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February 12, 2021

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Submitted via e-filing

Re: STB Finance Docket No. 36485, *City of Atlanta, Georgia—Petition for Preliminary Injunction and Petition for Declaratory Order—Norfolk Southern Corporation*

Dear Ms. Brown:

I have attached the City of Atlanta, Georgia's (City) Petition for Preliminary Injunction in the above-captioned proceeding. Due to the urgency of the matter, the City is filing a Petition for Preliminary Injunction immediately and will file the associated Petition for Declaratory Order in the matter no later than February 19, 2021. The filing fee of $1,400 for a Petition for Declaratory Order was paid today.

The City, a political subdivision of the State of Georgia, is seeking a waiver of the filing fee based on the fact that it is a state government entity filing the Petition for Preliminary Injunction and Petition for Declaratory Order on behalf of the general public. *See* 49 C.F.R. §1002.2(e); STB Ex Parte No. 542 (Sub-No. 6) - *Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services--Policy Statement* (Served December 6, 2000). Specifically, 49 C.F.R. 1002.2(e)(1) states that "filing fees are waived for application and other proceedings which is filed by…a state or local government agency." The City is a local government agency filing the request on behalf of the general public. Accordingly, the City requests that the filing fee submitted with its petitions for relief be waived.

Thank you very much for your attention to this matter.

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February 12, 2021
SURFACE
TRANSPORTATION BOARD

Yours very truly,

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Charles A. Spitulnik
Counsel for the City of Atlanta, Georgia

Enclosure

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36485

CITY OF ATLANTA, GEORGIA—
PETITION FOR PRELIMINARY INJUNCTION AND PETITION FOR DECLARATORY ORDER—
NORFOLK SOUTHERN CORPORATION

PETITION FOR PRELIMINARY INJUNCTION

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36485

CITY OF ATLANTA, GEORGIA—
PETITION FOR PRELIMINARY INJUNCTION AND PETITION FOR DECLARATORY ORDER—
NORFOLK SOUTHERN CORPORATION

PETITION FOR PRELIMINARY INJUNCTION

The City of Atlanta hereby requests the Surface Transportation Board (STB or Board) to issue a Preliminary Injunction enjoining Norfolk Southern Corporation (NS) and Lincoln Terminal Company (Lincoln Terminal) from all further excavation, construction and operations at the site known as "Chattahoochee Brick," and/or "NS Bulk Transfer Facility" located at 3195 Brick Plant Road in Atlanta, Georgia, until the Board issues a decision on the City of Atlanta's Petition for Declaratory Order, to be filed no later than February 19, 2021**.**

Chattahoochee Brick is a site of tremendous historical and cultural significance to the citizens of the City of Atlanta. Evidence indicates that the Chattahoochee Brick site is also a burial ground. In addition, the site lies partially within a floodplain, nestled against the Chattahoochee River and Proctor Creek, and has laid abandoned by its owners for years. Despite the historical importance of Chattahoochee Brick, the floodplain, and the environmental conditions on the site, NS and Lincoln Terminal have commenced construction of a transload facility on the site without regard to the myriad local health and safety laws and regulations and federal floodplain requirements that apply at this site. Continued physical destruction at the site, which recent

research confirms includes a burial site for workers who died while working at the plant in the late 19th and early 20th centuries, risks the total loss of a heritage site with substantial historical significance and violates City and State laws which are a legitimate and uniformly applied exercise of state and local police powers. The Board should grant the injunction requested here to prevent irreparable harm to the City of Atlanta.

I. Background

A. The History of Chattahoochee Brick

In the late 1800s and early 1900s the Chattahoochee Brick company in Atlanta, Georgia purchased Black convict laborers from the State of Georgia and the City of Atlanta to work at its brick manufacturing facility. Douglas A. Blackmon, SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II 343-346 (2008). The prisoner laborers produced millions of bricks which, in turn, helped rebuild the City of Atlanta after the Civil War. *Id.*

The convict laborers forced to work at Chattahoochee Brick endured horrific and gruesome treatment. Blackmon wrote that Chattahoochee Brick was "the biggest, and arguably the most abusive buyer of force laborers in Georgia." *Id.* at 74. "Chattahoochee Brick relied on slave workers from its inception in 1878, and by the early 1890s more than 150 prisoners were employed in the wilting heat of its fires." *Id.* at 343. Blackmon located testimony from a 1908 legislative committee hearing which detailed the operations and atrocities committed at Chattahoochee Brick. According to Blackmon, Chattahoochee Brick "forced laborers to their absolute physical limits to extract modern levels of production from archaic manufacturing techniques of a distant era." *Id.* at 344. Blackmon explained operations on-site as follows:

> Nearly two hundred men sold by the state of Georgia, the local county, and the city of Atlanta—virtually all of them black---labored at the complex of buildings, giant

> ovens, and smokestacks nine miles from the city and a short distance from the Chattahoochee River. . . Gangs of prisoners sold from the pestilential city stockade on Bryan Street dug wet clay with shovels and picks in nearby riverbank pits for transport back to the plant. There a squad of men pushed clay that had been cured in the open air into tens of thousands of rectangular molds. Once dried, the bricks were carried at a double-time pace by two dozen laborers running back and forth—under almost continual lashing by [the Owner]'s overseer, Capt. James T. Casey—to move the bricks to one of nearly a dozen huge coal-fired kilns, also called "clamps." At each kiln, one worker stood atop a barrel, in the withering heat radiating from the fires, furiously tossing the bricks into the top of the ten-foot-high oven.
>
> After being baked for a week or more, the fully hardened bricks were loaded, still hot, in groups of eight or ten onto crude wooden pallets tied to the necks and backs of young black men. The laborers ran—also carrying two hot bricks in each hand—across the yard and up a narrow plank to train cars waiting on an adjacent railroad spur and stacked the new bricks for delivery. Witnesses testified that guards holding long horse whips struck any worker who slowed to a walk or paused. . . The prisoners of the brickyard produced nearly 33 million bricks in twelve months ending in May 1907, generating sales of $239,402—or roughly $5.2 million [in 2008 dollars]. . .
>
> [P]risoners at the plant were forced to work under unbearable circumstances, fed rotting and rancid food, housed in barracks rife with insects, driven with whips into the hottest and most intolerable areas of the plant, and continually required to work at a constant run in the heat of the ovens. The plant was so hot that guards didn't carry guns for fear their cartridges might spontaneously detonate. One former guard told the committee that two hundred to three hundred floggings were administered each month. "They were whipping all the time. It would be hard to tell how many whippings they did a day," testified Arthur W. Moore, a white ex-employee of the company. Another former guard said Captain Casey was a "barbarous" whipping boss who beat fifteen to twenty convicts each day, often until they begged and screamed. "You can hear that any time you go out there. When you get within a quarter of a mile you will hear them" testified Ed Strickland.

Id. at 344-45.

In addition to the abhorrent working conditions, Blackmon's book includes evidence of at least two black prisoners who died as a result of injuries and abuse suffered at Chattahoochee Brick. *Id.* at 345-46. Blackmon recounts one unnamed victim's gruesome and horrific death:

> [A] black laborer drew the wrath of Captain Casey when he said he couldn't complete his assigned task of tossing 100,000 bricks to the top of a kiln. Sweating so profusely in the heat that the barrel beneath and the ground all around were

> drenched, the man said he was about to collapse. "God damn your soul," shouted Captain Casey, according to witnesses. "I will murder you if you don't do that work."
>
> Then the overseer told the man to climb down, whipped him with a leather belt attached to a wooden handle, and ordered him back to work. Incensed at the pace the brick thrower was working, Casey ordered two other black laborers to hold him across a barrel and began whipping again. Lash upon lash fell across his back and buttocks. Finally the unnamed man was released. "The negro staggered off to one side and fell across a lumber pile there, and laid there for a while," testified one witness. Soon he was dead.

Id. at 346.[1] There is suspicion that bodies of convicts who died while working at the site, like the victim described above, were burned and disposed of on the property. Molly Samuel, *Amid Debates About Memorials, Advocates Push To Remember Atlanta's Forced Laborers*, WABE.org (August 17, 2020), https://www.wabe.org/amid-debates-about-monuments-advocates-in-atlanta-call-attention-to-chattahoochee-brick/.

The sale of slave labor in Georgia was abolished by the legislature in March 1909 and, without the availability of slave labor business fell dramatically at Chattahoochee Brick. Blackmon, *supra*, at 351. The company operated in some form on the site until the 1980s. Josh Green, *Will the prisoners who labored to build Atlanta ever be acknowledged?*, Atlanta Magazine (Feb. 14, 2017), https://www.atlantamagazine.com/news-culture-articles/will-prisoners-labored-build-atlanta-ever-acknowledged/. The site was eventually acquired by General Shale, another brick company, which then sold the site to Lincoln Terminal. Given the horrendous abuse and murder associated with the Chattahoochee Brick site, many community members have voiced support for converting the site into a memorial honoring Chattahoochee Brick's forced laborers. Molly Samuel, *Atlanta City Council Asks Norfolk Southern to Alter Chattahoochee Brick Plans,*

[1] This is not the only description of gruesome abuse and murder at Chattahoochee Brick. Blackmon provides an account the of injury and abuse of Peter Harris, who died on the site. *See* Blackmon, 345-346.

WABE.org (Oct. 13, 2020), https://www.wabe.org/atlanta-city-council-asks-norfolk-southern-to-reconsider-chattahoochee-brick-plans/.

B. Lincoln Terminal Company's Acquisition and Plans for Chattahoochee Brick

In 2016, Lincoln Terminal sought approval from the City to build a rail transfer facility at the Chattahoochee Brick site. **Exhibit A**, Verified Statement of Keyetta M. Holmes ("Holmes V.S.") at 1. Lincoln Terminal followed the traditional process for obtaining a Special Use Permit from the City, including submission of an application, site plan and legal description of the property. *Id.* at 1-2. However, the City did not grant approval for the Special Use Permit sought by Lincoln Terminal. *Id.* at 2.

Four years later, NS advised the Department of City Planning that it "secured the right . . . to construct and maintain . . . a railroad facility needed to operate a multi-commodity bulk terminal and associated operations" at the Chattahoochee Brick site. Letter from Connor Poe, Regional Vice President, Norfolk Southern Corporation, to Timothy J. Keane, Department of City Planning for the City of Atlanta (December 8, 2020) (NS Letter), attached as **Exhibit B**.

NS provided the City with a copy of the Real Property Lease Agreement executed between Lincoln Terminal and NS for the three parcels of property (Parcels A, B, and C) located at Chattahoochee Brick as well as a copy of the parties' operating agreement ("Operating Agreement"). **Exhibit B.** NS advised the city that it "plans to contract with a third-party operator to conduct transloading of various commodities between rail cars and bulk storage, pipelines, and motor carrier trailers" on the site. **Exhibit B**, NS Letter, at 1. NS asserted that Lincoln Terminal "serves only an administrative function with respect to the constructed facility." *Id.* Under the terms of the Operating Agreement, Lincoln Terminal will "design, install, implement, and maintain certain specialized equipment and train NS employees and the third-party operator in its

operation." *Id.* This assertion is contradicted in another document NS provided to the City with the same letter. **Exhibit B**, Environmental Indemnity, Release and Covenant Not to Sue. The recitals of the Parties Environmental Indemnity, Release and Covenant Not to Sue indicates that "Lincoln Terminal presently intends to operate the Terminal, which would directly and indirectly benefit [NS], Lincoln Terminal and Lincoln Holding."

The Lease executed by NS and Lincoln Terminal includes provisions under which the parties will work together to complete regulatory filings that will provide a limitation of liability for pre-existing environmental conditions on the site pursuant to the Georgia Brownfield Act, GA. CODE ANN. § 12-8-200 (2020). **Exhibit B**, Real Property Lease Agreement, 4-5. However, none of the NS Letter, the Lease, nor the Operating Agreement addressed the historical significance of the site or set forth any historic preservation measures, or addressed its location in a floodplain. According to NS, its transload operations at Chattahoochee Brick are not subject to local zoning ordinances, including a Special Use Permit, because any state or local permitting or preclearance requirements are preempted under the ICC Termination Act (ICCTA). **Exhibit B**, NS Letter, at 2.

II. A Preliminary Injunction is Necessary to Halt Continued Destruction of Historical Artifacts, Address the Potential Impacts of Flooding at the Site and Allow the City to Exercise its Police Powers to Protect Health and Safety

"Under 49 U.S.C. § 1321(b)(4), the Board has authority to issue an appropriate order, such as a preliminary injunction, when necessary to prevent irreparable harm." *Union Pac. R.R.—Petition for Declaratory Order and Preliminary Injunction*, STB Finance Docket No. 36197, slip op. at 3 (Service Date June 29, 2018). "A party seeking a preliminary injunction must establish that (1) it is likely to prevail on the merits of any challenge to the action sought to be preliminarily enjoined, (2) it will be irreparably harmed in the absence of the requested relief, (3) issuance of

the injunction will not substantially harm other parties, and (4) granting the injunction is in the public interest." *Id.* (citing *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Am. Chemistry Council v. Ala. Gulf Coast Ry.*, NOR 42129, slip op. at 4 (Service Date May 4, 2012)). "A preliminary injunction is an extraordinary remedy and the party seeking it 'carries the burden of persuasion on all of the elements required for [such] extraordinary relief.'" *Id.* (citing *BP Amoco Chem. Co. v. Norfolk S. Ry.*, NOR 42093, slip op. at 4 (Service Date June 6, 2005)).

The City's Petition for Preliminary Injunction satisfies the Board's high standard for injunctive relief. The City will be filing shortly a Petition for Declaratory Order that will demonstrate that federal preemption does not permit NS to proceed with construction without compliance with City regulations that protect the public health and safety and are valid exercises of its police powers. The City will prevail on its Petition for Declaratory Order because the Chattahoochee Brick site remains subject to generally applicable local ordinances through which the City of Atlanta and State of Georgia carry out their respective police powers. Despite the efforts of NS and Lincoln Terminal to circumvent the applicable laws and ordinances through the invocation of ICCTA, the Chattahoochee Brick site—and the unjust, painful and racist legacy it represents—requires a thorough review by the City based on the site's history and the environmental sensitivity of its unique location. If NS and Lincoln Terminal are not enjoined from continuing with the already-begun site preparation and construction activities, the citizens of Atlanta risk the destruction of a heritage site with a unique and painful history. Neither NS nor Lincoln Terminal face substantial harm if the STB issues an injunction. Finally, the issuance of the injunction is entirely in the public interest.

1. The City will Succeeds on the Merits of its Petition for Declaratory Order

"Without a substantial indication of probable success, there would be no justification for . . . intrusion into the ordinary processes of administration and judicial review. To show a likelihood of success on the merits, the party seeking the injunction ordinarily must show more than a mere possibility of success." *Richard Best Transfer Company v. Union Pac. R.R. Co.*, STB Docket No. NOR 42149, slip op. at 5 (Service Date Dec. 22, 2016) (internal citations and quotation marks omitted).

NS and Lincoln Terminal's real estate arrangement is a bald-faced scheme to use the STB's broad preemption power as a shield against the exercise of legitimate local government authority. However, the unique facts of this case present a situation in which several of the City's and state's laws are not preempted.

a. Preemption, generally

The STB has exclusive jurisdiction over transportation by a rail carrier. 49 U.S.C. § 10501(b). The Board also has exclusive jurisdiction over the "construction, acquisition, operation, abandonment or discontinuance of spur, industrial, team, switching, or side tracks or facilities, even if the tracks are located, or intended to be located, entirely in one State." 49 U.S.C. § 10501(b)(2).

For the purposes of determining STB jurisdiction, "transportation" includes:

> (A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, **yard, property, facility**, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, **regardless of ownership or an agreement concerning use**; and
>
> (B) **services related to that movement**, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.

49 U.S.C. § 10102(9) (emphasis added).

The STB has held that "[s]tate or local permitting or preclearance requirements, including building permits, zoning ordinances, and environmental and land use permitting requirements are categorically preempted as to any facilities that are an integral part of rail transportation." *SEA-3, Inc.—Petition for Declaratory Order*, STB Finance Docket No. 35853, slip op. at 4 n.12 (Service Date Mar. 17, 2015) (citing *Green Mountain R.R. v. Vermont*, 404 F.3d 638, 643 (2d Cir. 2005)). "Other state actions may be preempted as applied—that is, only if they would have the effect of unreasonably burdening or interfering with rail transportation." *Id.* at 4-5 (citing *N.Y. Susquehanna & W. Ry. v. Jackson*, 500 F.3d 238, 252 (3d Cir. 2007); *Joint Pet. for Declaratory Order—Bos. & Me. Corp. & Town of Ayer*, 5 S.T.B. 500, 507-508 (2001), *reconsideration denied* (Service Date Oct. 5, 2001)).

Nevertheless, "states and towns may exercise traditional police powers over the development of railroad property . . . to the extent that the regulations protect public health and safety, are settled and defined, can be obeyed with reasonable certainty, entail no extended or open-ended delays, and can be approved (or rejected) without the exercise of discretion on subjective questions." *N.Y. Susquehanna*, 500 F.3d at 253-54 (quoting *Green Mountain R.R. Corp.*, 404 F.3d at 643). Such regulations include "[e]lectrical, plumbing and fire codes, direct environmental regulations enacted for the protection of the public health and safety, and other generally applicable, nondiscriminatory regulations and permit requirements." *Id*. at 254. *Accord*, *Green Mountain R.R. Corp.*, 404 F.3d at 643; *Boston & Maine Corp. v. Town of Ayer*, 330 F.3d 12, 16-17, 19 (1st Cir. 2003).

"Whether a particular activity is considered part of transportation by rail carrier under § 10501 is a case-by-case, fact-specific determination." *SEA-3, Inc.*, slip op. at 5. "The Board's jurisdiction extends to rail-related activities that take place at transloading facilities if the activities

are performed by a rail carrier, the rail carrier holds out its own service through a third party that acts as the rail carrier's agent, or the rail carrier exerts control over the third party's operations." *Id.* An activity that may be considered part of rail transportation and thus preempted when carried out by a railroad—such as certain transloading operations—may not be preempted when carried out by a non-railroad. *See Tri-State Brick and Stone of New York, Inc., and Tri-State Transp. Inc.—Petition for Declaratory Order*, STB Finance Docket No. 34824, slip op. at 4 (Service Date Aug. 11, 2006).

"The ICCTA pre-emption provision does not preclude the application of all other law." *Fla. E. Coast Ry. v. City of West Palm Beach*, 266 F.3d 1324, 1331 (11th Cir. 2001) (internal citation omitted). "In this manner, Congress narrowly tailored the ICCTA preemption provision to displace only 'regulation,' i.e., those state laws that may reasonably be said to have the effect of 'managing' or 'governing' rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation." *Id.* quoting Black's Law Dictionary 1286 (6th ed. 1990).

In *Florida East Coast*, the City of West Palm Beach issued Rinker Materials, an aggregate distribution company operating on FEC Railway property, a cease and desist order based on its operations in a residential zone and a Notice of Violation for unlawfully operating a business without an occupational license. *Florida East Coast Railway v. City of West Palm Beach*, 110 F.Supp. 2d 1367, 1372 (S.D. Fla. 2000). Before the District Court, the FEC argued that West Palm Beach's enforcement actions were preempted. *Id.* FEC then planned to run the facility with its own employees to take advantage of the breadth of ICCTA preemption. *Id.* However, the court found the ordinances at issue were "not aimed at the railroad or rail operations," but were "generally applicable exercises of a city's police powers to safeguard the health and safety of its

citizens." *Id.* at 1376. The District Court explained that West Palm Beach "merely prohibited Rinker from running a distribution operation for its own ends, not from running a rail operation." *Id.* at 1377.

Notably, the court explained: "FEC and Rinker entered into an arrangement whereby Rinker, FEC's largest customer, would operate an aggregate distribution operation on FEC property. Its genesis was a real estate transaction – a land swap initiated by Rinker at a time railway operations were being discontinued. . . railway operations appear to be an after-the-fact justification rather than the impetus for the project." *Id.* On appeal to the 11th Circuit, the District Court's decision on ICCTA preemption was affirmed. *Florida East Coast Ry. Co. v. City of West Palm Beach*, 266 F.3d 1324 (11th Cir. 2001).

NS and Lincoln Terminal have executed precisely the same scheme at Chattahoochee Brick. The lease agreement between NS and Lincoln Terminal is the same "after-the-fact" transactional sleight-of-hand as the FEC and Rinker's attempt to circumvent local regulations. And like the state and local regulations at issue in *FEC*, the local ordinances which the City seeks to apply to the facility are not preempted. In this case, the Chattahoochee Brick site is subject to local regulations that fall with the state and City's police powers. Each is addressed in turn in the following paragraphs.

b. City of Atlanta Floodplain Regulations

The Code of Ordinances of the City of Atlanta sets forth regulations for land that lies within traditional and modified floodplain areas. "[C]construction, reconstruction, repair, modification or demolition of any structure within all floodplains, including special flood hazard areas, shall require review and approval by the commissioner [of the Department of Watershed management, or an authorized designee]." Atlanta City Code Secs. 74-203, 74-204(a). As evidenced in **Exhibit**

C, the Chattahoochee Brick site lies adjacent to the Chattahoochee River. **Exhibit C**, Verified Statement of Craig Rethwilm, P.E. ("Rethwilm V.S.") at Attachment 1. Roughly half of the Chattahoochee Brick site lies in land designated as a floodplain. *Id.*

"Flood plain management regulations are zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion control ordinance) and other applications of police power." *County of Monmouth v. Fed. Emergency Mgmt. Agency*, 2009 U.S. Dist. LEXIS 87953, *14 (D.N.J. Sept. 24, 2009) (citing the definition of "Flood Plain Management Regulations," from 44 C.F.R. § 59.1, the National Flood Insurance Act of 1968). Atlanta's floodplain ordinance was designed to protect the public health and safety. *See N.Y. Susquehanna & W. Ry.*, 500 F.3d at 252.

Chattahoochee Brick sits partially in a floodplain on the banks of the Chattahoochee River. Proctor Creek runs along the southwest portion of the site. As shown on the map submitted by NS to the City, a copy of which is attached to Rethwilm V.S., all of two of the parcels into which NS proposes to divide the property, and a large portion of the third, sit within the floodplain. *Id.* at Attachment 2. The site is surrounded by water and its location in a floodplain requires the City to protect the nearby residents who may be impacted by flooding on the site. The City's floodplain ordinances are not subject to ICCTA preemption.

c. City of Atlanta Cemetery Ordinances

Based on the evidence set forth in Blackmon's book, discussed *supra*, there is a substantial likelihood that human remains are present on the Chattahoochee Brick site. Under Georgia law,

> No known cemetery, burial ground, human remains, or burial object shall be knowingly disturbed by the owner or occupier of the land on which the cemetery or burial ground is located for the purposes of developing or changing the use of any part of such land unless a permit is first obtained from the governing authority of the municipal corporation or county wherein the cemetery or burial ground is

> located, which shall have authority to permit such activity except as provided in Code Section 36-72-14.

GA. CODE ANN. § 36-72-4 (2020). "It has been generally, if not universally, held that cemeteries are subject to the police power of the state." *Masonic Cemetery Ass'n v. Gamage,* 38 F.2d 950, 954 (9th Cir. 1930). *Masonic Cemetery Association* cited a litany of state cases supporting the fact that cemeteries are subject to local police powers, including a Georgia case--*Nicolson v. Daffin,* 142 Ga. 729 (Ga. 1914). *Nicholson* held that "[t]he rights of burial are so far public that the right of exclusive interment is subject to the reasonable police regulations of the association or corporation having charge of the cemetery. Undoubtedly the municipality of the City of Savannah, acting through its park and tree commission, had the right to make reasonable rules and regulations respecting the care, management, and protection of the cemetery." *Id.* at 732.

