

CONSTRUCTION AGREEMENT

This Construction Agreement (this "Agreement") is made as of April 24, 2024, by and between R. J. Corman Railroad Company/Central Kentucky Lines, the address of which is 101 R. J. Corman Drive, P.O. Box 788, Nicholasville, Kentucky 40340, hereinafter referred to as ("RJC" or the "Railroad") and Lexington Fayette Urban County Government, the address of which is 200 East Main Street, Lexington, KY 40507, hereinafter referred to as (the "LFUCG").

RECITALS:

1. LFUCG desires to construct a pedestrian overhead crossing above the Railroad track and perform grading work, tie down slopes, improve drainage and install and replace existing fence adjacent to Railroad right of way at or near Mile Post 91.7, in Lexington, Fayette County, Kentucky, all as indicated in plans, maps and drawings included or referenced as part of the Town Branch Trail Project ("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, 2024, 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) terminate this Agreement.

4.3.4 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 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
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 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 Project, 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 Contractor, LFUCG shall acquire or require its Contractor to purchase and maintain insurance in compliance with RJCC's insurance requirements attached to this Agreement as Exhibit F. Neither LFUCG nor Contractor shall commence work on the Project until such policy or policies have been submitted to and approved by RJCC'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 Project, 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 and its Contractors shall indemnify, defend, and hold RJCC 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 RJCC, 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 RJCC, its affiliates, LFUCG or its Contractors, and environmental damages and any related remediation brought or recovered against RJCC 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 RJCC and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.

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

11.4 Notice of Incidents. LFUCG and its Contractor shall notify RJCC 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
Deborah Hawley
101 R. J. Corman Drive
P.O. Box 788
Nicholasville, Kentucky 40356
Deborah.Hawley@rjcorman.com

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

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 is Agreement shall be in the Circuit Court of Jessamine 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: 

BY: 

TITLE: 

TITLE: Mayor

EXHIBIT A
ALLOCATION OF WORK

Subject to Section 2.1, work to be performed in connection with the Project is allocated as follows:

A. LFUCG shall perform or let by contract to its Contractors:

Construction of a pedestrian overhead crossing above RJC railroad track and Town Branch stream.

Grading work

Tie Down Slopes

Drainage installations

Install and replace existing fence

B. RJC shall perform or cause to be performed:

Flagging

EXHIBIT B
PLANS AND SPECIFICATIONS

Plans, Specifications and Drawings:

As of the date of this Agreement, the following plans, specifications, and drawings have been submitted by LFUCG to RJC for its review and approval:

Structure Plans from Palmer Engineering Company, dated 11/2017. Item Number 7-3709.00 Drawing 27592. Fayette County, Town Branch Trail Over R.J. Corman Railroad & Town Branch STA. 429 + 35.00

Civil Plans dated July 18, 2019

Town Branch Trail – Segment 4 & 5 dated June 8, 2021

EXHIBIT C
RJC SPECIAL PROVISIONS

1. AUTHORITY OF RAILROAD REPRESENTATIVE AND AGENCY ENGINEER:

The authorized representative of the Railroad Company, hereinafter referred to as Railroad Representative, shall have final authority in all matters affecting the safe maintenance of Railroad traffic of the Company and Railroad Chief Engineer will have final authority in all matters affecting the railroad track and right of way including the adequacy of the foundations and structures supporting the Railroad tracks.

The authorized representative of the Agency, hereinafter referred to as the Engineer, shall have authority over all other matters as prescribed herein and in the Project Specifications.

2. NOTICE OF STARTING WORK:

- A. The Contractor shall not commence any work on Railroad corridors until it has complied with the following conditions
1. Given the Railroad written notice, with copy to the following Railroad Representative, who has been designated to be in charge of the work, at least ten days in advance of the date it proposes to begin work on Railroad rights of way.

