

# FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive  
Suite 800  
Chicago, Illinois 60606-3208

Phone: (312) 252-1500  
Fax: (312) 252-2400  
www.fletcher-sippel.com

**BRADON J. SMITH**  
(312) 252-1516  
bsmith@fletcher-sippel.com

January 7, 2022

303494

## VIA ELECTRONIC FILING

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings  
January 7, 2022  
Part of  
Public Record

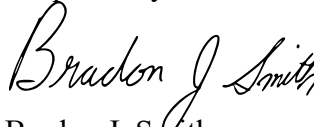
Re: **FD 36571**  
**Verdigris Southern Railroad, L.L.C. —**  
**Lease and Operation Exemption — Track in Rogers County, Okla.**

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is a **Verified Notice of Exemption of Verdigris Southern Railroad, L.L.C. Pursuant to 49 C.F.R. § 1150.33 and Motion for Protective Order** dated January 7, 2022. A confidential version of the notice has been filed separately. The filing fee for this matter has been tendered electronically via Pay.gov.

If you have any questions regarding this filing, please feel free to contact me.  
Thank you for your assistance on this matter.

Respectfully submitted,



Bradon J. Smith  
Attorney for Verdigris Southern Railroad, L.L.C.

BJS:bs

Attachments

**FILED**  
**January 7, 2022**  
**SURFACE**  
**TRANSPORTATION BOARD**

**FEE RECEIVED**  
**January 7, 2022**  
**SURFACE**  
**TRANSPORTATION BOARD**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FD 36571

VERDIGRIS SOUTHERN RAILROAD, L.L.C.  
— LEASE AND OPERATION EXEMPTION —  
TRACK IN ROGERS COUNTY, OKLA.

---

**VERIFIED NOTICE OF EXEMPTION OF  
VERDIGRIS SOUTHERN RAILROAD, L.L.C.  
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Bradon J. Smith  
Robert A. Wimbish  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 800  
Chicago, Illinois 60606-3208  
(312) 252-1500

**ATTORNEYS FOR VERDIGRIS SOUTHERN  
RAILROAD, L.L.C.**

Dated: January 7, 2022

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FD 36571

VERDIGRIS SOUTHERN RAILROAD, L.L.C.  
— LEASE AND OPERATION EXEMPTION —  
TRACK IN ROGERS COUNTY, OKLA.

---

**VERIFIED NOTICE OF EXEMPTION OF  
VERDIGRIS SOUTHERN RAILROAD, L.L.C.  
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Pursuant to 49 C.F.R. Part 1150, Subpart D, Verdigris Southern Railroad, L.L.C. (“VESO”), currently a noncarrier, hereby files this Verified Notice of Exemption (the “Notice”) to lease from the City of Tulsa – Rogers County Port Authority (the “Port”), and to commence common carrier operations over certain railroad track (described below) located in Rogers County, Okla. (the “Line”). In accordance with the requirements of 49 C.F.R. § 1150.33, VESO submits the following information:

**Name and Address of Applicant: 49 C.F.R. § 1150.33(a)**

The full name and address of the applicant herein is as follows:

Verdigris Southern Railroad, L.L.C.  
315 W. Third Street  
Pittsburg, KS 66782

**Applicant’s Representative: 49 C.F.R. § 1150.33(b)**

VESO’s representative to whom correspondence regarding this transaction should be sent is as follows:

Bradon J. Smith  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 800  
Chicago, Illinois 60606  
(312) 252-1500

**Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)**

VESO and the Port have entered into a “Track Lease and Operating Agreement” (the “Lease Agreement”) to govern the subject transaction, under which VESO will lease and operate the Line as a common carrier. The Lease Agreement is submitted here as Exhibit C for review in accordance with *Anthony Macrie – Continuance in Control Exemption – New Jersey Seashore Lines, Inc.* FD 35296 (STB served Aug. 31, 2010), 3, in confidential (unredacted) and public (redacted) form subject to a concurrently-filed Motion for Protective Order pursuant to 49 C.F.R. § 1140.14.

**Operator of the Property: 49 C.F.R. § 1150.33(d)**

VESO will operate and provide all rail common carrier service to shippers on the Line.

**Background and Summary of the Transaction: 49 C.F.R. § 1150.33(e)**

The Line is currently unregulated, private track owned by the Port (also, a noncarrier). The Line begins proximate to a point of connection to the northwest-southeast-running Union Pacific Railroad Company (“UP”) Wagoner Subdivision mainline at UP milepost 594.76 at Inola, Okla. Because the Lease Agreement obligates VESO to provide common carrier service, VESO is accordingly seeking authority over the above-identified portion of the leased premises. *See Effingham Railroad Company – Petition for Declaratory Order – Construction at Effingham, Ill., FD 41986*, 2 STB 606, 607 (1997) *and Effingham Railroad Company – Operation Exemption*

– *Line Owned by Agracel Corporation*, FD 33468 (STB served Sep. 24, 1997), *aff'd United Transp. Union v. United States*, 183 F.3d 606, 614 (7th Cir. 1999).

The name and address of the entity leasing the Line to VESO is:

City of Tulsa – Rogers County Port Authority  
5350 Cimarron Road  
Catoosa, Oklahoma 74015

The parties intend the Lease Agreement to be effective on receipt of all necessary regulatory approvals, at which point VESO expects to consummate the lease transaction. The Line extends from the aforementioned point of connection with the UP Wagoner Subdivision main line at UP milepost 594.76 at Inola, Okla. westward for a distance of approximately 13,883 feet to an end point to the west of the Line's crossing at grade of State Road S 4200. The Line, currently serving as private track, has no mileposts of its own.

**Maps: 49 C.F.R. § 1150.33(f)**

A map showing the Line is attached as Exhibit A.

**Certificate of Compliance: 49 C.F.R. § 1150.33(g)**

The projected revenues will not result in VESO becoming a Class I or II rail carrier. A certification to this effect is made with the verification of this Notice.

**Interchange Commitments: 49 C.F.R. § 1150.33(h)**

The Lease Agreement does not include an interchange commitment.

**Advance Notice: 49 C.F.R. § 1150.32(e)**

VESO revenues are not anticipated to exceed \$5 million. In any event, there are no affected railroad employees to whom advance notice might otherwise be required under

49 C.F.R. § 1150.32(e). *See Acquisition of Rail Lines under 49 U.S.C. 10901 and 10902 — Advance Notice of Proposed Transactions*, 2 STB 592, 602 (1997).

**Environmental and Historic Preservation Data: 49 C.F.R. § 1105**

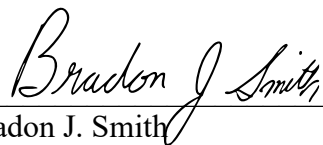
Under 49 C.F.R. § 1105.6(c)(2), this transaction is exempt from environmental reporting requirements because the thresholds of 49 C.F.R. § 1105.7(e)(4) or (5) will not be exceeded.

Under 49 C.F.R. § 1105.8(b)(1) the transaction—which is intended for the purpose of rail operations—is exempt from historic preservation reporting requirements. Separate Surface Transportation Board approval would be required for VESO to be able to discontinue service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

**Caption Summary: 49 C.F.R. § 1150.32(a)**

A caption summary in appropriate form is attached as Exhibit B.

Respectfully submitted,

By:   
\_\_\_\_\_  
Bradon J. Smith  
Robert A. Wimbish  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 800  
Chicago, Illinois 60606-3208  
(312) 252-1500

**ATTORNEYS FOR VERDIGRIS SOUTHERN  
RAILROAD, L.L.C.**

Dated: January 7, 2022

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

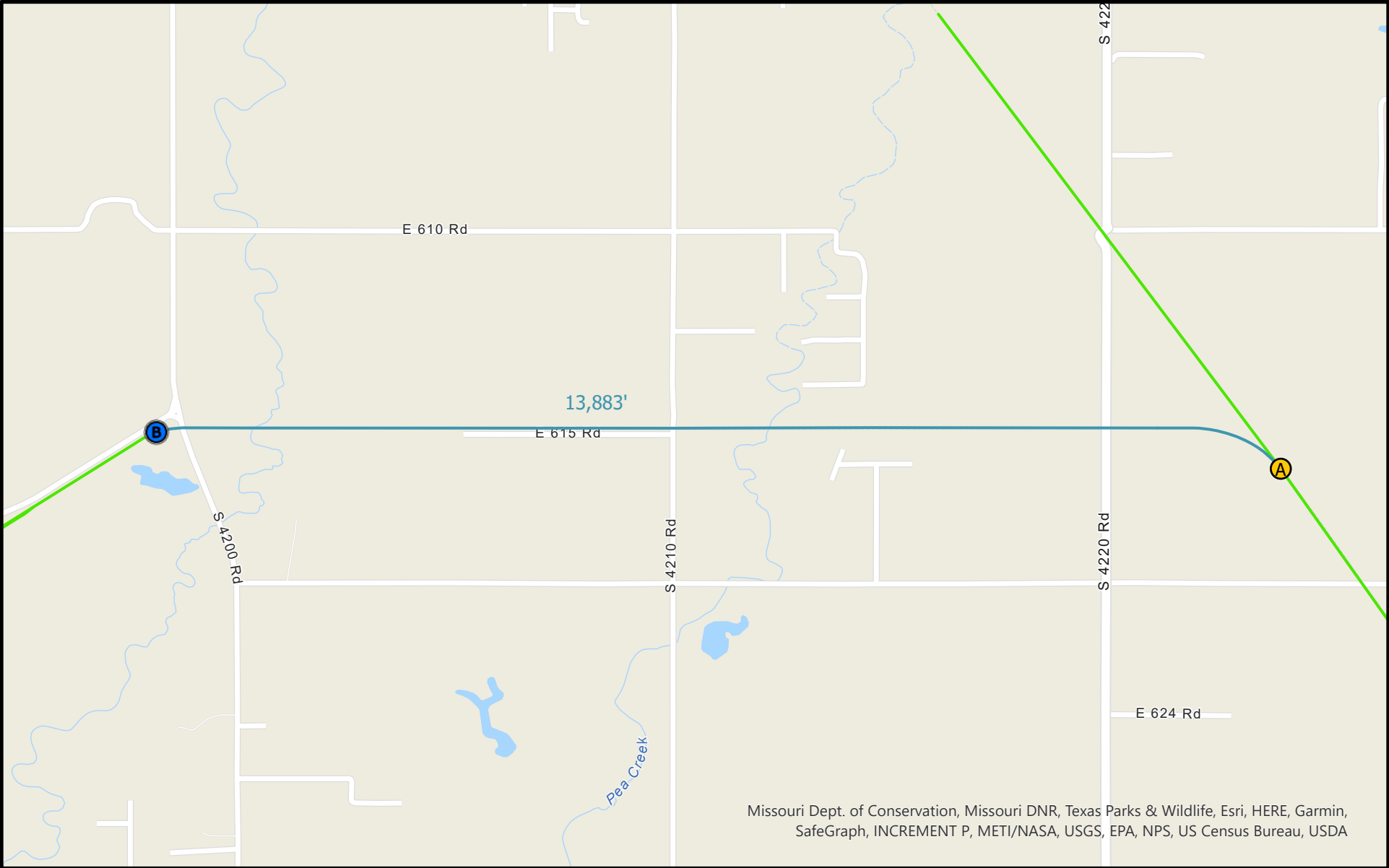
**FD 36571**

**VERDIGRIS SOUTHERN RAILROAD, L.L.C.  
— LEASE AND OPERATION EXEMPTION —  
TRACK IN ROGERS COUNTY, OKLA.**

---

**EXHIBIT A**

**MAP**



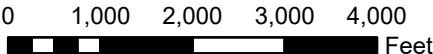
Foreign

Leased Track

ROW

Begin Lease

Lease Limits



Map Center: 95.5107°W 36.1249°N

|           |            |
|-----------|------------|
| Date:     | 12/29/2021 |
| Drawn By: | KT         |

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**FD 36571**

**VERDIGRIS SOUTHERN RAILROAD, L.L.C.  
— LEASE AND OPERATION EXEMPTION—  
TRACK IN ROGERS COUNTY, OKLA.**

---

**EXHIBIT B**

**CAPTION SUMMARY**

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

---

VERDIGRIS SOUTHERN RAILROAD, L.L.C.  
— LEASE AND OPERATION EXEMPTION —  
TRACK IN ROGERS COUNTY, OKLA.

