFIC RAILWAY  
COMPANY**

\_\_\_\_\_  
As to Railway

By: \_\_\_\_\_  
Real Estate Manager

Witness:

**LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT**

\_\_\_\_\_  
As to Licensee

By: \_\_\_\_\_

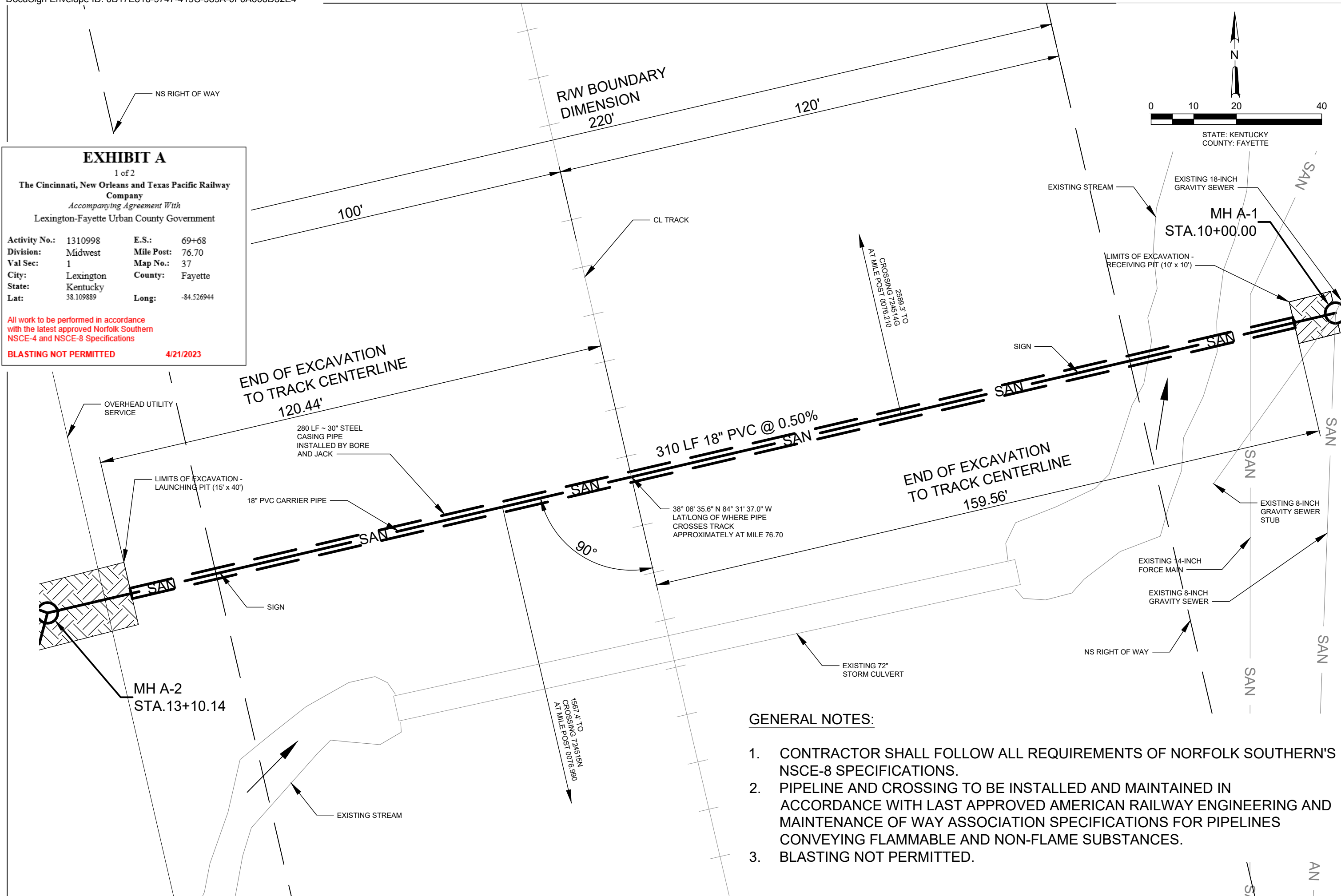
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**EXHIBIT A**  
 1 of 2  
**The Cincinnati, New Orleans and Texas Pacific Railway Company**  
*Accompanying Agreement With*  
 Lexington-Fayette Urban County Government

Activity No.: 1310998    E.S.: 69+68  
 Division: Midwest    Mile Post: 76.70  
 Val Sec: 1    Map No.: 37  
 City: Lexington    County: Fayette  
 State: Kentucky  
 Lat: 38.109889    Long: -84.526944

All work to be performed in accordance with the latest approved Norfolk Southern NSCE-4 and NSCE-8 Specifications

**BLASTING NOT PERMITTED**    4/21/2023



**GENERAL NOTES:**

1. CONTRACTOR SHALL FOLLOW ALL REQUIREMENTS OF NORFOLK SOUTHERN'S NSCE-8 SPECIFICATIONS.
2. PIPELINE AND CROSSING TO BE INSTALLED AND MAINTAINED IN ACCORDANCE WITH LAST APPROVED AMERICAN RAILWAY ENGINEERING AND MAINTENANCE OF WAY ASSOCIATION SPECIFICATIONS FOR PIPELINES CONVEYING FLAMMABLE AND NON-FLAME SUBSTANCES.
3. BLASTING NOT PERMITTED.

