

**Anderson County Board of Commissioners**  
**OPERATIONS COMMITTEE**  
**AGENDA**

**May 8, 2023**  
**6:00 p.m. Room 312**

**1. Call to Order**

**2. Prayer / Pledge of Allegiance**

**3. Approval of Agenda**

**4. Appearance of Citizens**

**5. Mayor's Report**

1. Requesting motion to approve Resolution No. 23-05-1090 requesting the Anderson County Information Technology Department take certain actions and create policies related to national and state identified cybersecurity risks around use of "Tik Tok" on government equipment and systems.
2. Requesting motion to approve special permit with the Tennessee Department of Transportation for the use of State property to install and maintain landscaping.
3. Assignment of Courthouse space. Requesting motion to authorize the reassignment of space for Information Technology (IT) to rooms 216 and 218, and reversion of rooms 26, 27, 25 and 24 to Planning and Development.
4. Approval of Railroad Agreement Project Pin Number: 125450.04.
5. Requesting motion to confirm Anderson County intent to renew license agreement with TDOT for sidewalks along State Route 116.
6. Requesting motion to approve Resolution No. 23-05-1091 authorizing the county mayor to seek relief on a property purchased at tax sale.
7. Requesting motion to approve Length of Service Award documents.

**6. Law Director's Report**

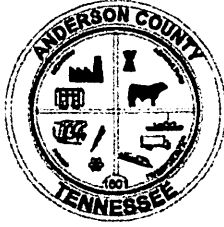
1. Powell Clinch Quitclaim Deed
2. Briceville Sidewalk Right-of-Way license agreement.

**7. EMS Discussion** – requested by Commissioner Mayes.

**New Business**

**Old Business**

**Adjournment**



## ANDERSON COUNTY GOVERNMENT

TERRY FRANK  
COUNTY MAYOR

May 2, 2023

Commissioner Tim Isbel  
Chairman, Anderson County Operations Committee

RE: Agenda

Dear Chairman Isbel and Honorable Members of Operations Committee,

I wish to add the following items to the Agenda:

1. **Action Item: Requesting Motion to authorize Resolution No. 23-05-1090** requesting the Anderson County Information Technology Department take certain actions and create policies related to national and state identified cybersecurity risks around use of "Tik Tok" on government equipment and systems. Requested by Commissioner Phil Yager. See attached Resolution.
2. **Action Item: Requesting Motion to approve special permit with the Tennessee Department of Transportation for the use of State property to install and maintain landscaping.** This request is related to the Veterans Bridge/Veterans Flag Pole Project. See attached permit. Term will be completion by November 30, 2025. Work expected to be completed much earlier, however, we put a longer "complete by" date in case of any obstacles with final permit on the flag poles. Flag poles are a separate license through TDOT.
3. **Action Item: Assignment of Courthouse Space.** It is the responsibility of the Anderson County Board of Commissioners to assign space for government operations.

Currently Information Technology (IT) is assigned to and occupies rooms 26, 27, 25 and 24 at the rear of the Planning and Development Office 127. The office of Finance-Purchasing Department occupies offices 214, 216, 218.

**Requesting motion to authorize the reassignment of space for Information Technology (IT) to rooms 216 and 218, and reversion of rooms 26, 27, 25, and 24 to Planning and Development.**

4. **Action Item: Approval of Railroad Agreement Project Pin Number: 125450.04** for Miscellaneous Safety Improvements near Oliver Springs, TN. See attached agreement. (Primary notes on county cooperation are noted on page 6)
5. **Requesting Motion to confirm Anderson County intent to renew license agreement** with TDOT for sidewalks along State Route 116 from log mile 15.43 to log mile 15.59. See attachment.
6. **Requesting Motion to approve Resolution No. 23-05-1091** authorizing the county mayor to seek relief on a property purchased at tax sale. See attached.
7. **Action Item: Requesting motion to approve Length of Service Award documents.** Enclosed is Roane County's version. Treasury is working on Anderson County's documentation, but may not be available by Agenda deadline. NOTE: Anderson County's Participation Agreement will mirror Roane County's. However, Anderson County must identify the following: 1. Terms of Forfeiture. (Funds go back to Anderson County) 2. Eligibility Criteria. In addition, I have added proposal 3 based on input from Operations Committee members asking that we somehow address tenure/long-serving volunteers.

**Forfeiture terms proposal—Proposed Doc. 1.**

See Proposed document 1. Forfeiture proposal: A participant's unvested Account balance will be forfeited if the Participant is absent from volunteer serve for three consecutive years.

**Eligibility Criteria—Proposed Doc. 2.**

See Proposed document 2 identifying proposed point system. (Special note: Eligibility Criteria can be amended at any point in the future, based on Commission's desires, Fire Commission input, etc. in order to adjust annual contributions ) The attached proposal is to get us off the ground.

**LOSAP Awards Contribution Guide—Proposed Doc. 3.**

This document is not a requirement, however, based on comments made at last month's Operations Meeting that I work on a method for adjusting contributions based on career of service, the Proposed document 3. is a proposed method of accomplishing that goal. Like Eligibility Criteria, this guide can be amended by County Commission at any point in the future to adjust the annual contribution.

Requesting Motion to approve the State of Tennessee Length of Service Award Program Resolution and Participation Agreement to include forfeiture terms, eligibility criteria, and awards contribution guide. (As soon as I have the full document from Treasury specific to Anderson County, I will distribute. To reiterate: document will mirror Roane County's, with exception of identified three (3) proposals above.



Anderson County, Tennessee  
Board of Commissioners

RESOLUTION NO. 23-05-1090

**A RESOLUTION REQUESTING THE ANDERSON COUNTY INFORMATION TECHNOLOGY DEPARTMENT TO (1) PROHIBIT ANDERSON COUNTY EMPLOYEES FROM DOWNLOADING OR USING THE TIKTOK APPLICATION ON ANY COUNTY-ISSUED DEVICE; (2) PROHIBIT PERSONS OR ENTITIES CONTRACTING WITH THE COUNTY FROM DOWNLOADING OR USING THE TIKTOK APPLICATION ON ANY COUNTY- OWNED OR COUNTY-LEASED DEVICES; (3) DEVELOP A PROCEDURE FOR THE TIMELY REMOVAL OF TIKTOK FROM ALL COUNTY-OWNED AND COUNTY-LEASED DEVICES; AND (4) DEVELOP A POLICY AND PROCEDURE PROVIDING FOR PUBLIC SAFETY AND CYBERSECURITY EXEMPTIONS RELATED TO TIKTOK USAGE.**

**WHEREAS**, TikTok, a video-sharing social media application with more than one billion users worldwide, is owned by ByteDance Ltd., an internet technology company headquartered in China; and

**WHEREAS**, TikTok has been downloaded in the United States on more than 100 million devices; and

**WHEREAS**, TikTok automatically captures personal information of its users, such as location data and search histories; and

**WHEREAS**, Chinese-based employees of TikTok, according to the company's CEO, have access to United States users' data; and

**WHEREAS**, legislation enacted by the Chinese Communist Party, titled the 2017 National Intelligence Law, requires Chinese citizens and businesses to share data with the Chinese government in furtherance of its efforts to gather intelligence; and

**WHEREAS**, access by the Chinese Communist Party to Americans' personal information and data can pose security risks at the national, state, and local levels; and

**WHEREAS**, on June 9, 2021, United States President Joseph R. Biden, Jr. issued Executive Order 14034 initiating an investigation of the national security risks posed by foreign-owned apps such as TikTok, citing concerns over foreign adversaries accessing the personal information of persons who live in the United States; and

**WHEREAS**, on December 14, 2022, the United States Senate passed S. 1134, a bill filed by Senator Josh Hawley (R-Missouri) entitled the "No TikTok on Government Devices Act," which requires certain federal agencies to create guidelines for the removal of TikTok from all devices issued by the federal government and used by executive agencies; and

**WHEREAS**, on December 29, 2022, President Biden signed into law H.R. 2617, the "Consolidated Appropriations Act, 2023," an omnibus spending bill that includes the provisions of S. 1134 requiring removal of TikTok from all devices issued by the federal government and used by executive agencies; and

Item 1

**WHEREAS**, a growing list of governors, including those from Tennessee, Alabama, Georgia, Oklahoma, North Dakota, Texas, Nebraska, South Carolina, Iowa, Maryland, Montana, Virginia, New Hampshire, Idaho, and South Dakota, have issued executive orders banning TikTok on state-owned devices due to potential security concerns; and

**WHEREAS**, the Anderson County Board of Commissioners seeks to maintain the cybersecurity of Anderson County's government, as is necessary to serve the residents of the county.

**WHEREAS**, the Anderson County Employee Handbook addresses **"USE OF EQUIPMENT, and USE OF COMPUTER, INTERNET, PHONE AND MAIL"** systems which includes the following verbiage: "Anderson County Government will provide employees with the equipment and supplies needed to do their job. None of this equipment should be used for personal use..." and "Computers and related items and software are County property and are provided for the use of County employees for conducting County business..." "Employees do not have personal privacy rights or any reasonable expectation of privacy when it comes to information composed, created, received, downloaded, retrieved, stored, transmitted, viewed or sent using Anderson County Government's electronic communications devices. While the County respects the privacy and security needs for all individuals, authorized County representatives have the right to access and review electronic files, messages, mail, websites accessed, etc. for legitimate business reasons."

**WHEREAS**, the Anderson County Board of Commissioners fervently believes that the vast majority of Anderson County employees do not engage in improper use of county-issued devices and that this resolution should in no way be construed as punitive, rather it should be viewed as a security measure for the safety and protection of county employees, Anderson County Government, and the citizens of Anderson County.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Commissioners of Anderson County, Tennessee, that we do hereby request that the county's Information Technology Department to: (1) prohibit Anderson County employees from downloading or using the TikTok application on any county-issued device; (2) prohibit persons or entities contracting with the county from downloading or using the TikTok application on any county-owned or county-leased devices; (3) develop a procedure for the timely removal of TikTok from all county-owned and county-leased devices, including any public access; and (4) develop a policy and procedure to provide for public safety and cybersecurity exemptions related to TikTok usage.

**BE IT FURTHER RESOLVED**, that this resolution shall become effective immediately upon its passage, the public welfare requiring it.

**APPROVED:**

\_\_\_\_\_  
Josh Anderson, Commission Chairman

\_\_\_\_\_  
Terry Frank, Anderson County Mayor

**ATTEST:**

\_\_\_\_\_  
Jeff Cole, Anderson County Clerk

Hen 2

**THE TENNESSEE DEPARTMENT OF TRANSPORTATION  
PERMIT TO LOCAL GOVERNMENT FOR LANDSCAPING  
WITHIN HIGHWAY RIGHT-OF-WAY**



The State of Tennessee, Tennessee Department of Transportation ("TDOT") hereby grants this special permit for the use of State property to install and maintain landscaping under the following terms and conditions:

PERMITTEE: Anderson County Government

CONTACT: Anderson County Mayor Mrs. Terry Frank, (865) 457-6200

AUTHORIZED USE: Install and maintain landscaping in accordance with plans dated \_\_\_\_\_, 20\_\_\_\_, attached hereto as Attachment "A" and incorporated by reference.

LOCATION OF PREMISES:

PLANTING: Initial landscaping must be completed by \_\_\_\_\_, 20\_\_\_\_.

**TERMS AND CONDITIONS**

1. A. PERMITTEE shall assume all liability for claims arising out of conduct on the part of the PERMITTEE for which it would be liable under the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101, for up to the limits for which it can be held liable for such conduct under the applicable act, arising from its use of the Premises.
- B. In addition, PERMITTEE shall require that any contractor of PERMITTEE that performs any work on the State's property, including any installation, maintenance, or operation of the authorized use, shall indemnify and hold harmless the State and all of its officers, agents and employees from all suits, actions or claims of any character arising from the contractor's acts or omissions

in the prosecution of the work and shall provide proof of adequate and appropriate general liability insurance providing liability coverage in an amount not less than \$1 million dollars per occurrence and \$300,000 per claimant, naming the State of Tennessee as an additional insured.

C. All volunteers involved shall sign liability releases to be kept by PERMITTEE, with copies to be provided upon request to TDOT.

2. Prior to commencing the work authorized herein, PERMITTEE shall obtain any other permits or approvals required by federal, state or local laws, and shall notify any utility company affected by this project. PERMITTEE shall be financially responsible for any relocation or replacement of such utilities.

3. Prior to commencing the work authorized herein, PERMITTEE shall notify Tennessee One Call regarding any excavation(s) and shall ensure that the provisions of TCA 65-31-101 et seq. are met.

4. Access to the Premises shall only be at those points that have been previously approved by TDOT. Equipment and vehicles shall be confined to unpaved portions of the Premises.

5. PERMITTEE shall not cut any tree or similar vegetation that has a trunk over four inches in diameter, except for dead and dying trees currently in median.

6. PERMITTEE shall not cut any flowering trees regardless of size.

7. All work on the premises shall be performed in compliance with current TDOT Standard Specifications for Road and Bridge Construction, TDOT Landscape Design Guidelines and TDOT Standard Drawings, in addition to applicable federal, state and local laws and regulations.

8. PERMITTEE must obtain prior, written approval from TDOT before deviating from the scope of the project or the manager of its construction as described in this permit, including attachments.

9. At no time will work authorized by this permit interfere with the normal flow of traffic on roadways adjoining the Premises. PERMITTEE is responsible for coordinating traffic control for this work zone with the TDOT according to the requirements of the current *Control Manual on Uniform Traffic Devices*. If proper traffic control is not in place, TDOT may order PERMITTEE to stop work until proper traffic control is put in place.

10. While installation or maintenance of the landscaping is underway, TDOT may conduct inspections to insure compliance with this Permit. Upon completion of the project, PERMITTEE shall notify TDOT so that the project may be inspected and approved by TDOT.

11. PERMITTEE shall be liable for any damage to state property resulting from the subject work, including but not limited to, the roadway, shoulders, guardrail, drainage, landscaping, signs and controlled-access fences. All repair or replacement of such damage shall be made in accordance with the current TDOT Standard Drawings and any Specifications for Road and Bridge Construction, TDOT Standard Drawings and any other applicable design and/or construction standards or guidelines.

12. PERMITTEE shall keep all debris, soil, refuse or waste of any kind associated with the project from accumulating within the highway right-of-way.

13. Nothing in the Permit shall be construed to limit TDOT's right to enter the Premises at any time.

14. If the PERMITTEE fails to comply with any of the foregoing conditions, TDOT shall have the right to revoke this permit, and require the immediate vacation of the Premises by the PERMITTEE. The parties further understand and agree that this Permit



is subject to suspension or revocation by the Department without liability whenever necessary for the conduct of maintenance or construction work to be performed by the Department. In the event of revocation, PERMITTEE must restore the Premises to its original condition. If PERMITTEE fails to do so within a reasonable time after revocation, TDOT may restore the Premises at the expense of the PERMITTEE.

15. The parties understand and agree that the Applicant shall be responsible for maintenance of the completed installed landscaping and shall be responsible for the continuation of the aesthetics of the completed landscaped area including, without limitation, the replacement of landscaping within and regular maintenance of said area; otherwise, on written notification by the Department, the landscaping will be removed and said area restored to its former condition in a timely manner, all at the expense of the PERMITTEE.

16. This permit is non-transferable.

17. This permit shall not be construed as a conveyance of any interest in real property.

18. All notices required to be given to TDOT under this Permit shall be sent to:

Casey Wood, Operations District Supervisor  
1045 Maintenance Lane, Knoxville TN 37914  
865-594-5976 (casey.wood@tn.gov)

IN WITNESS WHEREOF, the parties, through their authorized representative, have executed this agreement.