---

Verdigris Southern Railroad, L.L.C., a noncarrier, has filed a verified notice of exemption (the “Notice”) to lease from the City of Tulsa – Rogers County Port Authority (also a noncarrier), and to commence common carrier operations over certain trackage extending from a point of connection with the UP Wagoner Subdivision main line at UP milepost 594.76 at Inola, Okla., westward for a distance of approximately 13,883 feet to an end point to the west of the Line’s crossing at grade of State Road S 4200.

Comments must be filed with the Board and served on:

Bradon J. Smith  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 800  
Chicago, Illinois 60606  
(312) 252-1500

The Notice is filed under 49 C.F.R. § 1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**FD 36571**

**VERDIGRIS SOUTHERN RAILROAD, L.L.C.  
— LEASE AND OPERATION EXEMPTION—  
CITY OF TULSA – ROGERS PORT AUTHORITY**

---

**EXHIBIT C**

**LEASE AGREEMENT**

**TRACK LEASE AND OPERATING AGREEMENT**

**BY AND BETWEEN**

**CITY OF TULSA-ROGERS COUNTY PORT AUTHORITY**

**AND**

**VERDIGRIS SOUTHERN RAILROAD, L.L.C.**

## **TRACK LEASE AND OPERATING AGREEMENT**

THIS TRACK LEASE AND OPERATING AGREEMENT, (hereinafter referred to as "Agreement"), dated as of the 1st day of November, 2021, by and between THE CITY OF TULSA – ROGERS COUNTY PORT AUTHORITY, a governmental agency of the State of Oklahoma ("Authority") and VERDIGRIS SOUTHERN RAILROAD, L.L.C., a Delaware limited liability company ("Railroad").

### **RECITALS**

WHEREAS, Authority owns or controls certain property at an approximately 2,000+ acre industrial site at Inola, Oklahoma that includes an existing approximately three-mile rail spur; and

WHEREAS, Authority is seeking to develop the Inola industrial site as a port and industrial site for receipt, transload, and shipment of commodities; [REDACTED] and with potential future tenants that may also ship and/or receive commodities by rail; and

WHEREAS, the Authority and/or Railroad are cooperating to rehabilitate and upgrade the existing rail spur at the Inola industrial site ("Authority Track" or "Track"); and

WHEREAS, the Authority and Port desire for Railroad to lease and operate the Authority Track and conduct common carrier operations in interchange with the Union Pacific Railroad Company ("UP"), and to reach and serve the industrial tenants of the Authority, through arrangements under which the Authority and Railroad mutually agree.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration the adequacy of which being hereby acknowledged, the parties hereby agree as follows:

#### **SECTION I – GRANT OF LEASE**

SECTION 1.01 – Authority does hereby lease to Railroad and Railroad does hereby lease from Authority, upon the terms and conditions set forth below, the Authority Track as depicted on **Exhibit A** and more particularly described in Section 1.02 of this Agreement ("Leased Premises"), for the Permitted Uses as set forth in Section 1.04, subject to and in compliance with all terms, grant of use, and other conditions, restrictions, limitations, and requirements of this Agreement.

SECTION 1.02 – The Leased Premises shall include, without limitation, right-of-way, tracks, rails, ties, ballast, other track materials, switches, crossings, bridges, culverts, buildings, crossing warning devices, and any and all improvements or fixtures affixed to the right-of-way, including the capital improvements to be undertaken as described in Section 4 of this Agreement, as indicated on **Exhibit B**, but excluding any and all (a) communications equipment and related facility structures, and (b) items of personal property not owned by Authority or not affixed to

the land, including, without limitation, railroad rolling stock, locomotives, equipment, machinery, tools, inventories, materials, and supplies.

SECTION 1.03 – Railroad shall lease the Leased Premises in an “AS IS, WHERE IS” condition, subject to all faults and infirmities and the environmental condition of the Leased Premises, whether now or hereafter existing, and without any express or implied warranties, including but not limited to any warranties of merchantability, fitness for particular purpose or volume or quality of traffic on the Leased Premises, subject, however, to all existing interests, including but not limited to all reservations, rights-of-way, easements, and other encumbrances, of record or otherwise. Railroad shall assume the maintenance of the Leased Premises pursuant to the terms hereinafter set forth.

SECTION 1.04 – Railroad shall use the Leased Premises exclusively for freight railroad operating and maintenance activities pursuant to the terms hereinafter set forth and for no other purposes (collectively, the “Permitted Uses”).

## **SECTION II – AUTHORITY/GRANT OF USE**

SECTION 2.01. Railroad represents and warrants that is a corporation duly incorporated, validly existing, properly certified and licensed, or to be validly certified and licensed pursuant to the terms of this Agreement, and in good standing under the laws of its governing jurisdiction. Railroad has the corporate power and authority to own or lease its properties where it operates, to carry on its business, to enter into this Agreement pursuant to the terms hereof, and to perform its obligations hereunder and thereafter.

SECTION 2.02. Railroad accepts the use of the Leased Premises in accordance with the terms, conditions, covenants, and agreements set forth herein.

SECTION 2.03. The Authority represents that it owns or controls the Leased Premises and that there are no existing easements or encumbrances affecting such Leased Premises that would interfere with Railroad’s rights under this Agreement.

SECTION 2.04. The Authority shall not cause or allow the Authority Track to be blocked, obstructed or used in any manner that would impair or diminish Railroad’s ability to use the Leased Premises for the purposes set forth in this Agreement.

SECTION 2.05. Absent written consent of Authority, Railroad shall not access, use, or operate for any purpose any Authority property or track besides the Leased Premises for the specific purposes set forth herein. Railroad shall provide all relevant information in response to Authority’s inquiries regarding the use or condition of the Leased Premises.

SECTION 2.06. Railroad shall use the Leased Premises for the receipt of interline freight rail shipments, to be interchanged on the Interchange Tracks (defined below), delivery and pickup of loaded and empty railcars for tenants of the Authority, [REDACTED]

[REDACTED] do not interfere with Railroad’s ability to reasonably serve the Authority’s tenants. Loading or unloading of railcars should be performed on industry track

only; absent written consent of Authority, Railroad shall not engage in or permit the loading or unloading of railcars on the Leased Premises.

SECTION 2.07. Railroad shall not store, transload, or dispose any Hazardous Materials on the Leased Premises, provided however, that nothing herein shall preclude Railroad or any other admittee of Authority from conducting standard locomotive maintenance using Hazardous Material as required for operation of the railroad and using the Leased Premises for the movement, pickup and delivery of Hazardous Materials in railcars in the normal course of providing rail transportation service to or from the Authority and its tenants. For purposes of this Agreement, Hazardous Materials shall include but shall not be limited to any substance, material, or waste that is regulated by any federal or state law or otherwise regulated by any federal, state, or local governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals," "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes."

SECTION 2.08. Neither party shall use or occupy the Leased Premises or any part thereof in violation of Legal Requirements (as defined in Section 6.01).

SECTION 2.09. Railroad shall not cause to be filed or knowingly and intentionally permit persons within its control to file any liens against the Leased Premises. In the event any such liens are filed, Railroad shall promptly, and in any case no later than ten (10) days after notice of the filing thereof, pay and discharge any and all liens arising out of any activities done, suffered or permitted to be done by Railroad, and shall indemnify, defend and hold harmless Authority from any such liens.

### **SECTION III – TERM**

[REDACTED]

The "Commencement Date" shall be the date of completion of the capital improvements under the terms as set forth in Section 5 of this Agreement, or such later date as mutually agreed upon by the parties.

### **SECTION IV – RAIL SERVICE**

SECTION 4.01. Beginning on the Commencement Date and throughout the Term, Railroad shall be entitled to full and exclusive use of the Leased Premises for operation of rail freight service. [REDACTED]

[REDACTED]

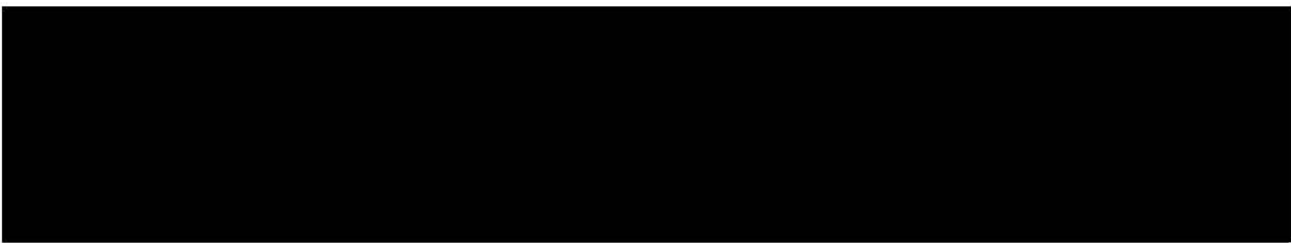
[REDACTED] Railroad shall not use the Leased Premises for any purpose other than for rail freight service subject to the jurisdiction of the Surface Transportation Board (“the STB”), and for ancillary services, as applicable.

SECTION 4.02. As soon as reasonably practicable, [REDACTED]  
[REDACTED] Railroad shall acquire and obtain the right to conduct common carrier rail freight service over the Leased Premises, at Railroad’s sole cost and expense, through an appropriate lease and operating authority exemption application. [REDACTED]  
[REDACTED]

SECTION 4.03. Following receipt of common carrier operating authority, Railroad shall promptly register the VESO as an interline settlement carrier in the interline settlement system as administered by the Association of American Railroads. [REDACTED]  
[REDACTED]

SECTION 4.04. During the Lease Term, Railroad shall at all times comply with its common carrier service obligations as required at law. Railroad will not suspend or discontinue its operation by rail over all or any part of the Leased Premises without first applying for and obtaining from the STB, and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approvals or exemptions from regulation for such discontinuance of operations over the Leased Premises; provided, however, that Railroad shall not seek such regulatory authority, or if no regulatory authority is required, take any action to suspend or discontinue its operations on the Leased Premises, without first (i) obtaining Authority’s prior written consent for such suspension or discontinuance of service, and (ii) giving Authority at least one hundred and eighty (180) days’ notice of the date in which Lessee seeks to suspend or discontinue service over the Leased Premises.