**R. J. Corman Railroad Company/Central Kentucky Lines
P. O. Box 788, Nicholasville, Kentucky 40340
Jimmy Overbey 859-537-1096
Office 859-881-2502**
 2. In addition, the Contractor shall notify the Consulting Engineer, George Zimmerman, of STV/Ralph Whitehead Associates, at (770) 452-0797, fax (770) 936-9171, at least 72 hours before proceeding with the work in Railroad property. The Contractor also agrees to abide by the instructions of all Railroad representatives, concerning matters related to Railroad safety.
 3. Obtain written authorization from the Railroad to begin work on the Railroad corridor, including an outline of specific conditions with which it must comply.
 4. Obtain written approval from the Railroad of Railroad Protective Insurance Liability coverage as required by paragraph 14 herein.
 5. Furnish a schedule for all work within the corridor as required by paragraph 7, B, 1.
- B. The Railroad's written authorization to proceed with the work shall include the names, addresses, and telephone numbers of the Railroad's representatives who are to be notified as hereinafter required. Where more than one representative is designated, the area of responsibility of each representative shall be specified.

3. INTERFERENCE WITH RAILROAD OPERATIONS:

- A. The Contractor shall so arrange and conduct its work that there will be no interference with Railroad operations, including train, signal, telephone and telegraphic services, or damage to the property of the Railroad Company or to poles, wires, and other facilities of tenants on the corridor of the Railroad Company. Whenever work is liable to affect the operations or safety of trains; the method of doing such work shall first be submitted to the Railroad Representative for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor which requires flagging service or inspection service shall, be deferred by the contractor until the flagging protection required by the Railroad is available at the job site.
- B. Whenever work within the Railroad corridor is of such a nature that impediment to Railroad operations (such as use of runaround tracks or necessity for reduced speed) is unavoidable, the contractor shall schedule and conduct its operations so that such impediment is reduced to the absolute minimum.
- C. Should conditions arising from, or in connection with the work, require that immediate and unusual provisions be made to protect operations and property of the Railroad, the Contractor shall make such

provisions. If in the judgment of the Railroad Representative, or in his absence, the Railroad Chief Engineer or the Consultant Engineer, such provisions are insufficient, the Railroad Representative may require or provide such additional provisions, as deemed necessary. In any event, such unusual provisions shall be at the Contractor's expense and without cost to the Railroad or the Agency.

4. TRACK CLEARANCES:

- A. The minimum track clearances to be maintained by the Contractor during construction are shown on the Project Plans. However, before undertaking any work within the Railroad corridor, or before placing any obstruction over any track, the Contractor shall:
1. Notify the Railroad's representative at least 72 hours in advance of the work.
 2. Receive assurance from the Railroad's representative that arrangements have been made for flagging service as may be necessary.
 3. Receive permission from the Railroad's representative to proceed with the work.
 4. Ascertain that the Engineer has received copies of notice to the Railroad and of the Railroad's response thereto.

5. CONSTRUCTION PROCEDURES:

- A. GENERAL. Construction work on Railroad property, whether owned or leased, shall be:
1. Subject to the inspection and approval of the Railroad.
 2. In accord with the Railroad's written outline of specific conditions, general rules, regulations and requirements including those relating to safety, fall protection and personal protective equipment.
 3. In accord with these special Provisions.
- B. EXCAVATION. The subgrade of an operated track shall be maintained with edge of berm at least 10'0" from centerline of track and not more than 24 inches below top of rail. Contractor will not be required to make an existing section meet this specification if the existing section is substandard, in which case existing section will be maintained.
- C. EXCAVATION OF STRUCTURES. The Contractor will be required to take special precaution and care in connection with excavating and shoring pits, and in driving piles, or sheeting for footings adjacent to tracks to provide adequate lateral support for the tracks and the loads which they carry, without disturbance of track alignment and surface, and to avoid obstructing track clearances with working equipment, tools or other material. The procedure for doing such work, including need of and plans for shoring shall first be approved by the Consulting Engineer and the Railroad Representative, but such approval shall not relieve the Contractor from liability.
- D. BLASTING.
1. The Contractor shall obtain advance approval of the Railroad Representative and the Engineer for use of explosives on or adjacent to Railroad property. The request for permission to use explosives shall include a detailed blasting plan. If permission for use of explosives is granted, the Contractor will be required to comply with the following:
 - (a) Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of the Contractor and a licensed blaster.
 - (b) Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way train radios.
 - (c) No blasting shall be done without the presence of an authorized representative of the Railroad. At least 72 hours advance notice to the person designated in the Railroad's notice of authorization to proceed (see paragraph 2B above) will be required to arrange for the presence of an authorized Railroad representative and such flagging as the Railroad may require.