STATE OF TENNESSEE  
TENNESSEE DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
REGIONAL ENGINEERING DIRECTOR

\_\_\_\_\_  
DATE

APPROVED AS TO FORM:

\_\_\_\_\_  
REGIONAL ATTORNEY

\_\_\_\_\_  
DATE

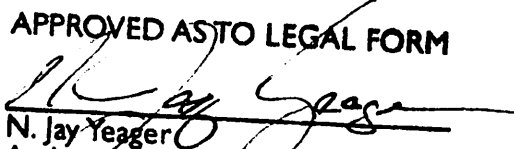
PERMITTEE:  
Anderson County Government

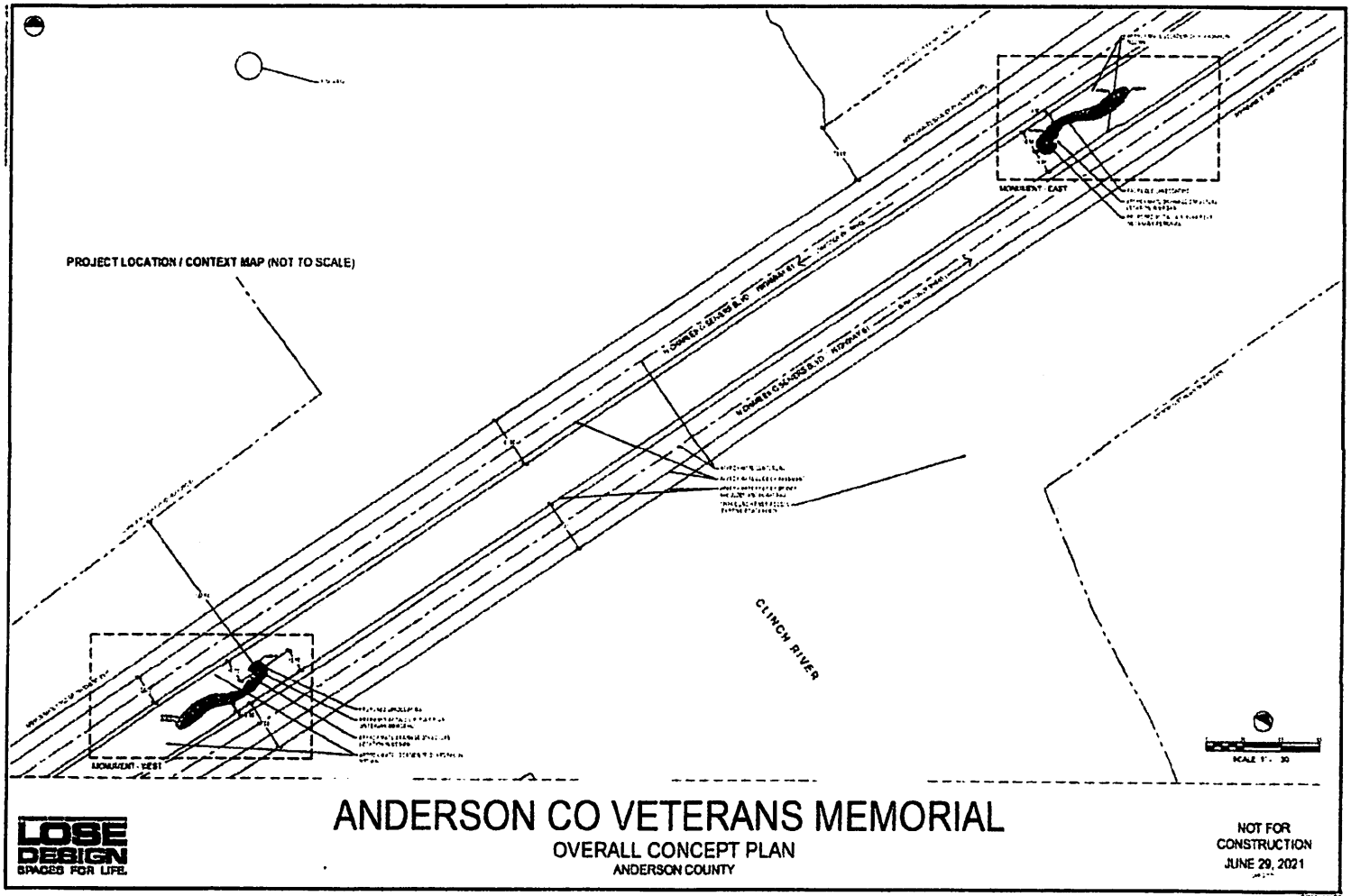
By: \_\_\_\_\_

\_\_\_\_\_  
DATE

TITLE: County Mayor

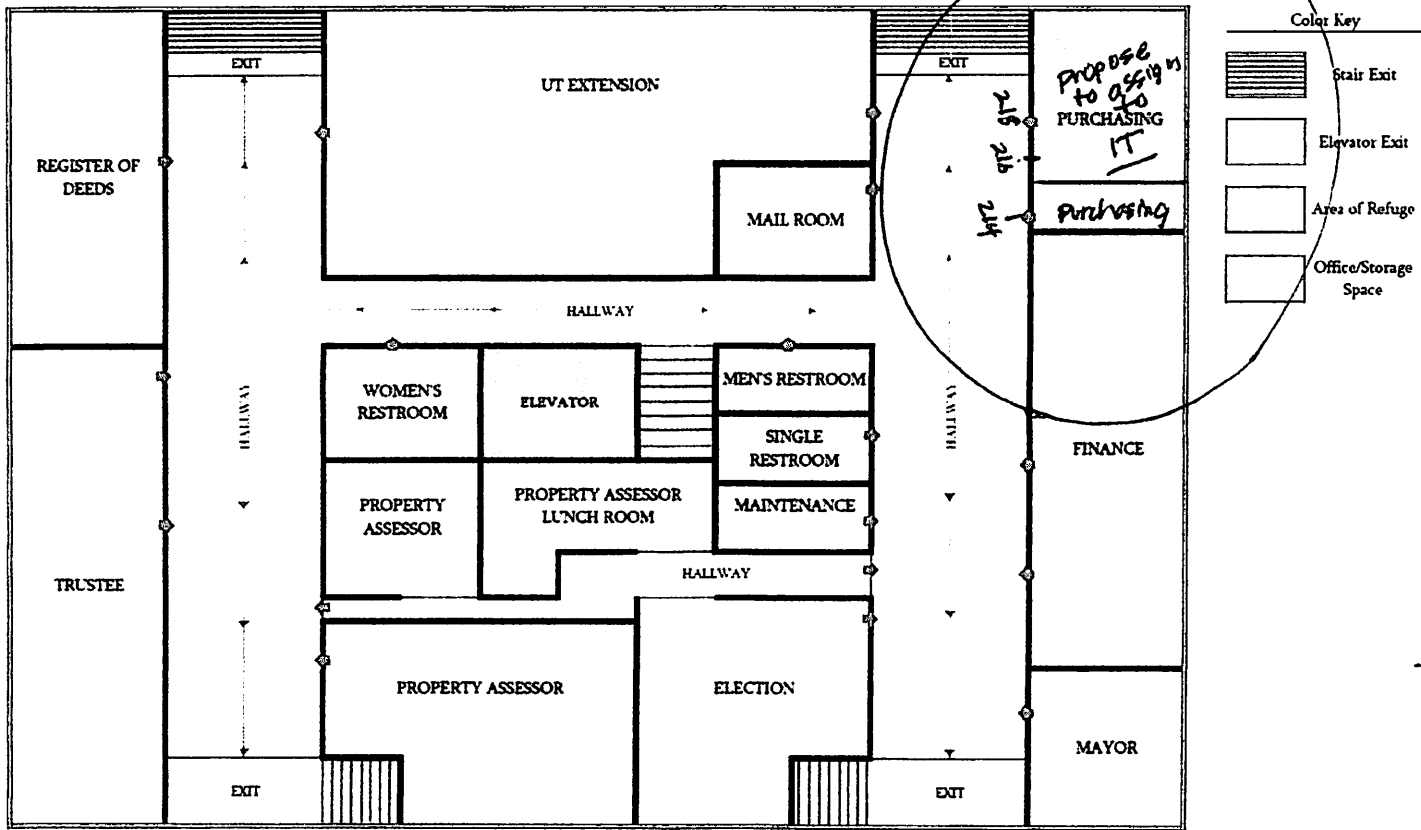
APPROVED AS TO LEGAL FORM

  
N. Jay Yeager  
Anderson County Law Director





Anderson County Courthouse  
2nd Floor Evacuation Plan



Item 3

Item 5



**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

**RIGHT OF WAY DIVISION  
SUITE 600, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-1402  
(615) 741-3196**

**BUTCH ELEY  
COMMISSIONER**

**BILL LEE  
GOVERNOR**

May 1, 2023

Anderson County  
101 South Main Street, Suite 310  
Clinton, TN 37716

Re: Expired License  
County: Anderson  
Licensee: Anderson County  
ADA sidewalks along SR-116

Dear Mr. Yeager:

Our records indicate that your license with the Department of Transportation for the County of Anderson expired on July 31, 2022. If you so desire, you will be considered a holdover licensee until your license can be renewed.

You will be required to keep your insurance in effect during this holdover tenancy. The certificate of insurance should be sent to the following address:

**Kyle Heggie | Right of Way Agent**  
Right-of-Way Division/Excess Land Office  
James K. Polk Building, Suite 600  
505 Deaderick Street  
Nashville, TN 37243  
O: (615) 253-1135  
E: [Kyle.Heggie@tn.gov](mailto:Kyle.Heggie@tn.gov)

If you choose to be considered a holdover licensee, please sign in the space below and return this letter to me as soon as possible.

Sincerely,

Kyle Heggie  
Excess Land Office

Signature: \_\_\_\_\_

5/2/2023  
Date

cc: Mr. Brian Dickerson

This Instrument prepared by:  
State of Tennessee  
Department of Transportation  
Region 2  
4005 Cromwell Road  
Chattanooga, TN 37421  
(Local government)

#### LICENSE AGREEMENT

THIS AGREEMENT is made and entered into as of this the 30<sup>th</sup> day of July, 2012 by and between THE STATE OF TENNESSEE, acting by and through its Commissioner of Transportation, (hereinafter referred to as "State") and ANDERSON COUNTY, TENNESSEE (hereinafter referred to as "Licensee").

WHEREAS, Licensee desires to use a portion of the Licensed Premises for the construction and maintenance of ADA (Americans with Disabilities Act) compliant sidewalks along State Route 116 from log mile 15.43 to log mile 15.59 in Anderson County, Tennessee, being more specifically described in Exhibit A attached to and made a part of this License; and

WHEREAS, the State is willing to permit said use of the Licensed Premises subject to certain conditions.

NOW, THEREFORE, in consideration of the execution of this License Agreement, it is mutually agreed between the parties hereto as follows:

1. LICENSE - Licensee is hereby granted permission to use the Licensed Premises for the construction and maintenance of ADA (Americans with Disabilities Act) compliant sidewalks along State Route 116 from log mile 15.43 to log mile 15.59 in Anderson County, Tennessee (hereinafter referred to as the "Improvements").
2. USE OF LICENSED PREMISES - Licensee shall be permitted to use the Licensed Premises for the installation and maintenance of the Improvements. Licensee shall not be permitted to use the Licensed Premises for any other purpose except by prior written permission of the State.
3. FEE - Licensee shall pay \$0 per year to the State for the use of the Licensed Premises.
4. TERM - The License is a 10 year, renewable, license which shall begin on August 1, 2012 and shall end on July 31, 2022.
5. ACCESS - The State shall provide Licensee access to the Licensed Premises at all times for the uses authorized herein.
6. MAINTENANCE - The costs of any maintenance and operation of the Improvements shall be at the sole expense of Licensee.
7. TRAFFIC CONTROL - At no time will work authorized by this license agreement interfere with the normal flow of traffic on roadways adjoining the

5

Licensed Premises. Licensee is responsible for providing traffic control for this work zone in accordance with the requirements of the current *Manual on Uniform Traffic Control Devices*. If proper traffic control is not in place, TDOT may order Licensee to stop work until proper traffic control is put in place.

8. **DAMAGE TO STATE PROPERTY** - Licensee shall be liable for any damage to state property resulting from Licensee's (or its contractors' or agents') use of the Licensed Premises and/or installation and operation of the Improvements, including but not limited to, the roadway, shoulders, guardrail, drainage, landscaping, signs and controlled-access fences. All repair or replacement of such damage shall be made in accordance with the current TDOT Standard Specifications for Road and Bridge Construction, TDOT Standard Drawings and any other applicable design and/or construction standards or guidelines.
9. **LIABILITY** - Licensee shall assume all liability for claims arising out of conduct on the part of the Licensee for which it would be liable under the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101, up to the limits for which it can be held liable for such conduct under that act, arising from its use of the Licensed Premises.
10. **INSURANCE** - The Licensee, its successors and assigns, agrees to maintain adequate public liability insurance which may include self insurance and will provide satisfactory evidence of such insurance to the State. Further, the liability limits of this insurance must not be less than the exposure and limits of the State's liability under the Claims Commission Statute, T.C.A. Section 9-8-307, as it may be from time to time amended and/or construed by the claims commission and courts. This statute currently limits liability of the State to \$300,000 per claimant and \$1,000,000 per occurrence. The insurance policy shall include a provision for the insurance company to notify the State in writing of any cancellation or changes of the policy at least 30 days in advance of the cancellation or change.
11. **PERMIT** - Licensee is responsible for obtaining and paying the costs of all permits, licenses or other approvals by any regulatory body having jurisdiction over the uses authorized herein.
12. **COMPLIANCE** - Should Licensee fail or neglect to comply with any term or condition of this License Agreement or to comply with written notice and demand, this License shall be subject to termination. In the event of such termination, Licensee shall immediately remove any and all of its Improvements from the licensed Premises and surrender all rights and privileges under this License Agreement.
13. **TITLE VI ASSURANCES** - The Licensee for itself, its successors in interest and assigns, as part of the consideration hereof does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this License Agreement for a purpose for which the State or a State program or activity is extended or for another purpose involving the provision of similar services or benefits, the Licensee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations shall be amended.
14. **TERMINATION** - The State may terminate this License at will with 60 days written notice to Licensee.
15. **ASSIGNMENT** - The license shall not be transferred, conveyed or assigned to another party without prior written approval from the State.



TO THE LICENSEE:

Anderson County, Tennessee  
100 N. Main Street  
Room 208  
Clinton, Tennessee 37716-3616

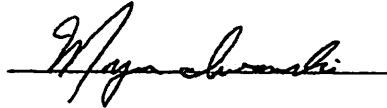
TO THE STATE:

State of Tennessee  
Department of Transportation  
Suite 700, James K. Polk Building  
505 Deaderick Street  
Nashville, Tennessee 37243-0337

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be  
executed the day and year first above written.

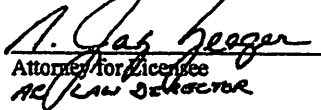
LICENSEE:

ANDERSON COUNTY, TENNESSEE



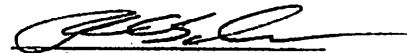
DATE: 7/12/12

APPROVED AS TO FORM  
AND LEGALITY:

  
Attorney for Licensee  
AC LAW DEPARTMENT

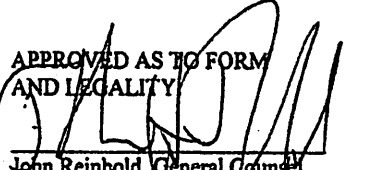
DATE: 07/16/12

STATE OF TENNESSEE

  
John C. Schroer, Commissioner  
Tennessee Department of Transportation

DATE: JUL 30 2012

APPROVED AS TO FORM  
AND LEGALITY:

  
John Reinbold, General Counsel  
Tennessee Department of Transportation

DATE: 7/25/12

External: RE: Anderson Co. Req#6526 - License

Kyle Heggie <Kyle.Heggie@tn.gov>

Mon 5/1/2023 9:58 AM

To: Jay Yeager <jyeager@aclawdirector.com>

Cc: Terry Frank <tfrank@andersoncountyttn.gov>

2 attachments (447 KB)

Holdover notice - License.pdf; License.pdf;

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Jay,

I apologize for the delay, this renewal fell through the cracks. I have attached a holdover letter that we will put on file to ensure the County has continued use of the licensed area throughout the renewal process. Please sign and return this letter to me as soon as possible.

I will request that the renewal process is continued today. Let me know if you have any questions.

Thanks!



Kyle Heggie | Right of Way Agent  
Right-of-Way Division/Excess Land Office  
James K. Polk Building, Suite 600  
505 Deaderick Street  
Nashville, TN 37243  
O: (615) 253-1135  
E: [Kyle.Heggie@tn.gov](mailto:Kyle.Heggie@tn.gov)

**From:** Jay Yeager <jyeager@aclawdirector.com>

**Sent:** Monday, May 16, 2022 7:27 AM

**To:** Kyle Heggie <Kyle.Heggie@tn.gov>

**Cc:** Terry Frank <tfrank@andersoncountyttn.gov>

**Subject:** [EXTERNAL] Re: Anderson Co. Req#6526 - License

Thanks Kyle. We really appreciate all your help with this project.  
Jay Yeager

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**From:** Kyle Heggie <Kyle.Heggie@tn.gov>

**Sent:** Monday, May 16, 2022 8:16:05 AM

**To:** Jay Yeager <jyeager@aclawdirector.com>

**Cc:** Terry Frank <tfrank@andersoncountyttn.gov>

Anderson County, Tennessee  
Board of Commissioners

RESOLUTION NO. 23-05-1091

**A RESOLUTION GIVING THE ANDERSON COUNTY MAYOR AND DELINQUENT TAX  
ATTORNEY THE AUTHORITY TO FILE FOR RELIEF WITH THE COURT SYSTEM ON A  
PROPERTY PURCHASED AT TAX SALE**

**WHEREAS**, Tennessee Code Annotated § 67-5-2501 and TCA 67-5-2507 lay out the requirements for counties that purchase properties at tax sales; and

**WHEREAS**, TCA § 67-5-2507 states, “If the county mayor determines that such financial obligations or environmental risks exceed the value of the parcel, the county legislative body may adopt a resolution, by a two-thirds (2/3) vote, concurring in the county mayor’s determination and directing the county mayor to request relief from the court in which the parcel was sold. Such relief shall be sought by motion pursuant to Rule 60 of the Tennessee Rules of Civil Procedure filed within one hundred-twenty (120) days after the entry of the order confirming the sale”; and

**WHEREAS**, a number of delinquent tax properties included in the 2018 Tax Sale, conducted February 21, 2023, received no bids, leaving the county as the potential buyer. The county mayor has reviewed those 27 “no bid” properties and has concluded that the environmental risks and financial obligations associated with 118 Duke Street - Tax Parcel ID 096J-B-096J-001.00 (*see Exhibit A*) could exceed the value of that property.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Commissioners of Anderson County, Tennessee, that we do hereby authorize the county mayor to seek relief with the court as it relates to 118 Duke Street Tax Parcel ID 096J-B-096J-001.00, according to the processes and procedures allowable by the referenced law.