SECTION 4.05. Upon termination of this Agreement, and in furtherance of the preferences and requirements of Authority, Railroad shall promptly effectuate a discontinuance of service and change in operator authorization before the STB, and/or abandonment authority if requested by Authority, at Railroad’s sole cost and expense. Authority shall reasonably cooperate in such filings. [REDACTED]  
[REDACTED]



## **SECTION V – CAPITAL IMPROVEMENTS**

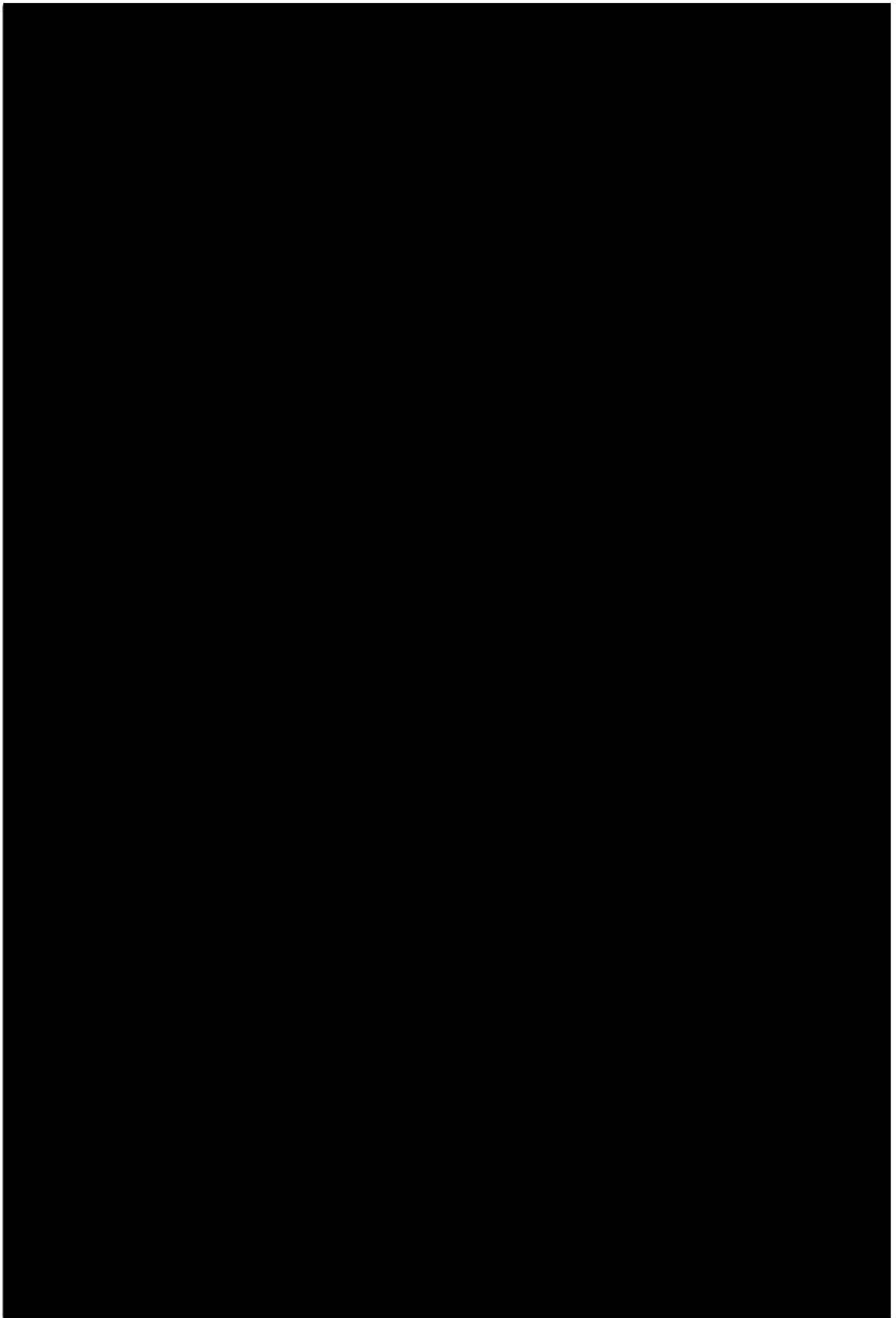
SECTION 5.01. The parties shall work in good faith to finalize design plans and to facilitate and timely complete the rehabilitation and upgrading of the Authority Track, including two new drop-pull railroad interchange tracks (“Interchange Tracks”) and improvements to three at-grade rail/highway crossings.

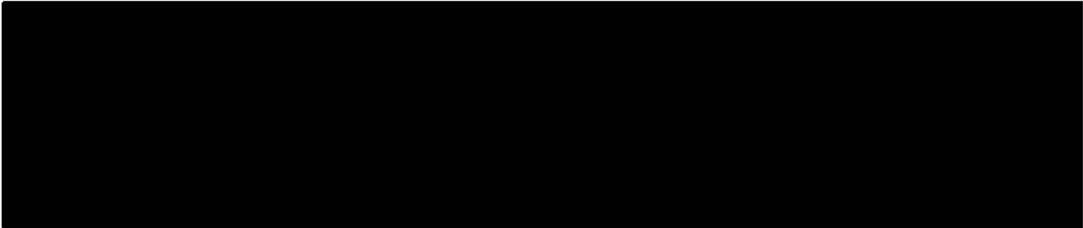
SECTION 5.02. The Parties’ Proposed Construction Plan (“Plan”) for Authority Track upgrades is included in **Exhibit A.** 



## **SECTION VI – MAINTENANCE**



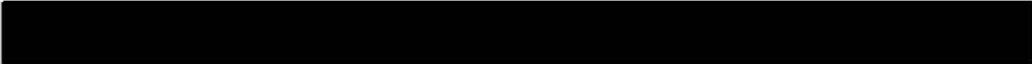




(g) Railroad will pay, satisfy, and discharge all claims or liens for material and labor or either of them used purchased, contracted for, or employed by Railroad during the term of this Agreement in any construction, repair, maintenance, or removal on the Leased Premises and any improvements located thereon, whether said improvements are the property of Authority or of Railroad, and Railroad will indemnify and save harmless Authority from all such claims, liens, or demands whatsoever.

(h) Railroad may, also at its own expense, seek to make from time to time additions, modifications or improvements to the Leased Premises it may deem desirable for its business purposes that do not adversely affect the structural integrity of the track located on the Leased Premises or substantially reduce its value; provided that all such additions, modifications and improvements to the track shall be located wholly within the boundary lines of the Leased Premises; provided, however, that Railroad shall first submit in writing to Authority the plans and specification for such improvements, and secure written approval from Authority before construction is undertaken by Railroad, which consent shall not be unreasonably withheld. If Railroad makes such improvements, Railroad shall be solely responsible for assuring the safe and satisfactory condition of the same and shall not allow any improvements to be a source of danger or environmental harm to the Leased Premises, or interfere with the safe operations of the track or Leased Premises. Railroad shall also be solely responsible for assuring the safe and satisfactory condition of all of the equipment and personal property on the Leased Premises and shall not allow any equipment or property to be a source of danger to the safe operation of the track. All such additions, modifications, and improvements so made by Railroad shall become a part of the Leased Premises to be owned by Authority and shall not be removed by Railroad; provided, that any real or personal property installed by Railroad as part of the Leased Premises without expense to Authority, which is not essential to the operation of the Leased Premises, may be removed by Railroad at any time and from time to time while it is not in default under this Agreement; and provided further, that any damage to the Leased Premises occasioned by such removal shall be repaired by Railroad at its own expense.

(i) Railroad shall not be responsible for capital improvements or maintenance of industry track or infrastructure that is not a part of the Leased Premises .



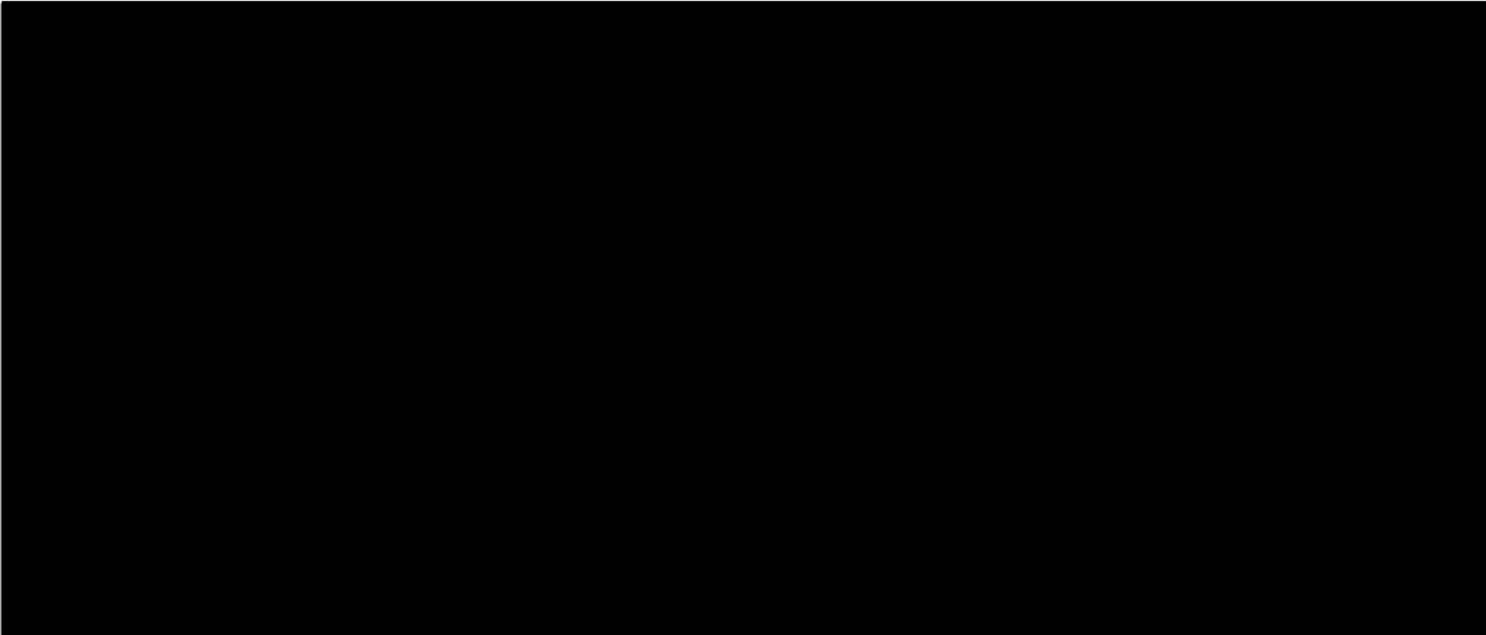
- 
- (b) During the term hereof, capital improvements of industry track or infrastructure that is not a part of the Leased Premises, including such capital improvements and infrastructure associated with existing and new railroad customers shall be the responsibility of the Authority's tenants or the Authority.