"Courts have long recognized the right of a state to enact laws reasonably related to its police power, even though such laws may interfere with the contractual relations and commercial freedom of private parties. Statutes that interfere with the sale or disposition of cemetery property have been upheld by the New York Court of Appeals as a reasonable exercise of the police power." *N.Y. State Ass'n of Cemeteries, Inc. v. Fishman,* 2004 U.S. Dist. LEXIS 1332, *23-24 (N.D. N.Y. Jan. 27, 2004) (internal citations omitted).

The City of Atlanta has set forth regulations implementing the state law on cemeteries and burial grounds. *See generally* Atlanta City Code Secs. §§ 38-60 – 38-69. The process outlined in the regulations requires the Urban Design Commission (UDC) to review applications for disturbances in a cemetery or burial ground. *Id.* Sec. 38-60. Preparation of an application requires a report by an archeologist, a genealogist, a proposal for mitigation or avoidance of the effects of the planned activities. *Id.* Sec. 38-62. Traditionally, the entity that plans to engage in activity that will disturb a burial ground will provide the City with documentation detailing the following: the

cemetery or burial ground, connections to living relatives, plans to engage with or consult living relatives, and a proposed relocation plan. **Exhibit D**, Verified Statement of Douglas H.R. Young ("Young V.S.") at 1-2. These regulations have been applied to sites that were not traditionally designated as cemeteries, such as Chattahoochee Brick. *Id.* at 1.

As Blackmon's book demonstrates, Black workers were killed and left for dead on the Chattahoochee Brick site. Accordingly, the City of Atlanta's local regulations on cemeteries and burial grounds apply to any disturbance on the site. As Mr. Young has explained, *id.* at 2-3, disturbance of a burial site creates a situation that cannot be remedied because of the possible impact on, if not removal of, human remains. Because these regulations fall within the City of Atlanta's established police powers to protect the health and safety of its citizens, NS and Lincoln Terminal cannot evade compliance by claiming preemption in this unprecedented scenario.

d. The Metropolitan River Protection Act

As the Board has made clear in numerous past decisions, "environmental and land use permitting requirements, are categorically preempted as to any facilities that are an integral part of rail transportation." *Grafton & Upton R.R. Co.—Petition for Declaratory Order*, STB Finance Docket No. 35779, slip op. at 4 (Service Date Jan. 27, 2014). However, Chattahoochee Brick presents an unprecedented situation in which some local environmental laws function in the manner of local police powers.

Under Georgia's Metropolitan River Protection Act (MRPA) it is unlawful to engage in any land-disturbing activity in the Chattahoochee Corridor unless and until the Atlanta Regional Commission issues a certificate for the proposed use pursuant to Georgia Annotated Code §§ 12-5-445, 12-5-443, 12-5-444(b)(1). The purpose of the MRPA is to:

> [P]rovide a method whereby political subdivisions in certain metropolitan areas shall utilize the police power of the state, in accordance with a comprehensive plan,

> to protect consistently the water quality of any major stream, the public water supplies of such political subdivision and of the area, recreational values of the major stream, and private property rights of landowners; to prevent activities which contribute to floods and flood damage; to control erosion, siltation, and intensity of development; to provide for the location and design of land uses in such a way as to minimize the adverse impact of development on the major stream and flood plains; and to provide for comprehensive planning for the stream corridor in such areas.

GA. CODE ANN. § 12-5-442(b) (2020). The Atlanta Regional Commission has issued rules and regulations that set forth the process for applying for a certificate for land disturbing activities in the Chattahoochee Corridor. *See* Atlanta Regional Commission, Metropolitan River Protection Act, Rules and Regulations (Adopted May 28, 2003) (available at: https://cdn.atlantaregional.org/wp-content/uploads/ep-chat-rulz.pdf). The process allows applicants to select a Phased Review or a Single Step Review. *Id.* at 6.

The certification process set forth by the Atlanta Regional Commission is the type of regulation that may not be preempted under ICCTA because it is a "generally applicable, nondiscriminatory regulation [or] permit requirement." *See supra New York Susquehanna and Western Ry. Corp.*, et al. The goals of the MPRA – to protect water and prevent flooding – serve to protect the public health and safety. *See N.Y. Susquehanna & W. Ry. v. Jackson*, 500 F.3d at 253-54; *Green Mountain R.R. Corp.*, 404 F.3d at 643. Chattahoochee Brick is exactly the situation in which the state and local police powers have a role to play in order to protect the interests of the people of Atlanta. Additionally, compliance with the MPRA would not unreasonably burden Norfolk Southern or Lincoln Terminal.

Each of these laws will be addressed in greater depth in the City's Petition for Declaratory Order. However, solely based on the foregoing and on the recognition by the STB and the Courts that a local government's exercise of its police powers to protect the public health and safety are

not preempted by the force of 49 U.S.C. § 10501, the City has a clear, convincing and unprecedented argument in support of the application of these local laws to the proposal by NS to construct a terminal for the benefit of Lincoln Terminal at the former Chattahoochee Brick site. It is clear, based on all of the foregoing, that the City is likely to prevail on the merits of its Petition for Declaratory Order.

2. Irreparable Harm

Clearly, the City will face irreparable harm if the Board does not issue a preliminary injunction to stop the destruction of the site without addressing the environmental risks and the potential harm to a documented burial site. "To show irreparable harm, the requesting party must demonstrate both the imminence and the irreparable nature of any purported harm." *Cent. Valley Ag Grinding, Inc. and Cent. Valley Ag Transport, Inc. v. Modesto and Empire Traction Co.*, STB Docket No. NOR 42159 slip op. at 5 (Service Date June 12, 2018). The potential loss of the Chattahoochee Brick site and the disrespect to the remains of those who are buried there – if NS and Lincoln Terminal continue to transform the site – is obvious. Chattahoochee Brick serves as a reminder of the unparalleled hardships African Americans faced in the years after the civil war. The use of convict labor in post-civil war America is unknown to most Americans. If sites like Chattahoochee Brick are destroyed, the legacies and lessons to be learned from those facilities will be lost to time. Preserving the status quo at the site until there has been full compliance with applicable regulations to protect and honor the deceased and to address the presence of a substantial portion of this property within a floodplain, will protect those archeological artifacts and remains that may still be on the site. The Board must issue an injunction to protect the Chattahoochee Brick site.

3. Harm to NS and Lincoln Terminal

Neither NS nor Lincoln Terminal face irreparable harm if the Board temporarily enjoins operations at Chattahoochee Brick. Lincoln Terminal has been planning operations for this site since 2016 – almost five years. An additional delay to first address the environmental impacts of construction of this facility within a floodplain, and at the same time to conduct the archeological review that is required to assess the presence of human remains, see Young, V.S. at 2-3, will not harm the long-term operations at the site especially when it has taken five years already for Lincoln Terminal to concoct an arrangement with NS to use the STB's regulatory authority as a shield against the application of local regulations that Lincoln Terminal could not avoid on its own. NS has been planning the destruction of the site for at least six additional months. A minor delay of construction of one of many transload facilities across NS's system will hardly constitute irreparable harm to NS, a Fortune 500 company with a 2020 net income of $2.4 billion.

4. The Public Interest

Granting the City's Petition for a Preliminary Injunction is entirely in the public interest. The history of Chattahoochee Brick, as described in SLAVERY BY ANOTHER NAME, presents a picture of a site that cries out for preservation as a reminder of the atrocities committed there as a lesson to future generations to avoid such conduct. The descendants of the families of prisoner laborers of Chattahoochee Brick have strenuously voiced their concern over the potential development at Chattahoochee Brick and the desecration of the site. See Molly Samuel, *Amid Debates About Memorials, Advocates Push To Remember Atlanta's Forced Laborers*, *supra*. Moreover, in addition to the historical concerns, the local community deserves to be certain that flooding on the site will not impact the surrounding neighborhoods. The public interest not only warrants the issuance of the injunction, it demands it.

Finally, granting the City's petition for Preliminary Injunction to halt the activities at Chattahoochee Brick is entirely consistent with the Board's precedent granting housekeeping stays in order to allow the Board to "fully consider the arguments presented" in this case. *BNSF Ry. Co., CBEC Ry. Inc., Ia. Interstate R.R., Ltd., and Union Pac. Ry. Co.—Joint Relocation Project Exemption—In Council Bluffs, Ia.*, STB Finance Docket No. 35755, slip op. at 1 (Service Date Nov. 8, 2013) (granting request for a housekeeping stay following railroad and shipper argument that a state would avoid disruption of service to shippers during the pendency of an exemption proceeding); *see also Burlington Shortline R.R. Inc., d/b/a Burlington Junction Ry.—Acquisition and Operation Exemption—BNSF Ry. Co.*, STB Finance Docket No. 35121, slip op. at 1 (Service Date April 16, 2008) (granting housekeeping stay in rail acquisition and operation case in order for the Board to make "an informed decision."). The City, as noted above, will shortly be filing its Petition for Declaratory Order to confirm that the laws and ordinances described herein should not be preempted. Surely, NS and Lincoln Terminal can wait until the Board takes the time to review this matter thoroughly in light of all of the facts and circumstances. The interests of the public demand that this Board have that opportunity. Lincoln Terminal, the real party in interest here that has waited for over five years already and has now devised a scheme to evade the application of laws described above by creating a transaction with NS that is solely designed to use this Board's jurisdiction as a shield against the valid application of those laws to its proposal, can wait.

III. Conclusion

When NS and Lincoln Terminal executed their real estate agreement—an agreement designed to circumvent the applicable state and local laws—they may not have been aware of the breadth of activities that took place at the Chattahoochee Brick plant—or its location within a

federally regulated floodplain. The letter NS sent to the City does not address the history of the site, the proximity to the river or the floodplain. NS's letter relied only on a short statement that the City cannot impose any permitting or preclearance activities on the site. On most sites that the railroad operates on, that would be the case. However, the unique nature of the history of Chattahoochee Brick places many of the applicable regulations outside of the scope of ICCTA and squarely within the police powers of the City, which has responsibility to protect the public health and safety of its citizens. Chattahoochee Brick is not a run-of-the mill industrial or railroad site. NS and Lincoln Terminal cannot hide behind ICCTA to escape the police powers of the City of Atlanta at Chattahoochee Brick.

The City of Atlanta respectfully requests the STB to issue an injunction ordering NS and Lincoln Terminal Company to cease construction activities and any operations at Chattahoochee Brick until the issues raised in the City's Petition for Declaratory Order have been addressed by this Board.

Respectfully Submitted,

Nina R. Hickson
Jonathan S. Futrell
Department of Law
City of Atlanta
55 Trinity Avenue
Suite 5000
Atlanta, GA 30303

Charles A. Spitulnik
Allison I. Fultz
Katherine C. Bourdon
Kaplan Kirsch and Rockwell
1634 I ("Eye") Street NW
Suite 300
Washington, DC 20006

Date: February 12, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February 2021, I have caused a copy of the foregoing Verified Petition of the City of Atlanta, for Preliminary Injunction to be served upon the following individuals via e-mail and first-class U.S. mail.

Hanna Chouest
Deputy General Counsel
Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9241
Hanna.Chouest@nscorp.com

Nina R. Hickson
Jonathan S. Futrell
Department of Law
City of Atlanta
55 Trinity Avenue
Suite 5000
Atlanta, GA 30303

Charles A. Spitulnik
Kaplan Kirsch & Rockwell LLP
1634 I (Eye) Street, NW
Suite 300
Washington, DC 20036
(202) 955-5600
cspitulnik@kaplankirsch.com

Dated: February 12, 2021

EXHIBIT A

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36485

CITY OF ATLANTA, GEORGIA—
PETITION FOR PRELIMINARY INJUNCTION AND PETITION FOR DECLARATORY ORDER—
NORFOLK SOUTHERN CORPORATION

VERIFIED STATEMENT OF KEYETTA M. HOLMES

1. I am Keyetta M. Holmes, AICP. I am Director Office of Zoning and Development in the City of Atlanta. I have held this position for 4 years.
2. My responsibilities as Director/Zoning Administrator include managing the office that is responsible for entitlement including rezoning, special use permits, variances, special exceptions, subdivisions, replats, lot consolidations and zoning review for building permitting.
3. Before taking this position, I was Assistant Director, Zoning for the City of Atlanta for beginning in 2017. I became the Interim Director in 2018 and became the Director in 2020.
4. I am familiar with the Lincoln Terminal Company's proposal to build a rail transfer facility at the site it owns that was formerly the site of the Chattahoochee Brick Company.
5. Lincoln Terminal first sought this approval on August 30, 2016. A copy of the application is attached to my Verified Statement as **Attachment 1.**
6. The process that Lincoln followed is set forth in the City Code Chapter 25 Section 16-17.007(1)(p).
7. It is a straightforward process. The applicant submits an application to the Office of Zoning and Development (formerly the Bureau of Planning). We assign a planner to manage application and draft a staff report. We send the application sent to the

neighborhood planning unit ("NPU"). The City of Atlanta is divided into 25 NPU's, which are citizens advisory councils that make recommendations to the Mayor and City Council on zoning, land use and other planning related matters.

8. The NPU then makes a formal recommendation. City staff then makes a formal recommendation on the matter, taking all of that information into account. The next step is a public hearing held at the Zoning Review Board, which sends a recommendation to the City Council Zoning Committee. That Committee then holds a meeting and provides recommendation to City Council. The City Council either approves or denies application.
9. In 2016, Lincoln submitted an application, a site plan, and a legal description of the property. I am not aware of whether Lincoln had any discussions with City staff or other representatives of the City about its application.
10. I am not aware of any between participation by Norfolk Southern Corporation in that process, either formally through commenting on the application or by any communication with City staff or officials about the proposed project.
11. The City did not grant the application for a Special Use Permit. Instead, when the matter was presented to the City Council, it was "filed", that is the Council tabled it for further consideration. The City Council took no further action on the application. *See,* Attachment 1.

I, Keyetta M. Holmes, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement in support of the Petition for Preliminary Injunction.

Executed on February 12, 2021.

DocuSigned by:
Keyetta M. Holmes
DF19B3363DD2401...

Keyetta M. Holmes, AICP

ATTACHMENT 1

15-O-1583

10702

16 -O- 1583

(Do Not Write Above This Line)

U-16-24

An Ordinance granting a Special Use Permit pursuant to Section 16-17.007 (1) (p) for a **TRUCK TERMINAL** for property located at **3195 Brick Plant Road, N.W.,** fronting approximatelty360 feet on the northwest side of Parrot Avenue beginning approximately 331 feet from the northwest corner of Spad Avenue, N.W. Depth: approximately 1600 feet. Area: approximately 44.56 acres. Land Lot 263, 17th District, Fulton County, Georgia.
OWNER: LINCOLN TERMINAL COMPANY, INC.
APPLICANT: DUNLAVY LAW GROUP, LLC
NPU G COUNCIL DISTRICT 9

FILED
APR 17 2017
By Council Filed. 14Y 0N

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1ST ADOPT 2ND READ & REFER
- ☐ PERSONAL PAPER REFER

Date Referred 10/17/16
Referred To: ZRB + ZONING
Date Referred
Referred To:
Date Referred
Referred To:

First Reading
Committee Zoning
Date 10/12/16
Chair Mary Norwood
Referred To ZRB + Zoning

Committee	Committee
Zoning	
Date 3/20/17	Date
Chair Carla Smith	Chair
Action Fav, Adv, Hold (See rev.side)	Action Fav, Adv, Hold (See rev.side)
Other file	Other
Members Dustin Hillis, Joyce M. Sheperd, Cleta Winslow, Mary Norwood, Carla Smith, Andrea Boone	Members
Refer To	Refer To

Committee	Committee
Date	Date
Chair	Chair
Action Fav, Adv, Hold (See rev.side) Other	Action Fav, Adv, Hold (See rev.side) Other
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION
☐ 2ND ☐ 1ST & 2ND ☐ 3RD Readings
☐ Consent ☐ V Vote ☑ RC Vote

CERTIFIED
CERTIFIED
APR 17 2017
ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED
APR 17 2017
MUNICIPAL CLERK

MAYOR'S ACTION

RCS# 2772
4/17/17
5:29 PM

Atlanta City Council

16-O-1583 U-16-24; SUP FOR A TRUCK TERMINAL AT 3195 BRICK PLANT ROAD
FILE

YEAS:	14
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	2
EXCUSED:	0
ABSENT	0

Y Smith	Y Archibong	Y Moore	Y Bond
Y Hall	Y Wan	Y Martin	NV Norwood
Y Young	Y Shook	Y Bottoms	Y Dickens
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

ATLANTA CITY COUNCIL

October 17, 2016

Zoning Committee

MOTION : Refer to Zoning Review Board & Zoning Committee

LEGISLATIVE ID: 16-O-1577;1578;1579;1580;1581;1582;1583;1584;1585

	YEA	NAY	ABSTAIN	COMMENTS
Ceasar C. Mitchell President of Council				
Michael Julian Bond Post 1 –at-Large				
Mary Norwood Post 2 –at-Large				
Andre Dickens Post 3 –at-Large				
Carla Smith Council District 1				
Kwanza Hall Council District 2				
Ivory Lee Young, Jr. Council District 3				
eta Winslow Council District 4				
Natalyn Mosby Archibong Council District 5				
Alex Wan Council District 6				
Charles Howard Shook Council District 7				
Yolanda Adrean Council District 8				
Felicia A. Moore Council District 9				
C. T. Martin, Jr. Council District 10				
Keisha Lance Bottoms Council District 11				
Joyce Sheperd Council District 12				
TOTAL	14	0		

City Council
Atlanta, Georgia

16 -O- 1583
U-16-24

AN ORDINANCE
BY ZONING COMMITTEE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

SECTION 1. Under the provisions of Section 16-17.007 (1) (p) of the Zoning Ordinance of the City of Atlanta, a Special Use Permit for a **TRUCK TERMINAL**, is hereby approved. Said use is granted to **Lincoln Terminal Company, Inc.** and is to be located at **3195 Brick Plant Road, N.W.** to wit:

ALL THAT TRACT or parcel of land lying and being in Land Lot 263, 17th District, Fulton County, Georgia being more particularly described by the attached legal description and/or survey.

SECTION 2. That this amendment is approved under the provisions of Section 16-25.003 of the Zoning Ordinance of the City of Atlanta, entitled, "Special Use Permits, Procedural Requirements", and the Director, Bureau of Buildings, shall issue a building permit only in compliance with the applicable provisions of this part. The applicable conditional site plan and any other conditions hereby imposed are enumerated by attachment. The Special Use Permit hereby approved does not authorize the violation of any zoning district regulations. District regulation variances can be approved only by application to the Board of Zoning Adjustment.

SECTION 3. That all ordinances or parts of ordinances in conflict with the terms of this ordinance are hereby repealed.

Lincoln Terminal Company, Inc.
Special Use Application
City of Atlanta

LEGAL DESCRIPTION - TRACT 1
GENERAL SHALE PRODUCTS CORP
(PART OF PARCEL ID: 17 0263 LL0304)

A tract or parcel of land lying and being in Land Lot 263 of the 17th District, City of Atlanta, Fulton County Georgia and being more particularly described as follows;

Beginning at an iron pin set at the intersection of the westerly right-of-way line of Parrot Avenue (50' R/W) and the southerly right-of-way line of The Southern Railroad Company (R/W Varies), Thence southerly along said westerly right-of-way line of Parrot Avenue, South 46 degrees 35 minutes 28 seconds West for a distance of 360.00 feet to an iron pin set; Thence leaving said westerly right-of-way line of Parrot Avenue and proceed North 50 degrees 04 minutes 52 seconds West for a distance of 92.19 feet to an iron pin set; Thence proceed South 87 degrees 12 minutes 10 seconds West for a distance of 177.44 feet to an iron pin set; Thence proceed North 67 degrees 25 minutes 24 seconds West for a distance of 902.73 feet to an iron pin set; Thence proceed South 52 degrees 10 minutes 50 seconds West for a distance of 388.34 feet to an iron pin set; Thence proceed North 36 degrees 01 minutes 51 seconds West for a distance of 398.83 feet to an iron pin set; Thence proceed North 52 degrees 09 minutes 50 seconds West for a distance of 290.95 feet to an iron pin set on the southeasterly right-of-way line of a railroad spur track owned by The Southern Railroad Company (R/W Varies); Thence continue along said right-of-way line the following series of calls: North 53 degrees 25 minutes 41 seconds East for a distance of 103.35 feet to an iron pin set; Thence North 44 degrees 19 minutes 56 seconds East for a distance of 89.29 feet to an iron pin set; Thence North 40 degrees 29 minutes 30 seconds East for a distance of 814.65 feet to an iron pin set; Thence along a curve to the right having a radius of 503.50 feet and an arc length of 381.05 feet, being subtended by a chord of North 58 degrees 46 minutes 54 seconds East for a distance of 372.02 feet to an iron pin set; Thence South 09 degrees 32 minutes 15 seconds East for a distance of 25.00 feet to an iron pin set, Thence along a curve to the right having a radius of 478.50 feet and an arc length of 505.31 feet, being subtended by a chord of South 69 degrees 17 minutes 05 seconds East for a distance of 482.15 feet to an iron pin set; Thence North 50 degrees 58 minutes 06 seconds East for a distance of 25.00 feet to an iron pin set; Thence along a curve to the right having a radius of 503.50 feet and an arc length of 34.79 feet, being subtended by a chord of South 37 degrees 03 minutes 08 seconds East for a distance of 34.78 feet to an iron pin set; Thence South 32 degrees 19 minutes 33 seconds East for a distance of 155.45 feet to an iron pin set; Thence South 32 degrees 19 minutes 33 seconds East for a distance of 100.49 feet to an iron pin set; Thence North 58 degrees 01 minutes 56 seconds East for a distance of 27.17 feet to an iron pin set on the southerly right-of-way line of the main line track of The Southern Railroad Company; Thence along said southerly right-of-way line of the main line tract, South 26 degrees 20 minutes 57 seconds East for a distance of 1050.39 feet to an iron pin set on the westerly right-of-way line of Parrot Avenue, and the TRUE POINT OF BEGINNING.

Said property contains 44.56 acres more or less, and is shown on, and described according to that certain Replat of: General Shale Brick Plant Site, by LandAir Surveying Company, Dated 12/22/2015, and bearing the seal of H. Tate Jones, Georgia Registered Land Surveyor No. 2339, which plat is hereby made part of this legal description by this reference.

EXHIBIT B

Norfolk Southern Corporation
Government Relations
1200 Peachtree Street, N.E.
Atlanta, GA 30309
Phone: (404) 576-9831
E-mail: conner.poe@nscorp.com

Conner A. Poe
Regional Vice President

December 8, 2020

Via Email

Commissioner Timothy J. Keane
Department of City Planning for the City of Atlanta, GA
55 Trinity Avenue, S.W., Suite 1450
Atlanta, GA 30303

Re: Norfolk Southern Bulk Transfer Facility at 3195 Brick Plant Road

Dear Tim:

Thank you for your recent follow-up question from our September meeting, where we discussed Norfolk Southern's bulk transfer project on Brick Plant Road. In your December 3 letter, you sought some additional information to confirm that the project is not subject to local zoning regulations, including a Special Use permit. Specifically, you asked me to provide you with evidence that Norfolk Southern has acquired the right to build and operate a new bulk transfer facility on Lincoln's property. Norfolk Southern is happy to provide you that information.

Norfolk Southern has secured the right, at its sole expense, to construct and maintain on the property a railroad facility needed to operate a multi-commodity bulk terminal and associated rail operations. Under the lease agreement, Norfolk Southern is responsible for the cost of constructing and maintaining the railroad facility. Norfolk Southern plans to contract with a third-party operator to conduct the transloading of various commodities between rail cars and bulk storage, pipelines, and motor carrier trailers on Norfolk Southern's behalf. This operator will serve at the direction and under the control of Norfolk Southern. This transloading work will occur "pursuant to rate transportation agreements, public rates and private quotes with [Norfolk Southern's] customers." Attached to this letter is the executed lease between Norfolk Southern and Lincoln, dated August 24, 2020. (We lightly redacted the lease agreement to remove sensitive financial terms that have no bearing on our right to build and operate the multi-commodity rail transloading facilities.)