**BE IT FURTHER RESOLVED**, that this resolution shall become effective immediately upon its passage, the public welfare requiring it.

**APPROVED:**

\_\_\_\_\_  
Josh Anderson, Commission Chairman

\_\_\_\_\_  
Terry Frank, Anderson County Mayor

**ATTEST:**

\_\_\_\_\_  
Jeff Cole, Anderson County Clerk

**Requires 2/3 vote of Commission:**

AYEs \_\_\_\_\_

NOs \_\_\_\_\_

ABSTAIN \_\_\_\_\_

Tennessee Property Assessment Data - Parcel Details Report - <https://assessment.cot.tn.gov/>

Anderson (	Jan 1 Owner	Current Owner	DUKE ST 118		
Tax Year 2023   Reappraisal 2020	TJM PROPERTY LLC	PO BOX 172	Crit Map:	Group:	Parcel:
	PO BOX 172	POWELL TN 37849	096J	B	001.00
	POWELL TN 37849				PI: SI:
					000

Value Information

Land Market Value: \$8,000  
 Improvement Value: \$12,300  
 Total Market Appraisal: \$20,300  
 Assessment Percentage: 25%  
 Assessment: \$5,075

Subdivision Data

Subdivision:

PINE MEADOWS

Plat Book:	Plat Page:	Block:	Lot:
8	47		0142

Additional Information

01 096J B 096J 00100 000

General Information

Class: 00 - Residential

City #:

Special Service District 1: 000

District: 01

Number of Buildings: 0

Utilities - Water/Sewer: 01 - PUBLIC / PUBLIC

Utilities - Gas/Gas Type: 00 - NONE

Outbuildings & Yard Items

Long Outbuilding & Yard Items list on subsequent pages

Sale Information

Long Sale Information list on subsequent pages

Land Information

Deed Acres: 0	Calculated Acres: 0	Total Land Units: 1
Land Code	Soil Class	Units
01 - RES		1.00

AC 50?

Exhibit 1

# Outbuildings & Yard Items

Building #	Type	Description	Units
1	WDK - WOOD DECK	4X8	32
1	MH3 - MOBILE HOME CLASS 3	16X56	896
1	WDK - WOOD DECK		1

# Sale Information

Sale Date	Price	Book	Page	Vacant/Improved	Type Instrument	Qualification
3/1/2022	\$0	1786	97		QC - QUITCLAIM DEED	-
9/9/2013	\$0	1589	1982		QC - QUITCLAIM DEED	-
5/22/2006	\$10,200	1424	691	I - IMPROVED	WD - WARRANTY DEED	A - ACCEPTED
8/15/2005	\$7,000	1402	1959	I - IMPROVED	WD - WARRANTY DEED	G - FORCED SALE
8/15/2005	\$6,445	1402	1958	I - IMPROVED	WD - WARRANTY DEED	G - FORCED SALE
1/27/2005	\$8,000	1383	2200	I - IMPROVED	WD - WARRANTY DEED	G - FORCED SALE
7/8/2000	\$49,000	1165	129	I - IMPROVED	WD - WARRANTY DEED	A - ACCEPTED
11/1/1989	\$2,000	R-17	158	I - IMPROVED	WD - WARRANTY DEED	A - ACCEPTED
6/4/1975	\$0	Z-12	424		-	-

Exhibit 1

**THIS INSTRUMENT PREPARED BY:**  
Heather A. Quinn-Bader, Attorney-at-Law  
408 Windham Hill Road, Farragut, Tennessee 37934  
(865)386-6580; BPR #014659

**Tax ID: 096JB-001**

**QUITCLAIM DEED**

THIS INDENTURE is made the date of the acknowledgment below, by and between **Marissa Rutherford, Ashton Connatser and Robert Connatser, Heirs at Law of Stephanie Connatser**, hereinafter referred to as "Grantor," and **TJM Property, LLC**, a Wyoming limited liability company, hereinafter referred to as "Grantee."

**WITNESSETH:**

That Grantor, for and in consideration of the sum of One Dollars (\$1.00) and other good and valuable consideration in hand paid by Grantee, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed, and does hereby grant, bargain, sell and convey, unto the Grantee that certain real property and premises described as follows:

Situated in District One (1) of Anderson County, Tennessee, and being known and designated as all of Lot 142, of Pine Meadows Mobile Home Subdivision, as shown on the plat of record in Map Book 8, Page 47, (Map Cabinet 2, Slide 63B), in the Register's Office for Anderson County, Tennessee, to which plat specific reference is hereby made for a more particular description.

With the hereditaments and appurtenances thereto appertaining to Grantee, and Grantee's successors, heirs, executors, administrators, and assigns forever.

Being the same property conveyed to Stephanie Connatser by Deed from Janet Dale Donaldson, dated September 16, 2013, and of record in Book 1589, Page 1982, in the Register's Office for Anderson County, Tennessee. Stephanie Connatser died on December 22, 2020, unmarried, and intestate, at the age of 47, and she had only three children born to her or adopted by her, namely: Marissa Rutherford, Ashton Connatser and Robert Connatser.

**THE PREPARER OF THIS DEED MAKES NO REPRESENTATION AS TO THE STATUS OF TITLE TO THE PROPERTY DESCRIBED HEREIN. THIS DEED HAS BEEN PREPARED SOLELY FROM INFORMATION FURNISHED TO THE PREPARER WHO MAKES NO REPRESENTATION WHATSOEVER OTHER THAN IT HAS BEEN ACCURATELY TRANSCRIBED FROM THE INFORMATION PROVIDED.**

Whenever in this instrument a pronoun is used, it shall be construed to represent either singular or plural, as the case may demand.

BK/PG: 1786/97-99

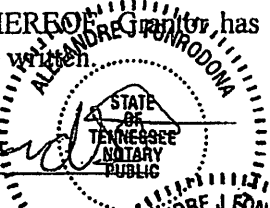
22002465

3 PGS:AL-QUIT CLAIM	
NETTA BATCH: 198747	
03/01/2022 - 11:50 AM	
VALUE	5508.75
MORTGAGE TAX	0.00
TRANSFER TAX	20.38
RECORDING FEE	15.00
OP FEE	2.00
REGISTER'S FEE	1.00
TOTAL AMOUNT	38.38

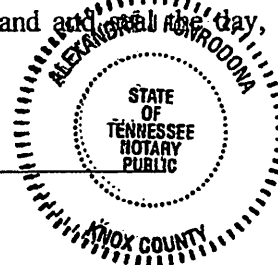
STATE OF TENNESSEE, ANDERSON COUNTY  
**TIM SHELTON**  
REGISTER OF DEEDS

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day,  
month and year first above written.

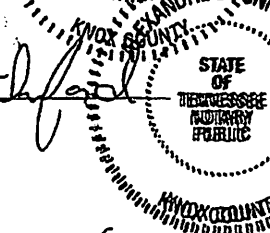
Ashton Connatser  
Ashton Connatser



Robert Connatser  
Robert Connatser



Marissa Ruthford  
Marissa Ruthford



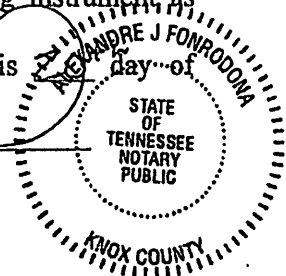
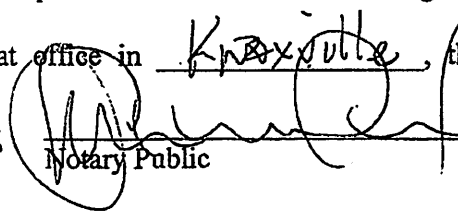
My commission expires  
8-29-23

STATE OF TENNESSEE  
COUNTY OF Knox

Before me, the undersigned, a notary public of the aforesaid state and county, personally appeared **Ashton Connatser**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), to be the persons who executed the foregoing instrument as his/her free act and deed.

WITNESS my hand and seal at office in Knoxville, this 11 day of December, 2021.

My commission expires: 8-29-23 Notary Public

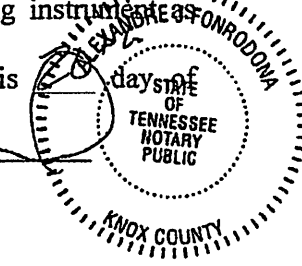
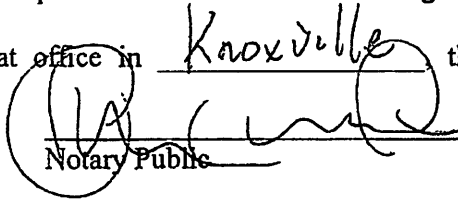


STATE OF TENNESSEE  
COUNTY OF Knox

Before me, the undersigned, a notary public of the aforesaid state and county, personally appeared **Robert Connatser**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), to be the persons who executed the foregoing instrument as his/her free act and deed.

WITNESS my hand and seal at office in Knoxville, this 11 day of December, 2021.

My commission expires: 8-29-23 Notary Public

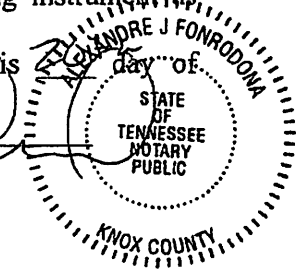
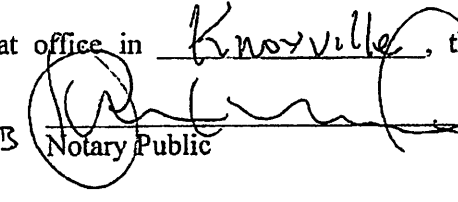


STATE OF TENNESSEE  
COUNTY OF Knox

Before me, the undersigned, a notary public of the aforesaid state and county, personally appeared **Marissa Ruthford**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), to be the persons who executed the foregoing instrument as his/her free act and deed.

WITNESS my hand and seal at office in Knoxville, this 11 day of December, 2021.

My commission expires: 8-29-23 Notary Public

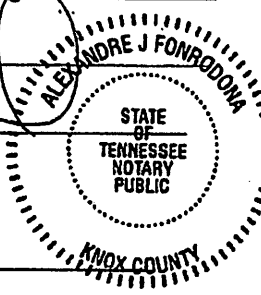


**AFFIDAVIT OF CONSIDERATION**

I hereby swear or affirm that the actual consideration or true value of the property transferred hereby, whichever is greater, is \$ 5508.75.

Subscribed and sworn to before me this 31 day of July 2021.

My Commission Expires: 8-29-23

TJM Property 31 July President  
Affiant  
[Signature]  
Notary Public  


Property Owner/Taxpayer Address:

Name: TJM Property, LLC

Mailing Address: P.O. Box 172, Powell, TN 37849

Street Address of the Property: 118 Duke Street, Clinton, TN 37716



Exhibit 1

5



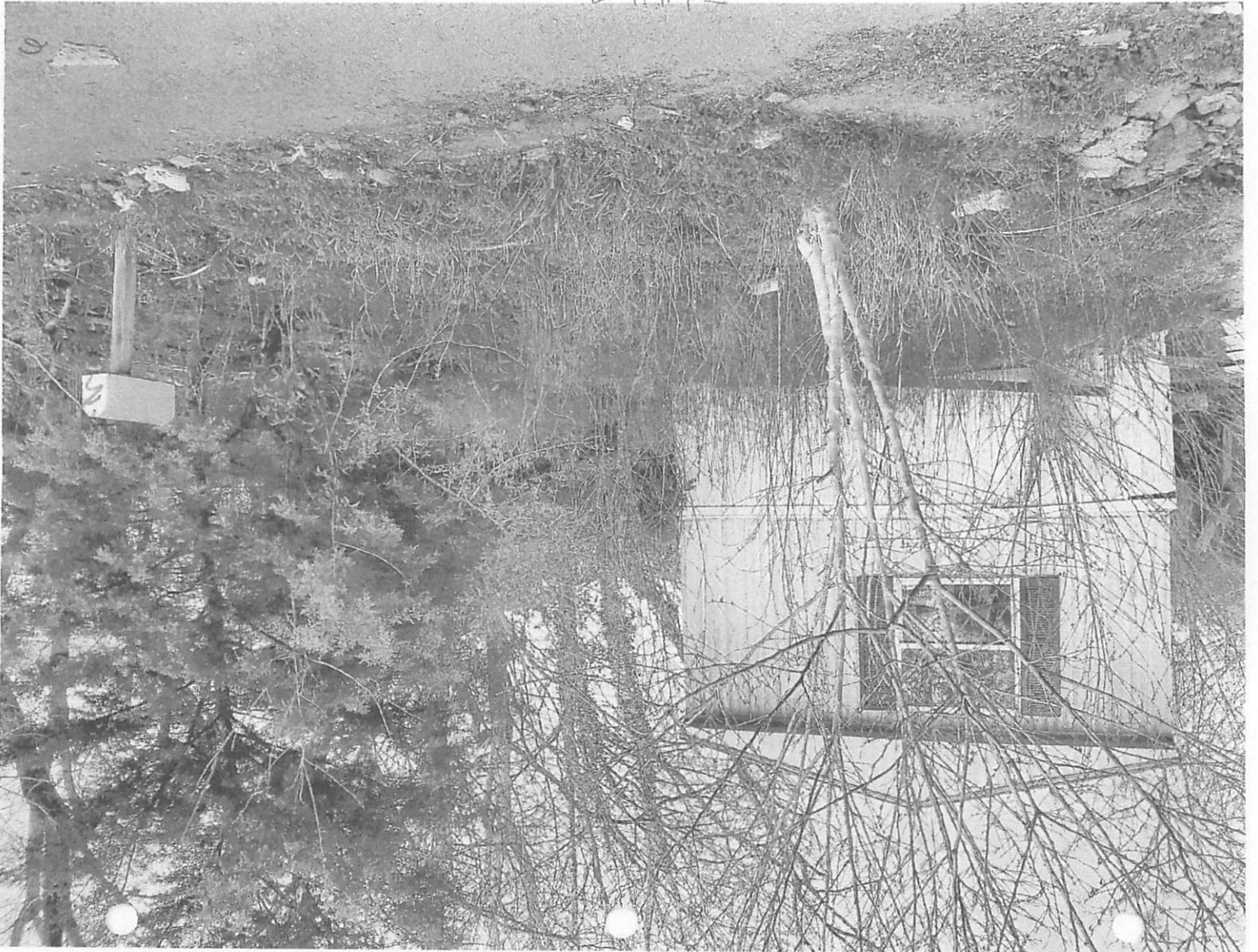
Exhibit I



Exhibit I



Exhibit 1



Hem 7

**STATE OF TENNESSEE  
LENGTH OF SERVICE AWARD PROGRAM**

**RESOLUTION AND  
PARTICIPATION AGREEMENT**

Roane County

---

**[Eligible Employer]**

**Administered by:  
Treasurer, State of Tennessee  
Deferred Compensation Program  
502 Deaderick Street  
Andrew Jackson State Office Building  
Nashville, Tennessee 37243  
Telephone: 615-532-1183**

## **RESOLUTION**

**WHEREAS**, the Roane County Government (hereinafter referred to as the "Eligible Employer") has determined that in the interest of attracting and retaining bona fide volunteers to perform firefighting and prevention services; emergency medical services; and/or ambulance services, it wishes to participate in the Length of Service Award Program, administered by the State of Tennessee, Department of Treasury, established pursuant to Section 457 of the Internal Revenue Code (as amended and along with associated federal rules and regulations, the "Code") and Tennessee Code Annotated, Section 8-25-115 (the "LOSAP" or the "Plan");

**WHEREAS**, Tennessee Code Annotated, Section 8-25-115 allows the Eligible Employer to participate in the LOSAP, subject to the approval of the State Treasurer (the "Treasurer");

**WHEREAS**, the Eligible Employer, on behalf of its agencies, instrumentalities, and other organizations constituting eligible employers pursuant to 26 U.S.C. §457(e)(1) (the "eligible employers" or each an "eligible employer"), intends to allow its eligible employers to apply to participate in the State's grant program in which the State, subject to a State appropriation, may award to an eligible employer a grant contribution for each bona fide volunteer ("Volunteer" or "Volunteers") to a statutorily determined amount;

**WHEREAS**, should an eligible employer apply to participate in the grant program, the eligible employer must certify to the State Treasurer each year the number and names of the Volunteers for which the required minimum contribution will be made to receive a grant contribution for each Volunteer;

**WHEREAS**, in order for an eligible employer to continue its participation in the grant program, it must submit to the State Treasurer an application and certification of the number and names of the Volunteers, and the contribution amount for each Volunteer. Should the eligible employer fail to meet these requirements, the eligible employer will not receive the grant award for that year;

**WHEREAS**, the liability for participation and the costs of administration shall be the sole responsibility of the Eligible Employer, its eligible employers and/or its Volunteers, and not the State of Tennessee; and

**WHEREAS**, the Roane County Commission ("Governing Authority") of the Eligible Employer is authorized by law to adopt this Resolution approving the Eligible Employer's participation in the LOSAP through this Participation Agreement on behalf of the Eligible Employer and its eligible employers.