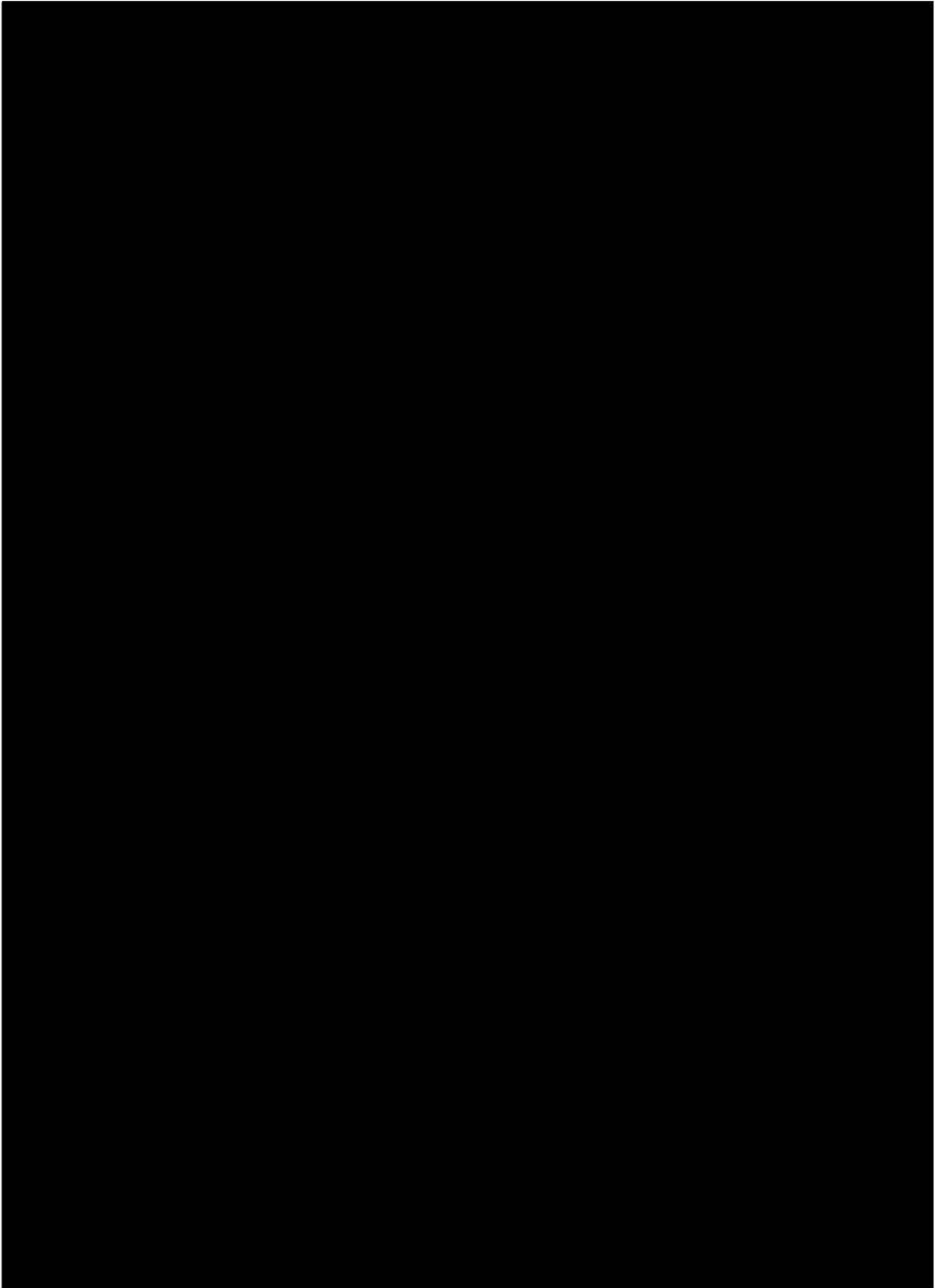


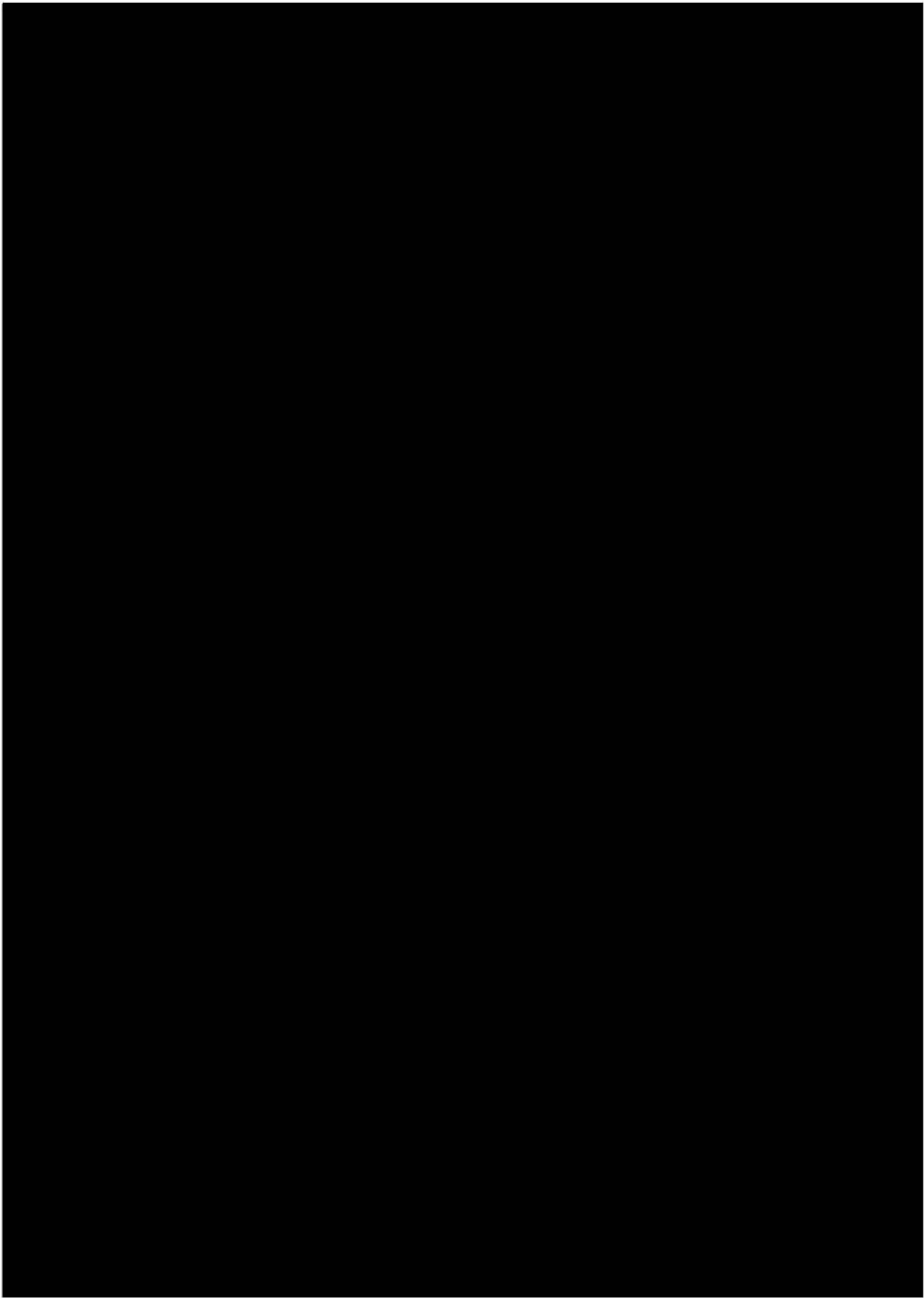
## **SECTION VII – SUBSURFACE RIGHTS AND RESERVED FACILITIES**

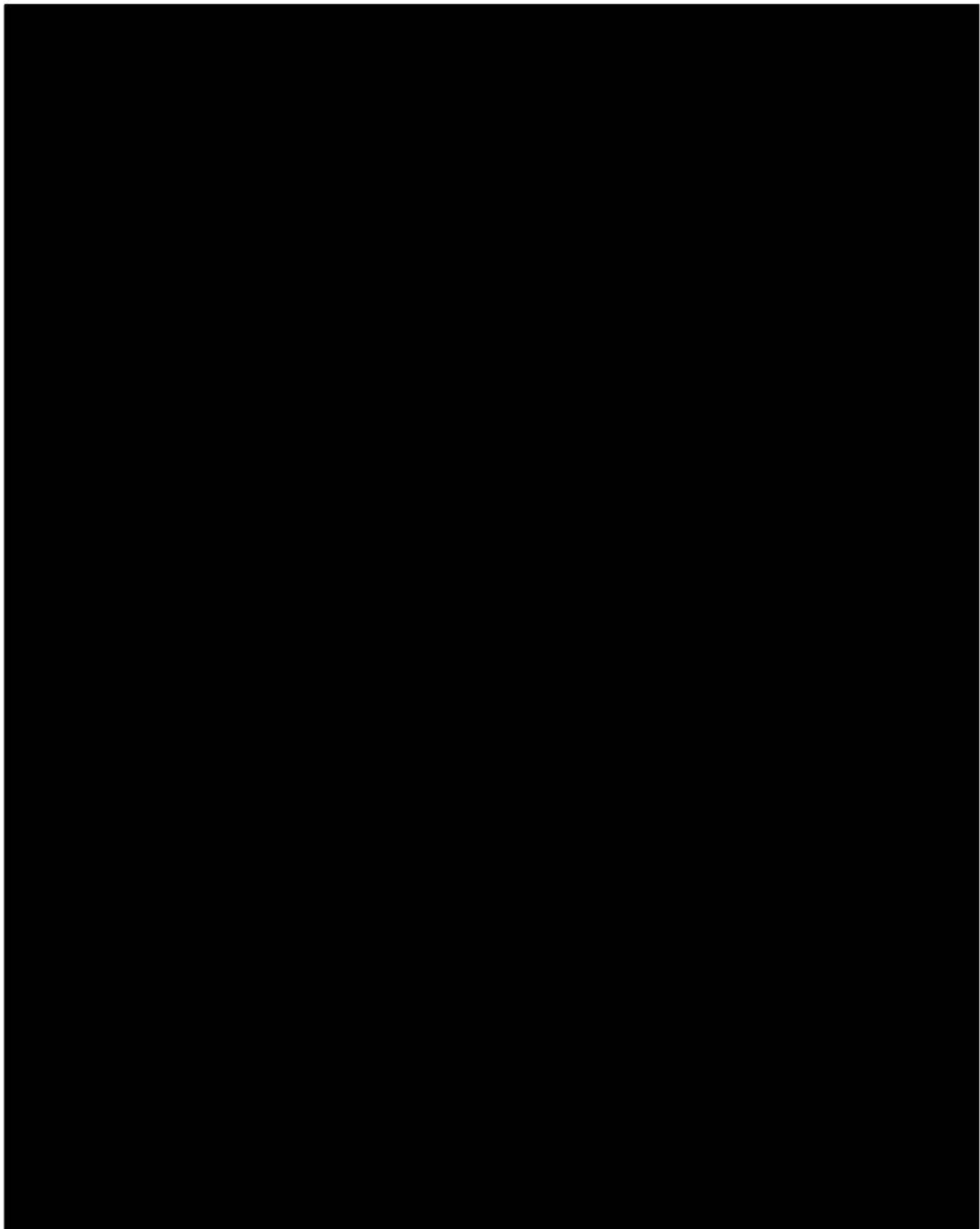
**SECTION 7.01 – SUBSURFACE RIGHTS.** This Agreement does not grant, convey or transfer any right to the use of the subsurface of the Leased Premises, nor water under any water right owned or claimed by Authority which may be appurtenant to the Leased Premises. All right, title, and interest in and to such water, or to the subsurface, is expressly reserved unto Authority, and the right to use same or any part thereof may be obtained only by the prior written consent of Authority. Railroad shall not use, install or permit to be installed or used any wells on the Leased Premises without the prior written consent of Authority.