Lincoln serves only an administrative function with respect to the constructed facility. Under the Operating Agreement, Lincoln will design, install, implement, and maintain certain specialized equipment and train Norfolk Southern employees and the third-party operator in its operation. Although Lincoln will receive compensation for this work, Lincoln will not market the transloading services, set rates, or have employees on the property.

The Lease and Operating Agreement confirms, as you requested, that Norfolk Southern is not required to seek a Special Use permit. As you know, state and local authority may not impose on a railroad any form of permitting or pre-clearance requirements that by their nature could be used to deny a carrier the right to construct rail facilities and conduct its federal common carrier operations.[1] A railroad does not need to own the subject property for federal preemption to apply.[2] For transloading activities—like those planned for the 3195 Brick Plant Road property—built and operated by or under the auspices of an interstate rail carrier, any "state or local permitting or preclearance requirements, including building permits, zoning ordinances, and environmental and land use permitting requirements, are preempted."[3] Norfolk Southern is still obligated to comply with a host of federal environmental, permitting, and safety regulations.

Norfolk Southern is committed to working collaboratively with your office about this project. Indeed, our federal regulator—the Surface Transportation Board—strongly encourages rail carriers to share information with local officials and the affected community prior to beginning operations at new or existing transloading facilities.

We are happy to continue sharing our progress with your office. I am including a link to our latest design plans for the project. Those documents can be accessed here. We welcome the opportunity to discuss those design plans with you and your staff and will keep you abreast on project developments.

We believe the information provided in this letter will provide you the information needed to confirm that NS is not subject to local zoning regulations. If you have further questions, as always please contact me.

Sincerely,

DocuSigned by:
E32896C8D76C492...
Conner A. Poe

Attachments

cc: Raymond A. Atkins, Sidley Austin

---

[1] *See* 49 U.S.C. § 10501(b); *see also* C*ity of Auburn v. United States*, 154 F.3d 1025, 1031 (9th Cir. 1998); *Green Mountain Railroad Corporation v. State of Vermont*, 404 F.3d 638, 641–45 (2d Cir. 2005); *SEA-3, Inc.—Petition for Declaratory Order*, FD 35853 (STB served Mar. 17, 2015), at 5; *The City of Alexandria, Virginia—Petition for Declaratory Order*, FD 35157 (STB served Feb. 17, 2009), at 2–3.

[2] *See, e.g., Pinelawn Cemetery—Petition for Declaratory Order*, FD 35468 (STB served Apr. 21, 2015), at 10.

[3] *Boston & Maine Corp.—Petition for Declaratory Order*, FD 35749 (STB served July 19, 2013), at *3.

REAL PROPERTY LEASE AGREEMENT

THIS REAL PROPERTY LEASE AGREEMENT is made as of the 24th day of August, 2020 by and between **LINCOLN TERMINAL COMPANY**, a South Carolina corporation (the "Landlord") and **NORFOLK SOUTHERN RAILWAY COMPANY,** a Virginia corporation (the "Tenant" or "Railroad").

WHEREAS, the Railroad is a common and contract carrier by rail; and

WHEREAS, the Landlord owns property located at 3095 Parrott Avenue in Atlanta, Georgia served by the Railroad's tracks; and

WHEREAS, the Railroad desires to use said property to engage in a rail-to-truck bulk transfer operation involving the use of a bulk transfer operator designated by the Railroad in conjunction with the transportation services offered by the Railroad to its customers and Landlord is willing to grant such use to Railroad.

NOW, THEREFORE, in consideration of the mutual promises herein, Landlord and Tenant agree as follows:

1. Premises; Use; Construction on Premises; Other Agreement.

(a) Premises. For and in consideration of the agreements set forth herein, to be paid, kept and performed by Tenant, Landlord hereby leases and rents to Tenant, certain real property located in the City of Atlanta, County of Fulton, State of Georgia, containing 75 acres, more or less, consisting of Parcel A, Parcel B and Parcel C, as shown on drawing marked Exhibit "A" attached hereto (the "Premises").

(b) Use. Tenant shall use the Premises to operate a multi-commodity rail transloading facility. Tenant not use the Premises for any illegal purposes, for the storage of unlicensed vehicles, nor in any manner to create any nuisance or trespass. No smoking is permitted in or about the Premises.

(c) Construction on Premises.

i. Bulk Transfer Facility. Except as otherwise provided in the Operating Agreement referenced in Paragraph 1(d) below, Tenant shall, at its sole expense, construct and maintain on the Premises certain railroad facilities ("Bulk Transfer Facility") necessary for the operation of Tenant's multi-commodity bulk terminal and associated railroad operations. Such construction shall be completed in a good, workmanlike and lien-free manner. Landlord's interest in the Premises shall not be subjected to liens of any nature by reason of Tenant's construction, alteration, renovation, repair, restoration, replacement or reconstruction of any improvements on or in the Premises including the construction of the Bulk Transfer Facility, or by reason of any other act or omission of Tenant (or of any person claiming by, through or under Tenant) including, but not limited to, mechanics' and materialmen's liens. Prior to commencement by Tenant of any work on the Premises Tenant shall record or file a notice of the commencement of such work (the "Notice of Commencement") in the land records of the County in which the Premises are located, identifying Tenant as the party for whom such work is being performed, stating such other matters as may be required by law and requiring the service of copies of all notices, liens or claims of lien upon Landlord. Any such Notice of Commencement shall clearly reflect

that the interest of Tenant in the Premises is that of a leasehold estate and shall also clearly reflect that the interest of Landlord as the fee simple owner of the Premises shall not be subject to mechanics or materialmen's liens on account of the work which is the subject of such Notice of Commencement. A copy of any such Notice of Commencement shall be furnished to and approved by Landlord and its attorneys prior to the recording or filing thereof, as aforesaid.

ii. Permitted Landlord Construction. Landlord shall construct certain facilities upon the Premises as further described in the Operating Agreement referenced in Paragraph 1(d) below. In addition, Landlord reserves unto itself and its permittees, the permanent right to construct, maintain or replace upon, under, or over the Premises, any pipe, electrical, telecommunications, and signal lines, or any other facilities of like character now installed or hereinafter to be installed to the extent those improvements do not interfere or conflict with Tenant's railroad operation.

(d) Other Agreement. The terms and conditions of the Operating Agreement, made by and between Landlord and Tenant, concerning the operation of the Bulk Terminal Facility, attached hereto as Exhibit "B" are incorporated herein by this reference. In the event of an inconsistency between the terms hereof and the terms of the Operating Agreement, the terms of the Operating Agreement shall prevail.

2. Term.

(a) Initial Term. The initial term of this Lease (the "Initial Term") shall commence on August 24, 2020 (the "Lease Commencement Date") and the Lease shall terminate and expire at midnight on June 30, 2032, unless sooner terminated as hereinafter provided, or renewed in accordance with Paragraph 2(b) hereof. The Initial Term, together with any Renewal Term (defined in Paragraph 2(b) below) shall be collectively referred to herein as the "Term."

(b) Option to Renew. Tenant shall have and is hereby granted two (2) options to extend this Lease beyond the Initial Term for an additional period of ten (10) years each (individually, a "Renewal Term") by giving Landlord notice in writing sixty (60) days prior to the expiration of the Initial Term or the immediately preceding Renewal Term of this agreement, of its intention to do so. The same terms, covenants, conditions and rental set forth herein shall apply during a Renewal Term, except the Base Rent shall be adjusted as provided below.

(c) Immediate Termination. This Lease shall immediately cease if the Tenant fails to construct the Bulk Transfer Facility and/or the Operating Agreement is terminated by the parties.

3. Base Rent. Commencing on September 1, 2020 (the "Rental Commencement Date"), Tenant shall pay to Landlord, base rent of [redacted], payable monthly, in advance ("Base Rent").

Base Rent shall be due in advance. Except in the event of default, Base Rent for any partial month shall be prorated. All payments of Base Rent, and any additional rent payable hereunder, shall be sent to Lincoln Terminal Company, Inc., 22 S. Main Street, Greenville, SC 29601 or such other address as Landlord may designate in any invoice delivered to Tenant. In the event this Agreement is renewed for a Renewal Term, the Base Rent shall be adjusted by mutual consent of the parties. In the event the parties cannot reach mutual agreement as to Base Rent during a Renewal Term, the Base Rent shall be established

by an MAI appraiser or other similarly qualified appraiser knowledgeable of commercial and industrial property in Atlanta, Georgia. The parties must mutually consent to the selection of the appraiser, and further agree to split the cost of the appraisal equally.

4. Utilities. Tenant shall be liable for and shall pay directly to such utility provider all charges, rents and fees (together with any applicable taxes or assessments thereon) when due for water, gas, electricity, air conditioning, heat, septic, sewer, refuse collection, telephone and any other utility charges or similar items in connection with the use or occupancy of the rail transloading facility during the Term of this Lease. Landlord will be responsible for all utility charges, rents and fees related to any infrastructure Landlord constructs that is not specified in Exhibit C-1 of the Operating Agreement. Landlord shall not be responsible or liable in any way whatsoever for the impairment, interruption, stoppage, or other interference with any utility services to the Premises not caused by the action or inaction of Landlord, its agents, employees, contractors, invitees or licensees. In any event no interruption, termination or cessation of utility services to the Premises shall relieve Tenant of its duties and obligations pursuant to this Lease, including, without limitation, its obligation to pay all Rent as and when the same shall be due hereunder. However, to the extent that any interruption, termination, or cessation of any utility services (through no fault of Tenant) continues for more than forty-five (45) consecutive days, then Tenant shall have the right to terminate this Lease by written notice to Landlord, with neither party having any further rights or obligations to Landlord (except for any rights or obligations that expressly survive termination or expiration).

5. Modifications and Alterations to the Premises. Except as provided in Paragraph 1(c) with regards to Tenant's construction of a Bulk Transfer Facility, Tenant shall make no material modifications, alterations or improvements to the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Any modifications or alterations consented to by Landlord shall be completed in a good, workmanlike and lien-free manner. Unless otherwise agreed by the parties hereto, any alterations or improvements to the Premises made by Tenant shall become the property of Landlord. Notwithstanding the foregoing, Tenant may remove any moveable equipment or trade fixtures owned by Tenant during the term of this Lease, provided that any damage caused by such removal shall be repaired by Tenant in a manner acceptable to Landlord**.**

6. Destruction of or Damage to Premises. If all or substantially all of the Premises are destroyed by storm, fire, lightning, earthquake or other casualty, this Lease shall terminate as of the date of such destruction, and Base Rent shall be accounted for as between Landlord and Tenant as of that date. In the event of such termination, Base Rent shall be prorated and paid up to the date of such casualty. Tenant shall not have the right to terminate this Lease and cease paying Base Rent for the remaining duration of the Term if the casualty in question was caused or contributed to by Tenant, its agents, employees, contractors or invitees**.**

7. Governmental Approvals or Permits. Tenant agrees, at its own expense, to obtain any permits as required (and not in conflict with the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10501 ("ICCTA")) for the construction and operation of its Bulk Transfer Facility and to comply with all laws, orders, regulations, ordinances or restrictions applicable by reason of Tenant's use or occupancy of the Premises or operation of its business (and not in conflict with the ICCTA).

8. Condemnation. If all of the Premises is taken for any public or quasi-public use under any applicable body with appropriate jurisdiction by right of eminent domain, or by private purchase in lieu thereof (a "Taking" or "Taken"), or if any part of the Premises should be Taken and the partial Taking would materially interfere with Tenant's access to or use of the Premises, in Tenant's reasonable judgment,

then in either such case, upon written notice by Tenant, Tenant may terminate this Lease on the effective date of such Taking and Base Rent shall be pro-rated through the date of termination for the then current month, and neither party shall have any further rights or obligations to the other, with the exception of any provisions of this Lease that expressly survive termination. If part of the Premises shall be Taken, and Tenant does not elect to terminate this Lease as provided above, Tenant may, at its sole cost and expense, restore and reconstruct the Premises to a state that Tenant deems reasonably acceptable to continue Tenant's prior operations on the Premises; provided, however, that during the period of any restoration or reconstruction, Base Rent shall be equitably reduced by an amount which bears the same ratio to the Base Rent then in effect as the leased area Taken bears to the leasable area of the Premises. Further, nothing in this Lease shall be interpreted as Tenant waiving any rights to make separate claims against any applicable body with appropriate jurisdiction by right of eminent domain to seek any applicable compensation to which Tenant's Lease would entitle Tenant under the applicable Taking proceedings.

9. Assignment. Tenant may not assign this Lease (other than to a parent, subsidiary or affiliate of Tenant) or any interest thereunder or sublet the Premises in whole or in part or allow all or a portion of the Premises to be used by a third party without the prior written consent of Landlord, which shall not be unreasonably withheld. Any assignee shall become liable directly to Landlord for all obligations of Tenant hereunder.

10. Environmental Terms Pertaining to Pre-Existing Conditions.

(a) Definitions:

1) Parcel A – the southernmost parcel as shown on Exhibit A.
2) Parcel B – the parcel located to the north of Parcel A as shown on Exhibit A.
3) Parcel C – the northernmost parcel as shown by Exhibit A.
4) EPD – the Georgia Environmental Protection Division.
5) GBA – the Georgia Brownfield Act, O.C.G.A. §12-8-200 et seq.
6) HSRA – the Georgia Hazardous Sites Response Act, O.C.G.A. §12-8-90 et seq.
7) LOL – the Limitation of Liability issued by EPD under the GBA, O.C.G.A. §12-8-207.
8) PPCAP – Prospective Purchaser Corrective Action Plan.
9) PPCSR – Prospective Purchaser Compliance Status Report
10) VRP Act – the Georgia Voluntary Remediation Act, O.C.G.A. §12-8-100 et seq.
11) Environmental Laws – Any federal, state or local law, statute, ordinance, order, decree, code, regulation, as well as under common law, any judicial or administrative orders, decrees or judgments thereunder, and any permits, approvals, licenses, registrations, filings and authorizations issued by a governmental authority, in each case whether now or hereafter in effect, pertaining to pollution, protection or cleanup of the environment, health, or industrial hygiene or the environmental conditions on, under, from, or about the Premises, including, but not limited to, the following, as now or hereafter amended: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq.; Resource, Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"),

Pub. L. 99-499, 100 Stat. 1613; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq.; Emergency Planning and Community Right to Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11001 et seq.; Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq.; Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. § 1251 et seq.; the Hazardous Site Response Act, O.C.G.A. §12-8-90 et seq., any corresponding state laws or ordinances; and regulations, rules, guidelines or standards promulgated pursuant to such laws, statutes and regulations, as such statutes, regulations, rules, guidelines and standards are amended from time to time.

12) Hazardous Substance – As used herein, the term "Hazardous Substance" means any materials or substances deemed hazardous or toxic or regulated by applicable laws, including but not limited to substances defined as hazardous under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq., or the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq. (or any state counterpart to the foregoing statutes) or determined to present the unreasonable risk of injury to health or the environment under the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq. or any under other Environmental Law, including without limitation, asbestos, polychlorinated biphenyls, oil, gasoline or other petroleum based liquids.

(b) Regulatory Filings

(1) Parcels A and C. Within thirty (30) calendar days following the Lease Commencement Date, Landlord and Tenant will jointly submit an application and PPCAP for Parcels A and C to EPD pursuant to the GBA, seeking a provisional LOL. A draft of the PPCAP will be prepared by Tenant and provided to Landlord for its review and comment no later than fifteen (15) calendar days following the Lease Commencement Date. Landlord shall have seven (7) calendar days from the date of its receipt of the PPCAP to provide written comments on the PPCAP, which comments Tenant will use its reasonable best efforts to incorporate prior to submittal. Landlord will apply as a Prospective Purchaser and Tenant will apply as a Prospective Tenant of Parcels A and C, and each party will be responsible for signing and submitting an eligibility form pursuant to the GBA prior to submittal of the PPCAP to EPD.

(2) Parcel B. Within thirty (30) calendar days following the Lease Commencement Date, Tenant will submit an application for Parcel B to EPD pursuant to the GBA, seeking a provisional LOL. Tenant will submit a PPCAP and will apply as a prospective tenant of Parcel B. A draft of the PPCAP will be prepared by Tenant and provided to Landlord for its review and comment no later than fifteen (15) calendar days following the Lease Commencement Date. Landlord shall have seven (7) calendar days from the date of its receipt of the PPCAP to provide written comments on the PPCAP,

which comments Tenant will use its reasonable best efforts to incorporate prior to submittal. This application may be combined with the application required under subparagraph (1), if and to the extent permitted by EPD pursuant to the GBA.

(3) HSRA Notification. If not previously requested by Landlord from Tenant, Tenant shall on the Lease Commencement Date provide Landlord with all non-privileged environmental reports, information, data and documents applicable to the Premises in its control and possession (the "Environmental Documents"), and shall provide Landlord with reasonable access to Tenant's environmental consultant, AECOM, with respect to the Environmental Documents. If and to the extent required by HSRA, Landlord will within thirty (30) days following the Lease Commencement Date, submit a Release Notification to EPD for any portion of the Premises for which such notification is required. Landlord will provide a draft of any required Release Notification to Tenant no later than fifteen (15) calendar days following the Lease Commencement Date. Tenant shall have seven (7) calendar days from the date of its receipt of the Release Notification to provide written comments on the Release Notification, which comments Landlord will use its reasonable best efforts to incorporate prior to submittal.

(4) Voluntary Remediation Program. If, at any time during the term of this Lease, any portion of the Premises is proposed for, or listed on Georgia's Hazardous Site Inventory (HSI) pursuant to HSRA, then Landlord shall be responsible for preparing and submitting an application to EPD pursuant to the VRP Act for such portion of the Premises. Landlord shall be solely responsible for performing all work required pursuant to the VRP Act at its sole cost and expense until such time as EPD concurs with Landlord's certification of compliance as set for in a VRP compliance status report. Landlord shall conduct all VRP work in coordination with Tenant's activities, in compliance with Tenant's safety requirements and in a manner that does not unreasonably interfere with Tenant's operations. Landlord shall provide Tenant with a reasonable opportunity to review and comment on any submittal pertaining to the VRP Act, and to participate in any meetings with EPD.

(c) Responsibility for Work

(1) Brownfield Work.

(A) Tenant shall be responsible for designing, directing and performing all work required to implement the PPCAPs under Paragraph (b)(1) and (b)(2) above, including all work necessary to bring all soil and any source material into compliance with the applicable HSRA risk reduction standards to the extent required pursuant to the GBA (the "Brownfield Work"). Tenant may elect to apply a treatment material at the groundwater/soil interface as part of its work to address LNAPL source materials. If Tenant elects to perform such work, this treatment would be considered Brownfield Work.

(B) Tenant shall be responsible for selecting and contracting with all engineers, consultants, contractors, subcontractors, and other service or material providers as may be necessary to perform the Brownfield Work. Tenant shall use its reasonable best efforts so that Landlord has the right to rely on all such work performed by Tenant's consultant(s) and contractor(s) on terms mutually acceptable to Landlord and the consultant(s) and/or contractor(s) performing the work, and shall, along with Tenant, be named as an additional insured on any contractor's insurance policy in connection with such work. Subject to the reimbursement provisions in Paragraph 10(f), Tenant shall pay all required fees, obtain any required permits, and perform all work in material compliance with all applicable laws.

(C) Tenant shall have primary responsibility for interacting with EPD for the Brownfield Work until such time as Tenant has received a final LOL for those parcels for which it has certified compliance under the GBA. Tenant shall make all necessary decisions about compliance under the GBA, and will perform such work as may be required to certify the parcels to either non-residential standards appropriate for the future use of the site, or to a Type 5 standard utilizing engineering and/or institutional controls pursuant to the GBA. Tenant shall determine the means and methods for all site work, the schedule for implementing corrective action, and the remedies to be employed to achieve compliance. Tenant shall, however, make reasonable efforts to select the most cost-effective cleanup standards and remediation methods appropriate for the development and use of the Premises.

(D) Fourteen (14) days prior to submitting any material report or work plan to EPD under the GBA, Tenant shall deliver a draft of the report or work plan to Landlord for its review and comment. Landlord shall provide any comments it may have within seven (7) days of its receipt of the draft plan. If no comments are received within seven (7) days, the work plan will be deemed approved by Landlord. Tenant will use reasonable efforts to incorporate and respond to any comments provided by Landlord but shall make the final determination as to the contents of the deliverable submitted to EPD.

(E) All work required under this Paragraph 10 shall performed by an environmental consulting firm that is reasonably acceptable to both parties.

(2) VRP Work

(A) If and to the extent any portion of the Premises is entered into the VRP by Landlord, the Parties acknowledge that work necessary under the

GBA to bring the soil and any source material into compliance with applicable risk reduction standards will also permit Landlord to certify compliance with those standards under the VRP. The parties agree that such work will, as specified in Paragraph (c)(1) above, be performed by Tenant. Any work required pursuant to the VRP which is not otherwise performed by Tenant in connection with the GBA will be Landlord's responsibility and will be performed in material compliance with all applicable laws. Landlord shall be solely responsible for any assessment, treatment or removal of groundwater required pursuant to the VRP, which Tenant is not required to undertake in connection with the Brownfield Work.

(B) Landlord shall be responsible for selecting and contracting with all engineers, consultants, contractors, subcontractors, and other service or material providers as may be necessary to perform the VRP Work. Landlord shall use its reasonable best efforts so that Tenant has the right to rely on all such work performed by Landlord's consultant(s) and contractor(s) on terms mutually acceptable to Tenant and the consultant(s) and/or contractor(s) performing the work, and shall, along with Landlord, be named as an additional insured on any contractor's insurance policy in connection with such work.

(C) Landlord shall have primary responsibility for interacting with EPD for those parcels it has entered into the VRP. Landlord shall make all necessary decisions about compliance under the VRP, and will perform such work as may be required to certify the parcels to either non-residential standards appropriate for the future use of the site, or to a Type 5 standard utilizing engineering and/or institutional controls pursuant to the VRP. Landlord shall determine the means and methods for all site work, the schedule for implementing corrective action, and the remedies to be employed to achieve compliance.

(D) Fourteen (14) days prior to submitting any material report or work plan to EPD under the VRP, Landlord shall deliver a draft of the report or work plan to Tenant for its review and comment. Tenant shall provide any comments it may have within seven (7) days of its receipt of the draft plan. If no comments are received within seven (7) days, the work plan will be deemed approved by Tenant. Landlord will use reasonable efforts to incorporate and respond to any comments provided by Tenant but shall make the final determination as to the contents of the deliverable submitted to EPD. Seventy-two (72) hours prior to the commencement of any material VRP Work, Landlord shall provide Tenant notice as set forth in Paragraph 10(e) so that Tenant can ensure that the VRP Work will not materially interfere with the Brownfield Work or site operations.

(3) Environmental Covenants. If, in order to achieve compliance with the selected risk reduction standards under either the GBA or VRP, it is necessary to record an environmental covenant under the Georgia Uniform Environmental Covenants Act, O.C.G.A. §44-16-1 et seq. on Parcels A, B, and/or C, Landlord shall be responsible for determining whether to permit any activity and use limitations (AULs) on its property. Before agreeing to any such AULs, Landlord and Tenant shall confer with one another to ensure that the proposed AULs do not unreasonably interfere with Tenant's current or planned uses of the parcels and are otherwise acceptable to Landlord. If, in order to certify compliance with the applicable risk reduction standards under the VRP, it becomes necessary to request an environmental covenant from an adjacent property owner, Landlord shall be responsible for contacting and negotiating with that owner(s), and for any costs that may be incurred in connection therewith.