**NOW, THEREFORE**, the Governing Authority of the Eligible Employer hereby resolves:

1. The Eligible Employer has received a copy of the LOSAP Plan Document and hereby elects to participate in the LOSAP Plan on behalf of its eligible employers, pursuant to the terms of the Participation Agreement attached to and incorporated into this Resolution. The Eligible Employer agrees and acknowledges that it has read and understood the LOSAP Plan Document and had the opportunity to consult with the appropriate legal, tax or other advisors to evaluate the risks and merits of the LOSAP Plan. Through this resolution, the Eligible Employer accepts the terms and conditions of the LOSAP Plan which are contained in the applicable laws, rules policies, procedures and the LOSAP Plan Document, which may be amended from time to time. The Eligible Employer agrees and acknowledges that it will ensure its eligible employer's compliance with the plan document;
2. The Eligible Employer reserves the right to amend its elections under the Participation Agreement, so long as the amendment is not inconsistent with the LOSAP Plan Document, the Code, Tennessee law, or other applicable law and is approved by the Treasurer;
3. For the purpose of the Plan, the Eligible Employer shall be deemed to have designated irrevocably the Treasurer as its agent, except as otherwise specifically provided herein or in the Participation Agreement;
4. The Treasurer may amend the Plan on behalf of all Eligible Employers, including those Eligible Employers who have elected to participate in the Plan prior to a restatement or amendment of the Plan, for changes in the Code, the regulations thereunder, Tennessee law, revenue rulings, other statements published by the Internal Revenue Service ("IRS"), including model, sample, or other required good faith amendments, and for other reasons that are deemed at the discretion of the Treasurer and the Commissioner of Finance and Administration, to be in the interest of the Plan. These amendments shall be automatically applicable to all Eligible Employers;
5. The Treasurer will maintain a record of the Eligible Employers and will make reasonable and diligent efforts to ensure that Eligible Employers have received all Plan amendments;
6. The Eligible Employer shall abide by the terms of the Plan, including amendments to the Plan made by the Treasurer, all investment, administrative, and other service agreements of the Plan, and all applicable provisions of the Code, Tennessee law, and other applicable law. The Eligible Employer shall ensure that its eligible employers will comply with the Plan terms;
7. The Eligible Employer accepts the administrative services to be provided by the Tennessee Treasury Department and any services provided by Plan vendors. The Eligible Employer acknowledges that fees will be imposed with respect to the services provided and that such fees may be deducted from the Volunteers' accounts and/or charged to the Eligible Employer, and such fees may be changed at any time upon written notice to the Eligible Employer;
8. Subject to the provisions of the Plan and in accordance with its terms, the Eligible Employer

may terminate its participation in the Plan;

9. The Eligible Employer acknowledges that the Plan Document contains provisions for Plan termination by the Trustees, subject to applicable Tennessee law;
10. The Eligible Employer acknowledges that all assets held in connection with the Plan, including all contributions to the Plan, remain the property of the Eligible Employer until distribution is made to a Volunteer;
11. The Eligible Employer acknowledges that only those persons who meet the requirements of Section 457 of the Code, including, but not limited to, being a bona fide volunteer, shall be permitted to enroll in the Plan;
12. The Eligible Employer understands that IRS rules and Tennessee law limit participation in the Plan to those entities meeting the definition of "eligible employer" under Section 457 of the Code. Any eligible employer will notify the Treasurer in writing within ten (10) calendar days if it ceases to be a governmental entity under applicable federal or Tennessee law, and/or if it loses its tax-exempt status;
13. The Eligible Employer agrees to abide by the Treasurer's decisions on all matters within the Treasurer's discretion involving the Plan, and will ensure its eligible employers compliance;
14. This Resolution and the Participation Agreement shall be submitted to the Treasurer for approval. The Treasurer shall determine whether the Resolution and the Agreement comply with the Plan and, if they do, shall provide appropriate forms to the Eligible Employer to implement participation in the Plan. The Treasurer may refuse to approve a Participation Agreement executed by an Eligible Employer that, in the Treasurer's sole discretion, does not qualify to participate in the Plan; and
15. The Governing Authority hereby acknowledges that it is responsible to assure that this Resolution and the Participation Agreement are adopted and executed in accordance with the requirements of applicable law.

**UPON MOTION** of Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, the following Commissioners voted Yes:

the following Commissioners voted No:

the following Commissioners passed:



**THEREUPON** the County Chairman announced to the Commission that said resolution had received a constitutional majority and ordered same spread of record.

\_\_\_\_\_  
County Commission Chairman

The foregoing resolution was submitted to the County Executive for his consideration this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
County Clerk

I approve \_\_\_\_ veto \_\_\_\_ the foregoing resolution this the \_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_  
County Executive

Submitted by Wade Creswell, Roane County Executive.

Adopted by the Governing Authority on \_\_\_\_\_, \_\_\_\_\_, in accordance with applicable law.

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Attest Printed Name: \_\_\_\_\_

Attest Signature: \_\_\_\_\_

Attest Title: \_\_\_\_\_

Date: \_\_\_\_\_

[Governing Authority must assure that applicable law is followed in the adoption and execution of this resolution.]

**THE STATE OF TENNESSEE  
LENGTH OF SERVICE AWARD PLAN  
FOR VOLUNTEERS**

**PARTICIPATION AGREEMENT**

Roane County  
[ELIGIBLE EMPLOYER]

This Participation Agreement ("Agreement"), with the accompanying State of Tennessee, Length of Service Award Program ("Program") and the Program Plan Document ("Plan Document") attached hereto as Exhibit A and the Resolution authorizing participation, is designed to comply with Internal Revenue Code ("Code") Section 457(b) as amended, and all applicable rules, regulations, notices, and interpretations released by the United States treasury, including the internal revenue service. By adopting this Agreement, with its accompanying Resolution, the Eligible Employer, on behalf of its agencies, instrumentalities, and other organizations constituting eligible employers pursuant to 26 U.S.C. §457(e)(1) (the "eligible employers" or each an "eligible employer"), is adopting the Plan Document intended to comply with Code Section 457(b).

This Agreement is for the following purpose: (check and complete one box)

- ☒ The Eligible Employer hereby adopts and agrees to participate in the Program effective July 1, 2023 (insert effective date of this Agreement).
- ☐ This is an amendment to be effective as of \_\_\_\_\_, \_\_\_\_\_, to the current Agreement previously adopted by the Eligible Employer, which was originally effective \_\_\_\_\_, \_\_\_\_\_.

1. Eligibility. Volunteers meeting the requirements set forth in Appendix A will be eligible for a contribution from the Eligible Employer to the Volunteer's Plan Account.

2. Forfeiture. A Participant's unvested Account balance will be forfeited if the Participant is:

- ☐ Absent from volunteer service for two consecutive years;
- ☐ Absent from volunteer service for three consecutive years;
- ☒ Other: (a) Absent from Volunteer service for two (2) consecutive years; OR (b) does not qualify for Volunteer Firefighter Education Incentive Pay, in accordance applicable law, for two (2) consecutive years.
- (Other Forfeiture Requirement Established by the Eligible Employer)

3. Contributions. The Eligible Employer shall transfer contributions for Participants to the Administrator's recordkeeper annually, on or before the last business day of

the calendar year, in accordance with instructions to be provided by the Administrator. The annual contribution amount must be no less than \$200.00 per Participant but may not exceed the applicable limit set by federal law. As of the execution date of this agreement, that limit is \$6,000.00. The Eligible Employer's annual contribution amount shall be indicated in its annual budget.

4. Grant Contributions. Should an eligible employer participate in the State's grant program, the eligible employer shall complete an Application and Certification for that calendar year. Additionally, should a Participant cease to be a Volunteer with an Eligible Employer or its eligible employers, the grant amount deposited in that Participant's Account shall be subject to forfeiture pursuant to Section 6.02 in the Plan.

5. Compliance and Reporting. The Eligible Employer is solely responsible for complying with the terms of the Plan and ensuring that its eligible employers comply with this Plan. Neither the State of Tennessee, Department of Treasury, as Administrator, nor any of the Administrator's service providers shall be obligated to determine and ensure compliance with the Plan's terms by the Eligible Employer, or its eligible employers. Notwithstanding the foregoing, the Administrator may require the Eligible Employer or any of its eligible employers to submit reports relative to enrollment, contributions and compliance with the Plan Document and this Participation Agreement. The Eligible Employer and any of its eligible employers shall promptly provide any such reports and shall make any of its records relative to the Plan available to the Administrator at any time.

This Participation Agreement is duly executed on behalf of the Eligible Employer by the undersigned signatories.

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED BY ADMINISTRATOR

\_\_\_\_\_  
David H. Lillard, Jr., State Treasurer

DATE

\_\_\_\_\_

**APPENDIX A**  
Eligibility Criteria

Roane  
County

Volunteers meeting all criteria below will be eligible to receive a Contribution to the Volunteer's Plan Account:

- (a) No fewer than three (3) consecutive years of service with an eligible employer (Roane County Volunteer Department), including the current year;
- (b) Response to no less than 10% of the annual calls of a single eligible employer (Roane County Volunteer Fire Department); and
- (c) Completes no less than 16 hours of annual training approved by a single eligible employer (Roane County Volunteer Fire Department).

**STATE OF TENNESSEE  
LENGTH OF SERVICE AWARD PROGRAM**

**FEE DISCLOSURE**

**As of July 1, 2023**

Pursuant to paragraph 7 of the Resolution and Participation Agreement for the State of Tennessee Length of Service Award Program (the "Plan"), below are the current fees for the Plan:

Volunteer Recordkeeping fee –

- ☐ Asset based fee: 14.9 bps (0.149%)
- ☐ Minimum fee of \$12 per participant annually

Eligible Employer fee:

- ☐ Initial set up fee - \$500 one time
- ☐ Annual maintenance fee - \$250 annually to be billed and paid via the Plan Service Center on an annual basis, coincident with the payment of volunteer awards

THE STATE OF TENNESSEE  
LENGTH OF SERVICE AWARD PLAN  
FOR VOLUNTEERS

PARTICIPATION AGREEMENT

Roane County  
[ELIGIBLE EMPLOYER]

Anderson  
Proposed  
1.

This Participation Agreement ("Agreement"), with the accompanying State of Tennessee, Length of Service Award Program ("Program") and the Program Plan Document ("Plan Document") attached hereto as Exhibit A and the Resolution authorizing participation, is designed to comply with Internal Revenue Code ("Code") Section 457(b) as amended, and all applicable rules, regulations, notices, and interpretations released by the United States treasury, including the internal revenue service. By adopting this Agreement, with its accompanying Resolution, the Eligible Employer, on behalf of its agencies, instrumentalities, and other organizations constituting eligible employers pursuant to 26 U.S.C. §457(e)(1) (the "eligible employers" or each an "eligible employer"), is adopting the Plan Document intended to comply with Code Section 457(b).

This Agreement is for the following purpose: (check and complete one box)

- ☒ The Eligible Employer hereby adopts and agrees to participate in the Program effective July 1, 2023 (insert effective date of this Agreement).
- ☐ This is an amendment to be effective as of \_\_\_\_\_, \_\_\_\_\_, to the current Agreement previously adopted by the Eligible Employer, which was originally effective \_\_\_\_\_, \_\_\_\_\_.

1. Eligibility. Volunteers meeting the requirements set forth in Appendix A will be eligible for a contribution from the Eligible Employer to the Volunteer's Plan Account.

2. Forfeiture. A Participant's unvested Account balance will be forfeited if the Participant is:



Absent from volunteer service for two consecutive years;

Absent from volunteer service for three consecutive years;

Other: (a) Absent from Volunteer service for two (2) consecutive years; OR (b) does not qualify for Volunteer Firefighter Education Incentive Pay, in accordance applicable law, for two (2) consecutive years.

(Other Forfeiture Requirement Established by the Eligible Employer)

3. Contributions. The Eligible Employer shall transfer contributions for Participants to the Administrator's recordkeeper annually, on or before the last business day of

Proposed

the calendar year, in accordance with instructions to be provided by the Administrator. The annual contribution amount must be no less than \$200.00 per Participant but may not exceed the applicable limit set by federal law. As of the execution date of this agreement, that limit is \$6,000.00. The Eligible Employer's annual contribution amount shall be indicated in its annual budget.

4. Grant Contributions. Should an eligible employer participate in the State's grant program, the eligible employer shall complete an Application and Certification for that calendar year. Additionally, should a Participant cease to be a Volunteer with an Eligible Employer or its eligible employers, the grant amount deposited in that Participant's Account shall be subject to forfeiture pursuant to Section 6.02 in the Plan.

5. Compliance and Reporting. The Eligible Employer is solely responsible for complying with the terms of the Plan and ensuring that its eligible employers comply with this Plan. Neither the State of Tennessee, Department of Treasury, as Administrator, nor any of the Administrator's service providers shall be obligated to determine and ensure compliance with the Plan's terms by the Eligible Employer, or its eligible employers. Notwithstanding the foregoing, the Administrator may require the Eligible Employer or any of its eligible employers to submit reports relative to enrollment, contributions and compliance with the Plan Document and this Participation Agreement. The Eligible Employer and any of its eligible employers shall promptly provide any such reports and shall make any of its records relative to the Plan available to the Administrator at any time.

This Participation Agreement is duly executed on behalf of the Eligible Employer by the undersigned signatories.

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED BY ADMINISTRATOR

\_\_\_\_\_  
David H. Lillard, Jr., State Treasurer

DATE

\_\_\_\_\_

# PROPOSED 2. for Anderson

## APPENDIX A ELIGIBILITY CRITERIA

### *ANDERSON COUNTY LENGTH OF SERVICE AWARD PROGRAM FOR VOLUNTEERS*

**The Volunteer must earn 50 points in a calendar year to be eligible for a LOSAP contribution.**

**Up to 25 points per year for training, drills, and meetings:**

- 1 point per hour of training
- 1 point per hour of drill
- 1 point per hour of mandatory meeting

**Up to 25 points per year for participation in any response scenario:**

- 5 points for participation in 1-4% of calls
- 10 points for participation in 5-9% of calls
- 15 points for participation in 12-14% of calls
- 20 points for participation in 15-19% of calls
- 25 points for participation in 20+% of calls



# PROPOSED 3. For Anderson

## APPENDIX B LOSAP AWARDS CONTRIBUTION GUIDE

Years of Volunteer Service - Low	Years of Volunteer Service- High	Annual Contribution authorized by County Commission
0	5	Base contribution*
6	10	Base contribution x 2
11	15	Base contribution x 3
16	20	Base contribution x 4
21	Up	Base contribution x 5

\*State of Tennessee requires minimum annual contribution amount of \$200 per participant for eligible volunteers.

State Proj : 01946-3445-94



Federal Proj : HSIP-100(79)

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## RAILROAD AGREEMENT

---

THIS AGREEMENT is made and entered into by, and between the **State of Tennessee** acting through its Department of Transportation (hereinafter referred to as "TDOT"), **Norfolk Southern Railway Company** (hereinafter referred to as the "Railroad"), and **Anderson County** (hereinafter referred to as "The County").