**SECTION 7.02 – RESERVED FACILITIES.** This Lease is made subject to all outstanding rights or interests of others. Authority reserves the right to operate, maintain, repair, replace, augment, or relocate (provided that said operation, maintenance, repair, replacement, augmentation or relocation does not unreasonably interfere with Authority's use of the Leased Premises for the purposes set forth in Section 2) any Reserved Facilities, as defined below, existing within or adjacent to the Leased Premises. This Agreement is subject and subordinate to any right which Authority or any easement holder, lessee, or licensee of Authority may have in the Reserved Facilities. Railroad shall not unreasonably interfere with the maintenance or operation of the Reserved Facilities, or the rights of any easement holders, lessees, or licensees with respect thereto. "Reserved Facilities" means existing tracks, pipes, conduits, thoroughfares, roads, tunnels, electric communication and signal transmission lines and poles and guys for such lines, and any other facilities of similar nature on, above or below the ground, belonging to any party whomsoever.

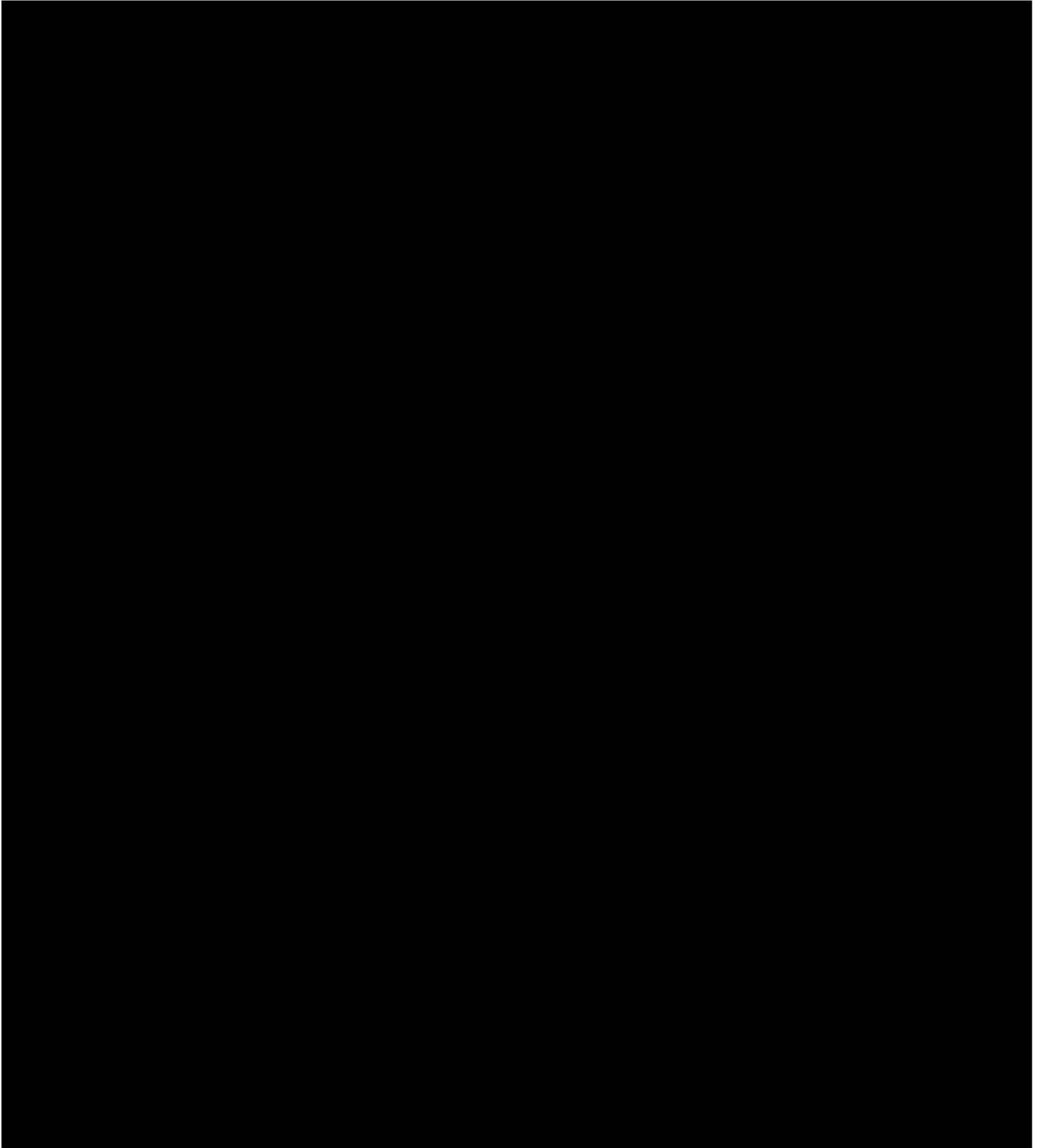


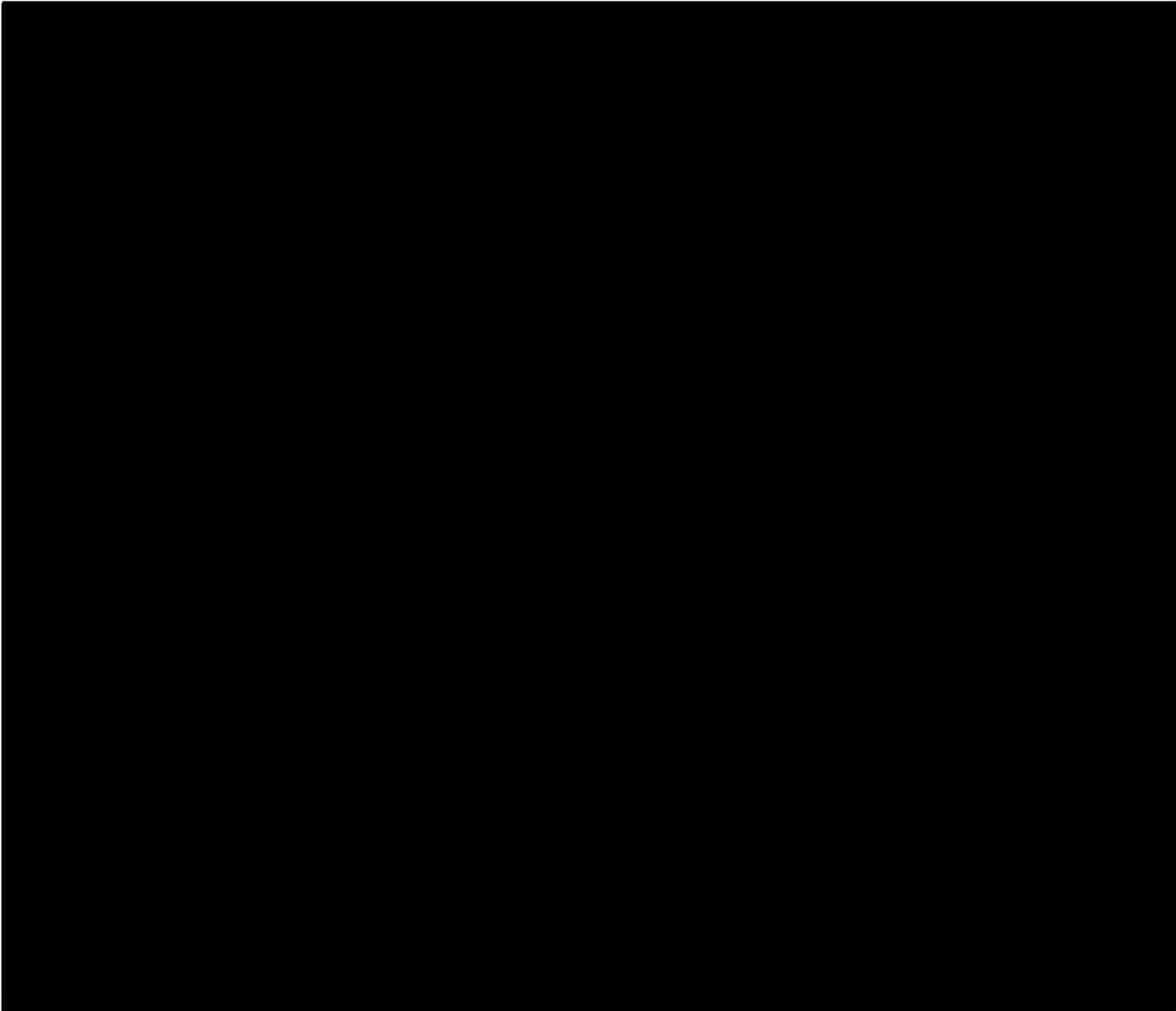






SECTION 9.05. At the time of an expiration or termination of this Agreement, Authority and Railroad agree to cooperate with each other and take appropriate actions that are commercially reasonable to effectuate an appropriate accounting of all outstanding receivables and payables at the time of such expiration or termination.

