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Subject: Lexington, KY - Proposed Southland Drive Sidewalk Improvements under Norfolk Southern Overhead Bridge. MP 83.50 CNO&TP

September 11, 2014
File: BR0013029

Mr. Keith Lovan, P.E.
Lexington-Fayette Urban County Government
101 East Vine Street, Suite 400
Lexington, KY 40507

Dear Mr. Lovan:

We understand that the Lexington-Fayette Urban County Government, or CITY, plans to install and maintain pedestrian improvements underneath railroad right-of-way operated by The Cincinnati, New Orleans and Texas Pacific Railway Company in the vicinity of Central Division milepost 83.50 (CNO&TP) as detailed in the attached plan sheets marked Exhibit A (the "Improvements"). We take no exception to the Improvements subject to the following conditions:

1. Railway's standard "Special Provisions for Protection of Railway Interest", copy attached as Exhibit B, which govern the conduct of all work to be performed adjacent to and over operating tracks and stipulates the type of insurance which must be kept in force for the duration of work performance, will be made part of the contract as requirements for the CITY's contractor in performing work at the project site.
2. That the work will be performed by the CITY's contractor at the entire expense of the CITY.
3. The CITY accepts the privilege hereby granted with full cognizance of the risk of loss of life, personal injury and property loss or damage that may be caused by railway operations at or in the vicinity of the Improvements. The CITY is willing to assume this risk and covenants that the privilege hereby granted shall be used and enjoyed at the sole risk of the CITY, and that the Railway shall not have any responsibility whatever for any such loss, injury or damage. To the extent allowed by applicable law, the CITY hereby agrees to indemnify and save harmless Railway, its officers, agents and employees, from and against all liability, claims, loss, damage, expense (including attorney's fees) or costs for personal injuries (including death) and/or property damage to whomsoever or whatsoever, occurring or arising in any manner from the construction, reconstruction, maintenance, existence, use, condition, repair, change, relocation or subsequent removal of the Improvements, or any parts thereof or appurtenances thereto. Nothing contained herein is intended to be, nor shall it act as, a waiver of any defense, including that of sovereign immunity, that the CITY may have as to any third party.

4. The CITY shall require its contractor(s), before commencing any work on Railway property or work involving Railway's facilities or the Improvements, to execute the construction right of entry agreement attached as Exhibit C and submit to the CITY for obtaining approval of Railway's Chief Engineer, his design and method of performing said work, including plans and specifications for any shoring, demolition shields and paint containment systems, etc. The CITY shall review said submittals and if found in substantial conformance with the provisions of the contractor's contract with the CITY, will forward same to Railway for review and approval of said methods by Railway. It is agreed by the parties hereto that approval of said methods by Railway, will not in any way relieve the CITY of the obligations, responsibilities and liabilities imposed upon it by the provisions of the agreement.
5. That Railway's Bridge Supervisor, Mr. Ronnie Doss, will be notified at (540) 520-9061 not less than seventy two (72) hours prior to the time that the work is to take place on Railway's property and that insofar as the safety of railroad operations is concerned, the CITY's contractor will be governed by Railway's requirements regarding the method and manner of performing said work.
6. That all work shall be performed with such care, diligence and cooperation with Railway personnel as to reasonably avoid accidents, damage or harm to persons or property and delays or interference with the operations of any Railway's facilities and in accordance with Railway's "Special Provisions for Protection of Railway Interest".
7. That no drainage condition shall be created or allowed to exist as a result of this work that is or may be adverse to Railway property.
8. That all work shall be performed in such manner as is reasonably satisfactory to Railway, and after completion of the move, Railway's property shall be left free of debris and in such condition as is reasonably satisfactory to Railway.
9. That such watchman and flagman services as may be required to protect Railway's facilities during construction of the work will be arranged by the Railway's Bridge Supervisor, Mr. Ronnie Doss at (540) 520-9061, the CITY will reimburse the Railway 100% for such costs.
10. That Railway shall render its billings for any required flagmen, inspection, and other services, estimated to cost \$42,400 (Exhibit D). This work shall be performed by the Railway (at project expense) and reimbursed 100% by CITY.
11. The minimum horizontal clearance of 25 feet from the center line of the nearest track and a minimum vertical clearance of 23 feet above the highest rail shall be maintained at all times for any equipment, materials or vehicles of the CITY and its contractor(s) occupying Railway's premises unless specifically arranged for in advance in each instance with Railway's Track Supervisor.
12. That this permit or right of entry (a) shall not be assigned or transferred, without written approval of Railway, which shall not be unreasonably withheld.

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13. That all personnel working on Railway's right-of-way must comply with the Railway's safety rules and requirements to include, without exception, the wearing of hard hats and approved safety shoes and glasses. Anyone not in compliance with these rules and regulations will be asked to leave the Railway property and Railway might withdraw its flagman and no work will be allowed on or over Railway's right-of-way.

If the foregoing meets with your concurrence, please have both originals signed in the space provided and returned one copy to this office.

Sincerely,

J. N. Carter, Jr.
Chief Engineer
Bridges and Structures

Accepted: Lexington-Fayette Urban County Government

By: _____
Title _____
Date _____