(d) Responsibility for Certification

(1) When the Prospective Purchaser Compliance Status Report (PPCSR) is submitted for Parcel A and/or Parcel C upon completion of the work required under the GBA, Landlord and Tenant shall both execute the required certification of compliance with the applicable risk reduction standards.

(2) When the PPCSR is submitted for Parcel B upon completion of the work required under the GBA, Tenant shall execute the required certification of compliance with the applicable risk reduction standards.

(3) For any parcel entered into the VRP, Landlord shall be responsible for certifying compliance with the risk reduction standards applicable to such property through submittal of a CSR pursuant to the VRP.

(e) Environmental Notices and Meetings. Notwithstanding any other provision of this Lease, all notices required to be made by the parties pursuant to this Paragraph 10 shall be provided by electronic mail to the individuals specified in Paragraph 14 and to Andrea Rimer (andrea.rimer@troutman.com) if to Landlord, and to John Spinrad (john.spinrad@agg.com) and Steven Aufdenkampe (steven.aufdenkampe@nscorp.com) if to Tenant. Landlord and Tenant may, upon written notice to one another, revise the parties required to receive notice under this Paragraph. Both parties will send copies to each other of any report, correspondence or other document provided to EPD, and will promptly provide each other with copies of all reports, correspondence or documents submitted to EPD or received by either party from EPD with respect to the Premises. Each party shall be provided with an opportunity to participate in any meetings with EPD arranged by the other party with respect to the Premises. No fewer than three (3) business days prior to any meetings with EPD, the party with

responsibility for arranging the meeting shall notify the other party of an upcoming meeting so that the other party may arrange to attend at its discretion.

(f) Financial Responsibility

(1) Payments and Reimbursements.

(A) Tenant has established an initial budget for the Brownfield Work it is required to perform under this Paragraph 10, a copy of which is attached as "Exhibit C" (the "Remediation Budget"). The parties acknowledge that the Remediation Budget is only an estimate which is subject to change and that Landlord's obligation to pay for all Brownfield Work required under this Paragraph 10 is not limited to the amount of the Remediation Budget. Tenant shall send an updated Remediation Budget that includes consultant and contractor proposals for any activities exceeding $50,000 ("Proposals") to Landlord for Landlord's review and approval approximately every month until LOLs have been received for all three parcels. Within five business days of receipt of each updated Remediation Budget, Landlord shall provide to Tenant any objections it has regarding the updated Remediation Budget and included Proposals. If Landlord objects to the updated Remediation Budget or a Proposal, the parties shall promptly attempt to resolve Landlord's objections in good faith. Neither the Remediation Budget nor Proposals shall be deemed approved by Landlord until Landlord's objections are resolved. If no objections are received within five business days following Tenant's delivery of the updated Remediation Budget or Proposals, they shall be deemed approved. Proposals for activities not exceeding $50,000, including laboratory testing and other tasks taking place under existing Tenant contractual rates, may be authorized by the Tenant without prior Landlord approval, but shall be accounted for in the monthly Remediation Budgets.

(B) Tenant shall pay when due all third party invoices, fees and charges (the "Environmental Expenses") for the Brownfield Work it is required to perform under this Paragraph 10 until such time as it has received final LOLs for those parcels for which it has certified compliance under the GBA. The Environmental Costs, as defined herein, shall include only Brownfield Work performed after the Lease Commencement Date, and shall not include any attorney's fees, or administrative or oversight costs incurred by Tenant for work performed by its own employees. Tenant shall be responsible for contesting any charges that it deems incorrect, excessive or unauthorized. Tenant shall provide Landlord with regular updates to

the Remediation Budget (on at least a monthly basis) for any work it anticipates performing pursuant to this Paragraph 10.

(C) Landlord shall be responsible for reimbursing Tenant for all Environmental Expenses actually paid by Tenant under this Paragraph 10 through the escrow account described in Paragraph (f)(2) below. Tenant shall submit a request for reimbursement quarterly to Landlord, providing reasonable detail as to the nature and amount of the charges and proof that the amounts were paid. If Landlord questions or disagrees with any of the charges, it shall raise those questions or issues with Tenant within fifteen (15) days of Landlord's receipt of the reimbursement request. If no questions or issues are raised within the fifteen (15) day period, the request shall be deemed approved. Landlord shall authorize the escrow agent to pay Tenant for the requested amount within thirty (30) days of receipt of the reimbursement request. If there are questions or disagreements about any of the charges or expenses, Landlord shall authorize the escrow agent to pay for all uncontested amounts within the thirty (30) day period. The parties shall negotiate with regard to any issues regarding the charges promptly and in good faith. If, after reasonable efforts to resolve any disagreements, the parties are unable to resolve the disagreements, they shall resolve the disagreement by means of arbitration with a single arbitrator. The selection of the arbitrator shall be agreed to by the parties and the arbitrator shall be experienced with disputes involving environmental remediation projects.

(2) Payment Escrow. Tenant and Landlord shall enter into an agreement in the form attached hereto as "Exhibit D" under which Landlord shall fund an escrow in the initial amount of [redacted]. The escrow shall be used solely to pay the Environmental Expenses due under Paragraph (f)(1) above. If at any time, following Landlord's approval of an updated Remediation Budget, Tenant reasonably believes the amount remaining in escrow is insufficient to cover Environmental Expenses anticipated to be expended by Tenant within the next quarter ("Anticipated Quarterly Expenses"), Tenant shall inform Landlord in writing and request that additional funds be placed into escrow to cover such Anticipated Quarterly Expenses. Furthermore, the minimum balance remaining in the escrow account shall be at least [redacted] (the "Minimum Balance") until Tenant either receives final LOLs for all parcels, or approves a lower Minimum Balance in writing and the escrow agent shall inform Landlord in writing if the balance in the escrow account falls below the Minimum Balance. Should Landlord receive either a request from Tenant or escrow agent to place additional funds into the escrow account to either maintain the Minimum Balance or cover Anticipated Quarterly Expenses, Landlord shall place such additional funds into the escrow account within ten (10) days. After Tenant has received final LOLs under the GBA for those parcels it has entered into the Brownfield program and NS has informed the escrow agent that all

amounts due to Tenant from Landlord have been paid in full, the escrow agent shall refund the remainder of the Payment Escrow to Landlord.

(3) Financial Assurance. If EPD requires that financial assurance be posted or established for any of the work performed by either party during the term of this Lease, Landlord shall be responsible for, and shall bear the cost of posting or establishing any such financial assurance in the amount required by EPD.

(g) Indemnity and Release.

(1) In conjunction with Landlord's purchase of Parcels A and C from General Shale, LLC ("General Shale") Landlord and Tenant shall execute an Environmental Indemnity, Release, and Covenant Not to Sue in favor of General Shale dated August 21, 2020(the "GS Environmental Indemnity"). A copy of that agreement is attached as "Exhibit E." Landlord agrees to assume each and every obligation imposed on Tenant under the GS Environmental Indemnity Guarantee, and, at Landlord's sole cost and expense, to respond to any claim thereunder for which General Shale asserts that Tenant is responsible. If General Shale makes a claim under the GS Environmental Indemnity, Tenant will promptly tender that claim to Landlord. If Landlord believes that the claim falls outside of the matters for which Tenant is responsible to General Shale under the GS Environmental Indemnity, it may contest the claim with General Shale, but it may not refuse to respond to General Shale's claim. If Landlord does contest the claim, it shall bear the cost of doing so, and shall indemnify, defend and hold Tenant harmless, and reimburse Tenant for any costs it may incur due to Landlord's contesting the claim.

(2) Landlord shall indemnify, defend and hold Tenant harmless from and against any costs, damages, expenses, fines, claims, demands, actions, causes of action, suits, judgments, administrative orders, awards or penalties, including reasonable attorney's and consultant's fees and expenses ("Claims") made or asserted by a governmental entity or third party against Tenant, or any affiliate of Tenant, alleging or asserting Tenant's liability for or a violation of or liability under any Environmental Law for any Hazardous Substance released or disposed of on or from the Premises prior to the Lease Commencement Date, except to the extent such Claims arise in connection with Tenant's own gross negligence or willful misconduct with respect to any Hazardous Substance on the Premises . Tenant shall provide written notice to Landlord of any Claim asserted against it promptly upon receipt, and shall, at no material cost to Tenant, provide reasonable cooperation to Landlord in the defense of any Claim or pursuit of any relevant counterclaims. In the event of an indemnified Claim where there is a conflict between Landlord and Tenant, Tenant may elect to engage separate counsel, the reasonable cost of which shall be paid by Landlord.

(h) Survival. This Paragraph 10 -- ENVIRONMENTAL TERMS PERTAINING TO PRE-EXISTING CONDITIONS shall survive the expiration or earlier termination of this lease.

11. Violation or Default. If either party shall fail to keep and perform any one or more of the covenants and agreements herein to be kept and performed, and should such failure continue for a period of thirty (30) days from the date of receipt of written notice of such failure, then the non-defaulting party shall have the option to terminate this Lease by written notice to the defaulting party. Neither party hereto shall be relieved by the termination of this Lease of any obligation which shall have accrued prior to such termination. In the event that the nature of any such failure to keep a covenant or agreement necessitates a period of more than thirty (30) days to complete compliance (without such additional time required being due to the negligence or willful misconduct of the defaulting party), then the non-defaulting party shall provide notice of the reasonably foreseeable expected period of time required to resolve the non-compliance (but not to exceed one hundred twenty (120) days unless the nature of the curative action requires a greater period of time and the defaulting party is using commercially reasonable good faith efforts to diligently prosecute the curative action to completion as quickly as the circumstances allow). In addition to the remedy hereinabove described, either party shall have and may exercise the right to invoke any other remedies allowed at law or in equity including, without limitation, suits for injunctive relief and specific performance, as if such remedies were not herein provided. Accordingly, the mention in this Lease of any particular remedy shall not preclude either party from having or exercising any other remedy at law or in equity. Nothing herein contained shall be construed as precluding the non-defaulting party from having or exercising such lawful remedies as may be and become necessary in order to preserve the non-defaulting party's right or the interest in the Premises and in this Lease.

12. No Estate in Land. This Lease shall create the relationship of landlord and tenant between Landlord and Tenant.

13. End of Term.

(a) Surrender of Premises. On or before the last day of the Term of this Lease or upon the sooner termination thereof or upon Tenant's cessation of business described in Paragraph 1, Tenant shall peaceably and quietly surrender and deliver to Landlord the Premises (including, without limitation, all Improvements and all additions thereto and replacements thereof made from time to time over the Term of this Lease including but not limited to the Bulk Terminal Facility), clear of any monetary encumbrances such as liens, mortgages, or other deeds to secure debt. Any personal property of Tenant located on the Premises shall be removed by Tenant prior to the end of the Term, failing which, any such personal property of Tenant shall be deemed abandoned and become the personal property of Landlord (except as may be otherwise agreed to by Landlord and Tenant prior to the expiration of or termination of the Term of this Lease).

(b) Holding Over.

(1) With Landlord Consent. If Tenant remains in possession of the Premises after expiration of the Term with Landlord's written consent, Tenant shall be a month-to-month tenant upon all the same terms and conditions as contained in this Lease, except that the Base Rent shall become one hundred fifty (150) percent of the then current Base Rent, and there shall be no renewal of this Lease by operation of law. Such month-to-month tenancy shall be terminable upon thirty (30) days written notice by either party to the other.

(2) Without Landlord Consent. If Tenant remains in possession of the Premises after the expiration of the Term without Landlord's written consent, Tenant shall be a tenant at sufferance subject to immediate eviction. In such event, in addition to paying Landlord any damages resulting from such holdover, Tenant shall pay Base Rent at the rate of three times the then current Base Rent. In such circumstance, acceptance of Base Rent by Landlord shall not constitute consent or agreement by Landlord to Tenant's holding over and shall not waive Landlord's right to evict Tenant immediately.

14. Notices. Except as otherwise provided in Paragraph 10(e) above, any notice given pursuant to this Lease shall be in writing and sent by certified mail, return receipt requested, by hand delivery or by reputable overnight courier to:

(a) Tenant: c/o Director Real Estate, Norfolk Southern Corporation, 1200 Peachtree Street, NE 12th Floor, Atlanta, Georgia 30309-3579, or at such other address as Tenant may designate in writing to Landlord.

(b) Landlord: Lincoln Terminal Company, Inc., 22 S. Main Street, Greenville, SC 26901, or at such other address as Landlord may designate in writing to Tenant.

Any notice sent in the manner set forth above shall be deemed delivered three (3) days after said notice is deposited in the mail if sent by certified mail (return receipt requested), or upon receipt if sent by hand delivery or reputable overnight courier. Any change of notice address by either party shall be delivered to the other party by the manner of notice required hereby.

15. Taxes.

(a) Real Estate Taxes and Assessments. Landlord shall pay all real estate taxes and assessments (regular or special) pertaining to the Premises on or before the date the same become delinquent. Landlord shall be entitled to the benefit of any property tax incentive or specialized tax designation available pursuant to applicable laws in connection with any costs incurred by Tenant or Landlord in connection with performance of work pursuant to the GBA, and Tenant shall provide reasonable cooperation (and ensure that each of its consultants and contractors provides reasonable cooperation) to Landlord in documenting and certifying any eligible costs associated with the GBA to EPD, and obtaining approval of such costs and/or special designation from any local taxing authority.

(b) Other Taxes. Tenant shall be responsible for any taxes or assessments imposed upon or assessed against Tenant's personal property, and Tenant shall pay and be liable for all rental, sales and use taxes, and other similar taxes, if any, levied or imposed by any city, state, county or other governmental authority (including any rental tax). Such payments shall be paid concurrently with the payment of Base Rent or other sum due hereunder upon which the tax is based. If Landlord pays any taxes or assessments which are Tenant's responsibility under this Paragraph, Tenant shall reimburse Landlord within ten (10) days after Tenant's receipt of paid invoices for such taxes and assessments.

16. Joint and Several. If Tenant comprises more than one person, corporation, partnership or other entity, the liability hereunder of all such persons, corporations, partnerships or other entities shall be joint and several.

17. Right of First Refusal. During the Term, if Landlord receives an offer to purchase the Premises from a legitimate *bona fide* third party which Landlord would, in its sole discretion, accept upon

the terms so presented, Landlord shall first offer to sell the Premises to Tenant upon terms no less favorable to Landlord. Tenant shall have thirty (30) days from receipt of such offer from Landlord to accept said offer. If Tenant fails to accept the offer by Landlord or if Tenant should make a counteroffer to Landlord to purchase the leased property and Landlord does not accept such counteroffer within thirty (30) days of receipt of such counteroffer, then Tenant's right of first refusal pursuant to this paragraph shall be null and void and Landlord shall be under no obligation to offer to sell the leased property to Tenant thereafter.

18. No Warranties. TENANT ACCEPTS THE PREMISES "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF QUIET ENJOYMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER IMPLIED WARRANTIES. LANDLORD SHALL NOT BE LIABLE FOR, AND TENANT HEREBY RELEASES LANDLORD FROM ALL CLAIMS FOR ECONOMIC LOSSES AND ALL OTHER DAMAGE OF ANY NATURE WHATSOEVER ACCRUING TO TENANT, INCLUDING, BUT NOT LIMITED TO THE VALUE OF ANY BUILDINGS, STRUCTURES OR IMPROVEMENTS OF TENANT UPON THE PREMISES, RESULTING FROM OR ARISING BY REASON OF ANY DEFICIENCY, INSUFFICIENCY OR FAILURE OF TITLE OF LANDLORD.

19. Survival. The provisions of Paragraphs 5, 10 and 14 shall survive the expiration or earlier termination of this Lease**.**

20. Subordination and Nondisturbance; Estoppel; Attornment.

(a) Subordination and Nondisturbance. Landlord shall have the right to place upon the Premises any mortgages which Landlord or its lender(s) deem advisable, provided that no such mortgage shall impose any cost or liability on Tenant beyond the terms of this Lease.

(b) Estoppel Certificate. Each party agrees to execute and deliver, not more than three (3) times per year during the Term, within thirty (30) days after receipt of written request therefor, an estoppel certificate setting forth the names of Landlord and Tenant; the Effective Date, Delivery Date, Rent Commencement Date and Expiration Date of this Lease; the duration of Original Term and number and duration of any Renewal Terms; a description of the Premises; the Rent payable; and a certification that, to the actual knowledge of the applicable party as of the date of execution of the Estoppel Certificate, this Lease is either in full force and effect or specifically enumerating any conditions of default with respect thereto and known to the party executing such estoppel certificate.

(c) Attornment. In the event that Landlord's mortgagee, or any other person, acquires title to the Premises pursuant to the exercise of any remedy provided for in its mortgage, Tenant agrees to attorn to the mortgagee or such person as its new landlord, and this Lease shall continue in full force and effect as a direct lease between Tenant and such mortgagee or other person, provided that the mortgagee, or any other person, assumes all rights and obligations of Landlord as set forth hereunder.

21. Miscellaneous.

(a) Rights Cumulative. All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative but not restrictive to those given by law.

(b) Waiver. No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon Landlord or Tenant unless in writing and executed by Landlord or

Tenant, as the case may be. Neither the failure of Landlord or Tenant to insist upon a strict performance of any of the terms, provisions, covenants, agreements and conditions hereof, nor the acceptance of any Base Rent by Landlord with knowledge of a breach of this Lease by Tenant in the performance of its obligations hereunder, shall be deemed a waiver of any rights or remedies that Landlord or Tenant may have or a waiver of any subsequent breach or default in any of such terms, provisions, covenants, agreements and conditions.

(c) Successors and Assigns. The agreements, terms, provisions, covenants and conditions contained in this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and, to the extent permitted herein, their respective successors and assigns.

(e) Severability. If any term, covenant or condition of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons, entities or circumstances other than those which or to which used may be held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law.

(f) Time. Time is of the essence in every particular of this Lease, including, without limitation, obligations for the payment of money.

(g) Entire Agreement. This Lease contains the entire agreement between the parties and, except as otherwise provided herein, can only be changed, modified, amended or terminated by an instrument in writing executed by the parties. It is mutually acknowledged and agreed by Landlord and Tenant that there are no verbal agreements, representations, warranties or other understandings affecting the same; and that Tenant hereby waives, as a material part of the consideration hereof, all claims against Landlord for rescission, damages or any other form of relief by reason of any alleged covenant, warranty, representation, agreement or understanding not contained in this Lease. This Lease shall not be changed, amended or modified except by a written instrument executed by Landlord and Tenant.

(h) Applicable Law. This Lease shall be governed by, and construed in accordance with, the laws of the State of Georgia, without reference to any conflicts of law principles

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, effective the day and year first above written.

Witness:

Signature
Name: Debbie Northcutt

Witness:

Signature
Name: JOHN HENDERSON

LANDLORD:

Lincoln Terminal Company, Inc.

By:
Name: L. Rumpf, Jr.
Title: President

Date of Landlord Signature: 8/24/2020

[SEAL]

Witness:

Signature
Name: Diane Hogan

Witness:

DocuSigned by:
Matthew A. Gernand
D51F486CF1444B6...

Signature
Name: Matthew A. Gernand

TENANT:

Norfolk Southern Railway Company

By: Alan H. Shaw
Name: Alan Shaw
Title: EVP and Chief Marketing Officer

Date of Tenant Signature: 08/24/2020

[SEAL]

EXHIBIT A

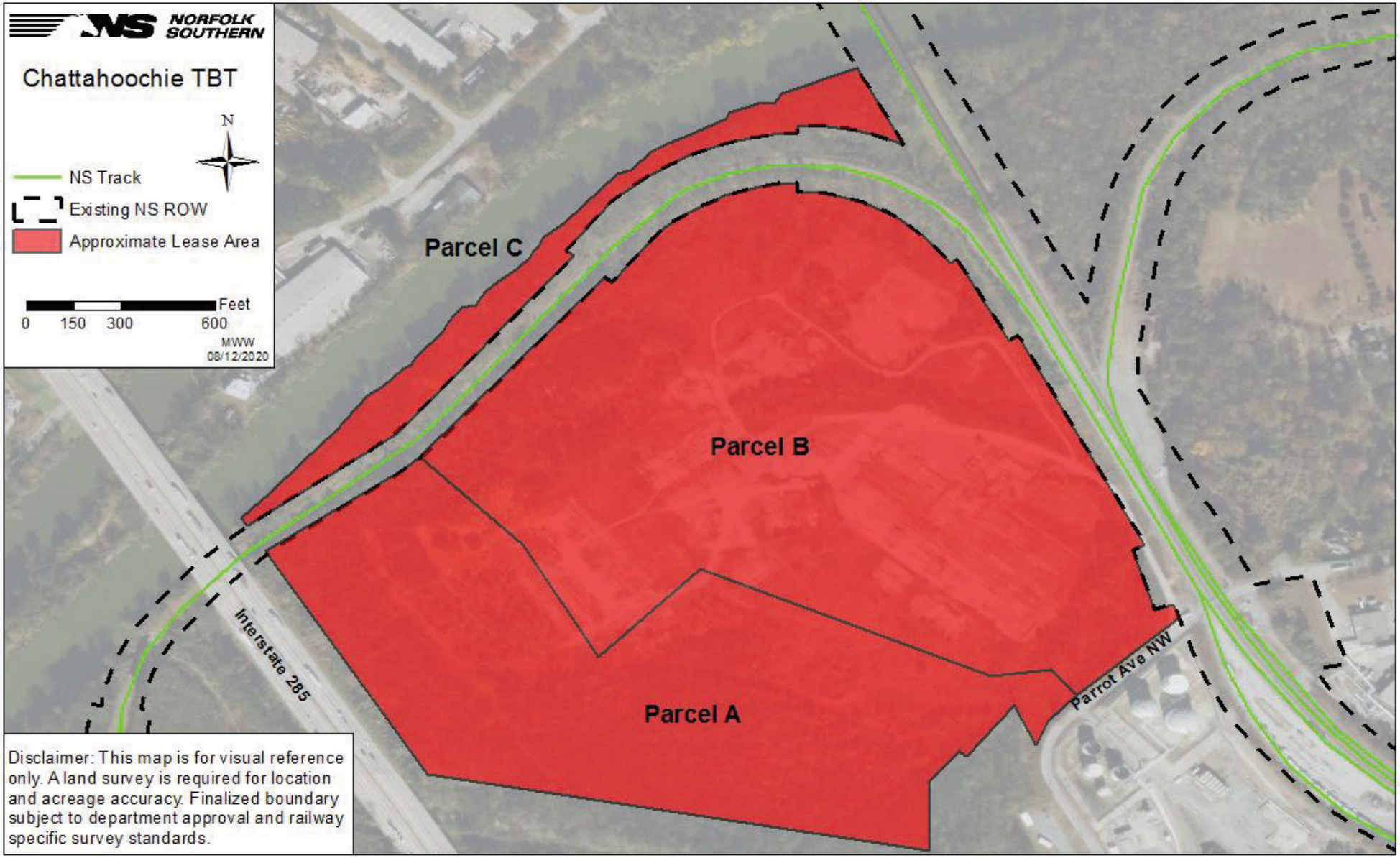


EXHIBIT B

OPERATING AGREEMENT

Contract Number:
Vendor Number: **2000106184 (Lincoln Terminal Company, Inc.)**

A G R E E M E N T

This Agreement is made and entered into this 24th day of August, 2020 to be effective as of the Effective Date (as defined herein), by and between **Norfolk Southern Railway Company** ("NSR") for itself and on behalf of its parent, affiliated and subsidiary companies (collectively, the "NSR Affiliates", and NSR and the NSR Affiliates sometimes referred to herein collectively as "Railway") and **Lincoln Terminal Company, Inc.** (hereinafter called "Lincoln" or "Contractor"). This Agreement includes the attached appendices to the same extent as if the provisions of appendices were set forth verbatim herein, and the term "this Agreement" as used hereinafter shall include the appendices.