- (d) Have at the job site adequate equipment, labor and materials and allow sufficient time to clean up debris resulting from the blasting without delay to trains, as well as correcting at Contractor's expense any track misalignment or other damage to Railroad property resulting from the blasting as directed by the Railway's authorized representative. If the Contractor's actions result in delay of trains, the Contractor shall bear the entire cost thereof.

2. The Railroad representative will:

- (a) Determine the location of trains and advise the Contractor the approximate amount of time available for the blasting operation and clean-up.
- (b) Have the authority to order discontinuance of blasting if, in the Railroad Representative's opinion, blasting is too hazardous or is not in accord with these special provisions.

E. MAINTENANCE OF RAILROAD FACILITIES.

- 1. The Contractor will be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from the Contractor's operations and provide and maintain any erosion control measures as required. The Contractor will promptly repair eroded areas with Railroad corridors and repair any other damage to the property of the Railroad or its tenants.
- 2. All such maintenance and repair of damages due to the Contractor's operation shall be done at the Contractor's expense.

F. STORAGE OF MATERIALS AND EQUIPMENT.

Materials and equipment shall not be stored where they will interfere with Railroad operations, nor on the railroad corridor without first having obtained permission from the Railroad Representative, and such permission will be with the understanding that the Railroad Company will not be liable for damage to such material and equipment from any cause and that the Railroad Representative may move or require the Contractor to move, at the Contractor's expense, such material and equipment. All grading or construction machinery that is left parked near any track unattended by a watchman shall be effectively immobilized so that it cannot be moved by unauthorized persons. The Contractor shall protect, defend, indemnify and save Railroad, and any associated, controlled or affiliated corporation, harmless from and against all losses, costs, expenses, claim or liability for loss or damage to property or the loss of life or personal injury, arising out of or incident to the Contractor's failure to immobilize grading or construction machinery.

- G. CLEANUP. Upon completion of the work, the Contractor shall remove all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of the Contractor, from the railroad corridor and leave it in a neat condition satisfactory to the Chief Engineer of the Railroad or his authorized representative.

6. DAMAGES:

- A. The Contractor shall assume all liability for any and all damages to Contractor's work, employees, equipment and materials caused by Railroad traffic.
- B. Any costs incurred by the Railroad for repairing damages to its property or to property of its tenants, caused by or resulting from the operations of the contractor, shall be paid directly to the Railroad by the Contractor.

7. FLAGGING SERVICES:

- A. When Required:

The Railroad has sole authority to determine the need for flagging required to protect its operations. In general, the requirements of such services will be whenever the Contractor's personnel or equipment are likely to be, working on the Railroad's corridor, or across, over, adjacent to, or under a track, or when such work has disturbed or is likely to disturb a railroad structure or the railroad roadbed or surface and alignment of any track to such extent that the movement of trains must be controlled by flagging.

Normally, the Railroad will assign one flagger to a project; but in some cases, more than one may be necessary, such as yard limits where three (3) flaggers may be required. However, if the Contractor works

within distances that violate instructions given by the Railroad's authorized Representative or performs work that has not been scheduled with the Railroad's authorized Representative, a flagger or flaggers may be required until the project has been completed.

B. SCHEDULING AND NOTIFICATION.

1. **Not later than the time that approval is initially requested to begin work on the Railroad corridor, Contractor shall furnish to the Railroad a schedule for all work required to complete the portion of the project within the Railroad corridor and arrange for a job site meeting between the Contractor, the Agency, and the Railroad's authorized representative. Flagger or Flaggers may not be provided until the job site meeting has been conducted and the Contractor's work scheduled. If flagging is required, no work shall be undertaken until the flagger or flaggers are present at the job site.**
2. **Initially, it may take up to 30 days to obtain flagging from the Railroad. If flagging service is required, such notice shall be submitted at least 30 business days in advance of the date scheduled to commence the Work. Such notices shall include sufficient details and dates of the proposed work to enable the Railroad Representative to determine if flagging will be required. When, flagging begins the flagger is usually assigned by the Railroad to work at the project site on a continual basis until no longer needed and cannot be called for on a spot basis. If flagging becomes unnecessary and is suspended, it may take up to 10 days to resume flagging services from the Railroad. It is necessary to give 5 working days notice before flagging service may be discontinued and responsibility for payment stopped. Once begun, if such work is suspended at any time, or for any reason, the Contractor will be required to give the Railroad Representative at least 7 working days of advance notice before resuming work on the Railroad corridor.**
3. **If, after the flagger is assigned to the project site, emergencies arise which require the flaggers presence elsewhere, then the Contractor shall delay work on the Railroad corridor until such time as the flagger is again available. Any additional costs resulting from such delay shall be borne by the Contractor and not the Railroad.**