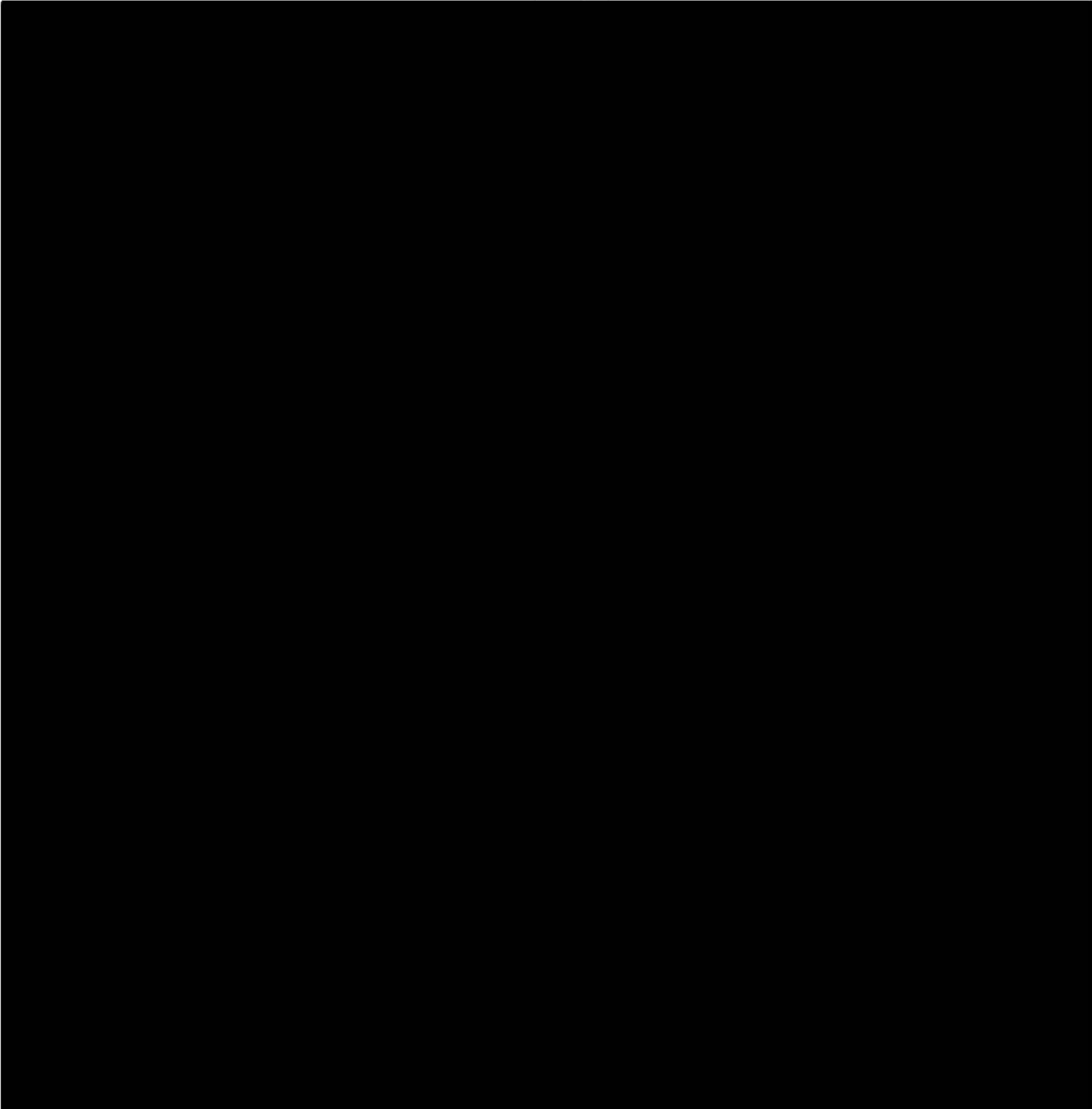


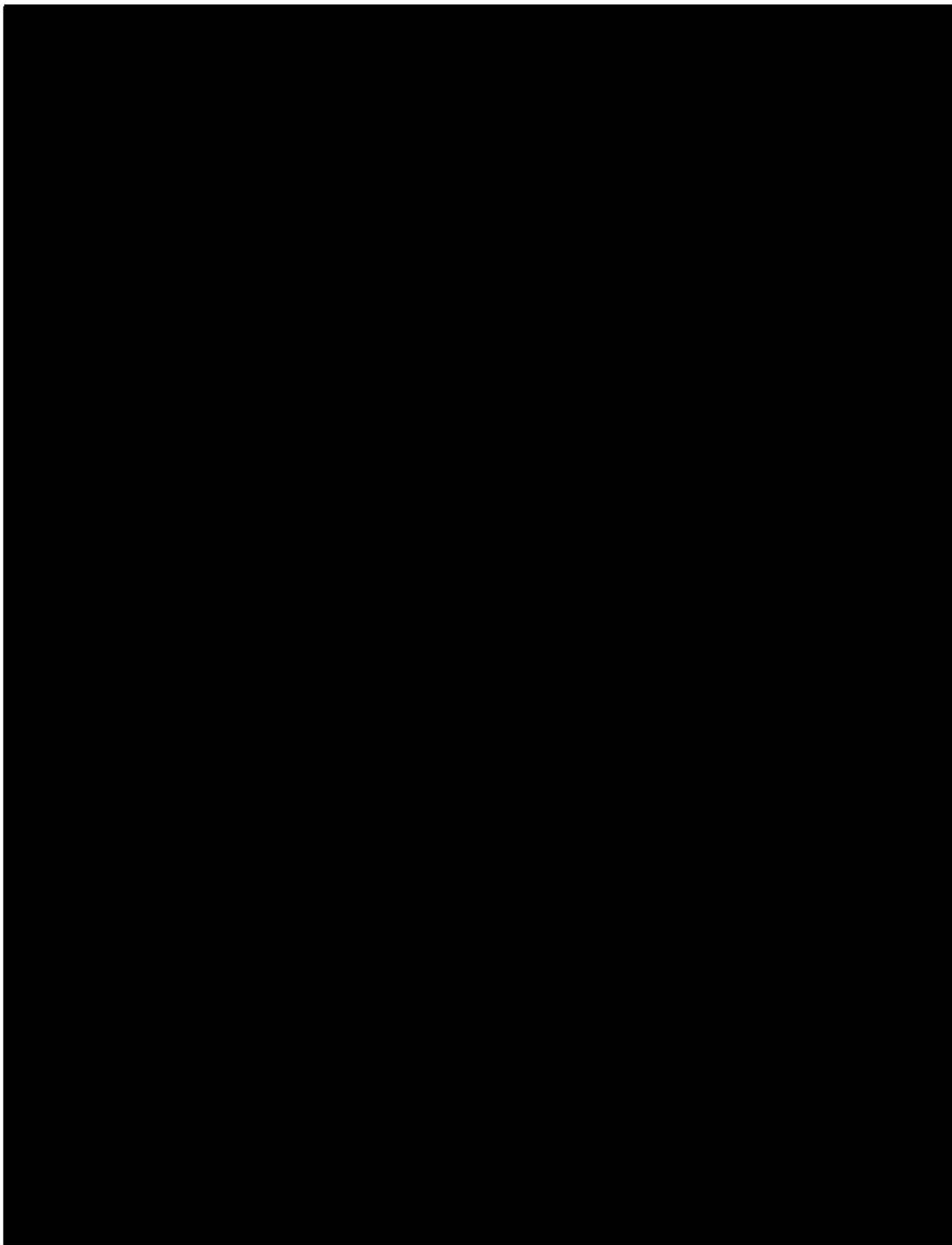


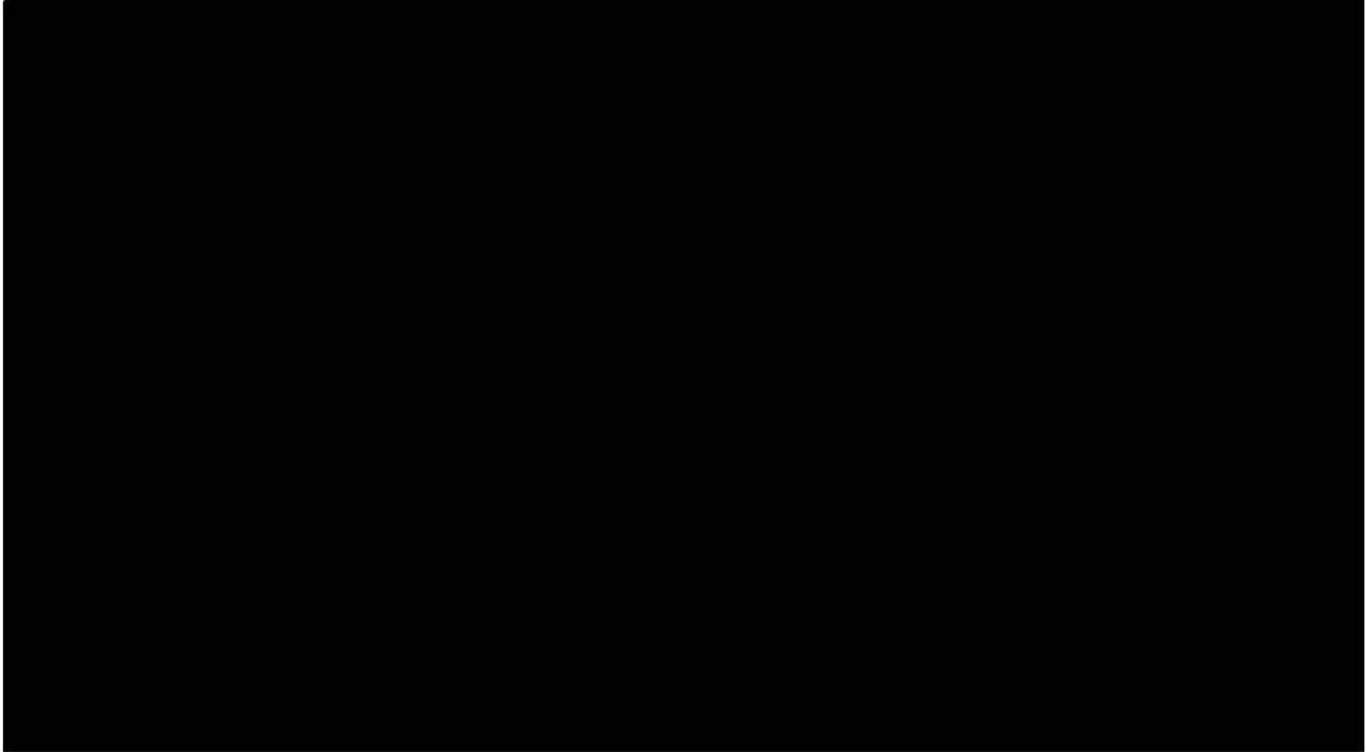
## **SECTION IX – CLEARING OF WRECKS**

SECTION 11.01. If trains, locomotives, railcars, or equipment of Railroad are wrecked or derailed on the Authority Track and require rerailling, wrecking service or wrecking train service, Railroad shall be responsible for providing Authority written notice of such event as soon as practicable, and clearing all such wrecked equipment no later than twenty-four (24) hours after the event. The repair and restoration of roadbed, track and structures shall be performed by Railroad within a reasonable period of time, not to exceed seventy-two (72) hours, and Railroad shall be responsible for the cost and expense thereof. Any other cost, liability and expense, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting from such wreck or derailment, shall be determined in accordance with the provisions of Section 16 hereof. All locomotives, cars and equipment and salvage from the

same so picked up and removed which are owned by or under the management and control of or used by Railroad at the time of such wreck shall be promptly delivered to Railroad.