W I T N E S S E T H

WHEREAS, Railway will construct certain facilities and equipment for the continuation of rail transportation through a multi-commodity rail transloading facility.

WHEREAS, the rail transloading facility will include the transloading of various commodities as determined by Railway (each commodity a "Product" and together, the "Products") from rail cars into bulk storage, pipelines or motor carrier trailers ("Trailers") pursuant to rate transportation agreements, public rates and private quotes with Railway's customers (the "Work"); and

WHEREAS, Railway desires to enter into an agreement with Lincoln for the design, installation, implementation and maintenance of additional facilities, software, procedures and equipment to provide a more efficient Product transfer and Trailer bill of lading generation incidental to such Work, as well as other related infrastructure as further described in Appendix C-1 (the "System"), to facilitate the transfer, inventory management, comingling of Product, and outbound loading of Product into Trailers for Railway's customers at the facility (the "Terminal"), as set forth herein and under the conditions hereinafter set forth below; and

WHEREAS, Railway has contracted or will contract with a third party operator (the "Operator") to operate the Terminal (as hereinafter defined) and perform the Work on its behalf; and

WHEREAS, the Operator will provide the day-to-day employees operating the Terminal (as hereinafter defined); and

WHEREAS, Lincoln will not employ any employees at the Terminal on a day-to-day basis, but will only have personnel available on an as-needed basis to install and provide oversight and maintenance of the Systems; and

WHEREAS, Lincoln will install, implement and maintain the Systems and perform the other services described herein.

NOW, THEREFORE, for and in consideration of the mutual undertakings set forth below, the parties hereto agree as follows:

SECTION 1. LINCOLN'S OBLIGATIONS.

A. Admin Function.

(i) The services set forth in this Section 1.A. shall hereinafter be referred to as the "Admin Function".

(ii) Lincoln will install, implement and maintain the Systems and will train the Operator's employees in operating the Systems with a goal of 100% customer satisfaction. Railway has entered into a separate Personal Property Lease Agreement with Lincoln to lease the Systems from Lincoln. Other than in connection with the installation, implementation and maintenance of the Systems and as otherwise required from time to time in order to perform its obligations under this Agreement, Lincoln will have no on-site personnel at the Terminal. Lincoln will be responsible, at its cost, for the initial purchase, overall maintenance, installation and replacement of all equipment needed for the Systems as described in Appendix C-1, as well as fuel, lubricant, supplies, depreciation and parts used by Lincoln pursuant to this Agreement facilitating the installation, implementation and maintenance of the System. Upon any termination or expiration of this Agreement, Railway will have the option, but not the obligation, to purchase the Systems from Lincoln at its mutually-agreed, then-current fair market value.

(iii) Lincoln will ensure that the Systems will accurately meter and record the volume of Product(s) that is loaded into Trailers at the Terminal. The parties acknowledge the System will separately comingle the Product, provided that Lincoln will in all events ensure that each supplier receives the same quantity of Product out of the System as it delivered into the System, subject to the penultimate sentence of this Section 1.A.(iii). The process for metering Products will be appropriate to the Product being transloaded. Lincoln will, at its sole cost, have an independent party perform periodic meter calibration tests on all meters and will provide the results of said tests to Railway no less than once a year. If the amount of volume transloaded through a System varies from the customer reported volume by .5% or more, then Lincoln will immediately notify Railway and determine whether it has malfunctioning equipment or there is otherwise a defect in the System. Lincoln will reimburse any supplier for Product shrinkage/loss in excess of .5% if the loss is determined to be due to Lincoln's malfunctioning or improperly calibrated equipment or due to any other defect in a System. Determination of Lincoln's shrinkage/loss liability will be determined by comparing the quantity of Product that entered the System to the quantity of Product metered through the System's outbound truck rack, which will be required to be properly calibrated and capable of temperature correction.

(iv) If requested by Railway, Lincoln will determine the quantity of the Product handled hereunder by Lincoln, or, at Railway's customer's option, by an independent inspector mutually acceptable to both the customer and Railway. The charges for an independent inspector, if any, shall be borne by parties other than Lincoln. Because Lincoln's compensation paid by Railway will be determined in whole or in part by the quantity of Product handled hereunder, either party (Lincoln or Railway) may dispute a determination under this section by delivering written notice thereof to the other party promptly upon receipt of the determination. The parties will resolve any disputes in good faith. In the event the parties cannot reach a good faith resolution of any disputes, the parties agree that Lincoln may engage (at its own expense) a second independent inspector mutually acceptable to both parties (the "Second Inspector") to review all records to determine the quantity of Product handled hereunder by Lincoln. If the Second Inspector reaches a different quantity from the original independent inspection, the parties agree to average the two determinations to reach a final quantity, and that this average will be deemed conclusive as to the quantity of Product handled hereunder by Lincoln.

(v) As between Railway and Lincoln, Lincoln will be responsible for any loss of Product beginning when the Product enters the System until such Product passes the loading flange at the truck loading rack.

B. Additional Admin Services.

Lincoln shall also provide any additional services that are determined in Railway's sole but good faith judgment to be reasonably necessary for the efficient management of the Admin Function (hereinafter called "Additional Admin Services" and together with the services required in connection with the Admin Function, the "Services"), which will include at a minimum those administrative services specifically described in Appendix A; provided, however, that no language in Appendix A, or omission of language from Appendix A will reduce or limit, in any manner, Lincoln's obligation to provide all support and incidental services ordinarily and reasonably required in ensuring the System operates consistent with the administration of a railroad bulk transloading facility.

C. Warranty; Supervision and Performance of Services.

In furtherance of its duties to maintain the System during the term of this Agreement, Lincoln will perform and complete all Services in a safe, efficient and workmanlike manner strictly in accordance with the requirements of this Agreement. Lincoln warrants that (i) the System and any equipment used in performing such Services will be in good working condition and repair and suitable for performing such Services, and (ii) the System will be fully operational during not less than 98% of the operating hours set forth in Appendix C-1 hereto. Lincoln is and will remain an independent contractor. Lincoln will be solely responsible for, and Railway will not participate in, the employing or supervising of each person engaged in discharging Lincoln's responsibilities under this Agreement; all such persons shall be the sole agents, representatives and/or employees of Lincoln. Lincoln will pay all expenses and charges involved or incurred in any way in the performance of its obligations under this Agreement, including without limitation compensation of its personnel, fringe benefits, Social Security, Worker's Compensation, unemployment insurance and any other employment taxes as may be required by local, state or Federal law. Should Lincoln engage the services of a subcontractor or agent to carry out any of Lincoln's activities under this Agreement, Lincoln assumes full responsibility and will indemnify and hold harmless Railway from any consequences of the acts and omissions of such subcontractor or agent. It is the intention of the parties that Lincoln will remain an independent contractor and nothing herein will be deemed to constitute a joint venture, partnership or agency of any kind for any purpose. Lincoln will not use the Terminal other than for the purposes set forth in this Agreement, and will not use the Terminal to transload rail cars placed at the Terminal by parties other than Railway.

D. Protection of Persons and Railway Property.

(i) Lincoln will require any person performing its obligations under this Agreement, including, without limitation, Lincoln's employees, prospective employees expected to perform Services hereunder, agents, representatives, and subcontractors (hereinafter called "Workers"), to comply, while on or about Railway property, with all applicable United States Department of Transportation ("DOT") or OSHA regulations and with the operating rules, if any, that apply to their activities and are supplied to Lincoln by Railway, and also to comply with any other statutes, rules or regulations concerning operations or safety applicable under federal or state laws or regulations.

(ii) Lincoln represents and warrants that, as to each of Lincoln's Workers who will come onto Railway's premises or who will perform work hereunder, Lincoln has performed, and such Lincoln's Worker has passed, the background check and a drug screening test (as described below), each of which shall be reasonably acceptable to Railway and otherwise in compliance with applicable laws, including, but not limited to the Fair Credit Reporting Act as applicable to background checks.

(iii) Except for the Products, this Agreement does not cover the handling of any commodity designated as hazardous pursuant to 49 C.F.R. Parts 171 and 172, including Section 172.101 (Hazardous Materials Table), as may be revised or replaced from time to time. Lincoln will not bring onto Railway's property or knowingly permit the presence of, or knowingly permit or knowingly suffer others to bring on or knowingly permit the presence on Railway's property, such materials without the expressed written approval of Railway.

(iv) In providing the System to facilitate the transloading of any Products, Lincoln will ensure that the transfer process has the appropriate equipment to be performed: (a) only on grounded track; (b) isolated from other commodities to the degree possible as track space allows but in any event as required by applicable laws and regulations to allow for safe operations; (c) only through a pumping system with a "closed loop" vapor control or emissions controls with a similar emissions control coefficient; (d) using hoses secured with straps/seals; (e) under conditions where all transfer equipment, car and tank truck is grounded; (f) only using bonded tanks; and (g) inside the containment area. During the design of the System by Lincoln, Lincoln and Railway will cooperate to minimize additional air permit obligations arising from installation and operation of the System.

E. E-Verifile.com

(i) Unless otherwise specified, Contractor shall secure through e-VERIFILE background investigations of its employees and subcontractors who will or might enter upon the property of Railway. Nothing in this background investigation requirement shall prevent Contractor from hiring any particular individual or requiring Contractor to terminate such individual if already hired; however, Contractor understands and acknowledges that a successful background investigation is a mandatory requirement to enable the individual Contractor employee or subcontractor to enter upon the property of Railway. Contractor employees or subcontractors successfully undergoing the background investigation will be issued a picture identification card which will be required for Contractor's employees and subcontractors to enter and work on Railway's property or perform the Services. Contractor employees or subcontractors without the identification card will not be allowed to work on Railway's property. Upon request of Railway at any time, Contractor shall provide Railway with a list of all employees and subcontractors who have entered, or may enter, upon the property of Railway, or who may otherwise be granted picture identification cards or such other badge access. Failure by Contractor to provide such information may result in immediate termination of this Agreement in Railway's sole discretion. Employees leaving the employment of Contractor, and Contractor's subcontractors who have completed their portion of the services for which they were engaged, must surrender identification cards to Contractor. Although Railway has negotiated standard volume rates with e-VERIFILE.com for the background investigations, identifications cards and other products, all charges incurred in the use of e-VERIFILE services and products are the sole responsibility of Contractor. Notwithstanding any provision of this Agreement, if any, that permits Contractor to seek reimbursement of travel and other expenses from Railway, the e-VERIFILE.com charges are not included among such reimbursable expenses. Contractor has considered such charges as a part of its overhead costs in determining its price proposals. Contractor shall execute e-VERIFILE.com's standard Subscriber Agreement – failure to do so voids this Agreement. Contractor agrees to comply with all applicable federal and state laws, rules and regulations

applicable to background investigations of employees and subcontractors (including, but not limited to, appeal rights and the protection of employee personal information).

(ii) In the event that Railway ceases the use of e-VERIFILE.com for background investigations or switches to another similar service, Contractor will be notified by Railway of the termination and/or transfer. In the event that Railway switches to another vendor for similar services, the requirements of this Section shall apply to Contractor with regard to the use of the alternative vendor's services.

(iii) Railway does not warrant or guarantee either the accuracy or completeness of the services performed by e-VERIFILE.com. Railway shall have no responsibility or liability to Contractor for the services performed by e-VERIFILE.com.

F. Other Investigations.

As to any of Contractor's Workers who have or may come onto Railway's premises or perform work hereunder, Contractor will perform any other investigation or procedure reasonably requested by Railway for the protection of Railway's property or operations, the protection of lading, and the protection of third parties.

G. Indemnification for Background Checks.

Contractor agrees that it will hold Railway harmless and will indemnify Railway in the event any actions are filed against Railway in connection with Contractor's completion of any of the foregoing, including but not limited to the conduct and communication of the background check and the drug screening test.

H. Waiver.

If Railway elects to waive the requirement of any background check, drug screen, or other investigation or procedure before permitting one of Contractor's Workers to perform work hereunder or to come on any Railway property, such waiver will not constitute a waiver of Railway's right to subsequently require any such check, screen, investigation or procedure for that Worker after he or she has begun working under this Agreement.

I. Notice to Workers.

Before permitting any of its Workers to perform any service under this Agreement, Contractor shall inform him or her of all of Railway's rights under this Section 1.I. Without limiting the generality of the foregoing sections of this Agreement in any way, Contractor will also arrange a urinalysis screen for any substance specified by Railway for each of Contractor's Workers who will perform work under this Agreement. Upon request by Contractor, Railway will furnish it with a list of doctors, clinics, and hospitals that perform drug screening urinalysis.

J. Conflict of Interest.

Except for Contractor's affiliate, Lincoln Energy Solutions, which may be shipping Product utilizing the System, neither Contractor nor any of its employees, subcontractor, or agents may (i) have a financial interest in, (ii) or make any payments, refunds, stipends or grant any consideration to, any (a)

shipper; (b) consignee, or (c) motor carrier performing services on behalf of a shipper or consignee that ships, receives or transports Product utilizing the System.

K. Damage and Injury Reports.

Contractor will immediately notify the Railway employee(s) specified on Appendix B of (i) any death of, or injury requiring medical treatment to, any person, including but not limited to employees of Contractor while on Railway property or performing services hereunder, and (ii) any loss or destruction of or damage to or on any Railway property, including but not limited to the rail cars and the Product. Contractor agrees to furnish full details of any such accident or incident. Contractor acknowledges Railway's responsibility to report deaths or injuries to Federal agencies and the penalties and damages to which Railway may be subjected if such reports are not made because of Contractor's failure to notify Railway.

L. Audit.

During the term of this Contract and for eighteen (18) months thereafter, Railway and its duly authorized representatives will be permitted access, within a reasonable time after request, to Contractor's books, records, accounts and other related documentation, pertaining to any Services performed by Contractor under this Agreement for the purpose of auditing and verifying such work, the cost of such work, the volume of Product that is transloaded at the Terminal and/or any other charges or payments or price adjustments billed hereunder.

M. Demurrage, Car Hire and Transportation Charges.

Except for Lincoln's affiliate, Lincoln Energy Solutions, Lincoln shall not be responsible for demurrage, car hire or transportation charges for the movement of the Product to and from the Terminal.

N. Access to Railway Property.

Railway reserves the right to temporarily or permanently bar from Railway's property any of Contractor's Workers who have failed, in Railway's sole determination, to act safely, respectfully, responsibly, professionally, and/or in a manner consistent with Railway's desire to minimize risk and maintain its property with maximum security and minimum distractions or disruptions or for any other lawful reason. Railway shall not be required to specify either the basis for its decision or which objections, if any, it has to the barred individual(s). The decision to bar one or more of Contractor's Workers from Railway property shall not be interpreted as a request for Contractor to fire the individual(s). Contractor shall indemnify, defend and hold harmless Railway from and against any and all claims, demands, suits, liability, damages, losses, costs (including, but not limited to, attorneys' fees) and expenses arising from or in connection with (a) any allegation that Railway is an employer or joint employer of Contractor's Workers or is liable for related employment benefits or tax withholdings or (b) Railway's decision to bar or exclude any one or more of Contractor's Workers from Railway's property.

O. Minimum System Standards.

Lincoln covenants and agrees that the System will meet the criteria specified in Appendix C-1.

P. Confidentiality.

Contractor shall maintain the confidentiality of this Agreement and shall not disclose its terms

without the prior written consent of Railway. Further, except as provided in the next succeeding sentence, Contactor shall not disclose any aspect of the services provided hereunder without the express written consent of Railway. Notwithstanding the foregoing, this Contract and/or the services provided hereunder may be disclosed (i) to advisors, attorneys, or financing sources of Contractor or (ii) when required by law, regulation or court order; provided, however, that (1) Railway is given prompt notice of such government or judicial action and is afforded an opportunity to intervene and prevent or limit the disclosure by Contractor and (2) in the event disclosure is so required, Contractor shall furnish only that portion of information that is legally required.

SECTION 2. COMPENSATION; IRS REPORTING FORMS.

A. Railway covenants and agrees to use the System for all transfers of Products specified in Appendix C-1 and to pay, and Contractor agrees to accept, as full compensation for all services provided hereunder by Contractor and all obligations assumed hereunder by Contractor the amounts or rates of compensation set forth in Appendix C-1. Without limiting the generality of the foregoing, the compensation shown in Appendix C-1 includes all activities covered by the Services, and Contractor shall not be entitled to any additional compensation for any such Services.

B. Railway agrees that it shall not use the System to transfer any products other than the Product specified in Appendix C-1 unless and until Lincoln and Railway enter into a subsequent agreement to allow for the use of the System for additional products.

C. Notwithstanding anything to the contrary contained elsewhere in this Agreement, as a condition precedent to any amounts owed by Railway under this Agreement to Contractor becoming due, Contractor must first provide Railway with a current, properly completed, executed and dated IRS Form W-8 or IRS Form W-9, as applicable, or such successor form as may be prescribed by the U.S. Internal Revenue Service, that eliminates any withholding tax obligation on Railway. If at any time during the term of this Agreement such IRS Form W-8 or IRS Form W-9 shall expire or otherwise become invalid, Railway shall have no obligation to make any further payment for any amounts due under this Agreement until such time as Contractor provides Railway with a current, properly completed, executed and dated IRS Form W-8 or IRS Form W-9, as applicable, or such successor form as may be prescribed by the U.S. Internal Revenue Service, that eliminates any withholding tax obligation on Railway.

D. Contractor and Railway acknowledge and agree that Railway's monetary obligations to Contractor under this Agreement shall at all times be net of all defense obligations, indemnity and contribution obligations and other monetary obligations owing by Contractor to Railway under any agreement between Railway and Contractor (collectively, "Contractor's Monetary Obligations") and any payment, installment payment or advance made by Railway to Contractor in respect of this Agreement while any Contractor's Monetary Obligations are outstanding shall be deemed to be an overpayment to Contractor to the extent of such outstanding Contractor's Monetary Obligations and shall be subject to recoupment and/or setoff by Railway. Without limiting the foregoing, Railway shall have the right, at all times, to deduct any Contractor's Monetary Obligations from any amounts owed to Contractor by Railway, and to pay only the net sum due, if any. Any Contractor's Monetary Obligation that remains outstanding after any exercise by Railway of its recoupment and/or setoff rights shall be paid by Contractor promptly upon demand by Railway.

E. Contractor shall invoice Railway for fees and expenses incurred on a monthly basis, and Railway's payment terms shall be net 30 days from date of invoice.

F. Contractor must invoice for Services performed within 90 days of the month in which the Services were provided or forfeit payment for those Services.

G. The rates listed in Appendix C-1 shall be fixed for a period of two (2) years commencing on the date the terminal becomes operational, provided that nothing in this Section 2 shall be deemed to limit Railway's right to terminate the Agreement pursuant to Section 5.B. Commencing as of May 1, 2021, and on each May 1st thereafter during the Term (each a "Adjustment Date"), the rates listed in Appendix C-1 will be adjusted by 70% of the percentage change in the Average Consumer Price Index – Urban Wage Earners and Clerical Workers - South (Index ID CWUR0300SA0) as published by the United States Department of Labor's Bureau of Labor Statistics (the "Index") for the most recently completed April to March 12-month period, compared to the prior April to March 12-month period. Provided, however, that any adjustment shall not be negative, nor greater than 3%.

By way of example only, assume an AVERAGE CPI-W South (CWUR0300SA0) for the following time periods. Effective each Adjustment Date, the rates would be adjusted as follows:

NP = new price *CP = Current Price*

AVERAGE CPI-W South (CWUR0300SA0) April 2019 to March 2020: 212.15

AVERAGE CPI-W South (CWUR0300SA0) April 2020 to March 2021: 218.15

AVERAGE CPI-W South (CWUR0300SA0) April 2021 to March 2022: 219.15

May 1, 2021 Adjustment Date:

$$NP = CP \times \left(1 + \left(0.70 \times \frac{\text{Avg. CPI 4/20-3/21} - \text{Avg. CPI 4/19-3/20}}{\text{Avg. CPI 4/19-3/20}}\right)\right)$$

$$NP = CP \times \left(1 + \left(0.70 \times \frac{218.15 - 212.15}{212.15}\right)\right)$$

$$NP = CP \times (1 + (0.70 \times .0283))$$

$$NP = CP \times 1.0198$$

Effective Date	*August 1, 2018*	*May 1, 2021*
Ethanol Transloads	*$ 1.0000*	*$ 1.0198*

May 1, 2022 Adjustment Date:

$$NP = CP \times \left(1 + \left(0.70 \times \frac{\text{Avg. CPI 4/21-3/22} - \text{Avg. CPI 4/20-3/21}}{\text{Avg. CPI 4/20-3/21}}\right)\right)$$

$$NP = CP \times \left(1 + \left(0.70 \times \frac{219.15 - 218.15}{218.15}\right)\right)$$

$$NP = CP \times (1 + (0.70 \times .0046))$$

$$NP = CP \times 1.0032$$

Effective Date	*August 1, 2018*	*May 1, 2021*	*May 1, 2022*
Ethanol Transloads	*$ 1.0000*	*$ 1.0198*	*$1.0231*

SECTION 3. LIABILITY, INDEMNITY AND INSURANCE.

A. Indemnity for Railway.

(i) Contractor will indemnify and hold harmless Railway and the other Indemnified Parties listed in Subsection 3.B below from and against any and all liability, damages, claims, suits, judgments, costs, expenses (including, but not limited to, litigation costs, investigation costs, reasonable attorney fees, environmental cleanup costs and, in the case of Subsection (i) c. below, royalties) fines, penalties and losses arising from or in connection with:

a. any alleged loss of life or personal injury to Contractor's Workers or damage to or loss of property or equipment of Contractor or its Workers arising from, incident to or occurring in connection with the performance by Contractor of this Agreement or the presence of the Workers at or about the Terminal, or any other Railway property, unless such injury, loss of life or property damage was caused solely by the negligence or intentional misconduct of Railway; provided however, that if, under the law applicable to the enforcement of this Agreement, an agreement to indemnify against the indemnified party's own negligence is invalid, then in that event Contractor's obligation to indemnify the Indemnified Parties under this Section shall be reduced in proportion to the negligence of Railway or its Operator, if any, that proximately contributed to such loss of life, personal injury or property loss or damage;

b. Except as provided in Subsection 3.A.(i).a, any alleged loss of life or personal injury to any person or the loss or damage to any property arising from, incident to or in connection with the negligent acts or omissions or willful misconduct of Contractor or its Workers; except to the extent that the injury, loss of life, or property damage was caused by the negligence or intentional misconduct of Railway or its Operator;

c. any alleged infringement of intellectual property rights arising from the use of the System in connection with Contractor's performance under this Agreement;

d. any alleged violation of any law, statute, code, ordinance or regulation of the United States or of any state, county or municipal government (including, without limitation, those relating to air, water, noise, solid waste and other forms of environmental protection, contamination or pollution or to discrimination on any basis) arising from the activities of Contractor or its Workers related in any way to this Agreement or from any other act or omission of Contractor or its Workers contributing to such violation (including, without limitation, any defect in the Systems or in any Services giving rise to any of the foregoing, and any failure to obtain

any license or permit for which Contractor is responsible hereunder), regardless of whether such activities, acts or omissions are intentional or negligent, and regardless of any specification by Railway without actual knowledge that it might violate any such law, statute, code, ordinance or regulation;

e. any failure by Contractor to comply with any covenant of this Agreement;

f. any third-party claim or dispute asserted by any customer of Railway, which claim or dispute arises from or relates to Contractor's breach of this Agreement or the failure of the services provided by the Contractor to conform with the terms of this Agreement.