REVISION DESCRIPTION	DATE

PLATE II - PIPE PLAN VIEW  
 LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
 SPURR ROAD AND DOTSON P.S. ELIMINATION  
 LFUCG BID No. XX-2023

JOB: 2815.325	DATE: February 08, 2023	DRAWN: SKM
SHEET: EXHIBIT-01	Scale: 1" = 20'	CHECKED: MLD



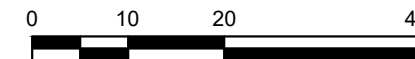
**EXHIBIT A**

Page 2 of 2  
 The Cincinnati, New Orleans and Texas Pacific Railway  
 Company  
 Accompanying Agreement With  
 Lexington-Fayette Urban County Government

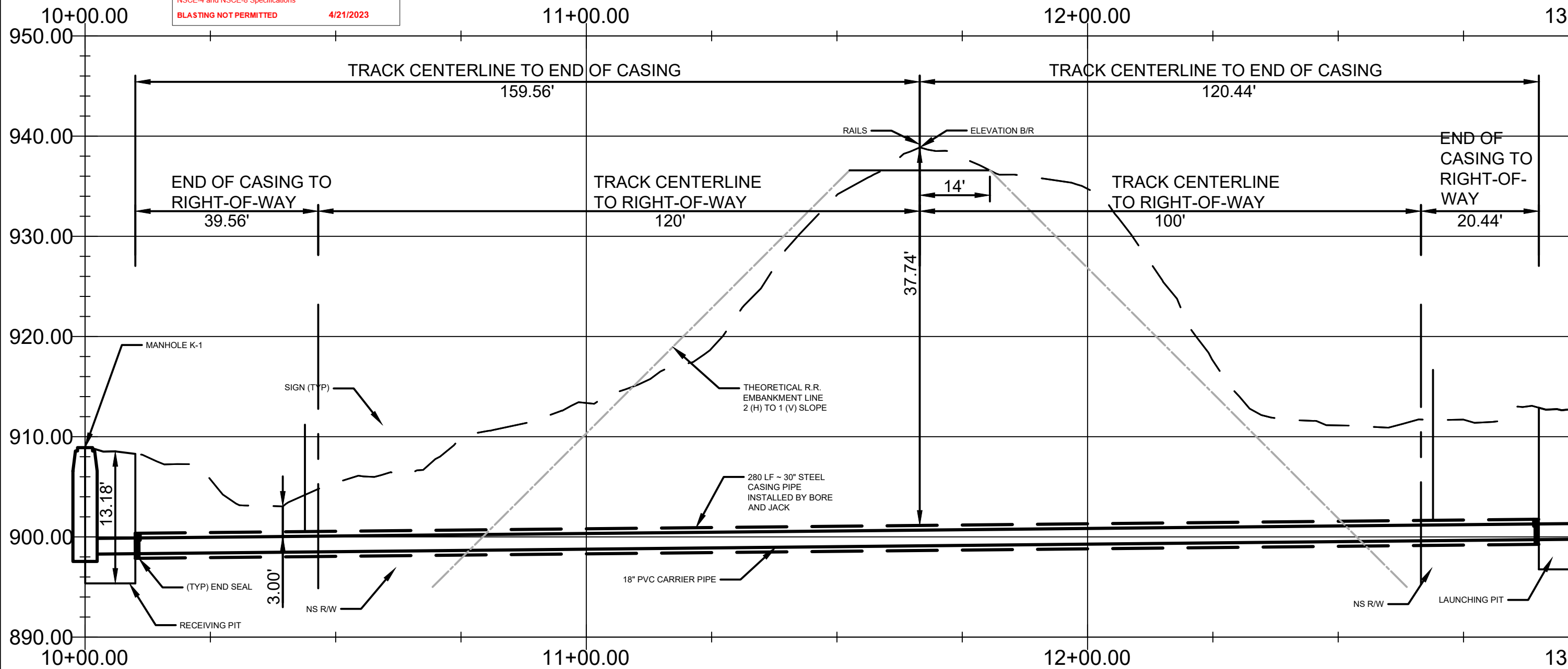
Activity No.: 1310998 E.S.: 69+68  
 Division: Midwest Mile Post: 76.70  
 Val Sec: 1 Map No.: 37  
 City: Lexington County: Fayette  
 State: Kentucky  
 Lat: 38.109889 Long: -84.526944

