

CONSTRUCTION AGREEMENT

This Construction Agreement (this "Agreement") is made as of September 8th, 2020 by and between R. J. Corman Railroad Company/Central Kentucky Lines, LLC the address of which is 101 R. J. Corman Drive, P.O. Box 788, Nicholasville, Kentucky 40340 ("RJC" or the "Railroad"), and the LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT, an urban county government of the Commonwealth of Kentucky, the address of which, for purposes of this Agreement is, 200 East Main Street, Lexington, Kentucky 40507, ("LFUCG").

RECITALS:

1. LFUCG desires to construct the Town Branch Trail parallel and adjacent to tracks owned or operated by the Railroad at or near Thompson Road, Lexington, Fayette County, Kentucky DOT346824H, from Railroad Milepost 92.6 to 92.8 on an easement acquired from CSX Transportation Inc. (the "Project").
2. LFUCG has obtained, or will obtain, all authorizations, permits and approvals from all local, state, and federal agencies, and their respective governing bodies and regulatory agencies, necessary to proceed with the Project and to appropriate all funds necessary to construct the Project.
3. LFUCG acknowledges that: (i) by entering into this Agreement, RJC is providing accommodations to promote the public interest to be served by this Project; (ii) neither RJC nor its affiliates (including their respective directors, officers, employees or agents) will incur any costs, expenses, losses or liabilities in excess of payments made to RJC, by or on behalf of LFUCG or its contractors, pursuant to this Agreement; and (iii) RJC retains, in its sole discretion, right to regulate all activities affecting its property and operations.
4. It is the purpose of this Agreement to provide for the terms and conditions upon which the Project may proceed.

NOW, THEREFORE, for and in consideration of the mutual terms, promises covenant and conditions set out herein, the parties hereby agree as follows:

1. PROJECT PLANS AND SPECIFICATIONS

Preparation and Approval. Project plans, specifications and drawings prepared by or on behalf of LFUCG shall be subject, at RJC's election, to the review and approval of RJC. Such plans, specifications, and drawings, as prepared or approved by RJC, are referred to as the "Plans", and shall be incorporated and deemed a part of this Agreement. Plans prepared or submitted to and approved by RJC as of the date of this Agreement are set forth in Exhibit B to this Agreement.

Effect of RJC Approval or Preparation of Plans. By its review, approval or preparation of Plans pursuant to this Agreement, RJC warrants only that construction of the Project in accordance with such Plans and improvements will satisfy RJC's requirements. RJC expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability, or fitness for the purposes of LFUCG or any other persons of the Plans or improvements constructed in accordance with the Plans.

Compliance with Plans. The Project shall be constructed in accordance with the Plans.

2. ALLOCATION AND CONDUCT OF WORK

Work in connection with the Project shall be allocated and conducted as follows:

2.1 RJC Work. Subject to timely payment of Reimbursable Expenses as provided by Section 4, RJC shall provide, or cause to be provided, the services as set forth by Exhibit A to this Agreement. LFUCG agrees that RJC shall provide all services that RJC deems necessary or appropriate (whether or not specified by Exhibit A) to preserve and maintain its property and operations, without impairment or exposure to liability of any kind and in compliance with all applicable federal, state and local regulations and RJC's contractual obligations, including, but not limited to, RJC's existing or proposed third party agreements and collective bargaining agreements.

2.2 LFUCG Work. LFUCG shall perform, or cause to be performed, all work as set forth by Exhibit A, at LFUCG's sole cost and expense.

2.3 Conduct of Work. RJC shall commence its work under this Agreement following: (i) delivery to RJC of a notice to proceed from LFUCG; (ii) payment of Reimbursable Expenses (as provided by Section 4.1) as required by RJC prior to the commencement of work by RJC; (iii) issuance of all permits, approvals and authorizations necessary or appropriate for such work; and (iv) delivery of proof of insurance acceptable to RJC, as required by Section 9. The initiation of any services by RJC pursuant to this Agreement, including, but not limited to, the issuance of purchase orders or bids for materials or services, shall constitute commencement of work for the purposes of this Section. The parties intend that all work by RJC or on RJC property shall conclude no later than December 31, 2021, unless the parties mutually agree to extend such date.