B. Indemnified Parties.

For purposes of Contractor's obligation to indemnify, Contractor will indemnify and hold harmless the following parties (herein the "Indemnified Party" or "Indemnified Parties") to the extent described in Subsection 3.A above: (i) Norfolk Southern Corporation; (ii) any direct or indirect subsidiary or affiliated company of Norfolk Southern Corporation; and (iii) any officer, director, employee or agent of Norfolk Southern Corporation or of any of its direct or indirect subsidiaries or affiliated companies.

C. Insurance.

(i) Contractor shall, at its sole cost and expense, obtain and maintain during the period of this Agreement in a form and with companies satisfactory to Railway, the following insurance coverages:

(a) 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 Contractor's officers, agents, servants or employees arising directly or indirectly out of the performance of the services herein undertaken;

(b) 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;

(c) Commercial General Liability Insurance with a combined single limit of not less than $25,000,000 per occurrence for injury to or death of persons and damage to or loss or destruction of property. Such policy shall be endorsed to provide products and completed operations coverage and contractual liability coverage for liability assumed under this Contract. The contractual liability coverage shall be of a form that does not deny coverage for operations conducted within fifty (50) feet of any railroad hazard. The policy shall not deny coverage for any obligation of the insured under the Federal Employers Liability Act, as amended. In addition, said policy or policies shall be endorsed to name NSR and the NSR Affiliates (specifically, NSR's parent, affiliated, and subsidiary

companies) as an additional insured and shall include a severability of interests provision;

(d) If the use of motor vehicles is required, Automobile Liability Insurance with a combined single limit of not less than $5,000,000 each occurrence for injury to or death of persons and damage to or loss or destruction of property. Said policy or policies shall be endorsed to name NSR and the NSR Affiliates (specifically, NSR's parent, affiliated, and subsidiary companies) as an additional insured and shall include a severability of interests provision;

(e) Pollution Liability Insurance with a limit of not less than $5,000,000 per occurrence to cover the sudden and accidental discharge, emission, spillage or leakage upon or into the seas, water, land or air of oil, petroleum products, chemicals or other substances of any kind or nature. Said policy shall be endorsed to name NSR and the NSR Affiliates (specifically, NSR's parent, affiliated, and subsidiary companies) as an additional insured and shall include a severability of interests provision;

(f) In the event Contractor leases or otherwise uses Railway's equipment in order to perform the services specified in this Agreement, Contractor shall maintain all risk property insurance at replacement cost value on said equipment excluding railcars and tracks; and

(g) Cargo insurance in the amount of the value of the Commodity being handled. Said policy or policies shall include a waiver of subrogation in favor of Railway.

(h) Builder's Risk Insurance to cover the full replacement cost of the project with coverage for "all risk," windstorm (hurricane), and flood perils. Coverage may include commercially reasonable sublimit as determined by the Contractor. Coverage shall extend to extra expense, delay, and debris removal with commercially reasonable sublimits.

(i) Professional Liability Insurance (also called Errors and Omissions Insurance) with a limit of not less than $5,000,000 each claim. Contractor shall maintain this coverage for 7 years beyond the termination of this agreement, or must have an extended reporting period (ERP) under the policy of at least 7 years;

(ii) Contractor shall furnish certificates of insurance to Railway's Director Risk Management, Three Commercial Place, Norfolk, Virginia 23510-2191, certifying the existence of such insurance. Contractor shall require all subcontractors who are not covered by the insurance carried by Contractor to maintain the insurance coverage described in this Section. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits without (30) days advance written notice to Railway. Upon request, Contractor and its subcontractors, if any, shall furnish Railway with copies of the insurance policies or other satisfactory evidence of such insurance.

(iii) The insurance coverage required herein shall in no way limit the Lincoln's liability under this Agreement.

(iv) All insurance to be provided in Section C. shall waive subrogation against Railway.

(v) All insurance to be provided in this Section 3.C whether primary, excess, umbrella or otherwise, and providing coverage to the Railway as an additional insured, or a named insured (i) are intended to take priority in responding and to pay before any insurance policies the Railway may have secured for itself must respond or pay and (ii) may not seek contribution from any policies the Railway may have secured for itself.

(vi) Deductibles on any policy shall not exceed $25,000 without the approval of Railway. Such approval shall not be unreasonably withheld.

SECTION 4. LIENS

Contractor will not cause any lien, claim or encumbrance to be placed against the Terminal. If any such lien, claim or encumbrance caused by Contractor shall be filed or placed against the Terminal or any part thereof, Contractor agrees to discharge the same within thirty (30) days after Contractor has notice thereof. If Contractor fails to do so, Railway will have the right (but not the obligation) to pay or discharge any such liens, claims or encumbrances without inquiry as to their validity and any amounts so paid, including interest, fees, charges and expenses shall be paid by Contractor to Railway.

SECTION 5. TERM AND TERMINATION.

A. The initial term of this Agreement will commence on the effective date of that Real Property Lease Agreement by and between Contractor and Railway (the "Effective Date") and will continue until the earlier of (i) June 30, 2032 or (ii) the date this Agreement is terminated in accordance with subsection 5.B. hereof (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement will automatically renew for up to two (2) additional consecutive terms of ten years each (each a "Renewal Term" and, collectively with the Initial Term, the "Term") unless either party hereto gives written notice to the other at least six (6) months prior to the end of the Initial Term or the then current Renewal Term, in which case this Agreement will terminate at the end of the Initial Term or such then current Renewal Term. Upon any termination or expiration of this Agreement, Railway will have the option, but not the obligation, to purchase the System from Contractor at its mutually-agreed, then fair market value. If Railway chooses not to purchase the System, Contractor will promptly remove the System from Railway property except for improvements made to the spill containment area and lined retention pond, which shall remain in place.

B. The following will be considered "Events of Default" under this Agreement:

(i) A party fails to pay any monies due hereunder or under on the date when due (except amounts being contested in good faith) and such party has failed to make the payment within ten (10) business days after receiving written notice thereof from the other party;

(ii) A party fails to comply in any material respect with any terms or conditions of this Agreement or applicable Appendix and such party has failed to cure such noncompliance within

thirty (30) days after receiving written notice thereof from the other party, or where cure of such failure is not possible within such thirty (30) day period, the party fails to commence cure of such failure within such thirty (30) day period and to diligently and in good faith pursue such cure;

(iii) Contractor fails to have the System fully operational on or before the date specified in Appendix C-1; provided that, any such failure that Contractor can demonstrate is directly attributable to the actions or omissions of Railway or to other forces outside of its reasonable control shall not be considered an Event of Default hereunder; or

(iv) Any assignment of this Agreement by Contractor without the prior written consent of Railway.

Upon an Event of Default the non-defaulting party shall be entitled to (i) terminate this Agreement, effective immediately, and/or (ii) pursue such other rights and remedies as may be available.

C. Notwithstanding anything in this Agreement to the contrary, if Railway decides, as a matter of business judgment and in its sole discretion, that the continued operation of the Terminal as a multi-commodity rail transloading facility is not justified and that it will cease using the Terminal as a multi-commodity rail transloading facility for the transloading of the Product, Railway may terminate this Agreement upon at least thirty (30) days prior written notice to Contractor of its intent to cease using the Terminal as a multi-commodity rail transloading facility for the transloading of the Product. Upon such termination, Railway shall promptly convey all structures, improvements and equipment constituting the multi-commodity rail transloading facility on Contractor's property. (

SECTION 6. INTENTIONALLY OMITTED

SECTION 7. GENERAL CONTRACT PROVISIONS.

A. Notices. All notices required to be given under this Agreement will be in writing, signed by or on behalf of the party giving the same, and transmitted to the addresses shown below or such successor address(es) as that party may specify by notice hereunder. Such notices shall be transmitted by United States registered or certified mail return receipt requested, or by fax, with confirmed receipt, addressed to the following offices and addresses:

For Railway: Group Manager Purchasing - Service Contracts
Norfolk Southern Corporation
Three Commercial Place – Box 244
Norfolk, VA 23510

For Contractor: President
Lincoln Terminal Company, Inc.
22 South Main Street
Greenville, SC 29601
Fax # (864) 242-9445

All notices shall be effective on day following confirmed receipt of the letter or fax.

B. Assignment.

Neither this Agreement nor any of the Services will be assigned or sublet without the prior written consent of Railway. The compensation to be paid hereunder by Railway to Contractor will not be assigned, sublet or factored by Contractor; and any such assignment, sublet or factoring will constitute a material breach of this Agreement. Subject to the foregoing restrictions, this Agreement will inure to the benefit of and be binding upon all successors and assigns.

C. Entire Agreement; Amendment.

This Agreement, together with the Appendices hereto, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all previous oral or written understandings, agreements and commitments as to the subject matter hereof. In deciding to become a party to this Agreement, no party has relied upon any representations or warranties other than those expressly set forth in this Agreement. This Agreement may be amended, modified or supplemented only by written mutual agreement executed and delivered by both Railway and Contractor.

D. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

E. Non-Waiver.

The waiver of any breach of any of the terms and conditions hereof shall be limited to the act or acts constituting such breach and shall not be construed as a continuing or permanent waiver of any such terms and conditions, all of which shall be and remain in full force and effect as to future acts or happenings notwithstanding such waiver. The parties intend that none of the provisions of this Agreement will be thought by the other to have been waived by any act or knowledge of the parties, but only by a written instrument signed by the party waiving a right hereunder.

F. Severability.

If any provision in this Agreement is found for any reason to be unlawful or unenforceable, the parties intend for such provision or provisions to be severed and deleted from this Agreement and for the balance of this Agreement to constitute a binding agreement, enforceable against both Railway and Contractor.

G. Remedies Cumulative.

Any rights or remedies under this Agreement are cumulative and in addition to all other rights and remedies hereunder or at law. Any cancellation or termination of this Agreement shall not relieve either party of any obligation or liability accruing under this Agreement prior to such cancellation or termination.

H. Venue; Waiver of Jury Trial.

Each of the parties (i) consents to submit itself to the personal jurisdiction of any state court located in the City of Norfolk, Virginia or the U.S. District Court for the Eastern District of Virginia (and appellate courts from any of the foregoing) (the "Chosen Courts") in the event any dispute arises out of this Contract or the transactions contemplated by this Contract, (ii) agrees that it will not

attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any Chosen Court and (iii) agrees that any action relating to this Contract or the transactions contemplated by this Contract shall be brought exclusively in the Chosen Courts. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY.

H. Governing Law.

The laws of the Commonwealth of Virginia shall govern the construction and interpretation of this Agreement and all rights and obligations of the parties under it.

I. Captions.

The caption of the paragraphs and sections are inserted for convenience only and shall in no way expand, restrict, or modify any of the terms and provisions hereof.

J. Confidentiality.

The terms and conditions of this Agreement will be considered strictly confidential between the parties hereto and neither party shall disclose any such term, condition, or Railway customer information for any other purpose other than such disclosures as may be required by any government authority in order that it may discharge its regulatory functions, or to each parties' accountants, attorneys, agents and subcontractors who have a need to know the information, or as may otherwise be required by law.

M. Force Majeure.

A party shall be excused from its contractual obligations to the extent it is prevented or delayed in such performance due to causes beyond its control, without fault of the party affected and which by the exercise of reasonable diligence could not have been foreseen or avoided ("Force Majeure Conditions"). Force Majeure Conditions may include but are not limited to: act of God, act of the public enemy, authority of law, fire or explosion, lockout, strike, war, act of terrorism, insurrection, derailment or any like causes beyond their control. In order to assert a Force Majeure Condition, the party declaring a Force Majeure Condition shall promptly notify the other parties when the condition begins, the nature of the condition and when the condition is terminated. Notwithstanding the existence of a Force Majeure Condition, the parties shall make commercially reasonable efforts to continue to meet their obligations for the duration of the condition, and the party declaring the condition shall make commercially reasonable efforts to expeditiously remedy the cause of the Force Majeure Condition and shall notify the other party of actions being taken and the projected schedule for implementing the remedy of the Force Majeure Condition. Notwithstanding the foregoing, neither party shall be obligated to settle any strike or labor disturbance except on terms satisfactory to such party. For the duration of any such force majeure relating to Contractor, Railway may arrange with other firms or persons for the performance of Services at the Terminal.

N. Non-Competition

Contractor covenants that, during the Term, it will not engage in any activities the same as or substantially similar to the Services at any facility or site located within a fifty (50)-mile radius of the Terminal without the prior consent of Railway, which consent Railway may grant or withhold in its sole discretion. Contractor acknowledges that a restraining order and/or an immediate injunction is an appropriate remedy to protect Railway's rights under this Section.

O. Railway's Vendor Safety Program

Unless otherwise specified by Railway, Contractor will enroll in Railway's Vendor Safety Program (the "VSP") operated by BROWZ LLC ("Browz") within thirty (30) days of the Effective Date of this Contract, and will comply with the terms of the VSP as in effect at any given time. Contractor agrees that, although Railway has negotiated on the behalf of Contractor standard volume rates with Browz, all charges incurred in the use of Browz services and products are the sole responsibility of Contractor. Notwithstanding any provision of this Contract, if any, that permits Contractor to seek reimbursement of travel and other expenses from Railway, the Browz charges are not included among such reimbursable expenses. Contractor represents that it has considered such charges as a part of its overhead costs in determining its price proposals. Contractor will execute Browz' standard Subscriber Agreement, and failure to do so will void this Contract. Compliance with the terms of the VSP will include the submission of records related to the training requirements of 49 CFR 214 and 49 CFR 243, the drug testing requirements of 49 CFR 219, and any other requirements as specified by Railway. Railway does not warrant or guarantee either the accuracy or completeness of the services performed by Browz. Railway will have no responsibility to Contractor for the services performed by Browz, which services Contractor will use, as between Railway and Contractor, solely at the risk of Contractor.

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

Norfolk Southern Railway Company

By: Alan H. Shaw

Name: Alan H. Shaw

Title: EVP and Chief Marketing Officer

Date: August 24, 2020

Lincoln Terminal Company, Inc.

By:

Name: L. Burgamy, Jr.

Title: President

Date: 8/24/2020

Appendix A

In general, Lincoln will install, implement, maintain and repair or replace as necessary the System, including the Equipment specified in Appendix C-1, and will train Operator's employees in operating the Systems, in order to facilitate the inventory management and transloading of Product from rail cars and to Trailers at the Terminal. Lincoln will be responsible, at its cost, for providing any fuel, lubricant, supplies, depreciation, and parts for such Equipment as used by Lincoln to facilitate the installation, implementation, operation and maintenance of the Systems. Lincoln will provide any and all administrative services ordinarily and reasonably required in the operation of the Systems, including but not limited to the tracking of product availability as requested by Railway management, the maintenance of records relating to such tracking, and any other electronic paper work ordinarily and reasonably generated in the operation of such a facility.

Lincoln will comply with, all permits, licenses, and authorizations (collectively, the "Government Approvals") for the construction, operation and maintenance of the System and will otherwise ensure that the System is in compliance with federal, state and local law, as applicable, provided, however, that Railway shall bear the actual permit or license fee or cost.

In performance of its duties, Lincoln will:

(A) Comply with all required Governmental Approvals of any description that may be necessary to be obtained for the performance and completion of the installation, use, maintenance, replacement or removal of the System. Lincoln shall furnish Railway with all certificates of inspection for any equipment and other personal property used by Lincoln in the installation, use, maintenance, replacement and removal of the System for which a certificate may be required.

(B) Provide structured guidelines, documentation, and training for all of Operator's on-site personnel in the use and implementation of the Systems.

(C) Provide sufficient manpower to install, implement and maintain the Systems with a goal of providing 100% safety and customer satisfaction.

(D) Perform accounting audits with Railway's personnel if and when requested by Railway

(E) Provide Railway with records of the kind and in the form specified by Railway that are legible, neat, and accurate.

(F) Be responsible for all damages or costs resulting from error of Lincoln personnel and will make immediate arrangements to correct or repair all damages resulting from the negligence or intentional acts of its personnel. Lincoln shall be responsible, at its sole cost, for all certification, maintenance and repair costs of any equipment installed by Lincoln for use in the Systems.

(G) Prepare necessary summary reports, daily pull and place sheets, end of month recaps, computer updates and other related reports reasonably required by Railway and ordinarily associated with the operation of facilities similar to the Terminal.

(H) Provide all back up paperwork for proof of proper notification and provide proper information in inventory management system to whomever and when necessary.

(I) Acknowledge that terminal holidays will be as set forth in NS TBT Freight Tariff Series NS-9328, Item 185 or successor document.

(J) Not dispose of any waste of any kind, whether hazardous or not, at the Terminal. To the extent of its actual knowledge, with the understanding that Lincoln's personnel are not on-site at the Terminal on a daily basis, Lincoln shall provide immediate notification to federal, state and local authorities in the event of a reportable release of a regulated material or in the event of an emergency.

(K) Develop and implement a maintenance schedule and/or annual certification schedule for any equipment requiring said maintenance or certification used for the Systems, and make available to Railway upon request.

(L) Per Railway's instructions, ensure that all shipping documentation, including outgoing truck documentation, reflect that the Terminal is a transloading facility and not a long-term storage facility.

Appendix B

The name and address of the Railway employee to be notified under Section 1.K for any death or injury or of any loss or damage to property is:

Group Manager Terminal Operations
Norfolk Southern Corporation
1200 Peachtree Street NE
Atlanta, GA 30309
Phone: 404-658-2019

Claim Agent
Norfolk Southern Corporation
1200 Peachtree Street NE
Atlanta GA 30309
Phone: 404-792-5164

CHIEF DISPATCHER – GEORGIA DIVISION
Norfolk Southern Railway Company
1200 Peachtree Street NE
Atlanta, GA 30309
Phone: 800-453-2530

Appendix C-1

Terminal Street Address:	3095 Parrott Avenue, Atlanta GA, 30318
Terminal Rail Station:	Chattahoochee, GA
Facilities at Terminal:	As shown in Appendix D
System/Product:	Ethanol

I. Compensation

In exchange for the payment by Railway to Lincoln of $[redacted]/gallon loaded at the System Trailer loading rack, Lincoln shall perform the Services, which shall include but shall not be limited to, providing employee training for the Operator, safety equipment used in connection with the System, loading equipment and supplies, maintenance, repairs and part replacement of the equipment listed below. Such Services shall also include providing remote standard office services provided to customers including but not limited to, inventory management, delivery waybill generation, shipment notification, a monthly inventory report, and any other services associated with transloading.

"Equipment" which will be part of the System, includes but is not limited to:

a. Rail offload system including all necessary suction piping, valves, vaults, pumps and conveyance lines to aboveground storage facilities to accommodate 100 rail cars and all associated structural components including pipe supports and bridges and equipment pads.
b. Three (3) 3.4 million gallon aboveground storage tanks .
c. One (1) 40' x 60' pre-engineered Mechanical building.
d. All necessary instrumentation and controls, including but not limited to: computer hardware/printers/data lines used in transfers, security cameras and flow measurement devices.
e. Fire suppression equipment.
f. Vapor combustion unit.

II. Administrative, Billing of Specified Charges Pursuant to Freight Tariff NS 9328.

Railway will bill Customers for storage in the tanks referenced in I.b above in accordance with Charges for Storage Not in Rail Cars when Permitted ("Storage Charges") pursuant to NS 9328, Item 112 B, on a monthly basis within thirty (30) days following the month in which such charges accrued. Railway may elect to establish the storage price on an individual basis with each customer. (75%) of Storage Charges will be forwarded to Lincoln within thirty (30) days of receipt and Railway will retain the remaining

twenty-five percent (25%) of Storage Charges. Railway shall furnish supporting documentation in a format acceptable to Railway accompanying each such payment.

III. Operating Hours

A. Trailer loading area: 24 hours per day, seven days per week except on Holidays.

B. Manifest Product receipts: As specified in NS Bulk Tariff 9328-Series.

Appendix D

EXHIBIT C

REMEDIATION BUDGET

Chattahoochee TBT									
Remediation Budget: August 17, 2020									
Task	Initial Budget	Change Orders (Current Month)	Previous Change Orders	Authorized Funding	Requested Payments (Current Quarter)	Outstanding Payments	Previous Payments	Remaining Budget	Approvals
Pre-Lease Agreement Site Work	[redacted]			[redacted]			[redacted]	[redacted]	AECOM 6/29 proposal (to be approved)
Remedial Design, Permitting, and Procurement	[redacted]			[redacted]				[redacted]	
Remediation Contractors (additional detail to be provided)	[redacted]			[redacted]				[redacted]	
Remediation Consulting Costs	[redacted]			[redacted]				[redacted]	
Brownfields CSR / Additional Reporting	[redacted]			[redacted]				[redacted]	
Totals:	[redacted]	$0	$0	[redacted]	$0	$0	[redacted]	[redacted]	

Escrow Summary	
Initial Escrow Funding:	[redacted]
Current Change Orders:	
Minimum Escrow Balance:	[redacted]
Current/Outstanding Payment Requests:	[redacted]
Pre-Lease Agreement Payment:	
Previous Escrow Payments:	
Total Project Funding:	[redacted]
Current Remediation Budget:	[redacted]

EXHIBIT D

ESCROW AGREEMENT

Real Property Lease Agreement
Exhibit D

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Agreement") is made by and among LINCOLN TERMINAL COMPANY, INC. ("Lincoln"), NORFOLK SOUTHERN RAILWAY COMPANY ("NS"), and Synovus Bank (the "Escrow Agent"). Lincoln and NS are hereinafter collectively referred to as the "Escrow Parties," and together with the Escrow Agent as the "Parties."

RECITALS

WHEREAS, Lincoln and NS are parties to that certain Real Property Lease Agreement dated August 24, 2020 (the "Lease Agreement"), with respect to the property located at 3095 Parrott Avenue, Atlanta, Georgia; and

WHEREAS, pursuant to the Lease, NS has undertaken obligations to perform the Brownfield Work; and

WHEREAS, in connection with such obligations, Lincoln has agreed to initially escrow $[redacted] ("Initial Escrow Amount") and the Parties have agreed to provide for the payment of the Escrowed Funds in accordance with Paragraph 6 below.

NOW, THEREFORE, in consideration of the mutual covenants of the parties set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties hereby agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated into this Agreement as if fully set forth herein.

2. Defined Terms. Any capitalized term not defined herein shall have the meaning assigned to that term in the Lease Agreement.

3. Appointment of Escrow Agent. The Escrow Parties hereby appoint the Escrow Agent as their agent and custodian to hold and disburse the Escrowed Funds in accordance with the terms of this Agreement.

4. Delivery of Funds to Escrow Agent. On the Lease Commencement Date, Lincoln shall cause the deposit of the Initial Escrow Amount with the Escrow Agent via wire transfer. Pursuant to the provisions of the Lease, NS may request and Lincoln may from time to time deposit additional amounts with Escrow Agent. The Initial Escrow Amount and all such additional deposits made by Lincoln, together with any interest or other income earned thereon, shall collectively be referred to herein as the "Escrowed Funds." The Escrow Agent shall hold the Escrowed Funds on behalf of the Escrow Parties under the terms of this Agreement and distribute the Escrowed Funds in accordance with Paragraph 6 below.

5. Minimum Balance. Notwithstanding anything herein to the contrary but except as provided in any joint writing executed by Lincoln and NS, Lincoln shall ensure that the minimum balance held as Escrowed Funds by the Escrow Agent is not less than $[redacted] (the "Minimum Balance"). In the event the Escrowed Funds at any time fall below the Minimum Balance, Escrow

Agent shall simultaneously inform the Escrow Parties of the same in writing. Lincoln shall deposit additional funds with the Escrow Agent to maintain the Minimum Balance or to cover Anticipated Quarterly Expenses within ten (10) days following receipt of written notice or request for the same from NS or the Escrow Agent.

6. Tax Reporting. The Escrow Agent is authorized and directed to report all interest and other income earned on the Escrowed Funds to Lincoln.