### WITNESSETH:

WHEREAS, TDOT plans to undertake Project Pin Number: **125450.04** described as **Miscellaneous Safety Improvements** at Mile Post **33.59-D (DOT#: 731035U)**, near **Oliver Springs, TN** in **Anderson County, Tennessee** (hereinafter referred to as the "Highway Project"); and

WHEREAS, TDOT agrees to cooperate with the **COUNTY** and the Railroad in constructing the Highway Project, and to assume ownership and the responsibility to maintain the Highway Project; and

WHEREAS, the Railroad agrees to cooperate with TDOT and the **COUNTY** in the construction and maintenance of the Highway Project; and

WHEREAS, the **COUNTY** agrees to cooperate with TDOT and the Railroad in the construction and maintenance of the Highway Project; and

WHEREAS, the Railroad is eligible for reimbursement for accommodating the Highway Project under 23 CFR, Subparts 140I and 646B, which are incorporated herein by reference; and

WHEREAS, for the Highway Project, in accordance with the preliminary engineering authorization fully executed by the parties on **4/22/21**, the Railroad has reviewed TDOT's Highway Project plans (hereinafter referred to as the "Highway Plans") and prepared Railroad plans, specifications, and estimate of costs of equipment, material, labor and other services as required for the Railroad to accommodate construction of the Highway Project (hereinafter referred to as the "Railroad Engineering Services"); and

WHEREAS, the Railroad will be required to perform inspection services and other work to ensure the Highway Project does not adversely affect its Railroad facilities and operations and to accommodate construction of the Highway Project in accordance with the Railroad's plans, specifications, and estimate of costs of equipment, material, and labor as approved by TDOT (hereinafter referred to as "Railroad Construction Phase Services"); and

WHEREAS, the Railroad Engineering Services and the Railroad Construction Phase Services shall hereinafter collectively be referred to as the "Railroad Services"; and

WHEREAS, for the Railroad Services, the Railroad has provided its estimate of costs, hereinafter referred to as the Force Account Estimate ("FAE"), dated **7/23/21**, which estimate is in the amount of **\$25,000.00**;

NOW, THEREFORE, in consideration of these premises and the mutual promises contained herein, the parties agree to provide for the services necessary for the construction and maintenance of the Highway Project under the following terms and conditions:

1. The Railroad shall perform the Railroad Services provided for in this Agreement as provided in 23 CFR, Subpart 646B.
2. TDOT has approved the FAE dated **6/17/22**, which is attached hereto as **Exhibit A** and incorporated herein by reference and which separately lists the Railroad's estimated costs for Railroad Engineering Services and for Railroad Construction Phase Services. The Railroad's estimated costs for Railroad Engineering Services shown in the FAE include those costs incurred from and after the preliminary engineering authorization fully executed by the parties on **4/22/21**.
3. TDOT agrees to undertake the Highway Project in accordance with:
  - (a) Any required Special Provisions for Protection of Railway Interest (hereinafter referred to as the "Special Provisions") approved by the parties, which shall be attached hereto and incorporated herein as the next numbered Exhibit if applicable; and
  - (b)
    - i. Preliminary engineering, construction engineering, administration and other services deemed necessary will be provided by the Railroad for the Railroad Services. The Railroad will perform Railroad Services to enable TDOT to complete the Highway Project and to not unreasonably delay TDOT's construction schedule. The Railroad agrees as part of the Railroad Services to furnish construction inspectors and/or engineering services that may be deemed necessary to ensure the Highway Project does not adversely affect its railroad facilities and operations during the time TDOT, or its contractor, is actively working on or adjacent to the Railroad property and/or has the possibility to foul the Railroad property.
    - ii. TDOT agrees as part of the Highway Project that it will require its contractor to furnish and maintain qualified protective services equipped to operate around railroad operations to protect TDOT, or its contractor, when construction activities are taking place on or adjacent to the Railroad property and/or has the potential to foul the Railroad's track or operations. All expenses for the qualified protective services shall be covered by TDOT. Prior to use, Railroad has the right to ensure the

qualified protective services used is properly equipped to provide services around rail operations to ensure safety; and

- (c) The Railroad or its contractor shall have the right during construction to inspect the Highway Project for inconsistencies with the Highway Plans, as revised if applicable, and such further rights to inspect as may be specified in the Special Provisions. The Railroad shall immediately notify TDOT of any such inconsistencies; and
- (d) TDOT's plans for the Highway Project have been approved by the Railroad dated 9/14/22 (the "Highway Plans"). The Highway Plans may be subsequently supplemented or modified by TDOT, in which event they will be reviewed and approved by Railroad under the process described in subsection 3(c) or subsection 3(d).
- (e) Should TDOT revise the Highway Plans in the ordinary course of business after the approval date indicated in subsection 3(b), TDOT agrees to forward such revised Highway Plans to the appropriate engineering officer of the Railroad by email, by mail, or by reputable overnight courier service. The Railroad agrees to notify TDOT by email, by mail, or by reputable overnight courier service within sixty (60) days after the Railroad's receipt of the revised Highway Plans if the Railroad has any objections to these plans or if the Railroad approves the revised Highway Plans. In an effort to prevent delay of the Highway Project, the Railroad agrees to use its reasonable best efforts to review and approve any revised Highway Plans as quickly as practicable and shall not unreasonably withhold or delay its review and approval of any revised Highway Plans.
- (f) If unforeseen events or unexpected conditions indicate an emergency need to revise the Highway Plans, TDOT agrees to forward such revised Highway Plans to the appropriate engineering office of Railroad by email, by mail, or by reputable overnight courier service. The Railroad agrees to use its reasonable best efforts to review and approve, or identify its objections to, such revised Highway Plans as quickly as possible and shall not unreasonably withhold or delay its review and approval of such revised Highway Plans.
- (g) Railroad agrees that construction of the Highway Project in accordance with Highway Plans approved by the Railroad, including any approved revisions, shall not be construed as creating any conflict with or causing any damage to the Railroad's facilities or operations.

- 4. (a) The Railroad agrees to perform the Railroad Services in accordance with its estimate of cost, plans and specifications, as approved by TDOT, which shall be incorporated into this Agreement as described herein, and as otherwise contemplated by this Agreement.
  - (b) Any change in the Railroad's approved estimate of cost, plans or specifications shall require the prior written approval of TDOT. TDOT agrees to review and, if acceptable, approve such requests for change in a timely manner, and TDOT agrees to cooperate with the Railroad to resolve, if possible, any objections TDOT may have to such requested changes in the Agreement.
5. The Railroad shall be reimbursed for its actual eligible costs up to the amounts listed in the FAE for Railroad Engineering Services and for Railroad Construction Phase Services. In the event that the parties agree that proposed

Railroad costs above the amount(s) shown in the approved FAE are justified, the parties shall execute a supplement to this Agreement to incorporate a revised FAE. Upon full execution of such supplement, the Railroad then may incur additional costs in accordance with the FAE. In no event shall Railroad be eligible for reimbursement of ineligible costs or of costs not actually incurred.

6. (a) The Railroad agrees that it will perform the Railroad Construction Phase Services by one or more of the following methods (mark the appropriate space(s) and describe as required):

☒ By force account with Railroad's own forces and equipment

☐ By contract awarded to the lowest qualified bidder based on appropriate solicitation

☒ By use of an existing continuing contract (provided that the costs are reasonable)

☐ Otherwise as authorized in 23 CFR, Subpart 646B, as described below:

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- (b) Whenever the Railroad elects to perform the Railroad Construction Phase Services by award of a contract, it shall submit the same to TDOT for prior approval, which approval shall not be unreasonably withheld. TDOT may not be required to reimburse the Railroad for its obligation under any contract that has not received the advance written approval of TDOT.
- (c) The Railroad shall not release or make available any memoranda or other information concerning the estimated cost of the Railroad Construction Phase Services to anyone other than TDOT. The Railroad hereby agrees, warrants and assures that the estimated cost information is confidential, and that it will not directly or indirectly disclose said estimated cost information to potential bidders.
- (d) Neither the Railroad nor any affiliate or subsidiary thereof shall participate directly or indirectly as a bidder for any part of the Railroad Construction Phase Services to be performed under a contract to be awarded by the Railroad. The Railroad further agrees that no employee, officer, or agent of the Railroad shall participate in the selection, or in the award or administration of a contract for the performance of any part of the Railroad Construction Phase Services if a real or apparent conflict of interest would be involved. Such a conflict of interest would arise when the employee, officer, or agent, or any member of his or her immediate family, or his or her partner, or an organization which employs or is about to employ any of the above, has a substantial financial interest, such as five-percent (5%) or greater ownership interest, or other interest in the firm selected for award of a contract to perform the Railroad Construction Phase Services for this Highway Project. Neither the Railroad nor any affiliate, subsidiary, employee, officer, or agent of the Railroad shall solicit or accept gratuities, favors, or anything of monetary value, except an unsolicited gift having nominal monetary value, from contractors or bidders.

- (e) The Railroad must request in writing and receive TDOT's written approval prior to any revision in the method of performing the Railroad Construction Phase Services, which approval shall not be unreasonably withheld. Failure to do so may result in the loss of TDOT participation in payment for the cost of the Railroad Construction Phase Services.
  - (f) The Railroad agrees to comply with all current, applicable provisions of the Buy America requirements established under 23 USC § 313 and 23 CFR § 635.410. In accordance with guidance provided by the Federal Highway Administration, the Railroad agrees that all products used in the Railroad's adjustment work that are manufactured of steel or iron –shall be manufactured in the United States, or shall comply with an exception allowable under 23 USC § 313 and 23 CFR § 635.410. For the purposes of applying this Buy America requirement and determining whether a product is a steel or iron manufactured product, the job site includes any sites where precast concrete products that are incorporated into the Railroad's adjustment work are manufactured. TDOT agrees that Railroad may rely on certifications provided by suppliers in connection with compliance with this paragraph.
7. TDOT or its contractor shall schedule a start-of-work meeting with Railroad in advance of beginning construction of the Highway Project on any part of the Railroad's rights-of-way, as provided in the Special Provisions.
  8. TDOT shall require its contractor to carry a performance bond in the full amount of the contract price, guaranteeing the satisfactory completion of the Highway Project covered by the Agreement. In addition, TDOT shall require the contractor to carry each of the following types of insurance, as provided in 23 CFR, Subpart 646A, and as may be further specified in the Special Provisions:
    - (a) Contractor's public liability and property damage insurance, and
    - (b) Railroad's protective public liability and property damage liability insurance, and
    - (c) Workmen's compensation and employer's liability insurance.
  9. The Railroad shall have the right during construction to inspect the Highway Project for inconsistencies with the Highway Plans, as revised if applicable, and such further rights to inspect as may be specified in the Special Provisions. The Railroad shall immediately notify TDOT of any such inconsistencies.
  10. (a) For the portion(s) of the Highway Project involving Crossing(s) **DOT# 731035U**, the provisions of this subsection shall apply. The Railroad, to the extent that its present rights, titles, and interest permit or enable it to do so and without warranty, hereby acknowledges and agrees that TDOT shall be allowed to construct the Highway Project in accordance with the Highway Plans approved by Railroad in the manner outlined in Section 3 and the said Special Provisions described in Section 3(a) of this Agreement, and that the **COUNTY** shall be allowed to maintain the completed Highway Project, subject to the following conditions:
    - i. As shown on the Highway Plans, access to the area designated as "construction access" is agreed to for the purpose of demolition and construction and shall terminate upon completion of the Highway Project construction. As shown on the Highway Plans, the area designated as "crossing agreement" is the area needed

to accommodate the operation, inspection, and maintenance of the highway, including a maintenance area fifteen feet (15') outside the edge of pavement, subject to such requirements of the Railroad as the parties shall reasonably agree.

- ii. The Railroad shall continue to own all right, title and interest in its rail operation facilities. Railroad shall also reserve all rights in the facilities or properties that Railroad owns or possesses at any time prior the commencement of the Highway Project including without limitation advertising signboards and communication facilities.
  - iii. The Railroad agrees to notify the **COUNTY** before undertaking any maintenance work within the “crossing agreement” area where such maintenance work interferes with or creates a hazard or potential hazard to the use or maintenance of the highway for transportation purposes. Furthermore, the Railroad agrees to submit plans to the **COUNTY** for its review and approval before constructing any fixed installation over the highway, and before constructing any fixed installation within fifteen feet (15') of the edge of pavement. The Railroad further agrees that it shall coordinate any such maintenance work or construction activity with the **COUNTY**.
  - iv. The **COUNTY** agrees to notify the Railroad before undertaking any inspection or maintenance work within the “crossing agreement” area, including any activities within twenty-five feet (25') on either side of the centerline of the tracks or activities which may create a hazard, cause debris, or adversely affect railroad operations, maintenance or safety. The **COUNTY** shall not commence such work until Railroad has approved the plans, and the Railroad agrees to use its reasonable best efforts to review and approve such plans as quickly as possible and shall not unreasonably withhold or delay its review and approval of such plans. The **COUNTY** shall be responsible for reasonable costs, including but not limited to, engineering review and specified safety requirements, incurred by the Railroad as a result of the **COUNTY's** work.
11. This Agreement is a covered transaction for the purposes of 2 CFR Part 1200.220 and 2 CFR Part 180.200. As such Railroad is required to verify that for anything done under this Agreement that neither it, nor its principals (as defined at 2 CFR 180.995) or affiliates (as defined at 2 CFR 180.905) is excluded (as defined at 2 CFR 180.940) or disqualified (as defined at 2 CFR 180.935). Railroad, pursuant to 2 CFR 180.330(a)-(b), must also include a term or condition in lower-tier transactions related to this Agreement requiring lower-tier participants to comply with requirements in subpart 2 CFR subpart C to each person with whom the lower-tier participant enters into a covered transaction at the next lowest tier. Subpart C of 2 CFR 180 requirements are (Railroad and lower-tier participants must comply):
- (a) Verification. Railroad and all lower-tier participants must verify that the person with whom the Railroad or the lower-tier participant intends to do business with is not excluded, pursuant to the definition set forth in 2 CFR 180.940, or disqualified, pursuant to the definition set forth in 2 CFR 180.935. Railroad and all lower-tier participants may do this by either (i) checking out the Excluded Parties List System (EPLS), found at <http://epls.aret.gov> or <http://www.epls.gov>, or (ii) collecting the certification form from the lower-tier participant, or (iii) adding a clause or condition to the covered transaction with that lower-tier participant.

The Railroad certification form and lower-tier participant certification form referred to herein is attached hereto as **Exhibit C**.

- (b) Disclosing Information. Railroad and all lower-tier participants, before or after entering into a covered transaction, must notify the higher-tiered participant if they are presently excluded or disqualified, or any of their principals are excluded or disqualified, pursuant to 2 CFR 180.355 and 2 CFR 180.365.

12. Subject to the provisions of this paragraph and as otherwise provided in this Agreement, TDOT agrees to reimburse the Railroad for the cost of the Railroad Services as follows:

- (a) TDOT shall reimburse the Railroad for such direct and indirect costs as are allowable under the current provisions of 23 CFR, Subparts 140I and 646B. Any claim for costs that would be ineligible for Federal reimbursement under 23 CFR 646B on a federal-aid project shall be ineligible for reimbursement by TDOT on this Highway Project whether it is or is not a federal aid-project.
- (b) The Railroad shall develop and record Railroad Services costs in a manner consistent with the current provisions of 23 CFR, Subparts 140I and 646B as of the effective date of this Agreement, and as approved by TDOT.
- (c) The Railroad shall submit all requests for payment by invoice, in form and substance acceptable to TDOT and with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged line-item to date, the total amount charged for the period invoiced, and the total amount charged under the Agreement to date.
- (d) The Railroad may submit invoices for interim payments during the progress of the Railroad Services; provided, however, that such interim payments for Railroad Construction Phase Services may be approved only up to a maximum of eighty percent (80%) of the approved estimate of reimbursable costs for the Railroad Construction Phase Services, and any remaining reimbursable Railroad Construction Phase Services costs must be submitted on the final bill. Such invoices for interim payments shall be submitted no more often than monthly.
- (e) TDOT shall, unless it has good faith and reasonable objections to the Railroad's invoice for interim payment, use its best efforts to issue payment based on the Railroad's invoice within forty-five (45) days after receipt. If, however, TDOT has good faith and reasonable objections to the Railroad's invoice(s) or any part thereof, TDOT shall specifically identify those objections in writing to the Railroad so as to allow the parties to address them in a prompt manner. If the invoice is otherwise acceptable, TDOT shall only withhold payment(s) as to those cost items it has specified in its written notice of objections to the Railroad. All other reimbursable cost items set out in the Railroad's invoice shall be paid by TDOT.
- (f) Subject to the Railroad's right to bill on an interim basis as described above, the Railroad shall by invoice provide one final and complete billing of all costs incurred, or of the agreed-to lump sum, within one (1) year



following the completion of the Railroad Services in their entirety. Otherwise, any previous payments to the Railroad may be considered final, and the Railroad may be deemed to have waived any claim for additional payments, except as TDOT and the Railroad may have agreed otherwise in writing before the end of that year.

- (g) The Railroad's invoice(s) shall be subject to reduction for amounts in any invoice or payment theretofore made which are determined by TDOT, on the basis of audits or monitoring conducted in accordance with the terms of this Agreement, not to constitute allowable costs. The payment of an invoice shall not prejudice TDOT's right to object to or question any invoice or matter in relation thereto. Such payment by TDOT shall neither be construed as acceptance of the work nor as final approval of any of the costs invoiced therein.