C. PAYMENT.

1. The Contractor will be responsible for paying the Railroad directly for any and all costs of flagging, which may be required to accomplish the construction.
2. The cost of flagging is \$65 per hour based on Contractor's 8-hour work day which necessitates the flagger to work a 12 hour day (1 hour for travel to and from the project site and 2 hours to install and remove the warning boards if necessary). This cost includes the base pay for the flagger, overhead, and a per diem charge for travel expenses, meals and lodging.
3. Work by a flagger in excess of 8 hours per day or 40 hours per week, but not more than 12 hours a day will result in overtime pay at ½ times the appropriate rate. Work by a flagger in excess of 12 hours per day will result in overtime pay at 2 times the appropriate rate. If work is performed on a holiday, the flagging rate is 2 ½ times the normal rate.
4. Railroad work involved in preparing and handling bills will also be charged to the Contractor. Flagging costs are subject to change. The above estimates of flagging cost are provided for information only and are not binding in any way.

D. VERIFICATION.

1. The Contractor will review and sign the Railroad flagger's time sheet, attesting that the flagger was present during the time recorded. Flagger may be removed by Railroad if the time sheet is not signed. If flagger is removed, the Contractor will not be allowed to re-enter the Railroad corridor until the issue is resolved. Any complaints concerning flagger or flaggers must be resolved in a timely manner. If need for flagger or flagger is questioned, please contact Railroad Representative. All verbal complaints must be confirmed in writing by the Contractor within 5 working days. All written correspondence should be addressed to:

R.J. Corman Railroad Company/Central Kentucky Lines
Attn: Katie Byrd, Property Services Specialist
P. O. Box 788
101 RJ Corman Drive
Nicholasville, Kentucky 40340
Phone 859-881-2389
Katherine.Byrd@RJCorman.com

2. The Railroad flagger assigned to the project will be responsible for notifying the Project Engineer upon arrival at the job site on the first day (or as soon thereafter as possible) that flagging services begin and on the last day that such services are performed for each separate period that services are provided. The Project Engineer will document such notification in the project records. When requested, the Project Engineer will also sign the flagger's timesheet showing daily time spent and activity at the project site.

8. HAUL ACROSS RAILROAD:

- A. Where the plans show or imply that materials of any nature must be hauled across a railroad corridor, unless the plans clearly show that the Agency has included arrangements for such haul in its agreement with the Railroad, the Contractor will be required to make all necessary arrangements with the Railroad regarding means of transporting such materials. The Contractor will be required to bear all costs incidental, including flagging, to such crossings whether services are performed by the Contractor's forces or by Railroad personnel.
- B. No crossing may be established for use of the Contractor for transporting materials or equipment across the tracks of the Railroad Company. If Agency or Contractor desires access across Railroad property or tracks other than existing and open public road crossing in or incident to construction of the project, the Agency or Contractor must first obtain the permission of the Railroad. Should the Railroad grant such permission the railroad shall execute a license agreement or right of entry satisfactory to the railroad, wherein the Agency or Contractor agrees to bear all costs.

9. WORK FOR THE BENEFIT OF THE CONTRACTOR:

- A. All temporary or permanent changes in wire lines or other facilities which are considered necessary to the project are shown on the plans; included in the force account agreement between the Agency and the Railroad or will be covered by appropriate revisions to same which will be initiated and approved by the Agency and/or the Railroad.
- B. Should the Contractor desire any changes in addition to the above, then he shall make separate arrangements with the Railroad, to be accomplished at the Contractor's expense.