7. Semi-Annual Statements. As soon as practicable following each June 30 and each December 31 during the term of this Agreement, the Escrow Agent shall deliver to the Escrow Parties, a statement (a "Semi-Annual Statement") setting forth (i) the value of Escrowed Funds as of such date, and (ii) the amount of payments and distributions made during the period covered in such Semi-Annual Statement and the payee thereof.

8. Release of Escrowed Funds.

(a) Reimbursement Requests. Pursuant to the provisions of the Lease, the Escrowed Funds shall be used solely to pay the Environmental Expenses. NS shall submit a request for reimbursement simultaneously to NS and the Escrow Agent each quarter (each a "Reimbursement Request"), providing reasonable detail as to the nature and amount of the charges and proof that the amounts were paid. If Lincoln questions or disagrees with any of the charges on a Reimbursement Request, it shall raise those questions or issues simultaneously with NS and Escrow Agent in writing within fifteen (15) days of the Escrow Agent's receipt of the Reimbursement Request ("Escrow Dispute Notice"). If Lincoln does not provide an Escrow Dispute Notice within such fifteen (15) day period, the Reimbursement Request shall be deemed approved and the Escrow Agent shall pay NS the requested reimbursement amount within thirty (30) days following Escrow Agent's receipt of the Reimbursement Request. If Lincoln does provide an Escrow Dispute Notice within such fifteen (15) day period, the Escrow Dispute Notice shall include reasonable detail as to any amounts of such Reimbursement Request which are not disputed. Such amounts shall be paid by the Escrow Agent to NS within thirty (30) days following Escrow Agent's receipt of such Reimbursement Request.

(b) Good Faith. The Escrow Parties shall negotiate with regard to any disputes regarding a Reimbursement Request promptly and in good faith. If, after reasonable efforts to resolve any disputes, the Escrow Parties are unable to resolve such disputes, they shall resolve such disputes by means of arbitration with a single arbitrator. The selection of the arbitrator shall be agreed to by the Escrow Parties and the arbitrator shall be experienced with disputes involving environmental remediation projects.

(c) Disputed Claims. If the Escrow Agent receives an Escrow Dispute Notice within the fifteen (15) day period following the Escrow Agent's receipt of the Reimbursement Request, then the Escrow Agent will take no action on account of such claim until it receives:

(i) a Joint Written Instruction pursuant to subparagraph (d) below, whereupon the Escrow Agent will pay the amount specified in such instruction (if any) to an Escrow Party out of the Escrowed Funds within three (3) business days of receipt of such instructions; or

(ii) a copy of a final, non-appealable decision of an arbitrator, a judgment enforcing such arbitration award by a court of competent jurisdiction, or a settlement agreement signed by Lincoln and NS, whereupon the Escrow Agent will promptly pay the amount specified in such judgment or settlement agreement to the party specified therein in accordance with the terms of this Agreement. The Escrow Agent shall make any such payment out of the Escrowed Funds within three (3) business days following the Escrow Agent's receipt of such judgment, order, decision or agreement.

(d) Joint Written Instructions. Notwithstanding anything to the contrary in this Agreement, if the Escrow Agent receives a joint written instructions in the form of **Attachment 1** ("Joint Written Instructions") from both of the Escrow Parties, or their respective successors or assigns as to the disbursement of the Escrowed Funds, or any portion thereof, the Escrow Agent shall disburse the Escrowed Funds, or such applicable portion thereof, pursuant to such Joint Written Instructions within three (3) business days after receipt of the Joint Written Instructions. The Escrow Agent shall have no obligation to follow any directions set forth in any Joint Written Instructions unless and until the Escrow Agent is satisfied, in its reasonable discretion, that the persons executing said Joint Written Instructions are authorized to do so.

(e) Release of the Indemnity Escrow Fund. The then-remaining Escrowed Funds, less amounts reserved for any pending or unpaid claims asserted in accordance with Paragraph 8(b) above, shall be released within three (3) business days after the Release Date by the Escrow Agent to Lincoln. Any amount of the Escrowed Funds held after the Release Date as a reserve for pending claims shall be released: (i) in accordance with Paragraph 8(b), or (ii) if an Escrow Dispute Notice has been provided with respect to such claims, within three (3) business days after the resolution of such claims in accordance with Paragraph 8(c). "Release Date" shall mean the date on which NS notifies the Escrow Agent in writing that NS has received final LOLs under the GBA for those parcels of the Property which have been entered into the Brownfield program, and that all Environmental Expenses due to NS from Lincoln have been paid in full.

9. Duties of Escrow Agent. The Escrow Agent hereby accepts its obligations under this Agreement, and represents that it has the legal power and authority to enter into this Agreement and perform its obligations hereunder. The Escrow Agent further agrees that all Escrowed Funds held by the Escrow Agent hereunder shall be deposited into an interest-bearing account and all interest derived therefrom shall be deposited into the account. The Escrow Agent further agrees that all Escrowed Funds held by the Escrow Agent hereunder shall be segregated from all other property held by the Escrow Agent, shall be identified as being held in connection with this Agreement, and shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of any Party hereto. Segregation may be accomplished by appropriate identification on the books and records of the Escrow Agent. The Escrow Agent agrees that its documents and records with respect to the transactions contemplated hereby will be available for examination by authorized representatives of the Escrow Parties upon two business days' notice, at the requesting Party's expense, and during normal business hours of the Escrow Agent. Any fees charged by Escrow Agent shall be paid first from the interest accrued in the account, and if there is insufficient interest accumulated at the time of billing, then from the principal in the account. The fees of the Escrow Agent are attached hereto as **Attachment 2**. Such fees shall be payable from time to time from the Escrowed Funds.

10. No Other Duties. Notwithstanding any provision to the contrary, the Escrow Agent is obligated only to perform the duties specifically set forth in this Agreement, which shall be deemed purely ministerial in nature. Under no circumstances will the Escrow Agent be deemed to be a fiduciary to the Escrow Parties. The Escrow Agent shall not have any duties or responsibilities hereunder except as expressly set forth herein. References in this Agreement to any other agreement is for the convenience of the Escrow Parties, and the Escrow Agent has no duties or obligations with respect thereto.

11. Liability of Escrow Agent. Except in cases of the bad faith, fraud, willful misconduct, criminal acts, or gross negligence of Escrow Agents, its employees and contractors, the Escrow Agent shall not be liable for any action taken in accordance with the terms of this Agreement, including without limitation any release or distribution of Escrowed Funds in accordance with Paragraph 8 above. The Escrow Agent shall not be liable for any other action or failure to act under or in connection with this Agreement, except for the bad faith, fraud, will misconduct, criminal acts, or gross negligence of Escrow Agent, its employees and contractors.

12. Resignation of Escrow Agent. The Escrow Agent may at any time resign by giving written notice of such resignation simultaneously to the Escrow Parties. The Escrow Agent shall not be discharged from its duties and obligations hereunder until a successor escrow agent has been designated by the Escrow Parties. If the Escrow Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) days following the delivery of such notice of resignation, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Escrow Parties.

13. Removal of Escrow Agent. The Escrow Parties acting together shall have the right to terminate the appointment of the Escrow Agent by giving no less than thirty (30) days' prior written notice to the Escrow Agent, specifying the date upon which such termination shall take effect. The Escrow Parties agree that they will jointly appoint a banking corporation, trust company or attorney as successor escrow agent. Escrow Agent shall refrain from taking any action until it shall receive Joint Written Instructions from the Escrow Parties designating the successor escrow agent. Escrow Agent shall deliver all of the then remaining balance of the Escrowed Funds to such successor escrow agent in accordance with such instructions. Upon receipt of the Escrowed Funds, the successor escrow agent shall be bound by all of the provisions of this Agreement.

14. Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act, any provision herein to the contrary notwithstanding.

15. Notices. All notices, demands, and other communications required or permitted to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall

be deemed to have been given when personally delivered, one (1) day after deposit with Federal Express or similar overnight courier service, upon transmission by facsimile or electronic mail if a customary confirmation of transmission is received during normal business hours and, if not, the next business day after transmission or three (3) days after being mailed by certified mail, return receipt requested. Account statements shall be sent via first class mail. Notices, demands, and other communications to the Escrow Parties shall, unless another address is specified, in writing, be sent to the addresses indicated below:

If to Lincoln, to:
Lincoln Terminal Company, Inc.
c/o Larry G. Burgamy, Jr., President
22 S. Main Street
Greenville, S.C. 29601
lburgamy@lincolnenergysolutions.com

With a copy to:

Merline & Meacham, P.A.
Attn: Douglas B. O'Neal
P.O. Box 10796
Greenville, S.C. 29603
doneal@merlineandmeacham.com

If to NS, to:

Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510
Attention: Matthew Gernand
matthew.gernand@nscorp.com

If to Escrow Agent, to:

Synovus Bank
800 Shades Creek Parkway-Suite 275
Birmingham,AL 35209
Attn: Dean D. Matthews
deanmatthews@synovus.com

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. Nothing herein is intended or shall be construed to give any other person any right, remedy, or claim under, in, or with respect to this Agreement or any property held hereunder.

17. Amendments; Waiver. This Agreement may be amended, modified, extended, superseded, canceled, renewed, or extended and the terms and conditions hereof may be waived only by a written document signed by all the Parties. No course of conduct shall constitute a waiver of any terms or conditions of this Agreement, unless such waiver is specified in writing, and then only to the extent so specified. A waiver of any of the terms and conditions of this Agreement on

one occasion shall not constitute a waiver of the other terms of this Agreement, or of such terms and conditions on any other occasion.

18. Governing Law. The laws of the State of Georgia shall govern the creation, interpretation, construction, and enforcement of and the performance under this Agreement and all transactions and agreements contemplated by any of them, as well as any and all claims arising out of or relating in any way to this Agreement, notwithstanding the choice of law rules of any other state or jurisdiction. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of Georgia or the United States District Court of Georgia. Each party consents to the jurisdiction of such court in any such claim and waives any objection to the laying of venue of any such claim in such court.

19. Counterparts; Electronic Delivery. This Agreement may be entered into in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile, pdf or other electronic means shall constitute effective execution and delivery of this Agreement and may be used in lieu of the original Agreement for all purposes.

20. Costs. The successful party in any litigation, arbitration, or other dispute resolution proceeding to enforce the terms and conditions of this Agreement shall be entitled to recover from the other party reasonable attorneys' fees and related costs involved in connection with such litigation, arbitration, or dispute resolution proceeding.

21. Survival. Notwithstanding anything in this Agreement to the contrary, the provisions of Paragraph 7 shall survive any resignation or removal of the Escrow Agent, and any termination of this Agreement.

22. Further Assurances. If at any time the Parties shall determine or be advised that any further agreements, assurances or other documents are reasonably necessary or desirable to carry out the provisions of this Agreement and the transactions contemplated by this Agreement, the Parties shall execute and deliver any and all such agreements or other documents, and do all things reasonably necessary or appropriate to carry out fully the provisions of this Agreement.

23. Severability. If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

24. Headings. The paragraph headings contained in this Agreement are inserted for purposes of convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

[Signature page to follow.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

LINCOLN TERMINAL COMPANY, INC.

By: _____
Larry G. Burgamy, Jr., President

NORFOLK SOUTHERN RAILWAY COMPANY

DocuSigned by:

By: Matthew A. Gernand _____
D51F486CF1444B6...

Name: Matthew A. Gernand

Its: Assistant Deputy General Counsel

Synovus Bank, Escrow Agent

By: _____

Name: Dean Matthews

Its: Senior Vice President

Escrow Agreement
Attachment 1

Form of Joint Written Instructions

TO: _____
_____
_____
_____

This Certificate is issued pursuant to that certain Escrow Agreement dated as of [_____], 2020, by and among Lincoln Terminal Company, Inc., Norfolk Southern Railway Company, and you, as Escrow Agent ("Escrow Agreement"). Capitalized terms herein shall have the meaning ascribed to them in the Escrow Agreement.

You are hereby instructed to deliver within two business days after your receipt hereof the sum of $_____ out of the Escrowed Funds to _____ by wire transfer to the following account:

Account Name: _____
Account Number: _____
Bank Name: _____
Bank ABA Number: _____
Bank Address: _____
_____
For Credit To: _____
Special Instructions: _____

LINCOLN TERMINAL COMPANY, INC.

Dated: _____

By: _____
Larry G. Burgamy, Jr., President

NORFOLK SOUTHERN RAILWAY COMPANY

Dated: _____

By: _____

Name: _____

Its: _____

(Signatures for both Lincoln Terminal Company, Inc. and Norfolk Southern Railway Company are required for disbursement.)

Escrow Agreement
Attachment 2

Escrow Agent Fees

$ _____ Annual Fee

EXHIBIT E
Environmental Indemnity
Guarantee

ENVIRONMENTAL INDEMNITY, RELEASE, AND COVENANT NOT TO SUE

THIS ENVIRONMENTAL INDEMNITY, RELEASE, AND COVENANT NOT TO SUE (this "**Agreement**") is made and entered into as of the 24 day of August, 2020 (the "**Effective Date**") by and between **General Shale, LLC**, a Delaware limited liability company ("**General Shale**"), **Lincoln Terminal Company, Inc.**, a South Carolina corporation **("Lincoln Terminal")**, **Lincoln Holding Company, LLC**, a South Carolina limited liability company **("Lincoln Holding")**, and **Norfolk Southern Railway Company**, a Virginia corporation ("**NSRC"**). Lincoln Terminal, Lincoln Holding and NSRC may be referred to herein collectively as the "**Indemnitors**" and individually as an "**Indemnitor**." Lincoln Terminal, Lincoln Holding, NSRC and General Shale may be referred to herein collectively as the "**Parties**" and individually as a "**Party**."

RECITALS

WHEREAS, General Shale owns (a) approximately 27.33 acres of real property, more or less, located in Atlanta, Fulton County, Georgia, being known as Tax Parcel No. 17 0263 LL0296 and more particularly described as Tract 2 on Exhibit "A" attached hereto , and (b) approximately 3.58 acres of real property, more or less, located in Atlanta, Fulton County, Georgia, being known as Tax Parcel No. 17 0263 LL0288 and more particularly described as Tract 3 on Exhibit "A" attached hereto (the real property referenced in clauses (a) and (b) above, collectively, the "**Premises**").

WHEREAS, General Shale has entered into a Contract of Purchase and Sale, dated July 15, 2020 (the "**Purchase Agreement**"), with Lincoln Terminal under which Lincoln Terminal has agreed to purchase the Premises "as is", "where is" and "with all faults".

WHEREAS, Lincoln Terminal is a wholly-owned subsidiary of Lincoln Holding.

WHEREAS, NSRC is a railway company and operates a railroad having a rail line adjacent to the Premises and adjacent to and connected with the Terminal (as herein defined).

WHEREAS, NSRC will construct on the Premises a multi-commodity rail transloading facility (the "**Terminal**") for transloading various commodities from rail cars into bulk storage, pipelines or motor carrier trailers.

WHEREAS, the railroad cars that are unloaded at the Terminal access and depart the Terminal on the rail line operated by NSRC.

WHEREAS, Lincoln Terminal presently intends to operate the Terminal, which would directly and indirectly benefit NSRC, Lincoln Terminal and Lincoln Holding.

WHEREAS, NSRC, Lincoln Terminal and Lincoln Holding will benefit directly and indirectly from the conveyance of the Premises by General Shale contemplated by the Purchase Agreement and, accordingly, each of NSRC, Lincoln Terminal and Lincoln Holding has agreed to execute and deliver this Agreement in order to induce General Shale to enter into the Purchase Agreement and to convey the Premises thereunder.

WHEREAS, the execution and delivery of this Agreement by the Parties is a condition precedent to the conveyance of the Premises by General Shale contemplated by the Purchase Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. No Environmental Representations and Warranties. General Shale and the other Indemnitees (as herein defined) make no representations or warranties (express, implied or statutory) regarding the environmental condition of the Premises (including without limitation as to whether there are any Hazardous Substances located in, on, under or about the Premises). Each Indemnitor acknowledges and agrees that Lincoln Terminal is purchasing the Premises "as is", "where is" and "with all faults" in reliance on its own investigation and inspection of the Premises, as more fully set forth in Sections 7 and 11 of the Purchase Agreement. Each Indemnitor further acknowledges and agrees that (a) NSRC was previously party to that certain Contract of Purchase and Sale, dated as of November 22, 2019 (the "**Terminated Agreement**"), with General Shale relating to the purchase and sale of the Premises, which contract was terminated by NSRC, (b) under the Terminated Agreement, NSRC had the right to access the Premises and conduct its own investigations and inspections of the Premises as more fully set forth in the Terminated Agreement, (c) Lincoln Terminal, Lincoln Holding and NSRC have conducted to their satisfaction all investigations and inspections that they have deemed necessary in connection with the Premises and this Agreement, (d) all documents and information provided or made available by General Shale and its representatives to the Indemnitors were provided or made available as an accommodation to the Indemnitors with the understanding and agreement of the Parties that the Indemnitors shall not rely on any such documents or information and that the delivery of same by General Shale and its representatives was made without representation or warranty (express, implied or statutory) with respect to the accuracy, completeness, methodology of preparation or otherwise concerning the contents of such documents or information, (e) Indemnitors are entering into this Agreement with the understanding that the Premises are "as is", "where is" and "with all faults", (f) Indemnitors are entering into this Agreement in reliance on their own investigations and inspections of the Premises and not in reliance on any information that may have been provided to them by or on behalf of General Shale or any other Indemnitee, and (g) the Recitals above are accurate and correct in all material respects.

2. Each Indemnitor's Representations and Warranties. Each Indemnitor represents and warrants to General Shale that:

(a) Such Indemnitor has the full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; the execution, delivery and performance of this Agreement by such Indemnitor has been duly and validly authorized; and all requisite action has been taken by such

Indemnitor to make this Agreement valid and binding upon such Indemnitor, enforceable against such Indemnitor in accordance with its terms;

(b) This Agreement constitutes a valid, legal and binding obligation of such Indemnitor, enforceable against such Indemnitor in accordance with the terms hereof.

3. Indemnification. Lincoln Terminal, Lincoln Holding and NSRC, jointly and severally, covenant and agree, at their sole cost and expense, to protect, defend, indemnify, release and hold General Shale and each of the other Indemnitees harmless from and against, and to pay, any and all Losses (defined below) imposed upon, incurred by or asserted against any Indemnitee and directly or indirectly arising out of or in any way relating to any one or more of the following (regardless of the cause or whether originating or arising before, on or after the Effective Date) (collectively, the "**Indemnified Matters**"):

(a) any environmental conditions, including without limitation the presence of any Hazardous Substances, in, on, above or under the Premises;

(b) any environmental conditions, including without limitation the presence of any Hazardous Substances, in, on, above or under adjacent or neighboring properties to the extent caused by or migrating from the Premises;

(c) any spilling, leaking, pumping, pouring, emitting, emptying, discharging, depositing, injecting, escaping, leaching, dumping, migrating, disposing or other releasing of Hazardous Substances in, on, above, under or from the Premises;

(d) any violation of any Environmental Laws with respect to conditions at the Premises or the operations conducted thereon;

(e) any injury to, destruction of or loss of natural resources in any way caused by or connected with the Premises, including, but not limited to, costs to investigate and assess such injury, destruction or loss; and

(f) any personal injury, wrongful death or property or other damage arising under any statutory or common law or tort law theory arising out of the Indemnified Matters described in clauses (a), (b), (c), (d) and (e) above.

4. Release. Each Indemnitor, for itself and for its successors, assigns, agents, representatives, predecessors, affiliates, subsidiaries and parent entities, unconditionally and without reservation hereby releases, acquits, and forever discharges all of the Indemnitees, and each of them, from any and all manner of Losses which such Indemnitor ever had, now has, or ever may have in the future against any of the Indemnitees, whether at law, in equity or otherwise, whether now known or unknown, foreseeable or unforeseeable, accrued or un-accrued, asserted or un-asserted, anticipated or unanticipated, direct or indirect, fixed or contingent, liquidated or unliquidated, matured or un-matured, absolute or contingent, determined or determinable, from

the beginning of the world to the date of this Release, that were, could be or could have been asserted arising out of, resulting from or in any way related to, directly or indirectly, in whole or in part (collectively, and including subsections (a) and (b) of this Paragraph Four (4), the "**Released Matters**"):

(a) the Indemnified Matters; and

(b) any claim of alleged breach of contract, negligence, fraud, breach of express, implied or statutory warranties, or breach of duty of good faith and fair dealing to the extent that any such claim relates to or arises from the Indemnified Matters.

5. Covenant Not to Sue. Each Indemnitor, for itself and for its successors, assigns, agents, representatives, predecessors, affiliates, subsidiaries and parent entities, further covenants and agrees that it and they will forever forbear from pursuing any action, lawsuit, legal proceeding, charge, petition, complaint or claim arising from, concerned with, or otherwise relating to, directly or indirectly, in whole or in part, the Released Matters (including without limitation the Indemnified Matters), and it and they will not in any other way commence, maintain, initiate, or prosecute, or knowingly cause or knowingly cooperate with any other person to commence, maintain, initiate or prosecute, any action, lawsuit, proceeding, charge, petition, complaint or claim before any court, agency or tribunal against any Indemnitee arising from, concerned with, or otherwise relating to, directly or indirectly, in whole or in part, the Released Matters (including without limitation the Indemnified Matters). If any Indemnitor or any of its successors, assigns, agents, representatives, predecessors, affiliates, subsidiaries or parent entities files or makes, or knowingly permits to be filed or made on its behalf, an action, lawsuit, charge, petition, complaint, appeal or other claim asserting any claim or demand against any of the Indemnitees that is within the scope of the Released Matters (including without limitation the Indemnified Matters), then, whether or not such a claim is otherwise valid, in addition to any other rights or remedies that may be available to them, the Indemnitees shall be entitled to recover from such Indemnitor any and all costs incurred by them in defending such claim(s), including reasonable attorneys' fees and other reasonable legal costs.

6. Duty to Defend and Attorneys' and Other Fees and Expenses. Upon written request by any Indemnitee, each Indemnitor shall defend such Indemnitee against any claim for which indemnification is required hereunder, by attorneys and other professionals approved by such Indemnitee. Each Indemnitee shall have the right, at its own cost and expense, to participate in such defense assisted by counsel of its own choosing.

7. Successors and Assigns. This Agreement shall be binding upon each of the Parties and their respective successors and assigns, and shall inure to the benefit of and be enforceable by General Shale and its successors and assigns. Notwithstanding the foregoing, Indemnitors shall not assign or transfer this Agreement or any of their liabilities or obligations hereunder, and any purported assignment or transfer by any Indemnitor of this Agreement or such Indemnitor's liabilities and obligations hereunder shall be null and void. No provision of this Agreement shall be interpreted to restrict Lincoln Terminal's (or any other owner's) rights to freely sell, transfer, convey or encumber all or any portion of the Premises as Lincoln Terminal (or any other owner) may deem necessary or convenient, provided that no such sale, transfer, conveyance or

encumbrance of all or any portion of the Premises by Lincoln Terminal (or any other owner) shall relieve Indemnitors of this Agreement or their liabilities and obligations hereunder, all of which shall survive all such sales, transfers, conveyances or encumbrances of all or any portion of the Premises. This Agreement shall survive closing of the conveyance of the Premises contemplated by the Purchase Agreement and shall remain in full force and effect following such conveyance, enforceable in accordance with its terms. The Indemnitees are intended third-party beneficiaries of this Agreement. This Agreement shall survive the sale, assignment or other transfer by Lincoln Terminal (or any other owner) of all or any portion of the Premises and shall remain in full force and effect following all such sales, assignments or other transfers, enforceable in accordance with its terms.