13. TDOT shall have the right to inspect the Railroad Construction Phase Services and to confirm the financial information made available by the Railroad to TDOT in support of the Railroad's invoiced amounts. Any costs billed by the Railroad that cannot be verified by the TDOT Project Supervisor's records will not be reimbursed.
14. The Railroad agrees that its cost records will be subject to inspection at any reasonable time by representatives of TDOT before or after final payment for reimbursable work. In event any costs are determined not to be allowable under provisions of this Agreement, the Railroad agrees to repay TDOT such amount of ineligible costs included within payments made by TDOT.
15. The Railroad shall keep and maintain accurate records by which all invoices can be verified. The books, records, and documents of the Railroad, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three (3) full years after final payment has been received by the Railroad and shall be subject to audit at any reasonable time and upon reasonable notice by TDOT, the State Comptroller of the Treasury, or the Federal Highway Administration, or their duly appointed representatives, during this three year period. The financial statements shall be prepared in accordance with generally accepted accounting principles.
16. This Agreement is subject to the appropriation and availability of TDOT funds. In the event that the funds are not appropriated or are otherwise unavailable, TDOT reserves the right to terminate this Agreement upon written notice to the Railroad. Said termination shall not be deemed a breach of this Agreement by TDOT. Upon receipt of the written notice, the Railroad shall cease all work associated with the Agreement, except as may be reasonably necessary to return the Railroad's facilities to safe operation. Should such an event occur, the Railroad shall be entitled to compensation for all costs reimbursable under 23 CFR, Subpart 646B (in accordance with paragraph 12 of this Agreement) for work completed as of the termination date or in accordance with this provision. Upon termination, the Railroad shall have no right to recover from TDOT any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
17. TDOT shall have no liability except as specifically provided in this Agreement.
18. This Agreement may be modified only by a written amendment executed by the parties hereto.
19. Failure by any party to this Agreement to insist in any one or more cases upon strict performance of any of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment

of any such term, covenant, condition or provision. No term, covenant, condition or provision of this Agreement shall be held to be waived, modified, or deleted except by written amendment signed by the parties hereto.

20. The Railroad hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the Railroad on the grounds of disability, age, race, color, religion, sex, national origin, or any classification protected by the Constitution or statutes of the United States or the State of Tennessee. The Railroad shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
21. The Railroad agrees to comply with all applicable federal and state laws and regulations in performing any of its obligations under this Agreement. The parties agree that failure of the Railroad to comply with this provision shall constitute a material breach of this Agreement, and subject the Railroad to the repayment of all State funds expended, or expenses incurred, under this Agreement.
22. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors, and assigns. Time is of the essence of this Agreement.
23. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Railroad acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.
24. If any terms, covenants, conditions or provisions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms, covenants, conditions, and provisions hereof shall not be affected thereby, and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.
25. Subject to the provisions and limitations of Tennessee Code Annotated in Title 9, Chapter 8, Parts 3 and 4, TDOT shall defend and, if found liable, be responsible for paying damages arising from all claims, suits, liabilities and judgments for personal injuries or damage to property, caused by any activities conducted by TDOT in connection with the Highway Project, excepting any such injury, damage or loss caused by the Railroad's negligence or intentional wrongful misconduct in the performance of the Railroad services or otherwise.
26. TDOT and the Railroad each acknowledges that the terms, covenants, conditions and provisions of this Agreement have been negotiated between and jointly authored by the parties hereto, and in consequence of this joint authorship, the parties agree that no term, covenant, condition or provision hereunder shall be construed more strictly against one party or the other hereto.
27. TDOT and the Railroad agree that any notice provided for in this Agreement or concerning this Agreement shall be in writing, and shall be made by personal delivery, by certified mail (return receipt requested), by nationally recognized overnight delivery service (such as FedEx or UPS), or by facsimile transmission (provided that notice shall also be given in one of the other methods prescribed herein) addressed to the respective party at the appropriate

facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

To TDOT:

Tennessee Department of Transportation  
Attention: Jay Lanius, State Railroad Coordinator  
Suite 600, James K. Polk Building  
505 Deaderick Street  
Nashville, Tennessee 37243-0329  
Facsimile Number: (615) 253-1106

With a copy if requested by TDOT to:

Mr. John H. Reinbold, Office of General Counsel  
Suite 300, James K. Polk Building  
505 Deaderick Street  
Nashville, Tennessee 37243-0326  
Facsimile Number: (615) 532-5988

To the Railroad:

Shawn Starling, Public Projects  
Norfolk Southern Railway Company  
650 West Peachtree Street, NW – Box 45.  
Atlanta, Georgia 30308

With a copy if requested by Railroad to:

Monique Harris  
AECOM  
1635 Market Street, Suite 1000  
Philadelphia, PA 19103

To the County:

Terry Frank  
Anderson County Mayor  
100 N Main Street, Room 208 | Clinton, TN 37716-3617  
865-457-6200 or 865-457-6201 | tfrank@andersoncountyttn.gov

28. With respect to property owned or operated by the Railroad in which TDOT may be required to acquire one or more property interests in conjunction with the Highway Project, the Railroad hereby grants to TDOT the right to enter upon such Railroad property in advance of such acquisition as described below:
- (a) TDOT shall acquire or settle all property, property rights and all damages to property affected by the Highway Project. The cost of said property, property rights and damages to property, if any, shall be included as a part of the Highway Project expense and shall in no event be the responsibility of the Railroad. TDOT shall furnish the plans and description for any such conveyance.
  - (b) The Railroad, insofar as it has the legal right so to do, hereby permits TDOT to enter upon lands owned or operated by the Railroad to construct and operate the Highway Project across its property in accordance with the Highway Plans.
  - (c) TDOT and the Railroad shall enter into good faith negotiations for a price to be consistent with the property interests in property of the Railroad determined by TDOT to be needed for the Highway Project. However, the price to be paid by TDOT to the Railroad for said conveyances (representing the fair market value thereof plus damages, if any, to the residue) shall be as mutually agreed upon within nine (9) months from the date of occupancy by TDOT, and if agreement as to price is reached, an additional period of ninety (90) days shall be allowed for settlement; it being agreed, however, that if no agreement as to price is reached within the aforesaid nine (9) month period, TDOT will within ninety (90) days thereafter institute an eminent domain proceeding authorized by law for the determination of the value of same. The provisions of this Section 28 shall survive the institution of such eminent domain proceeding.
  - (d) TDOT shall furnish the plans, descriptions, and any other documents required by the Railroad for any Conveyance of property to TDOT. It is understood that the nothing in this Agreement shall convey or obligate the Railroad to convey any interest in its land.
  - (e) In case any legal action involving the Highway Project is brought by or against any party hereto, said party shall promptly notify the other parties of the pendency of such action.
29. Nothing in this Agreement shall be deemed to grant to any third party, including any contractor of TDOT, any right to enter or work upon any property of the Railroad. TDOT shall cause each of its contractors to execute and deliver the Railroad's then-current right-of-entry agreement before entering onto any property of the Railroad.
30. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement.

RAILROAD:

STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION:

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
Howard H. Eley, Commissioner

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
John H. Reinbold, General Counsel

TITLE: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Agreement.

County:

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

# EXHIBIT A

## FORCE ACCOUNT ESTIMATE

Work to be Performed By:	Norfolk Southern Railway Company
For the Account of:	Tennessee Department of Transportation
Project Description:	Proposed roadway safety improvements along Donovan/Smith Rd adjacent to XAG and Offut Rd UP
Location:	Oliver Springs, Anderson County, TN
Project No.:	PIN 125450.04
Milepost:	33.59-D & 26.93-C
File:	CX1114249 & BR0010433
Date:	July 23, 2021

ITEM A - Preliminary Engineering	5,566
ITEM B - Construction Engineering	12,143
ITEM C - Accounting	1,524
ITEM D - Railroad Protective Services	5,766
ITEM E - Communications Changes	0
ITEM F - Signal & Electrical Changes	0
ITEM G - Track Work	0
ITEM H - T-Cubed	0
<b>GRAND TOTAL</b>	<b>\$ 25,000</b>

### ITEM A - Preliminary Engineering

(Review plans and special provisions,  
prepare estimates, etc.)

Labor:	22 Hours @ \$60 / hour=	1,320
Labor Additives:		1,037
Travel Expenses:		209
Services by Contract Engineer:		3,000

NET TOTAL - ITEM A	\$ 5,566
NET COMBINED TOTAL	

**APPROVED**

*By Ethan Messimore, P.E. at 10:52 am, Jun 17, 2022*

**ITEM B - Construction Engineering**

(Coordinate Railway construction activities,  
review contractor submittals, etc.)

Labor:	27 Hours @ \$60 / hour=	1,620
Labor Additives:		1,273
Travel Expenses:		1,000
Services by Contract Engineer:		8,250

NET TOTAL - ITEM B	\$	12,143
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NET COMBINED TOTAL

**ITEM C - Administration**

Agreement Construction, Review and/or Handling:		1,250
Accounting Hours (Labor):	5 Hours @ \$30 / hour=	150
Accounting Additives:		124

NET TOTAL - ITEM C	\$	1,524
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NET COMBINED TOTAL

**ITEM D - Railroad Protective Services**

(During construction on, over,  
under, or adjacent to the track.)

Labor:	Protective Services	
	5 days @ 330.00 per day=	1,650
	(based on working 12 hours/day)	

Labor Additive:		3,066
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Travel Expenses, Meals & Lodging:		
	1 days @ \$100/day=	100

Rental Vehicle	1 months @ \$950/month=	950
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NET TOTAL - ITEM D	\$	5,766
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NET COMBINED TOTAL

**ITEM E - Communications Changes**

Material:		0
Labor:		0
Purchase Services:		0
Subsistence:		0
Additive:		0

NET TOTAL - ITEM E	\$	-
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NET COMBINED TOTAL



**ITEM F - Signal & Electrical Changes**

Material:	0
Labor:	0
Purchase Services:	0
Other:	0
	<hr/>
<b>NET TOTAL - ITEM F</b>	<b>\$ -</b>
<b>NET COMBINED TOTAL</b>	

**ITEM G - Track Work**

Material:	0
Labor:	0
Additive:	0
Purchase Services:	0
	<hr/>
<b>NET TOTAL - ITEM G</b>	<b>\$ -</b>
<b>NET COMBINED TOTAL</b>	

**ITEM H - T-CUBED**

Lump Sum	\$ -
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**NOTES**

1. For all groups of CONTRACT employees, the composite labor surcharge rate used in this estimate (including insurance) is 185.81%. Self Insurance - Public Liability Property Damage is estimated at 16.00%. Work will be billed at actual current audited rate in effect at the time the services are performed.
2. For all groups of NON-CONTRACT employees, the composite labor surcharge rate used in this estimate (including insurance is 78.59%. Self Insurance - Public Liability Property Damage is estimated at 16.00%. Work will be billed at actual current audited rate in effect at the time the services are performed.
3. All applicable salvage items due the Department will be made available to it at the jobsite for its disposal.
4. The Force Account Estimate is valid for one (1) year after the date of the estimate (07/23/2021). If the work is not performed within this time frame the Railway may revise the estimate to (1) include work not previously indicated as necessary and (2) reflect changes in cost to perform the force account work.

## EXHIBIT B

STATEOFTENNESSEE

## SPECIAL PROVISIONS FOR PROTECTION OF RAILWAY INTEREST

**Project Information:** PIN#: 125450.04; Safety – Miscellaneous Safety Improvements; Various Local Roads in Anderson County (Local Roads Safety Initiative); At-Grade; Norfolk Southern Railway Company; Crossing (DOT#: 731035U); Fed. Proj. No.(s): HSIP-100(79); RR Proj. #: CX1114249

<b>Tennessee Project Number(s):</b>	Prelim. Eng. NEPA	01946-0445-94
	Prelim. Eng. DESIGN	01946-1445-94
	Construction	01946-3445-94

**County:** Anderson

## 1. CONTRACTOR PROTECTIVE SERVICES

The Contractor shall furnish and maintain appropriate qualified protective services required by the Railroad equipped to operate around Railroad operations when construction activities are taking place on or adjacent to the Railroad right-of-way and/or have the potential to foul the Railroad's track or operations (also referred to herein as "Contractor Protective Services"), as further detailed herein. The Department has allotted 3 Days for all Contractor Protective Services. No payment will be made to the Contractor for costs of Contractor Protective Services that are required in excess of the allotted days except as approved in writing in advance by the Department. Payment shall be based on actual invoices plus five percent (5%), but not to exceed \$ 1260 per day for Contractor Protective Services. Payment for Contractor Protective Services will be made under the following items:

105-07.04	Contractor Protective Services	DOLLAR
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Payment under 105-07.04 Contractor Protective Services (DOLLAR) is inclusive of all costs associated with such Contractor Protective Services, including but not limited to day rates, per diem, mileage, overtime, overhead, and additives.

## 2. PROJECT INFORMATION

- a. Date: 4/27/2023
- b. NS File No.: CX1114249
- c. NS Milepost: 33.59-D
- d. Sponsor's Project No.: PIN 125450.04
- e. Trains/Day: 2
- f. Maximum Train Speed: 40 MPH
- g. Email Subject Line: PIN 125450.04 - CX1114249 & BR0010433 Oliver Springs TN  
Donovan/Smith Rd & Offut Rd MP 33.59-D & 26.93-C - DOT 731035U  
& 730868P - Task 917



## E. Norfolk Southern – Special Provisions for Protection of Railway Interests

### 1. AUTHORITY OF RAILROAD ENGINEER AND SPONSOR ENGINEER:

Norfolk Southern Railway Company, hereinafter referred to as “Railroad”, and their authorized representative shall have final authority in all matters affecting the safe maintenance of railroad traffic including the adequacy of the foundations and structures supporting the railroad tracks. For Public Projects impacting the Railroad, the Railroad’s Public Improvements Engineer or Engineer Planning, hereinafter referred to as “Railroad Engineer”, will serve as the authorized representative of the Railroad.

A general engineering consultant may be utilized to assist the Railroad Engineer in handling the Project, hereinafter referred to as “Construction Engineering Representative”.

Other designated personnel by the Railroad Engineer shall hereinafter be referred to as “Railroad Representative”.

The authorized representative of the Project Sponsor (“Sponsor”), hereinafter referred to as the “Sponsor’s Engineer”, shall have authority over all other matters as prescribed herein and in the Project Specifications.

The Sponsor’s Prime Contractor, hereinafter referred to as “Contractor” shall be responsible for completing any and all work in accordance with the terms prescribed herein and in the Project Specifications. This shall include the qualified protective services of a contractor directly hired by the Contractor to protect their workers and construction activities while working on or adjacent to Railroad property, hereinafter referred to as “Contractor Protective Services”.

This document titled E. Norfolk Southern – Special Provisions for Protection of Railway Interests shall hereinafter be referred to as “Special Provisions”.

These terms and conditions are subject to change without notice at the sole discretion of the Railroad. The Contractor must request the latest version of these Special Provisions from the Railroad prior to commencing work and must follow the requirements outlined therein.

### 2. AUTHORIZATION TO PROCEED:

A. The Contractor shall not commence mobilizing to the Premises, as defined in the Norfolk Southern Contractor Right of Entry Agreement, until the Contractor has complied with the following conditions:

1. Signed and received a fully executed copy of the required Norfolk Southern Contractor Right of Entry Agreement. Contractor Right of Entry Agreements to be submitted via email to the Railroad Engineer.
2. Obtained written approval from the Railroad of Railroad Protective Liability Insurance coverage as required by paragraph 14 herein. It should be noted that the Railroad does not accept notation of Railroad Protective insurance on a certificate of liability insurance form or Binders as Railroad must have the full original countersigned policy. Further, please note that mere receipt of the policy is not the only issue but review for compliance. Due to the number of projects system-wide, it typically takes a minimum of 30-45 days for the Railroad to review.

3. Held a preconstruction meeting between the Contractor, the Sponsor, Railroad Engineer and/or their Construction Engineering Representative and the Railroad Representative(s). NOTE: Railroad Representative(s) may choose to not attend the preconstruction meeting at their discretion.
4. Obtained Contractor Protective Services as required by Section 8 herein.
5. Furnished a schedule for all construction activities which may impact the Railroad's property or operations. NOTE: Contractor Protective Services shall be provided any time construction activities are taking place on or adjacent to the Railroad Property and/or has the potential to foul the Railroad's track or operations as required by Section 8 herein.
6. Schedule an onsite start-of-work meeting between the Contractor, Contractor Protective Services personnel, Railroad Engineer and/or their Construction Engineering Representative and the Railroad Representative(s). NOTE: Railroad Representative(s) may choose to not attend the start-of-work meeting at their discretion.
7. Obtained written authorization to proceed from the Railroad to begin mobilization to the Premises, as defined in the Norfolk Southern Contractor Right of Entry Agreement, such authorization to include an outline of specific conditions with which the Contractor must comply. Written Authorization will be issued by the Railroad once all items on the Norfolk Southern Checklist for Construction - Direct Hire have been completed.

- B. The Railroad's written authorization to proceed with the work shall include the names, addresses, and telephone numbers of the Railroad Representative(s) and any specific Construction Engineering Representative who shall be notified as hereinafter required. Where more than one representative is designated, the area of responsibility of each representative shall be specified.
- C. All project-related utility work that is to occur on, over, or under Railroad right-of-way must be coordinated with the Norfolk Southern Pipe and Wire Program. The Contractor must receive approval from the Norfolk Southern Pipe and Wire Program prior to commencing any utility work.