10. COOPERATION AND DELAYS:

- A. It shall be the Contractor's responsibility to arrange a schedule with the Railroad for accomplishing stage construction involving work by the Railroad or tenants of the Railroad. In arranging the schedule, the Contractor shall ascertain, from the Railroad, the lead time required for assembling crews and materials and shall make, due allowance therefor.
- B. No charge or claims of the Contractor against either the Agency or the Railroad will be allowed for hindrance or delay on account of railway traffic; any work done by the Railroad Company, or other delay incident to or necessary for safe maintenance of rail traffic or for any delays due to compliance with these special provisions.

11. TRAIN CREW'S WALKWAYS:

Along the outer side of each exterior track of multiple operated track, and on each side of single operated track, an unobstructed continuous space suitable for a train crew's use in walking along trains, extending to a line not less than 10 feet from centerline of track, shall be maintained. Any temporary impediments to walkways or drainage structures shall be removed before the close of each workday. If there is any excavation near the walkway, a handrail, with 10'0" minimum clearance from centerline of track, shall be placed.

12. REQUIREMENTS FOR PERSONNEL ON RAILROAD CORRIDORS:

- A. All persons shall wear hard hats. Appropriate eye and hearing protection must be used. Working in shorts is prohibited. Shirts must cover shoulders, back and abdomen. Working in tennis or jogging shoes, sandals, boots with high heels, cowboy and other slip on type footwear is prohibited. Hard-sole; Steel Toe lace-up footwear, zippered-boots cinched with straps which fit snugly about the ankle are adequate. Safety boots are strongly recommended.
- B. No one is allowed within 25' of the centerline of the track without specific authorization from the flagger.
- C. All persons working near track when train is passing are to look out for dragging bands, chains and protruding or shifting cargo.
- D. No one is allowed to cross tracks without specific authorization from the flagger.
- E. All welders and cutting torches working within 25' of track must stop when train is passing.
- F. No steel tape or chain will be allowed to cross or touch rails without permission.

13. REQUIREMENTS FOR EQUIPMENT ON RAILROAD RIGHT OF WAY:

- A. No crane or boom equipment will be allowed to set up to work or park within boom distance plus 15' of centerline of track without specific permission from the railroad official and flagger.
- B. No crane or boom equipment will be allowed to foul track or lift a load over the track without flag protection and track time.
- C. All employees will stay with their machines when crane or boom equipment is pointed toward track.
- D. All cranes and boom equipment under load will stop work while a train is passing (including pile driving).
- E. Swinging loads must be secured to prevent movement while a train is passing.
- F. No loads will be suspended above a moving train.
- G. No equipment will, be allowed within 25' of the centerline of any track without specific authorization of the flagger.
- H. Trucks, tractors or any equipment will not touch the ballast without specific permission from a railroad official and the flagger.
- I. No equipment or load movement will be within 25' or above a standing train or railroad 'equipment without specific authorization of the flagger.
- J. All operating equipment within 25' of track must halt operations when a train is passing. All other operating equipment may be halted by the flagger if the flagger views the operation to be dangerous to the passing train.
- K. All equipment, loads and cables are prohibited from touching rails.
- L. While clearing and grubbing, no vegetation will be removed from the railroad embankment with heavy equipment without specific permission from the Railroad Representative and flagger.
- M. No equipment or materials will be parked or stored on Railroad's property unless specific permission is granted from the Railroad Representative.
- N. All unattended equipment that is left parked on Railroad property shall be effectively immobilized so that it can not be moved by unauthorized persons.
- O. All cranes and boom equipment will be turned away from track after each workday or whenever unattended by an operator.

14. INSURANCE:

Any agency, contractor or outside party performing work on or about RJC's property shall procure and maintain appropriate insurance policies to protect RJC against the exposure to liability.