8. Definitions. As used in this Indemnity, the following terms shall have the following meanings:

(a) "**Environmental Laws**" means any applicable federal, state, local, municipal, or other law (including common law), statute, code, ordinance, regulation, rule, administrative ruling or guidance, directive, or order concerning pollution or protection of the environment, occupational health or safety, or natural resources, including all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, control, management, or cleanup of any Regulated Substance pursuant to the Georgia Hazardous Site Response Act, O.C.G.A. § 12-8-90, et seq., or any Hazardous Substance, including, but not limited to, Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6091 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Clean Water Act (33 U.S.C. § 7401 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), the Toxic Substance Control Act (15 U.S.C. § 2601 et seq.) and the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.); and any state equivalents of the foregoing (e.g., the Georgia Hazardous Waste Management Act, O.C.G.A. § 12-8-60, et seq.).

(b) "**Hazardous Substances**" means any chemical, material, substance, or waste, whether naturally occurring or manmade, that is regulated by Environmental Laws, including any material or substance that is (a) listed or defined as "hazardous" or "toxic" substance, material, or waste, "extremely hazardous waste," "restricted hazardous waste," "pollutant," "contaminant," "hazardous constituent," "special waste," "toxic substance," or other similar term or phrase under any Environmental Laws and (b) any petroleum product, including any fraction or by-product thereof, asbestos, polychlorinated biphenyls (PCBs), perfluoroalkyl or polyfluoroalkyl substances (PFAS), radioactive material, or urea-formaldehyde foam insulation.

(c) The term "**Indemnitees**" means, collectively, General Shale and its past, present, and future predecessors, subsidiaries, parent entities and affiliates (including, without limitation, General Shale Brick, Inc., a Delaware corporation, and Wienerberger AG, an Austrian aktiengesellschaft, and any other entity controlling, controlled by or under common control with General Shale Brick, Inc.), and its and their past, present and future officers, directors, members, managers, owners, shareholders, employees, agents and representatives, and the respective successors, assigns, heirs and personal representatives of each of the foregoing. "**Indemnitee**" means each of the foregoing Indemnitees.

(d) The term "**Losses**" includes any losses, damages (including, without limitation, compensatory, consequential, statutory, or punitive damages), injuries, costs, fees, expenses, demands, claims, actions, causes of action, suits, judgments, awards, liabilities (including, but not limited to, strict liabilities), obligations, duties, debts, obligations, diminutions in value, fines, penalties, sanctions, charges, costs of assessment, investigation, remediation and cleanup (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, fees of attorneys, engineers and environmental consultants and investigation costs (including, but not limited to, costs for sampling, testing and analysis of soil, water, air, building materials and other materials and substances, whether solid, liquid or gas), of every kind, character and manner whatsoever, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards.

9. Severability. If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

10. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Georgia and shall, for all purposes, be governed by and construed and enforced in accordance with the laws of the State of Georgia, without regard to the conflicts of laws principles thereof that would otherwise direct the application of the laws of a different jurisdiction.

11. Amendments; No Waiver. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. No delay by any of General Shale or any other Indemnitee in exercising any right, power or privilege under this Agreement shall operate as a waiver of any such privilege, power or right.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties, intending to be legally bound, has executed this Agreement as of the Effective Date.

GENERAL SHALE, LLC

By_____
Name: Charles Smith
Its: Manager

LINCOLN TERMINAL COMPANY, INC.

By_____
Name: L. Burgamy, Jr.
Its: President

LINCOLN HOLDING COMPANY, LLC

By_____
Name: L. Burgamy, Jr.
Its: President

NORFOLK SOUTHERN RAILWAY COMPANY

By Alan H. Shaw
Name: Alan Shaw
Its: Executive Vice President and Chief Marketing Officer

Exhibit A

Tracts 2 and 3 of the Replat of the General Shale Brick Plant Site recorded in Plats Book 389, Page 42 of the public records of the Clerk of Superior Court of Fulton County, Georgia, further described as follows:

Tract 2:

A tract or parcel of land lying and being in Land Lot 263 of the 17th District, City of Atlanta, Fulton County Georgia and being more particularly described as follows;

To find the TRUE POINT OF BEGINNING commence at an iron pin set at the intersection of the westerly right-of-way line of Parrot Avenue (50' R/W) and the southerly right-of-way line of The Southern Railroad Company (R/W Varies), Thence southerly along said westerly right-of-way line of Parrot Avenue, South 46 degrees 35 minutes 28 seconds West for a distance of 360.00 feet to an iron pin set, and the TRUE POINT OF BEGINNING;

From the TRUE POINT OF BEGINNING as thus established continue along the westerly right-of-way line of Parrott Avenue South 46 degrees 35 minutes 28 seconds West for a distance of 92.52 feet to an iron pin set; Thence South 46 degrees 35 minutes 28 seconds West for a distance of 54.83 feet to an iron pin set; Thence along a curve to the left having a radius of 201.95 feet and an arc length of 69.74 feet, being subtended by a chord of South 25 degrees 54 minutes 11 seconds West for a distance of 69.40 feet to an iron pin set; Thence leaving said westerly right-of-way line of Parrot Avenue and proceed North 26 degrees 44 minutes 44 seconds West for a distance of 138.62 feet to an iron pin set; Thence South 38 degrees 18 minutes 46 seconds West for a distance of 228.45 feet to an iron pin set; Thence North 51 degrees 41 minutes 14 seconds West for a distance of 25.00 feet to an iron pin set; Thence South 36 degrees 29 minutes 32 seconds West for a distance of 65.29 feet to an iron pin found; Thence South 00 degrees 09 minutes 34 seconds East for a distance of 269.88 feet to an iron pin set; Thence North 78 degrees 05 minutes 16 seconds West for a distance of 1389.90 feet to an iron pin found on the easterly right-of-way line of Interstate Highway 285 (R/W Varies); Thence northerly along said easterly right-of-way line, North 31 degrees 39 minutes 10 seconds West for a distance of 780.70 feet to an iron pin set on the southeasterly right-of-way line of a railroad spur track owned by The Southern Railroad Company (R/W Varies); Thence leaving said easterly right-of-way line of Interstate Highway 285, proceed along said southeasterly right-of-way line of a railroad spur track North 53 degrees 25 minutes 41 seconds East for a distance of 393.59 feet to an iron pin set; Thence leaving said right-of-way line proceed South 52 degrees 09 minutes 50 seconds East for a distance of 290.95 feet to an iron pin set; Thence proceed South 36 degrees 01 minutes 51 seconds East for a distance of 398.83 feet to an iron pin set; Thence proceed North 52 degrees 10 minutes 50 seconds East for a distance of 388.34 feet to an iron pin set; Thence proceed South 67 degrees 25 minutes 24 seconds East for a distance of 902.73 feet to an iron pin set; Thence proceed North 87 degrees 12 minutes 10 seconds East for a distance of 177.44 feet to an iron pin set; Thence proceed South 50 degrees 04 minutes 52 seconds East for a distance of 92.19 feet to an iron pin set on the westerly right-of-way line of Parrott Avenue and the TRUE POINT OF BEGINNING.

Said property contains 27.33 acres more or less, and is shown on, and described according to that certain Replat of: General Shale Brick Plant Site, by LandAir Surveying Company, Dated 12/22/2015, and bearing the seal of H. Tate Jones, Georgia Registered Land Surveyor No. 2339, which plat is hereby made part of this legal description by this reference.

Tract 3:

A tract or parcel of land lying and being in Land Lot 263 of the 17th District, City of Atlanta, Fulton County Georgia and being more particularly described as follows;

To find the TRUE POINT OF BEGINNING, commence at an iron pin set at the intersection of the westerly right-of-way line of Parrot Avenue (50' R/W) and the southerly right-of-way line of The Southern Railroad Company (R/W Varies), Thence proceed along said Southern Railroad Company right-of-way North 26 degrees 20 minutes 57 seconds West for a distance of 1050.39 feet to an iron pin set at the intersection of the southerly right-of-way of said Southern Railroad Company and the southerly right-of-way line of a Spur Line (R/W varies) also owned by said Southern Railroad Company; Thence crossing said Spur Line North 26 degrees 20 minutes 57 seconds West for a distance of 570.95 feet to an iron pin set lying at the intersection of the southerly right-of-way of said Southern Railroad Company and the northerly right-of-way line of said Spur Line; said iron pin being the TRUE POINT OF BEGINNING.

From the TRUE POINT OF BEGINNING as thus established proceed along the northerly right-of-way of said Spur Line along a curve turning to the left having a radius of 678.50' and an arc length of 444.56', being subtended by a chord of North 80 degrees 46 minutes 02 seconds West for a distance of 436.65' to an iron pin set; Thence South 09 degrees 32 minutes 15 seconds East a distance of 25.00 feet to an iron pin set; Thence along a curve turning to the left having a radius of 653.50' and an arc length of 489.84', being subtended by a chord of South 58 degrees 59 minutes 21 seconds West for a distance of 478.45' to an iron pin set; Thence South 40 degrees 29 minutes 30 seconds West a distance of 805.47 feet to an iron pin set; Thence South 44 degrees 19 minutes 56 seconds West a distance of 72.33 feet to an iron pin set; Thence South 53 degrees 27 minutes 17 seconds West a distance of 378.40 feet to an iron pin set at the top of the bank on the east side of the Chattahoochee River; Thence leaving said right-of-way line proceed along said top of bank the following bearings and distances, North 45 degrees 24 minutes 41 seconds East a distance of 82.91 feet to a point; Thence North 38 degrees 25 minutes 54 seconds East a distance of 63.57 feet to a point; Thence North 36 degrees 30 minutes 34 seconds East a distance of 45.16 feet to a point; Thence North 29 degrees 50 minutes 49 seconds East a distance of 55.55 feet to a point; Thence North 40 degrees 11 minutes 31 seconds East a distance of 68.47 feet to a point; Thence North 48 degrees 30 minutes 19 seconds East a distance of 71.93 feet to a point; Thence North 41 degrees 09 minutes 56 seconds East a distance of 143.05 feet to a point; Thence North 46 degrees 33 minutes 31 seconds East a distance of 109.06 feet to a point; Thence North 43 degrees 40 minutes 35 seconds East a distance of 85.29 feet to a point; Thence North 40 degrees 21 minutes 34 seconds East a distance of 81.86 feet to a point; Thence North 46 degrees 16 minutes 01 seconds East a distance of 130.59 feet to a point; Thence North 36 degrees 21 minutes 31 seconds East a distance of 139.70 feet to a point; Thence North 45 degrees 02 minutes 32 seconds East a distance of 132.08 feet to a point; Thence North 49 degrees 56 minutes 16 seconds East a distance of 113.75 feet to a point; Thence North 47 degrees 48 minutes 42 seconds East a distance of 101.62 feet to a point; Thence North 53 degrees 09 minutes 02 seconds East a distance of 111.13 feet to a point; Thence North 61 degrees 10 minutes 18 seconds East a distance of 114.57 feet to a point; Thence North 61 degrees 44 minutes 29 seconds East a distance of 275.66 feet to a point; Thence North 72 degrees 22 minutes 59 seconds East a distance of 112.60 feet to a point; Thence North 70 degrees 25 minutes 04 seconds East a distance of 81.68 feet to an iron pin set at the intersection of said top of bank and said southerly railroad right-of-way; Thence leaving the top of bank proceed along said southerly right-of-way South 26 degrees 20 minutes 57 seconds East a distance of 290.01 feet to an iron pin set; which is THE TRUE POINT OF BEGINNING.

Said property contains 3.58 acres more or less, and is shown on, and described according to that certain Replat of: General Shale Brick Plant Site, by LandAir Surveying Company, Dated 12/22/2015, and bearing the seal of H. Tate Jones, Georgia Registered Land Surveyor No. 2339, which plat is hereby made part of this legal description by this reference.

Certificate Of Completion

Envelope Id: C69F72E661884E24B1DD5504EE5EAADA
Subject: Please DocuSign: Commissioner Keane 12-8-20 final.pdf
Source Envelope:
Document Pages: 68
Certificate Pages: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-05:00) Eastern Time (US & Canada)

Signatures: 1
Initials: 0

Status: Completed

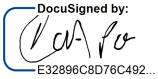
Envelope Originator:
Matthew A. Gernand
3 Commercial Place
Norfolk, VA 23510
Matthew.Gernand@nscorp.com
IP Address: 70.160.88.160

Record Tracking

Status: Original
12/8/2020 3:24:10 PM

Holder: Matthew A. Gernand
Matthew.Gernand@nscorp.com

Location: DocuSign

Signer Events	Signature	Timestamp
Conner Poe Conner.poe@nscorp.com Security Level: Email, Account Authentication (None)	DocuSigned by:  E32896C8D76C492...	Sent: 12/8/2020 3:25:01 PM Viewed: 12/8/2020 3:25:27 PM Signed: 12/8/2020 3:25:45 PM
	Signature Adoption: Drawn on Device Using IP Address: 99.47.125.39 Signed using mobile	

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	12/8/2020 3:25:01 PM
Certified Delivered	Security Checked	12/8/2020 3:25:27 PM
Signing Complete	Security Checked	12/8/2020 3:25:45 PM
Completed	Security Checked	12/8/2020 3:25:45 PM

Payment Events	Status	Timestamps

EXHIBIT C

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36485

CITY OF ATLANTA, GEORGIA—
PETITION FOR PRELIMINARY INJUNCTION AND PETITION FOR DECLARATORY ORDER—
NORFOLK SOUTHERN CORPORATION

VERIFIED STATEMENT OF CRAIG RETHWILM, P.E.

1. I am Craig Rethwilm, P.E., CFM (Professional Engineer, Certified Floodplain Manager). I am the Floodplain Administrator in the City of Atlanta's Department of Watershed Management.
2. I have been with the City since March 6, 2014 and was the Floodplain Coordinator until the previous Floodplain Administrator left the City.
3. I provide Floodplain information to citizens upon demand, make Floodplain determinations, that is, whether a piece of property is in or out of the Floodplain, determining base flood elevation where not provided by the Federal Emergency Management Agency (FEMA) or the National Flood Insurance Program (NFIP), and coordinate with Site Development concerning permitting.
4. I had previously been in the private sector since 1995, working as a site Civil Engineer doing stormwater, sanitary sewer, and site layout design.
5. Atlanta is a participating community in the NFIP. As a participating community in the NFIP, the federal regulations governing floodplains apply.
6. I am familiar with the proposal of Lincoln Terminal Company, and now of Norfolk Southern Corporation, to construct an intermodal transfer facility at the former Chattahoochee Brick site at 3195 Brick Plant Road, NW in the City of Atlanta.

7. I have prepared a map, attached to this statement as **Attachment 1**, of the site showing that a substantial portion of it is within the floodplain. The top of the map is the northern direction. The site is bounded on the north, northeast and northwest by the rail line (represented by the dotted line on the map), on the west, southwest and south by Proctor Creek, on the southeast by Parrott Road and the same rail line. From this map, it is clear that a substantial portion of the proposed site is within the floodplain.
8. I have also attached as **Attachment 2**, a map that Norfolk Southern provided to Commissioner Timothy J. Keane in a letter dated December 8, 2020. In the letter to Commissioner Keane, the map is Exhibit A to the "Real Property Lease Agreement." All of the area marked Parcel A, a substantial portion of the area marked Parcel B, and all of the area marked Parcel C are within the floodplain that is shown on **Attachment 1.**

I, Craig Rethwilm, P.E., CFM, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement in support of the Petition for Preliminary Injunction.

Executed on February 12, 2021.

DocuSigned by:

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Craig Rethwilm, P.E., CFM

ATTACHMENT 1

GEORGIA
FLOOD MAP PROGRAM

Pan tool active

Preliminary Flood Zone | Effective Flood Zone

Zone AE

Zone AE - 1% Chance (100-year) floodplain

3195 Brick Plant Rd NW

FULTON COUNTY
13121C0236F
9/18/2013
EFFECTIVE

COBB COUNTY
13067C0236H
9/18/2013
EFFECTIVE

CHATTAHOOCHEE RIVER

PROCTOR CREEK

Riverview Rd SE

Jackaranda Dr SE

Mitchell Rd SE

Freeman Pkwy

Brick Plant Rd NW

Parrott Ave NW

Spaci Ave NW

407

285

Bridge

767

766.9

766.0

766.5

376 ft

ATTACHMENT 2

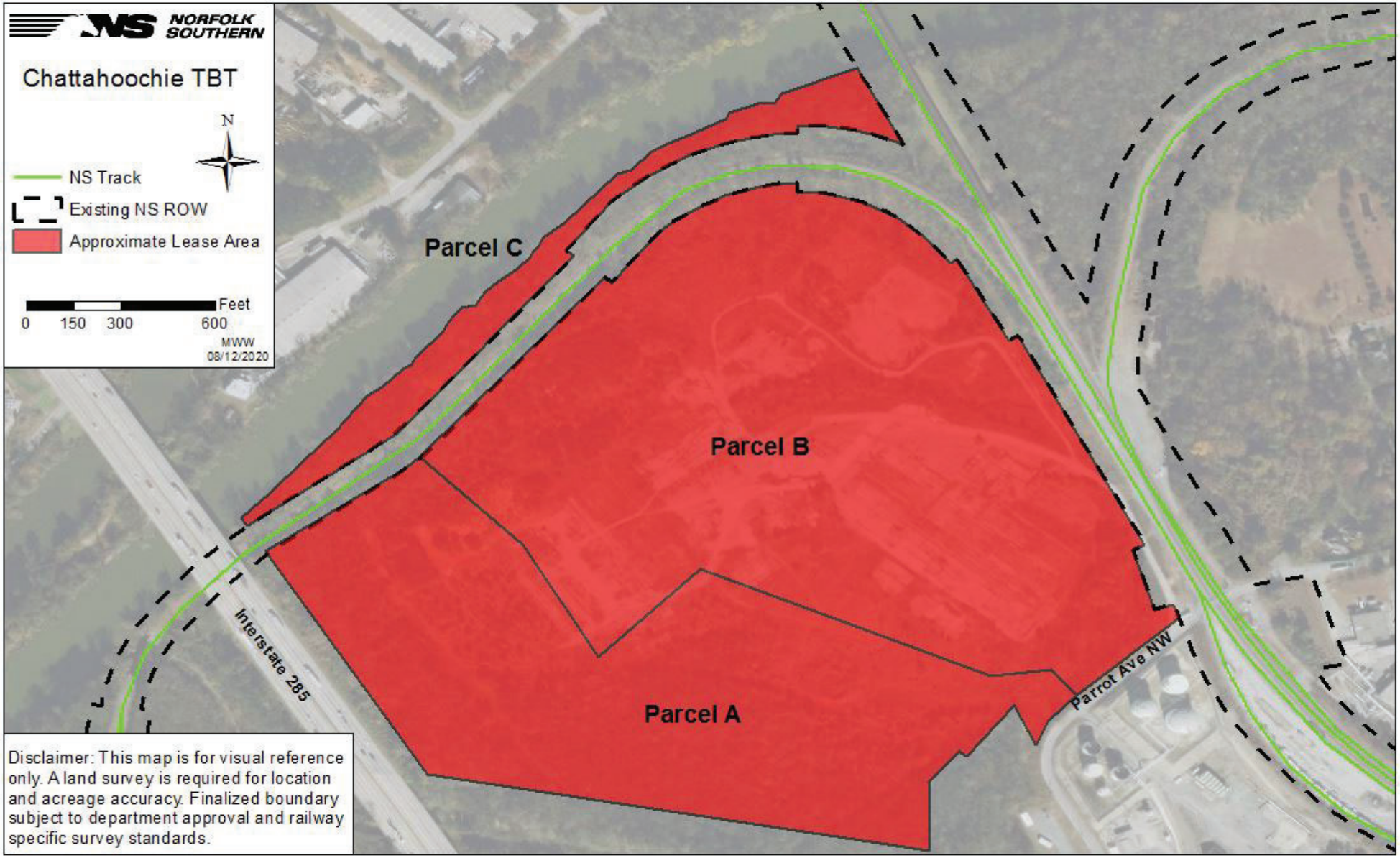

EXHIBIT D

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36485

CITY OF ATLANTA, GEORGIA—
PETITION FOR PRELIMINARY INJUNCTION AND PETITION FOR DECLARATORY ORDER—
NORFOLK SOUTHERN CORPORATION

VERIFIED STATEMENT OF DOUGLAS H.R. YOUNG

1. My name is Douglas H. R. Young. I am Assistant Director of the Historic Preservation Studio, Office of Design in the City of Atlanta Department of City Planning. I am also the Director of the Atlanta Urban Design Commission. I have held the latter position for 11 years.
2. In these positions, my responsibilities include overseeing all functions of the Historic Preservation Studio of the Office of Design, including strategy, policy, operations, community engagement, design review, and technical assistance, as well as all operations associated with the Atlanta Urban Design Commission.
3. Previously, from 1996-2010 I was a Historic Preservation Planner (various levels) in the Office of Design (successor to previous offices) in the Department of City Planning (successor to previous department names). From 1994 to 1996, I was a Planner for the Corporation for Olympic Development in Atlanta (CODA).
4. Part of the responsibilities of my position include administering the sections of the Atlanta City Code that govern cemeteries and burial grounds. This is in the City of Atlanta Code of Ordinances – Part II, Chapter 38, Article III. This section of the Code requires persons who are planning to engage in construction or any activity that will involve disturbing a cemetery / burial ground to come to the City for approval of the project, and it lays out the steps that the proponent has to complete to disturb or move a cemetery / burial ground, as follows:
    - Document the existing situation of the potential cemetery / burial ground;

- Document any connections to living relatives;
- Try to engage / consult with any living relatives;
- Propose a relocation plan;
- Receive approval from the Urban Design Commission (the City's entity with "the power to hear, grant or deny applications for a cemetery or burial ground"), as well as from the Atlanta City Council, and Mayor for the disturbance / relocation; and,
- If approved, relocate the remains per the approved relocation plan.

5. I am aware of the proposal to build a rail transfer facility at the site owned by Lincoln Terminal Company that was formerly the site of the Chattahoochee Brick Company. I am aware as well, that the Lincoln Terminal Company filed a request for a special use permit to construct a rail transfer facility at this site and that the City did not grant that approval.
6. The history of the operations by Chattahoochee Brick is documented in analysis and research contained in *Slavery by Any Other Name* by Douglas A. Blackmon (published by Anchor Books in 2008).
7. That documentation confirms that the Chattahoochee Brick site almost certainly contains burial sites and that the site should not be disturbed without full research and documentation of the site in a way that is consistent with the City's requirements and that respects those who are buried there.
8. The City's regulations for the disturbance / relocation of cemeteries / burial grounds have been applied during my tenure in this office to a number of other sites where construction or disturbance of the site has been proposed, including (but not limited to): the McDonald Family Cemetery at 3744 Martin Luther King Junior Drive; the Mt. Olive Cemetery at 431 Pharr Road; and the Williams Cemetery at 0 Fulton Industrial Blvd - 0 Sandy Creek Road. The latter two cemeteries sought permits and complied with the obligations set forth in the City Code, and the situation with the first cemetery listed is

still unresolved. The Mt. Oliver Cemetery request was denied and the Williams Cemetery was approved.

9. The most important part of the City regulations, from my perspective, is to ensure that no work that would otherwise potentially disturb the cemetery be undertaken until the code section is complied with. Part of the process itself is to do professional, scholarly research, analysis, and field work to determine if there is actually a cemetery / burial ground there and if so, what is the extent of it.
10. The question of "extent" is critical to understanding the situation with the Chattahoochee Brick site, as it would be with any other cemetery / burial ground. Any disturbance of the dirt at the site has the potential for disturbing burial sites if a careful analysis of the site as I have described above is not completed before the first shovel-full of dirt has been disturbed.
11. In this situation, the idea that more caution should be taken,and no construction or site preparation should begin, is a substantial one because the City has good reason to believe that this contains a burial site, but we do not know yet exactly the extent of what is there.

I, Douglas H. R. Young, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement in support of the Petition for Preliminary Injunction.

Executed on February 12, 2021.

DocuSigned by:
Douglas H. R. Young
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Douglas H. R. Young