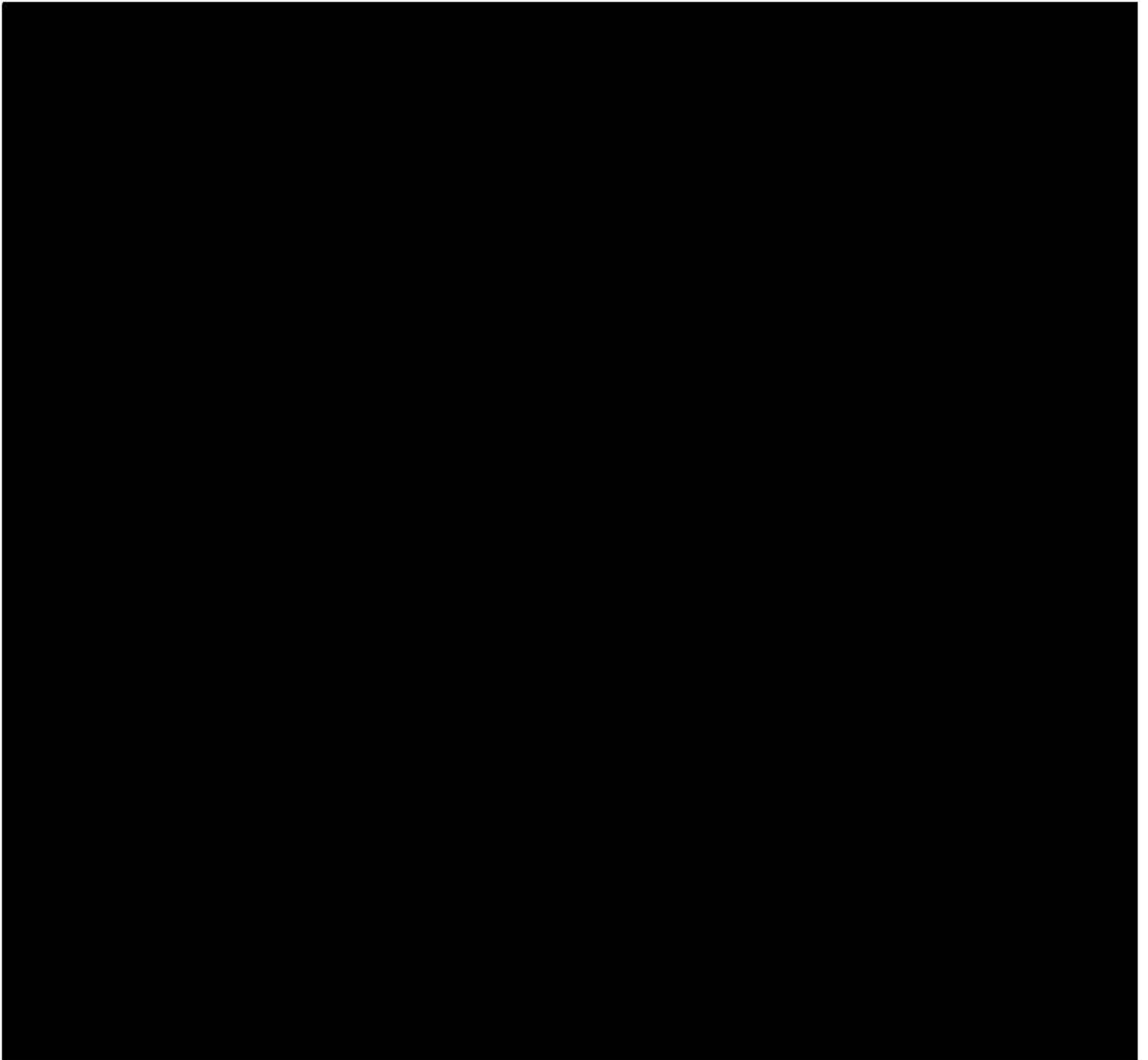


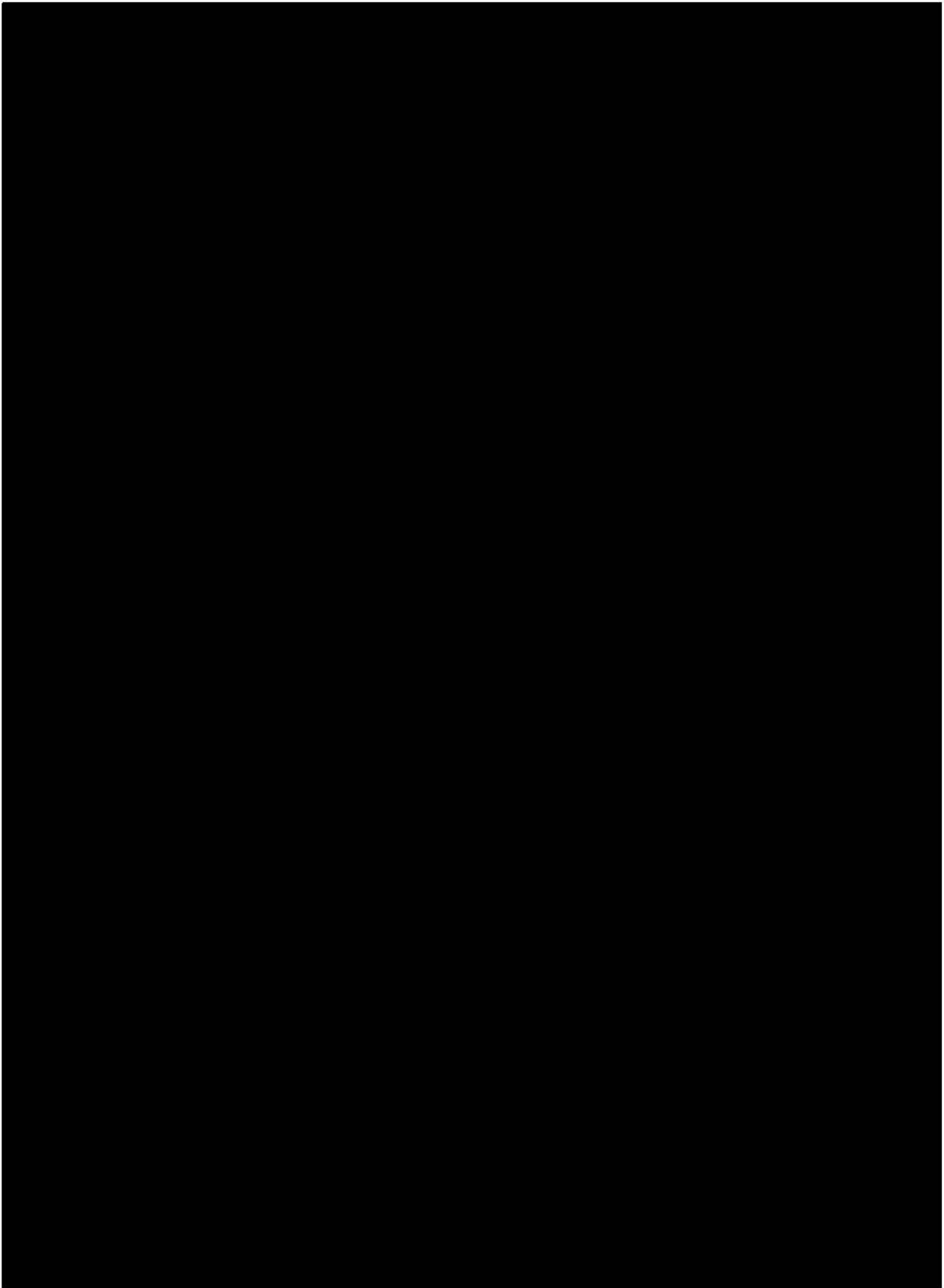


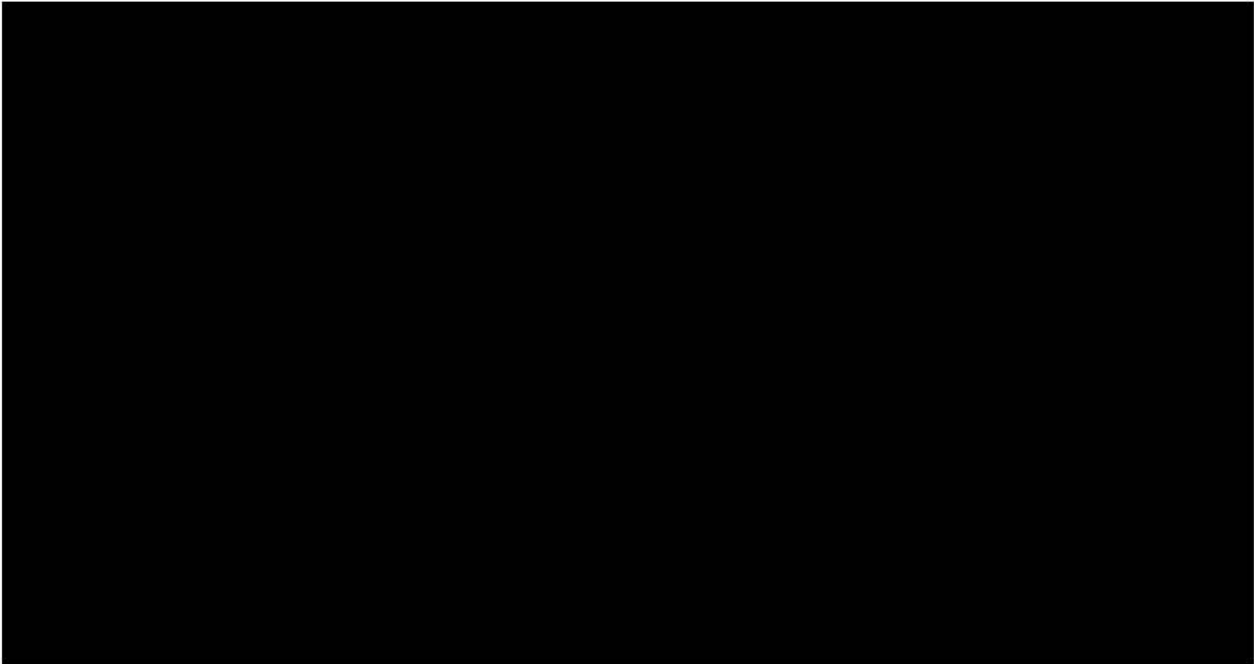
#### **SECTION XIV – RESERVED FACILITIES/ADDITIONAL EASEMENTS**

SECTION 14.01. RESERVED FACILITIES. This Agreement is made subject to all outstanding rights or interests of others. Authority reserves the right to operate, maintain, repair, replace, augment, or relocate (provided that said relocation does not unreasonably interfere with Railroad's use of the Leased Premises for the purposes set forth in Section 1) any Reserved Facilities, as defined below, existing within or adjacent to the Track. Any party entering Leased Premises to maintain, repair, replace, augment or relocate Reserved Facilities must sign Railroad's Right of Entry Agreement, pay applicable fees and arrange for flagging. This Agreement is subject and subordinate to any right which Authority or any easement holder, lessee, or licensee of Authority may have in the Reserved Facilities. Railroad shall not interfere with the maintenance or operation of the Reserved Facilities, or the rights of any easement holders, lessees, or licensees with respect thereto. "Reserved Facilities" means existing tracks, pipes, conduits, thoroughfares, roads, tunnels, electric communication and signal transmission lines and poles and guys for such lines, and any other facilities of similar nature on, above or below the ground, belonging to any party whomsoever.