- A. Commercial General Liability coverage at their sole cost and expense with limits of not less than \$5,000,000 in combined single limits for bodily injury and property damage per occurrence, and such policies shall name RJC as an additional insured.
- B. Statutory Worker's Compensation and Employers Liability Insurance with limits of not less than \$1,000,000. The insurance must contain a waiver of subrogation against RJC and its affiliates.
- C. Commercial Automobile Liability insurance with limits of not less than \$500,000 combined single limit for bodily injury and/or property damage per occurrence. Such policies shall designate RJC as an additional insured.
- D. **Railroad Protective Liability** insurance with limits of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate annual limit of \$10,000,000. The insurance shall satisfy the following additional requirements:
 1. The insurer must be financially stable and rated B+ or better in Best's Insurance Reports.
 2. The Railroad Protective Insurance Policy must be on the ISO/RIMA Form of Railroad Protective Insurance - Insurance Services Office (ISO) Form CG 00 35.
 3. The sole named insured on the Railroad Protective Insurance Policy should be:

R. J. Corman Railroad Company/Central Kentucky Lines
P.O. Box 788
101 RJ Corman Drive
Nicholasville, KY 40340
 4. Name and address of contractor and agency must be shown on the Declarations page.
 5. Description of operations, and location of work to be performed, must appear on the Declarations page and must match the project description, including project or contract identification numbers. Include DOT and/or OP number
 6. Authorized endorsements must include the Pollution Exclusion Amendment CG 28 31— unless using form CG 00 35 version 96 and later.
 7. Authorized endorsements may include:
 - a. Broad Form Nuclear Exclusion - IL 00 21
 - b. 30-day Advance Notice of Non-renewal or cancellation
 - c. Required State Cancellation Endorsement
 - d. Quick Reference or Index - CL/IL 240
 8. Authorized endorsements may not include:
 - a. A Pollution Exclusion Endorsement except CG 28 31
 - b. A Punitive or Exemplary Damages Exclusion
 - c. A "Common Policy Conditions" Endorsement
 - d. Any endorsement that is not named in Section D, 6 or 7 above
 - e. Policies that contain any type of deductible
- E. Such additional or different insurance as RJC may require.

15. ADDITIONAL TERMS:

- A. **Contractor must submit certificates of insurance and the original Railroad Protective Liability insurance policy and all notices and correspondence regarding the insurance policies to:**

R.J. Corman Railroad Company/Central Kentucky Lines
Attn: Katie Byrd, Property Services Specialist
P. O. Box 788
101 RJ Corman Drive
Nicholasville, Kentucky 40340
Phone 859-881-2389
Katherine.Byrd@RJCorman.com

- B. Neither agency nor contractor may begin work on the project until it has received RJC's written approval of the required insurance policies.
- C. Contractor's obligation to reimburse Railroad for property damage or personal injuries caused by or contributed to by Contractor is not limited to the insurance provided by Contractor. The insurance is only evidence of Contractor's ability to protect Railroad against loss or damage.

16. FAILURE TO COMPLY:

These Special Provisions are supplemental and amendatory to any and all other documents relating to the project, and where in conflict therewith, these Special Provisions shall govern. In the event the Contractor violates or fails to comply with any of the requirements of these Special Provisions:

- A. The Railroad Representative may require that the Contractor vacate Railroad property.
- B. The Engineer may withhold all monies due the Contractor on monthly statements.

Any such orders shall remain in effect until the Contractor has remedied the situation to the satisfaction of the Railroad Representative and the Engineer.

17. PAYMENT FOR COST OF COMPLIANCE:

No separate payment will be made for any extra Cost incurred on account of compliance with these special provisions. All such cost shall be included in prices bid for other items of the work as specified in the payment items.

NOTICE

No activity is permitted without proper scheduling with railroad due to the risk of serious, even fatal, injury. Entering any railroad right of way or other railroad property without permission is considered trespassing.

Unless covered by separate agreement, no installation of pipes, wires, fiber optic cable or temporary crossings are permitted in the railroad right of way or on railroad property. Such installations require application, approval, and written agreement. Please contact Katherine.Byrd@RJCorman.com.

*****Any work taking place within 50 ft of a Signal Warning System call.***

EXHIBIT D
INITIAL ESTIMATE

R. J. CORMAN RAILROAD COMPANY/
CENTRAL KENTUCKY LINES

SUBJECT: Construction of a pedestrian overhead crossing perpendicular to R. J. Corman Railroad at or near Mile Post 91.7 in Lexington, Fayette County, Kentucky.