2.4 The "Work". Collectively the RJC Work and the LFUCG Work shall be defined as the "Work".

3. SPECIAL PROVISIONS

LFUCG shall observe, comply with, and abide by, and shall require its contractors ("Contractors") to observe, comply with, and abide by the terms, conditions and provisions set forth in this Agreement and Exhibit C to this Agreement (the "Special Provisions"). To the extent that LFUCG performs Project work itself, LFUCG shall be deemed a Contractor for purposes of this Agreement. LFUCG further agrees that, prior to the commencement of Project work by any third party Contractors, such Contractors shall execute and deliver to

RJC Schedule 1 to this Agreement to acknowledge the Contractor's agreement to observe and abide by the terms and conditions of this Agreement.

4. COST OF PROJECT AND REIMBURSEMENT PROCEDURES

4.1 Reimbursable Expenses. LFUCG shall reimburse RJC for all costs and expenses incurred by RJC in connection with the Project, including, without limitation: (1) all out of pocket expenses, (2) travel and lodging expenses, (3) telephone, facsimile, and mailing expenses, (4) costs for equipment, tools, materials and supplies, (5) sums paid to RJC's engineers, consultants and subcontractors, and (6) RJC labor in connection with the Project, together with RJC labor overhead percentages established by RJC pursuant to applicable law (collectively, "Reimbursable Expenses"). Reimbursable Expenses shall also include expenses incurred by RJC prior to the date of this Agreement to the extent identified by the Estimate provided pursuant to Section 4.2.

4.2 Estimate. RJC has estimated the total Reimbursable Expenses for the Project as shown on Exhibit D (the "Estimate", as amended or revised). In the event RJC anticipates that actual Reimbursable Expenses for the Project may exceed such Estimate, it shall provide LFUCG with the revised Estimate of the total Reimbursable Expenses, together with a revised Payment Schedule (as defined by Section 4.3.1), for LFUCG's approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses of such revised Estimate. RJC may elect, by delivery of notice to LFUCG, to immediately cease all further work on the Project, unless and until LFUCG provides such approval and confirmation.

4.3 Payment Terms.

4.3.1 LFUCG shall pay RJC for Reimbursable Expenses in the amounts and on the dates set forth in the Payment Schedule as shown on Exhibit E (the "Payment Schedule", as revised pursuant to Section 4.2). RJC agrees to submit invoices to LFUCG for such amounts and LFUCG shall remit payment to RJC at the later of thirty (30) days following delivery of each such invoice to LFUCG or, the payment date (if any) set forth in the Payment Schedule.

4.3.2 Following completion of the Project, RJC shall submit to LFUCG a final invoice that reconciles the total Reimbursable Expenses incurred by RJC against the total payments received from LFUCG. LFUCG shall pay to RJC the amount by which Reimbursable Expenses exceed total payments as shown by the final invoice, within thirty (30) days following delivery of such invoice to LFUCG. In the event that the payments received by RJC from LFUCG exceed the Reimbursable Expenses, RJC shall remit such excess to LFUCG.

4.3.3 In the event that LFUCG fails to pay RJC any sums due RJC under this Agreement: (i) LFUCG shall pay RJC interest at the lesser of 1.5% per month or the maximum rate of interest permitted by applicable law on the delinquent amount until paid in full; and (ii) RJC may elect, by delivery of notice to LFUCG: (A) to immediately cease all further work on the Project, unless and until LFUCG pays the entire delinquent sum, together with accrued interest; and/or (B) to

terminate this Agreement.

- 434 All invoices from RJC shall be delivered to LFUCG in accordance with Section 16 of this Agreement. All payments by LFUCG to RJC shall be made by certified check and mailed to the following address or such other address as designated by RJC's notice to LFUCG:

R. J Corman Railroad Company\Central Kentucky Lines, LLC
101 R. J. Corman Drive
P.O. Box 788
Nicholasville, Kentucky 40356
ATTN: Deborah J. Hawley

5. APPROPRIATIONS

LFUCG represents to RJC that: (i) LFUCG has appropriated funds sufficient to reimburse RJC for the Reimbursable Expenses encompassed by the Estimate attached as Exhibit D; (ii) LFUCG shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by LFUCG; and (iii) LFUCG shall promptly notify RJC in the event that LFUCG is unable to obtain such appropriations.