SECTION 16.05. The provisions of this Section 16 are solely for the benefit of the parties to this Agreement and shall not be construed for the benefit of any third parties. The provisions of this Section shall survive the termination of this Agreement.

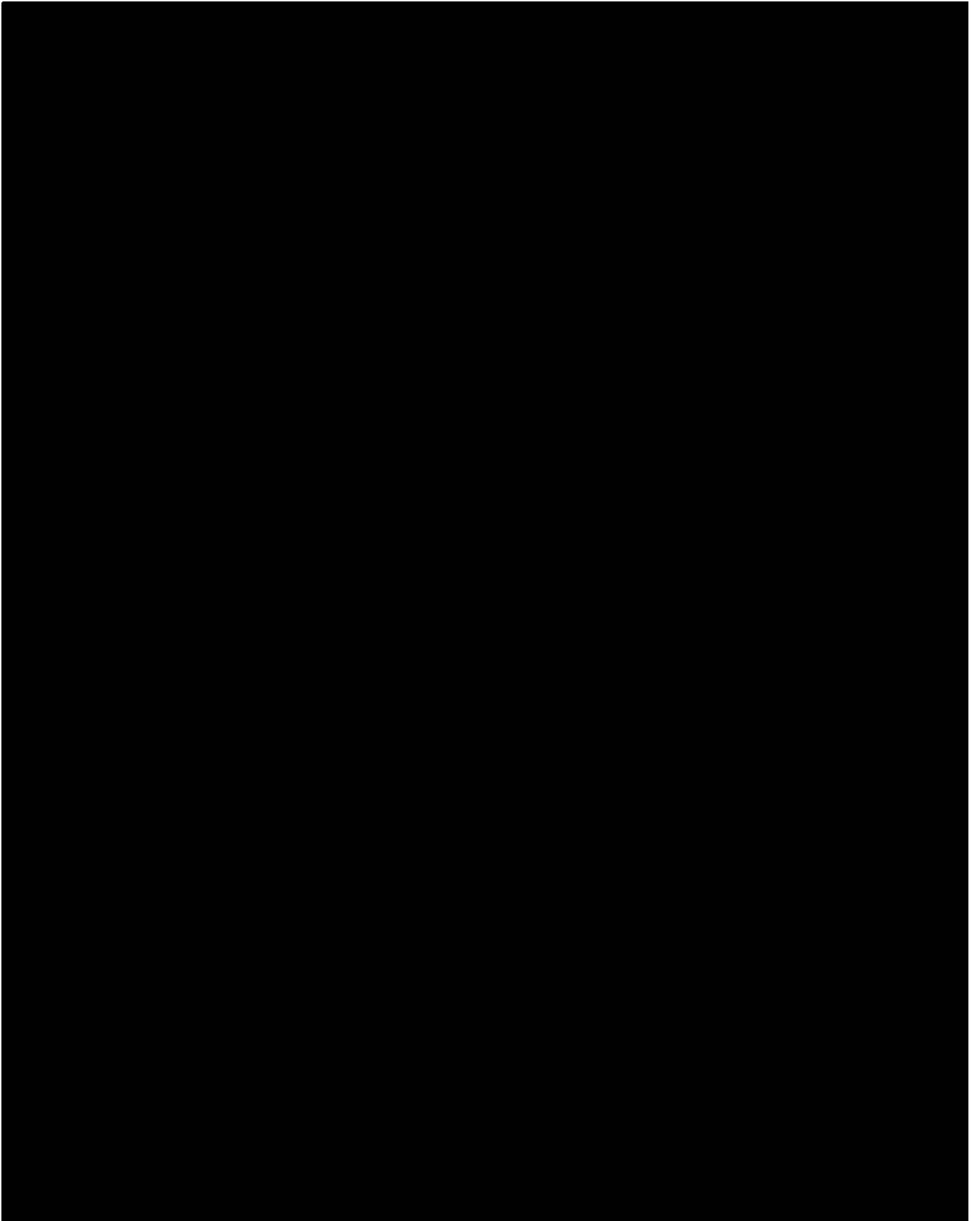


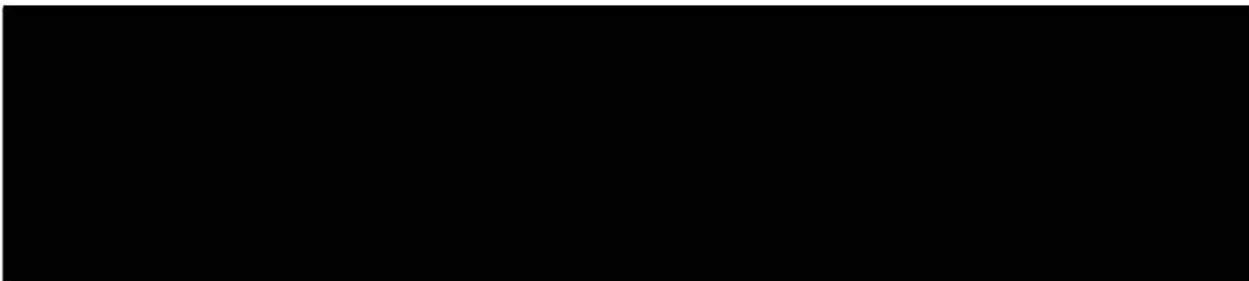
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





## **SECTION XXI – MISCELLANEOUS**

SECTION 21.01. Entire Agreement. This Agreement expresses the entire agreement between the parties and supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, and no modification of this Agreement shall be binding upon the party affected unless set forth in writing and duly executed by the affected party.

SECTION 21.02. Notices. All notices, demands, requests or other communications which may be or are required to be given, served or sent by any party to the other pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or sent by (i) mailing by registered or certified mail, return receipt requested, with postage prepaid, or (ii) depositing into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Authority: City of Tulsa-Rogers County Port Authority  
5350 Cimarron Road  
Catoosa, Oklahoma 74015  
Attn: Port Director/Deputy Port Director

If to Railroad: Verdigris Southern Railroad, L.L.C.  
315 W. 3<sup>rd</sup> St.  
Pittsburg, KS 66762  
Attn: General Manager

SECTION 21.03. Each notice, demand, request or communication which shall be mailed by registered or certified mail to any party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation. Any party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure.

SECTION 21.04. This Agreement shall be binding upon and inure to the benefit of Authority and Railroad, and shall be binding upon the successors and assigns of Railroad, subject to the limitations hereinafter set forth.





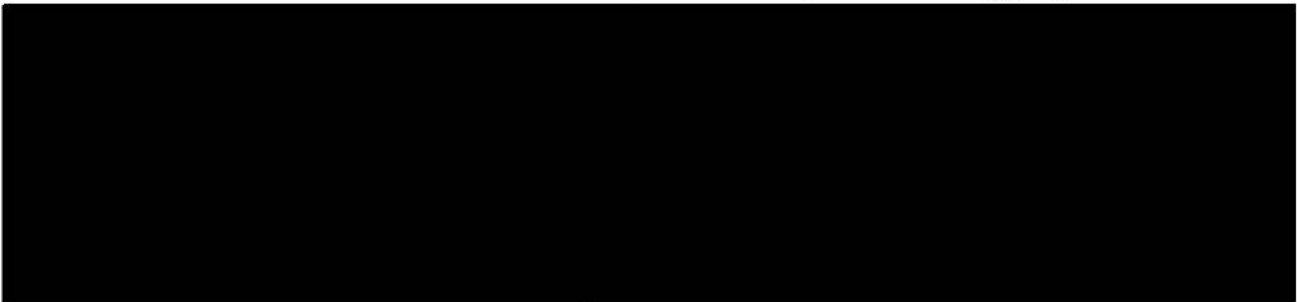
SECTION 21.05. Except as may be provided by separate written agreement, the parties are independent contractors with respect to all services performed hereunder, and no party nor those employed by such party to perform any services hereunder will be deemed to be agents, representatives, employees, servants of, or partners or joint venturers with, the other party in the performance of such services or any part thereof. Each party assumes full responsibility for supervising and directing its employees and subcontractors. No relationship of exclusivity will be construed from this Agreement except as explicitly stated herein.

SECTION 21.06. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration of this Agreement.

SECTION 21.07. Except as may be elsewhere specifically provided in this Agreement, if either party is delayed or hindered in, or prevented from the performance required under this Agreement (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, a national health pandemic, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation ("Force Majeure"), such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay. The party claiming Force Majeure shall take commercially reasonable steps to remove the Force Majeure event, and shall promptly notify the other party within a period of five (5) days, excluding weekends and holidays, when it learns of the existence of a Force Majeure condition and will similarly notify the other party within a period of five (5) days, excluding weekends and holidays, when a Force Majeure is terminated.

SECTION 21.08. If fulfillment of any provision hereof or any transaction related hereto shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect.

SECTION 21.09. Article headings used in this Agreement are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement for any purpose.

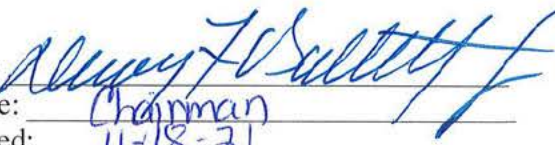


SECTION 21.11. No modification, addition or amendments to this Agreement or any of the Appendices shall be effective unless and until such modification, addition or amendment is in writing and signed by the parties.

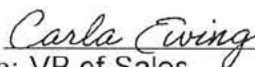
SECTION 21.12. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Agreement may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf, as of the date first herein written.

CITY OF TULSA-ROGERS COUNTY PORT  
AUTHORITY

By:   
Title: Chairman  
Dated: 11-18-21

VERDIGRIS SOUTHERN RAILROAD, L.L.C.

By:   
Title: VP of Sales  
Dated: 11/17/2021































































**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**FD 36571**

**VERDIGRIS SOUTHERN RAILROAD, L.L.C.  
— LEASE AND OPERATION EXEMPTION—  
CITY OF TULSA – ROGERS PORT AUTHORITY**

---

**VERIFICATION**

### **VERIFICATION**

I, Rick D. Baden, Chief Financial Officer of Verdigris Southern Railroad, L.L.C. verify under penalty of perjury that the foregoing is true and correct. I further certify that the revenues of Verdigris Southern Railroad, L.L.C. are not anticipated to be that of a Class I or II carrier. Further, I certify that I am qualified and authorized to verify this notice of exemption on behalf of Verdigris Southern Railroad, L.L.C.



Rick D. Baden