PRELIMINARY ENGINEERING	\$7,862.00
CONSTRUCTION ENGINEERING	\$51,743.00
ADMINISTRATIVE COST	\$1,500.00
ESTIMATED FLAGGING COSTS	TBD

Flagging costs should be determined according to how many hours the work, employee, or equipment are likely to be within twenty-five (25) feet of the track or other track clearance specified by RJC.

\$65.00 per hour for an 8-hour day
1 ½ times the rate for over 8 hours
2 times the rate for over 10 hours

TOTAL ESTIMATE	\$61,105.00
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EXHIBIT E
PAYMENT SCHEDULE

LFUCG shall pay Railroad for Reimbursable Expenses within 30 days following the receipt of an invoice.

EXHIBIT F

Insurance Requirements

Key Points and Procedures

- Outside parties performing work on RJC property or that may impact railroad operations must have insurance that protects RJC.
- The types of insurance required are Commercial General Liability, Statutory Worker's Compensation and Employer's Liability, Commercial Automobile Liability, and Railroad Protective Liability.
- RJC must be provided copies and notices of required insurance coverage.

Insurance Policies

Any agency, contractor or outside party performing work on or about RJC's property shall procure and maintain appropriate insurance policies to protect RJC against the exposure to liability.

- A. Commercial General Liability coverage at their sole cost and expense with limits of not less than \$5,000,000 in combined single limits for bodily injury and/or property damage per occurrence, and such policies shall name RJC as an additional insured.
- B. Statutory Worker's Compensation and Employers Liability Insurance with limits of not less than \$1,000,000. The insurance must contain a waiver of subrogation against RJC and its affiliates.
- C. Commercial automobile liability insurance with limits of not less than \$500,000 combined single limit for bodily injury and/or property damage per occurrence. Such policies shall designate RJC as an additional insured.
- D. Railroad protective liability insurance with limits of not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate annual limit of \$6,000,000. The insurance shall satisfy the following additional requirements:
 1. The insurer must be financially stable and rated B+ or better in Best's Insurance Reports.
 2. The Railroad Protective Insurance Policy must be on the ISO/RIMA Form of Railroad Protective Insurance - Insurance Services Office (ISO) Form CG 00 35.
 3. RJC must be the sole named insured on the Railroad Protective Insurance Policy.

R. J. Corman Railroad Company/Central Kentucky Lines
P.O. Box 788
Nicholasville, KY 40340

4. Name and address of contractor and agency must be shown on the Declarations page.
5. Description of operations, and location of work to be performed, must appear on the Declarations page and must match the project description, including project or

contract identification numbers.

Include DOT and/or OP number

6. Authorized endorsements must include the Pollution Exclusion Amendment CG 28 31—unless using form CG 00 35 version 96 and later.
 7. Authorized endorsements may include:
 - a. Broad Form Nuclear Exclusion - IL 00 21
 - b. 30-day Advance Notice of Non-renewal or cancellation
 - c. Required State Cancellation Endorsement
 - d. Quick Reference or Index - CL/IL 240
 8. Authorized endorsements may not include:
 - a. A Pollution Exclusion Endorsement except CG 28 31
 - b. A Punitive or Exemplary Damages Exclusion
 - c. A “Common Policy Conditions” Endorsement
 - d. Any endorsement that is not named in Section D, 6 or 7 above
 - e. Policies that contain any type of deductible
- E. Such additional or different insurance as RJC may require.

Additional Terms

- A. Contractor must submit its original insurance policies and all notices and correspondence regarding the insurance policies to:

R.J. Corman Railroad Company

Attn: Deborah Hawley

P.O. Box 788

Nicholasville, KY 40340

Phone 859-881-2499

Deborah.Hawley@rjcorman.com

- B. Neither agency nor contractor may begin work on the project until it has received RJC's written approval of the required insurance policies.

SCHEDULE 1

CONTRACTOR'S ACCEPTANCE

To and for the benefit of R. J. Corman Railroad Company/Central Kentucky Lines ("RJC") and to induce RJC to permit Contractor on or about RJC's owned or leased property for the purposes of performing work in accordance with the Construction Agreement between Lexington Fayette Urban County Government and RJC, Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to Exhibit C thereto.

Contractor: _____

By: _____

Title: _____

Date: _____