6. ACCESS, PERMITS AND LICENSES

- 6.1 LFUCG's Obligation. LFUCG shall, at its sole cost and expense, acquire all necessary licenses, permits and easements required for the Project. Right of Entry permits will be required for LFUCG contractors.
- 6.2 Temporary Construction Licenses Insofar as it has the right to do so, RJC hereby grants LFUCG a nonexclusive license to access and cross RJC's property, to the extent necessary for the construction of the Project (excluding ingress or egress over public grade crossings), along such routes and upon such terms as may be defined and imposed by RJC and such temporary construction easements as may be designated on the Plans approved by RJC.
- 6.3 Access Rights. Insofar as it has the right to do so, RJC shall grant, without warranty to LFUCG, access rights for the use and maintenance of the trail, wholly or partly on property owned or leased by RJC as shown on the Plans approved by RJC, if any, on terms and conditions and at a price acceptable to the parties. Upon request by RJC, LFUCG shall furnish to RJC descriptions and plat plans for said rights.

7. PERMITS

At its sole cost and expense, LFUCG shall procure all permits and approvals required by any federal, state, or local governments or governmental agencies for the construction,

maintenance and use of the Project, copies of which shall be provided to RJC.

8. TERMINATION

- 8.1 By LFUCG. For any reason, LFUCG may, as its sole remedy, terminate this Agreement by delivery of notice to RJC. LFUCG shall not be entitled to otherwise pursue claims for consequential, direct, indirect, or incidental damages or lost profits as a consequence of RJC's default or termination of this Agreement or Work on the Project by either party.
- 8.2 By RJC. In addition to the other rights and remedies available to RJC under this Agreement, RJC may terminate this Agreement by delivery of notice to LFUCG in the event LFUCG or its Contractors fail to observe the terms or conditions of this Agreement and such failure continues more than ten (10) business days following delivery of notice of such failure by RJC to LFUCG.
- 8.3 Consequences of Termination. If the Agreement is terminated by either party pursuant to this Section or any other provision of this Agreement, the parties understand that it may be impractical for them to immediately stop the Work. Accordingly, they agree that, in such instance a party may continue to perform Work until it has reached a point where it may reasonably and safely suspend the Work. LFUCG shall reimburse RJC pursuant to this Agreement for the Work performed, plus all costs reasonably incurred by RJC to discontinue the Work and protect the Work upon full suspension of the same, the cost of returning RJC's property to its former condition, and all other costs of RJC incurred as a result of the Project up to the time of full suspension of the Work. Termination of this Agreement or Work on the Project, for any reason, shall not diminish or reduce LFUCG's obligation to pay RJC for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Work for any reason, RJC's only remaining obligation to LFUCG shall be to refund to LFUCG payments made to RJC in excess of Reimbursable Expenses in accordance with Section 4.

9. INSURANCE

In addition to the insurance that LFUCG requires of its Contractors, LFUCG shall require its Contractors to purchase and maintain insurance in compliance with RJC's insurance requirements attached to this Agreement as Exhibit F. Neither LFUCG nor its Contractors shall commence work on the Project until such policy or policies have been submitted to and approved by RJC's Risk Management Department. RJC understands that LFUCG is self-insured and both parties agree that nothing contained in this Agreement or within any Exhibit to this Agreement is intended to obligate LFUCG to acquire insurance.

10. OWNERSHIP AND MAINTENANCE

- 10.1 LFUCG, and its successors and assigns, shall own and be solely responsible for the maintenance, upkeep, repair, and operation of the Project.
- 10.2 LFUCG, and its successors and assigns, shall promptly, upon notice from RJC, make any and all repairs to the project reasonably determined by RJC to be necessary for the safety of RJC's railroad operations; and, upon LFUCG's failure to do so, and in emergencies,

without notice RJC shall have the right, but not the duty, to make such repairs at LFUCG's sole cost and expense,

10.3 LFUCG shall not undertake any future alteration, modification, or expansion of the bridge, without the prior written approval of RJC, which may be withheld for any reason, and the execution of such agreements as RJC may require.