**3. NOTICE OF STARTING WORK:**

- A. Before undertaking any construction activities on the Premises, as defined in the Norfolk Southern Contractor Right of Entry Agreement, the Contractor shall:
  1. Notify the Railroad Representative(s) at least 72 hours in advance of any construction activities that Contractor Protective Services have been obtained for use.
  2. Hold an onsite start-of-work meeting between the Contractor, Contractor Protective Services personnel, Railroad Engineer and/or their Construction Engineering Representative and the Railroad Representative(s). NOTE: Railroad Representative(s) may choose to not attend the start of work meeting at their discretion.

3. Receive assurance from the qualified protective services contractor that the Contractor Protective Services are properly equipped and have been site specific trained by the Railroad Representative prior to performing the full duties of protecting the Contractor. Until assurance from the qualified protective services contractor is obtained, Contractor Protective Services may act as an observer until such Contractor Protective Services are site specific trained by the Railroad Representative. The reference to an "observer" is defined as a person who has the authority to deny access to Contractor's workers and machinery to a specified Railroad operation zone as directed to the qualified protective services contractor by Railroad and prevent those potential to foul work events which may put the Contractor's workers and machinery at risk for injury or damage.

4. INTERFERENCE WITH RAILROAD OPERATIONS:

- A. The Contractor shall so arrange and conduct the Contractor's work that there will be no interference with Railroad's operations, including train, signal, telephone and telegraphic services, or damage to the property of the Railroad or to poles, wires, and other facilities of tenants on the rights-of-way of the Railroad. 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 Engineer for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor which requires Construction Engineering Representative inspection services shall be deferred by the Contractor until the Construction Engineering Representative inspection services are available at the job site. Contractor Protective Services shall be provided onsite any time construction activities are taking place on or adjacent to the Railroad Property and/or has the potential to foul the Railroad's track or operations
- B. Whenever work within Railroad's rights-of-way is of such a nature that impediment to Railroad's operations such as use of runaround tracks or necessity for reduced speed is unavoidable, the Contractor shall schedule and conduct the Contractor's 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 Engineer, or in the Railroad Engineer's absence, the Railroad's Division Engineer, such provisions are insufficient, either may require or provide such provisions as the Railroad deems necessary. In any event, such unusual provisions shall be at the Contractor's expense and without cost to the Railroad or the Sponsor.
- D. "One Call" Services do not locate buried Norfolk Southern Signals and Communications Lines. The contractor shall contact the Railroad's representative 7 days in advance of work at those places where excavation, pile driving, or heavy loads may damage the Railroad's underground facilities. Upon request from the Contractor or Sponsor, Railroad forces will locate and paint mark or flag the Railroad's underground facilities. The Contractor shall avoid excavation or other disturbances of these facilities. If disturbance or excavation is required near a buried Railroad facility, the contractor shall coordinate with the Railroad to have the facility potholed manually with careful hand excavation. The facility shall be protected by the Contractor during the course of the disturbance under the supervision and direction of the Railroad's Representative.

5. TRACK CLEARANCES:

- A. The minimum track clearances to be maintained by the Contractor during construction are shown on the Project Plans. If temporary clearances are not shown on the project plans, the following criteria shall govern the use of falsework and formwork above or adjacent to operated tracks.
1. A minimum vertical clearance of 22'-0" above top of highest rail shall be maintained at all times.
  2. A minimum horizontal clearance of 13'-0" from centerline of tangent track or 14'-0" from centerline of curved track shall be maintained at all times. Additional horizontal clearance may be required in special cases to be safe for operating conditions. This additional clearance will be as determined by the Railroad Engineer.
  3. All proposed temporary clearances which are less than those listed above must be submitted to Railroad Engineer for approval prior to construction and must also be authorized by the regulatory body of the State if less than the legally prescribed clearances.
  4. The temporary clearance requirements noted above shall also apply to all other physical obstructions including, but not limited to: stockpiled materials, parked equipment, placement or driving of piles, and bracing or other construction supports.

6. CONSTRUCTION PROCEDURES:

A. General:

1. Construction work and operations by the Contractor on Railroad property shall be:
  - a. Subject to the inspection and approval of the Railroad Engineer or their designated Construction Engineering Representative.
  - b. In accordance with the Railroad's written outline of specific conditions.
  - c. In accordance with the Railroad's general rules, regulations and requirements including those relating to safety, fall protection and personal protective equipment.
  - d. In accordance with these Special Provisions.
2. Submittal Requirements
  - a. The Contractor shall submit all construction related correspondence and submittals electronically to the Railroad Engineer and/or their designated Construction Engineering Representative.
  - b. The contractor should anticipate a minimum of 45 days for NS and their Construction Engineering Representative to complete the review of all construction submittals. Time frames for reviews can vary significantly depending on the complexity of the project and the quality of submittals. Submittals requiring input from other departments may require additional time.

- c. All work in the vicinity of the Railroad's property that has the potential to affect the Railroad's train operations or disturb the Railroad's property must be submitted and approved by the Railroad prior to work being performed.
- d. All submittals and calculations must be signed and sealed by a registered engineer licensed in the state of the project work.
- e. All submittals shall first be approved by the Sponsor's Engineer prior to submission to the Railroad Engineer for review. Submittals are reviewed by the Railroad for impacts to Railroad operations only; therefore, approval from the Railroad Engineer shall not relieve the Contractor from liability.
- f. For all construction projects, the following submittals, but not limited to those listed below, shall be provided for review and approval when applicable:
  - (1) General Means and Methods
  - (2) Ballast Protection
  - (3) Construction Excavation & Shoring
  - (4) Pipe, Culvert, & Tunnel Installations
  - (5) Demolition Procedure
  - (6) Erection & Hoisting Procedure
  - (7) Debris Shielding or Containment
  - (8) Blasting
  - (9) Formwork for the bridge deck, diaphragms, overhang brackets, and protective platforms
  - (10) Bent Cap Falsework. A lift plan will be required if the contractor want to move the falsework over the tracks.
- g. For Undergrade Bridges (Bridges carrying the Railroad) the following submittals in addition to those listed above shall be provided for review and approval:
  - (1) Girder Shop Drawings including welding/fabrication procedures
  - (2) Bearing Shop Drawings and Material Certifications
  - (3) Shop Drawings for drainage, handrails/fencing, and expansion dams
  - (4) Concrete Mix Design
  - (5) Structural Steel, Rebar, and/or Strand Certifications
  - (6) 28-day Cylinder Test for Concrete Strength
  - (7) Waterproofing Material Certification
  - (8) Dampproofing materials
  - (9) Test Reports for all steel
  - (10) Foundation Construction Reports

Other submittals may be required upon request from the Railroad. Fabrication may not begin until the Railroad has approved the required shop drawings.



- h. The Contractor shall include in all submissions a detailed narrative indicating the progression of work with the anticipated timeframe to complete each task. Work will not be permitted to commence until the Contractor has provided the Railroad with a satisfactory plan that the project will be undertaken without scheduling, performance, or safety related issues. Submissions shall also provide: a listing of the anticipated equipment to be used, plan and profile views showing the location of all equipment to be used relative to the track centerline(s) shown, and a contingency plan of action covering the event that a primary piece of equipment malfunctions.

**B. Ballast Protection**

1. The Contractor shall submit the proposed ballast protection system detailing the specific filter fabric and anchorage system to be used during all construction activities.
2. The ballast protection is to extend 25' beyond the proposed limit of work, be installed at the start of the project and be continuously maintained to prevent all contaminants from entering the ballast section of all tracks for the entire duration of the project.

**C. Excavation:**

1. 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 existing section meet this specification if substandard, in which case the existing section will be maintained.
2. Additionally, the Railroad will require the installation of an OSHA approved handrail and orange construction safety fencing for all excavations of the Railroad right-of-way.

**D. Excavation for Structures and Shoring Protection:**

1. 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.
2. The use of shoring systems utilizing tiebacks shall not be permitted without written approval from the Railroad Engineer.
3. Shoring systems utilizing trench boxes shall not be permitted within the Theoretical Railroad Embankment (Zones 1, 2, or 3) as shown on NS Typical Drawing No. 4 – Shoring Requirements without written approval from the Railroad Engineer.
4. All plans and calculations for shoring shall be prepared, signed, and sealed by a Registered Professional Engineer licensed in the state of the proposed project, in accordance with Norfolk Southern's Overhead Grade Separation Design Criteria, subsection H.1.6 - Construction Excavation (Refer to Norfolk Southern Public Improvement Projects Manual Appendix H). The Registered Professional Engineer will be responsible for the accuracy for all controlling dimensions as well as the selection of soil design values which will accurately reflect the actual field conditions.

5. The Contractor shall provide a detailed installation and removal plan of the shoring components. Any component that will be installed via the use of a crane or any other lifting device shall be subject to the guidelines outlined in Section 6.G of these Special Provisions.
6. The Contractor shall be required to survey the track(s) and Railroad embankment and provide a cross section of the proposed excavation in relation to the tracks.
7. Calculations for the proposed shoring should include deflection calculations. The maximum deflection for excavations within 18'-0" of the centerline of the nearest track shall be 3/8". For all other cases, the max deflection shall not exceed 1/2".
8. Additionally, the Railroad will require the installation of an OSHA approved handrail and orange construction safety fencing for all excavations of the Railroad right-of-way.
9. The front face of shoring located closest to the NS track for all shoring setups located in Zone 2 (shown on NS Typical Drawing No. 4 – Shoring Requirements in Appendix I) shall remain in place and be cut off 2'-0" below the final ground elevation. The remaining shoring in Zone 2 and all shoring in Zone 1 may be removed and all voids must be backfilled with flowable fill.

**E. Pipe, Culvert, & Tunnel Installations**

1. Pipe, Culvert, & Tunnel Installations shall be in accordance with the appropriate Norfolk Southern Design Specification as noted below:
  - a. For Open Cut Method refer to Norfolk Southern Public Improvement Projects Manual Appendix H.4.6.
  - b. For Jack and Bore Method refer to Norfolk Southern Public Improvement Projects Manual Appendix H.4.7.
  - c. For Tunneling Method refer to Norfolk Southern Public Improvement Projects Manual Appendix H.4.8.
2. The installation methods provided are for pipes carrying storm water or open flow run-off. All other closed pipeline systems shall be installed in accordance Norfolk Southern's Pipe and Wire Program and the NSCE-8.

**F. Demolition Procedures**

1. General
  - a. Demolition plans are required for all spans over the track(s), for all spans adjacent to the track(s), if located on (or partially on) Railroad right-of-way; and in all situations where cranes will be situated on, over, or adjacent to Railroad right-of-way and within a distance of the boom length plus 15'-0" from the centerline of track.
  - b. Railroad tracks and other Railroad property must be protected from damage during the procedure.

- c. A pre-demolition meeting shall be conducted with the Sponsor, the Railroad Engineer and/or the Construction Engineering Representative, and the key Contractor's personnel prior to the start of the demolition procedure.
- d. The Railroad Engineer and/or the Construction Engineering Representative must be present at the site during the entire demolition procedure period.
- e. Demolition of existing bridge decks in spans over the Railroad shall be performed in a controlled manner (i.e. saw-cutting). No impact equipment (track-mounted hoe-ram, jackhammers, etc.) may be used over the Railroad without approval by the Railroad Engineer.
- f. Existing, obsolete, bridge piers shall be removed to a sufficient depth below grade to enable restoration of the existing/proposed track ditch, but in no case less than 2'-0" below final grade.

2. Submittal Requirements

- a. In addition to the submittal requirements outlined in Section 6.A.2 of these Special Provisions, the Contractor shall submit the following for approval by the Railroad Engineer:
  - (1) A plan showing the location of cranes, horizontally and vertically, with proposed boom lengths, operating radii, counterweights, and delivery or disposal locations shown. The location of all tracks and other Railroad facilities as well as all obstructions such as wire lines, poles, adjacent structures, etc. must also be shown.
  - (2) Rating sheets showing that cranes or lifting devices are adequate for 150% of the actual weight of the pick, including all rigging components. A complete set of crane charts, including crane, counterweight, and boom nomenclature is to be submitted. Safety factors that may have been "built-in" to the crane charts are not to be considered when determining the 150% factor of safety.
  - (3) Plans and computations showing the weight of the pick must be submitted. Calculations shall be made from plans of the existing structure showing complete and sufficient details with supporting data for the demolition of the structure. If plans do not exist, lifting weights must be calculated from field measurements. The field measurements are to be made under the supervision of the Registered Professional Engineer submitting the procedure and calculations.

- (4) The Contractor shall provide a sketch of all rigging components from the crane's hook block to the object being hoisted. Catalog cuts or information sheets of all rigging components with their lifting capacities shall be provided. All rigging must be adequate for 150% of the actual weight of the pick. Safety factors that may have been "built-in" to the rating charts are not to be considered when determining the 150% factor of safety. All rigging components shall be clearly identified and tagged with their rated lifting capacities. The position of the rigging in the field shall not differ from what is shown on the final plan without prior review from the Sponsor and the Railroad.
- (5) A complete demolition procedure, including the order of lifts, time required for each lift, and any repositioning or re-hitching of the crane or cranes.
- (6) Design and supporting calculations for the temporary support of components, including but not limited to the stability of the superstructure during the temporary condition, temporary girder tie-downs and falsework.

3. Overhead Demolition Debris Shield

- a. The demolition debris shield shall be installed prior to the demolition of the bridge deck or other relevant portions of the superstructure over the track area to catch all falling debris.
- b. The demolition debris shield shall provide a minimum vertical clearance as specified in Section 5.A.1 of these Special Provisions or maintain the existing vertical clearance if the existing clearance is less than that specified in Section 5.A.1.
- c. The Contractor shall include the demolition debris shield installation/removal means and methods as part of the proposed demolition procedure submission.
- d. The Contractor shall submit the demolition debris shield design and supporting calculations for approval by the Railroad Engineer.
- e. The demolition debris shield shall have a minimum design load of 50 pounds per square foot plus the weight of the equipment, debris, personnel, and other loads to be carried.
- f. The Contractor shall include the proposed bridge deck removal procedure in its demolition means and methods and shall verify that the size and quantity of the demolition debris generated by the procedure does not exceed the shield design loads.
- g. The Contractor shall clean the demolition debris shield daily or more frequently as dictated either by the approved design parameters or as directed by the Railroad Engineer.

4. Vertical Demolition Debris Shield

- a. A vertical demolition debris shield may be required for substructure removals in close proximity to the Railroad's track and other facilities, as determined by the Railroad Engineer.

G. Erection & Hoisting Procedures

1. General

- a. Erection plans are required for all spans over the track(s), for all spans adjacent to the track(s), if located on (or partially on) Railroad right-of-way; and in all situations where cranes will be situated on, over, or adjacent to Railroad right-of-way and within a distance of the boom length plus 15'-0" from the centerline of track.
- b. Neither crane handoffs nor "walking" of cranes with suspended load will be permitted for erection on or over Railroad right-of-way.
- c. Railroad tracks and other Railroad property must be protected from damage during the erection procedure.
- d. A pre-erection meeting shall be conducted with the Sponsor, the Railroad Engineer and/or the Construction Engineering Representative, and the key Contractor's personnel prior to the start of the erection procedure.
- e. The Railroad Engineer and/or the Construction Engineering Representative must be present at the site during the entire erection procedure period.
- f. For field splices located over Railroad property, a minimum of 50% of the holes for each connection shall be filled with bolts or pins prior to releasing the crane. A minimum of 50% of the holes filled shall be filled with bolts. All bolts must be appropriately tightened. Any changes to previously approved field splice locations must be submitted to the Railroad for review and approval. Refer to Norfolk Southern's Overhead Grade Separation Design Criteria for additional splice details (Norfolk Southern Public Improvement Projects Manual Appendix H.1, Section 4.A.3.).

2. Submittal Requirements

- a. In addition to the submittal requirements outlined in Section 6.A.2 of these provisions, the Contractor shall submit the following for approval by the Railroad Engineer:
  - (1) As-built beam seat elevations - All as-built bridge seats and top of rail elevations shall be furnished to the Railroad Engineer for review and verification at least 30 days in advance of the erection, to ensure that minimum vertical clearances as approved in the plans will be achieved.
  - (2) A plan showing the location of cranes, horizontally and vertically, with proposed boom lengths, operating radii, counterweights, and delivery or staging locations shown. The location of all tracks and other Railroad facilities as well as all obstructions such as wire lines, poles, adjacent structures, etc. must also be shown.

- (3) Rating sheets showing that cranes or lifting devices are adequate for 150% of the actual weight of the pick, including all rigging components. A complete set of crane charts, including crane, counterweight, and boom nomenclature is to be submitted. Safety factors that may have been "built-in" to the crane charts are not to be considered when determining the 150% factor of safety.
- (4) Plans and computations showing the weight of the pick must be submitted. Calculations shall be made from plans of the proposed structure showing complete and sufficient details with supporting data for the erection of the structure. If plans do not exist, lifting weights must be calculated from field measurements. The field measurements are to be made under the supervision of the Registered Professional Engineer submitting the procedure and calculations.
- (5) The Contractor shall provide a sketch of all rigging components from the crane's hook block to the object being hoisted. Catalog cuts or information sheets of all rigging components with their lifting capacities shall be provided. All rigging must be adequate for 150% of the actual weight of the pick. Safety factors that may have been "built-in" to the rating charts are not to be considered when determining the 150% factor of safety. All rigging components shall be clearly identified and tagged with their rated lifting capacities. The position of the rigging in the field shall not differ from what is shown on the final plan without prior review from the Sponsor and the Railroad.
- (6) A complete erection procedure, including the order of lifts, time required for each lift, and any repositioning or re-hitching of the crane or cranes.
- (7) Design and supporting calculations for the temporary support of components, including but not limited to temporary girder tie-downs and falsework.