All work to be performed in accordance  
 with the latest approved Norfolk Southern  
 NSCE-4 and NSCE-8 Specifications

**BLASTING NOT PERMITTED 4/21/2023**



STATE: KENTUCKY  
 COUNTY: FAYETTE



**GENERAL NOTES:**

1. CONTRACTOR SHALL FOLLOW ALL REQUIREMENTS OF NORFOLK SOUTHERN'S NSCE-8 SPECIFICATIONS.
2. PIPELINE AND CROSSING TO BE INSTALLED AND MAINTAINED IN ACCORDANCE WITH LAST APPROVED AMERICAN RAILWAY ENGINEERING AND MAINTENANCE OF WAY ASSOCIATION SPECIFICATIONS FOR PIPELINES CONVEYING FLAMMABLE AND NON-FLAME SUBSTANCES.
3. BLASTING NOT PERMITTED.

REVISION DESCRIPTION  
 DATE

PLATE III - PIPE PROFILE VIEW  
 LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
 SPURR ROAD AND DOTSON P.S. ELIMINATION  
 LFUCG BID No. XX-2023

JOB: 2815.325  
 SHEET: EXHIBIT-02  
 DATE: February 08, 2023  
 DRAWN: SKM  
 CHECKED: MLD  
 Scale: 1" = 20'

### Certificate Of Completion

Envelope Id: 0B17E8169747419C989A0F0A606D32E4	Status: Sent
Subject: 1310998 Lex-Fay UG Pipeline for Signature (18632)	
Source Envelope:	
Document Pages: 17	Signatures: 0
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	RailPros Permitting
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	1320 Greenway Dr.
	Suite 490
	Irving, TX 75038
	docusign@railpros.com
	IP Address: 3.130.31.15

### Record Tracking

Status: Original	Holder: RailPros Permitting	Location: DocuSign
10/20/2023 8:12:58 AM	docusign@railpros.com	

### Signer Events

Signer Events	Signature	Timestamp
<p>Craig Prater (Licensee/Facility Owner)</p> <p>bprater@lexingtonky.gov</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>            Accepted: 10/20/2023 10:50:09 AM            ID: 0311dc36-1d9c-4959-bf0a-2657259a00c7</p>		<p>Sent: 10/20/2023 8:13:00 AM</p> <p>Viewed: 10/20/2023 10:50:09 AM</p>
<p>Jamie Jordan (Document Specialist 2)</p> <p>jamie.jordan@railpros.com</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>            Accepted: 11/9/2020 6:20:10 AM            ID: 0a68d14b-a488-477d-8ea6-1abc9a7a0a90</p>		
<p>Keyana Holloway</p> <p>keyana.holloway@nscorp.com</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>            Accepted: 11/9/2020 5:38:02 AM            ID: 95fda88c-ee71-44b3-806f-7614e3b7bc43</p>		
<p>Solomon Jackson</p> <p>solomon.jackson@nscorp.com</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>            Accepted: 11/9/2020 5:27:48 AM            ID: 097fa1b6-fca4-4d11-8fd5-d5fc7c21939a</p>		

In Person Signer Events	Signature	Timestamp
<b>Editor Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Agent Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Intermediary Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Certified Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>

<b>Carbon Copy Events</b>	<b>Status</b>	<b>Timestamp</b>
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Ana

Ana.Mcdowell@railpros.com

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**

Accepted: 7/26/2023 7:11:47 AM

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<b>Witness Events</b>	<b>Signature</b>	<b>Timestamp</b>
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<b>Notary Events</b>	<b>Signature</b>	<b>Timestamp</b>
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<b>Envelope Summary Events</b>	<b>Status</b>	<b>Timestamps</b>
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Envelope Sent

Hashed/Encrypted

10/20/2023 8:13:00 AM

<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>
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<b>Electronic Record and Signature Disclosure</b>
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## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Railpros (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

### **How to contact Railpros:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [docusign@railpros.com](mailto:docusign@railpros.com)

### **To advise Railpros of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [docusign@railpros.com](mailto:docusign@railpros.com) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

### **To request paper copies from Railpros**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [casey.vorwaller@railpros.com](mailto:casey.vorwaller@railpros.com) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

### **To withdraw your consent with Railpros**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to [docusign@railpros.com](mailto:docusign@railpros.com) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### **Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

### **Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Railpros as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Railpros during the course of your relationship with Railpros.