11. INDEMNIFICATION

11.1 Generally. To the maximum extent permitted by applicable law, LFUCG's Contractors shall indemnify, defend, and hold RJC and its affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of RJC, its affiliates, LFUCG or its Contractors), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of RJC, its affiliates, LFUCG or its Contractors, and environmental damages and any related remediation brought or recovered against RJC and its affiliates), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the LFUCG, its Contractors, and their respective agents, employees, invitees, contractors, or its Contractors' agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto or from their presence on or about RJC's property or property leased by it. The foregoing indemnification obligation shall not be limited to the insurance coverage required by this Agreement, except to the extent required by law or otherwise expressly provided by this Agreement. Nothing contained herein is intended to be, nor shall it be, a waiver of any defense, including that of sovereign immunity, LFUCG may have as to any third party.

11.2 Compliance with Laws. LFUCG shall comply, and shall require its Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the Project. LFUCG's Contractors shall indemnify, defend, and hold RJC and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.

11.3 "RJC Affiliates". For the purpose of this Section 11, RJC's affiliates include R. J. Corman Railroad Group, LLC, and all entities, directly or indirectly, owned or controlled by or under common control of RJC or R. J. Corman Railroad Group, LLC, their respective officers, directors, employees and agents; and CSX Transportation Inc. and their respective officers, directors, employees and agents.

11.4 Notice of Incidents. LFUCG and its Contractors shall notify RJC promptly of any loss, damage, injury, or death arising out of or in connection with the Project.

11.5 Survival. The provisions of this Section 11 shall survive the termination or expiration of this Agreement.

12. INDEPENDENT CONTRACTOR

The parties agree that neither LFUCG nor its Contractors shall be deemed either agents or independent contractors of RJC. Except as otherwise provided by this Agreement, RJC shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by LFUCG or LFUCG's Contractors, or the construction practices, procedures, and professional judgment employed by LFUCG or its Contractors to complete the Project. Notwithstanding the foregoing, this Section 12 shall in no way affect the absolute authority of RJC to prohibit LFUCG or its Contractors or anyone from entering RJC's property, or to require the removal of any person from its property, if it determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the Project exist.

13. ENTIRE AGREEMENT

This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.

14. WAIVER

If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.

15. ASSIGNMENT

RJC may assign this Agreement and all rights and obligations herein to a successor in interest, parent company, affiliate, or future affiliate. Upon assignment of this Agreement by RJC and the assumption of RJC's assignee of RJC's obligations under this Agreement, RJC shall have no further obligation under this Agreement. LFUCG shall not assign its rights or obligations under this Agreement without RJC's prior consent, which consent may be withheld for any reason.

16. NOTICES

All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the parties at the addresses set forth below, or such other addresses as either party may designate by delivery of prior notice to the other party:

If to RJC: R. J. Corman Railroad Company/Central Kentucky Lines,
LLC 101 R. J. Corman Drive
P.O. Box 788
Nicholasville, Kentucky 40356
ATTN: Deborah J. Hawley

If to LFUCG: Lexington Fayette Urban County Government
200 East Main Street,
Lexington, Kentucky 40507
ATTN: Keith Lovan,
Municipal Engineer Senior

17. SEVERABILITY

The parties agree that if any part, term or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable.

18. VENUE

The parties agree that the venue of all legal and equitable proceedings related to disputes under this Agreement shall be in the Circuit Court of Fayette County, Kentucky.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, each by its duly authorized officers, as of the date of this Agreement.

R. J. CORMAN RAILROAD COMPANY/
CENTRAL KENTUCKY LINES, LLC

LEXINGTON FAYETTE URBAN
COUNTY GOVERNMENT

BY: _____
TITLE: _____

BY: _____
TITLE: Mayor