H. Blasting:

1. The Contractor shall obtain advance approval of the Railroad Engineer and the Sponsor 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 additional provisions as designated by the Railroad Engineer.

I. Track Monitoring

1. At the direction of the Railroad Engineer, any activity that has the potential to disturb the Railroad track structure may require the Contractor to submit a detailed track monitoring program for approval by the Railroad Engineer.

2. The program shall specify the survey locations, the distance between the location points, and frequency of monitoring before, during, and after construction. Railroad reserves the right to modify the survey locations and monitoring frequency as necessary during the project.
3. The survey data shall be collected in accordance with the approved frequency and immediately furnished to the Railroad Engineer for analysis.
4. If any movement has occurred as determined by the Railroad Engineer, the Railroad will be immediately notified. Railroad, at its sole discretion, shall have the right to immediately require all Contractor operations to be ceased and determine what corrective action is required. Any corrective action required by the Railroad or performed by the Railroad including the monitoring of corrective action of the Contractor will be at project expense.

J. 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 within Railroad rights-of-way and repair any other damage to the property of the Railroad or its tenants.
2. If, in the course of construction, it may be necessary to block a ditch, pipe or other drainage facility, temporary pipes, ditches, or other drainage facilities shall be installed to maintain adequate drainage, as approved by the Railroad Engineer. Upon completion of the work, the temporary facilities shall be removed, and the permanent facilities restored.
3. All such maintenance and repair of damages due to the Contractor's operations shall be done at the Contractor's expense.

K. Storage of Materials and Equipment:

1. Materials and equipment shall not be stored where they will interfere with Railroad operations, nor on the rights-of-way of the Railroad without first having obtained permission from the Railroad Engineer, and such permission will be with the understanding that the Railroad will not be liable for damage to such material and equipment from any cause and that the Railroad Engineer may move or require the Contractor to move, at the Contractor's expense, such material and equipment.
2. All grading or construction machinery that is left parked near the track unattended by Contractor Protective Services shall be effectively immobilized so that it cannot be moved by unauthorized persons. The Contractor shall protect, defend, indemnify and save the 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.

L. Cleanup:

1. Upon completion of the work, the Contractor shall remove from within the limits of the Railroad rights-of-way, all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of the Contractor, and leave said rights-of-way in a neat condition satisfactory to the Railroad Engineer or the Railroad Representative.

7. DAMAGES:

- A. The Contractor shall assume all liability for any and all damages to the Contractor's work, employees, servants, equipment, and materials caused by Railroad traffic.
- B. Any cost 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.

8. CONTRACTOR PROTECTIVE SERVICES:

A. Requirements:

1. Qualified protective services are those services of a contractor, directly hired by the Prime Contractor, that have been vetted through the Railroad and are allowed to be performed on Railroad property.
2. Contractor Protective Services shall be onsite anytime construction activities are taking place on or adjacent to the Railroad Property and/or have the potential to foul the Railroad's track or operations.
3. Contractor Protective Services shall be those services of a subcontractor to the Contractor who have the ability to fully protect the Contractor's workers and machinery once the qualified protective services contractor confirms the Contractor Protective Services are properly equipped and site specific trained by the Railroad Representative. Contractor Protective Services may act as an observer until such Contractor Protective Services are site specific trained by the Railroad Representative. The reference to an "observer" is defined as a person who has the authority to deny access to Contractor's workers and machinery to a specified Railroad operation zone as directed to the qualified protective services contractor by Railroad and prevent those potential to foul work events which may put the Contractor's workers and machinery at risk for injury or damage.
4. Contractor Protective Services will not be allowed on the property until all items on the Norfolk Southern Checklist for Construction- Direct Hire have been completed and the authorization to proceed is given by the Railroad Engineer.
5. Under the terms of the agreement between the Sponsor and the Railroad, the Railroad has sole authority to determine the need for any Railroad Protective Services required to protect its operations or work designated to be done by the Railroad through the force account estimate.



9. HAUL ACROSS RAILROAD TRACK:

- A. Where the plans show or imply that materials of any nature must be hauled across the Railroad's track, unless the plans clearly show that the Sponsor 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 across the Railroad's track. The Contractor or Sponsor will be required to bear all costs incidental to such crossings whether services are performed by the Contractor's own forces or by Railroad personnel.
- B. No crossing may be established for use by the Contractor for transporting materials or equipment across the tracks of the Railroad unless specific authority for its installation, maintenance, use, until the Contractor has a fully executed a temporary private crossing agreement between the Contractor and Railroad. The approval process for an agreement normally takes 90 days.

10. 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 Sponsor and the Railroad or will be covered by appropriate revisions to same which will be initiated and approved by the Sponsor and/or the Railroad.
- B. Should the Contractor desire any changes in addition to the above, then the Contractor shall make separate arrangements with the Railroad for same to be accomplished at the Contractor's expense.

11. 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 Contractor's schedule, the Contractor shall ascertain, from the Railroad, the lead time required for assembling crews and materials and shall make due allowance therefore.
- B. No charge or claim of the Contractor against either the Sponsor or the Railroad will be allowed for hindrance or delay on account of railroad traffic; any work done by the Railroad or other delay incident to or necessary for safe maintenance of railroad traffic or for any delays due to compliance with these Special Provisions.

12. TRAINMAN'S WALKWAYS:

- A. 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 trainman'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 and track drainage encroachments or obstructions allowed during work hours while Railroad's Protective Service is provided 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 and must conform to AREMA and/or FRA standards.

- H. Trucks, tractors, or any equipment will not touch ballast line without specific permission from Railroad Representative and Contractor Protective Services personnel. At the beginning of each project that involves the Contractor working within 25' of the centerline of any track, orange construction fencing must be established. Orange construction fencing shall be established in accordance with the minimum temporary horizontal clearances contained in Section 5.A.2 and shall be maintained for the duration of construction.
- I. No equipment or load movement is permitted within 25' or above a standing train or Railroad equipment without specific authorization of the Contractor Protective Services personnel.
- 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 Contractor Protective Services personnel if said personnel 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 Railroad embankment with heavy equipment without specific permission from the Railroad Engineer, Railroad Representative and Contractor Protective Services personnel.
- M. No equipment or materials will be parked or stored on Railroad's property unless specific authorization is granted from the Railroad Engineer.
- N. All unattended equipment that is left parked on Railroad property shall be effectively immobilized so that it cannot 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.
- P. Prior to performing any crane operations, the Contractor shall establish a single point of contact for the Contractor Protective Services personnel to remain in communication with at all times. Contractor Protective Services personnel must also be in direct contact with the individual(s) directing the crane operation(s).

15. INSURANCE:

- A. In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, the Prime Contractor will be required to carry insurance of the following kinds and amounts:
  - 1. A Commercial General Liability ("CGL") policy containing products and completed operations, bodily injury, property damage, and contractual liability coverage, with a combined single limit of not less than \$5,000,000 for each occurrence with a general aggregate limit of not less than \$5,000,000. Any portion of this requirement may be satisfied by a combination of General Liability and/or Excess/Umbrella Liability Coverage. The CGL policy shall provide additional insured coverage equivalent to at least as broad as ISO CG 20 10 11/85.

2. 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. This policy shall be endorsed to include Transportation Pollution Liability Broadened Coverage ISO CA 99 48 03 06 or MCS-90 if vehicles are subject to Federal jurisdiction. If this coverage is on a claims-made form, the Retro Active Date must be prior to the date of this Agreement and the policy endorsement must be maintained for not less than seven (7) years.
3. 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 the work.
4. 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.
5. All insurance required in Section 15.A (excluding any Workers' Compensation policy) shall name Norfolk Southern Railway and its parent, subsidiary, and affiliated companies as additional insureds with an appropriate endorsement to each policy.
6. All policies secured by Contractor, whether primary, excess, umbrella or otherwise, and providing coverage to the Railroad as an additional insured (i) are intended to take priority in responding and to pay before any insurance policies Railroad may have secured for itself must respond or pay and (ii) may not seek contribution from any policies the Railroad may have secured for itself.
7. 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.
8. To the fullest extent permitted by law, all insurance furnished by Contractor in compliance with Section 15.A shall include a waiver of subrogation in favor of Railroad with an appropriate endorsement to each policy.
9. All policies required in Section 15.A shall not be subject to cancellation, termination, modification, changed, or non-renewed except upon thirty (30) days' prior written notice to the additional insureds.
10. The insurance coverages maintained by Contractor shall not limit any indemnity obligations or other liabilities. The insurance available to Railroad and its parent, subsidiary and affiliated companies as additional insureds shall not be limited by these requirements should Licensee maintain higher coverage limits.
11. Any deductibles or retentions in excess of \$50,000 maintained on any insurance required in 15.A shall be disclosed and approved by Railroad with a request made for approval to NSRISK3@nscorp.com.

12. Anyone subcontractor providing work on this project must extend CG 20 38 (or broader coverage) additional Insured endorsement to provide coverage for up stream parties.
13. Contractor shall require all subcontractors who are not covered by the insurance carried by Contractor to obtain commercially reasonable insurance coverage, but not less than the requirements of 15.A.

B. In addition to the insurances required in Section 15.A, the Contractor shall also procure on behalf of the Railroad for the entirety of the project:

1. Railroad Protective Liability (RPL) Insurance having a combined single limit of not less than \$5,000,000 each occurrence and \$10,000,000 in the aggregate applying separately to each annual period. Said policy shall provide coverage for all loss, damage or expense arising from bodily injury and property damage liability, and physical damage to property attributed to acts or omissions at the job site.

The standards for the Railroad Protective Liability Insurance are as follows:

- a. The insurer must be rated A- or better by A.M. Best Company, Inc.
- b. The policy must be written using one of the following combinations of Insurance Services Office ("ISO") RPL Insurance Form Numbers:
  - (1) CG 00 35 01 96 and CG 28 31 10 93; or
  - (2) CG 00 35 07 98 and CG 28 31 07 98; or
  - (3) CG 00 35 10 01; or
  - (4) CG 00 35 12 04; or
  - (5) CG 00 35 12 07; or
  - (6) CG 00 35 04 13.
- c. The named insured shall read:

Norfolk Southern Corporation and its subsidiaries and affiliates  
650 West Peachtree Street NW – Box 46  
Atlanta, GA 30308  
Attn: Risk Manager

**(NOTE: Railroad does not share coverage on RPL with any other entity on this policy)**

- d. The description of operations must appear on the Declarations, must match the project description in this agreement, and must include the appropriate Sponsor project and contract identification numbers.
- e. The job location must appear on the Declarations and must include the city, state, and appropriate highway name/number. **NOTE: Do not include any references to milepost, valuation station, or mile marker on the insurance policy.**
- f. The name and address of the prime Contractor must appear on the Declarations.

- g. The name and address of the Sponsor must be identified on the Declarations as the "Involved Governmental Authority or Other Contracting Party."
- h. Endorsements/forms that are **required** are:
  - (1) Physical Damage to Property Amendment
  - (2) Terrorism Risk Insurance Act (TRIA) coverage must be included
- i. Other endorsements/forms that will be accepted are:
  - (1) Broad Form Nuclear Exclusion – Form IL 00 21
  - (2) 30-day Advance Notice of Non-renewal or cancellation
  - (3) Required State Cancellation Endorsement
  - (4) Quick Reference or Index Form CL/IL 240
- j. Endorsements/forms that are NOT acceptable are:
  - (1) Any Pollution Exclusion Endorsement except CG 28 31
  - (2) Any Punitive or Exemplary Damages Exclusion
  - (3) Known injury or Damage Exclusion form CG 00 59
  - (4) Any Common Policy Conditions form
  - (5) An Endorsement that limits or excludes Professional Liability coverage
  - (6) A Non-Cumulation of Liability or Pyramiding of Limits Endorsement
  - (7) An Endorsement that excludes TRIA coverage
  - (8) A Sole Agent Endorsement
  - (9) Any type of deductible endorsement or amendment
  - (10) Any other endorsement/form not specifically authorized in item no. 2.h above.

**SPONSOR:**

**RAILROAD:**

Risk Management  
Norfolk Southern Corporation and its subsidiaries  
650 West Peachtree Street NW – Box 46  
Atlanta, GA 30308  
[NSRISK3@NSCORP.COM](mailto:NSRISK3@NSCORP.COM)

- C. All insurance required under Section 15.A and 15.B shall be underwritten by insurers and be of such form and content, as may be acceptable to the Railroad. Prior to entry on Railroad right-of-way, the original electronic RPL Insurance Policy shall be submitted by the Prime Contractor to the Railroad at [NSRISK3@NSCORP.COM](mailto:NSRISK3@NSCORP.COM) for review and approval. In addition, certificates of insurance evidencing the Prime Contractor's insurance compliant with the requirements in 15.A shall be issued to the Railroad at [NSRISK3@NSCORP.COM](mailto:NSRISK3@NSCORP.COM) at the same time the RPL Policy is submitted.
- D. The insurance required herein shall in no way serve to limit the liability of Sponsor or its Contractors under the terms of this agreement.

E. Insurance Submission Procedures

1. The Railroad will only accept initial insurance submissions via email to NSRISK3@NSCORP.COM. The Railroad will NOT accept initial insurance submissions via hard copies that would be sent either US Mail or Overnight carrier or faxes as only electronic versions only are to be submitted to Railroad. **Please provide point of contact information with the submission including a phone number and email address.**

For email insurance submissions, the subject line should follow the format provided unless otherwise directed by the Railroad Engineer:

Insurance Submittal: City, State – NS File Number – NS Milepost – Project Name – Sponsor Project #

2. Railroad requires the following two (2) forms of insurance in the initial electronic insurance submission to NSRISK3@NSCORP.COM to be submitted under a cover letter providing details of the project and containing the contact information:
  - a. The full original or certified true electronic countersigned copy of the RPL Insurance Policy in its entirety inclusive of all declarations, schedule of forms and endorsements along with the policy forms and endorsements as required in Section 15.B.
  - b. A certificate of insurance from the Contractor evidencing the Contractor's insurance in Section 15.A (i.e. the Contractor's commercial general, automobile, and workers' compensation liability insurance, etc.). The certificate must show Norfolk Southern Railroad and its subsidiaries and affiliated companies as an additional insured on the General Liability and Auto policies. The certificate should also indicate that the Workers' Compensation policy waives subrogation against Norfolk Southern Corporation and its subsidiaries. See Appendix J for a Sample Certificate of Insurance.

16. FAILURE TO COMPLY:

- A. In the event the Contractor violates or fails to comply with any of the requirements of these Special Provisions:
  1. The Railroad Engineer may require that the Contractor vacate Railroad property.
  2. The Sponsor's Engineer may withhold all monies due the Contractor on monthly statements.
- B. Any such orders shall remain in effect until the Contractor has remedied the situation to the satisfaction of the Railroad Engineer and the Sponsor's Engineer.

17. PAYMENT FOR COST OF COMPLIANCE:

- A. No separate payment will be made for any extra cost incurred on account of compliance with these Special Provisions. All such costs shall be included in prices bid for other items of the work as specified in the payment items.

18. PROJECT INFORMATION

- A. Date: \_\_\_\_\_
- B. NS File No.: \_\_\_\_\_
- C. NS Milepost: \_\_\_\_\_
- D. Sponsor's Project No. \_\_\_\_\_

## EXHIBIT C

### **DEBARMENT CERTIFICATION OF CONTRACTOR REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

\_\_\_\_\_ certifies to the best of its knowledge and belief, that it and its subsidiaries:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or Contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had on (1) or more public transactions (Federal, State or Local) terminated for cause or default.

(If the primary participant is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE PRIMARY PARTICIPANT (POTENTIAL CONTRACTOR FOR A MAJOR THIRD PARTY CONTRACT) \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

\_\_\_\_\_  
Signature and Title of Authorized Official

\_\_\_\_\_  
Date



## EXHIBIT C

### **DEBARMENT, SUSPENSION, & OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION** **CERTIFICATION OF LOWER-TIER PARTICIPANTS REGARDING DEBARMENT,** **SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION**

The Lower-Tier Participant (potential sub-contractor under a major third party Contract), \_\_\_\_\_, certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(If the Lower-Tier Participant is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal.)

THE LOWER-TIER PARTICIPANT (POTENTIAL CONTRACTOR UNDER A MAJOR THIRD PARTY CONTRACT) \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

\_\_\_\_\_  
Signature and Title of Authorized Official

\_\_\_\_\_  
Date