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BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36785

CITY OF CHARLOTTE, NORTH CAROLINA
—ACQUISITION EXEMPTION—
NORFOLK SOUTHERN RAILWAY COMPANY

MOTION TO DISMISS
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D

EXPEDITED CONSIDERATION REQUESTED

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**ATTORNEYS FOR THE CITY OF
CHARLOTTE, NORTH CAROLINA**

Dated: June 10, 2024

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OVERVIEW

The City of Charlotte, North Carolina (“Charlotte”) has filed a verified notice of exemption (the “Notice”) to acquire certain railroad assets owned by Norfolk Southern Railway Company (“NSR”) and located in the City of Charlotte, Mecklenburg County, and Iredell County, North Carolina. Specifically, the Notice would, to the extent necessary, authorize Charlotte to acquire certain specified assets (primarily track and right-of-way) along a segment of NSR’s “O-Line,” extending roughly 29.04 miles from a point of connection with NSR at or near milepost O-0.04 on West Ninth Avenue, in downtown Charlotte, to milepost O-29.08 in Mooresville, North Carolina (the “Assets”), subject to NSR’s retention of a permanent and exclusive railroad freight service easement (the “Easement”) that would reserve for NSR alone

the right and obligation to provide common carriage and related freight services to customers over, located on, and connecting to the Assets without unreasonable interference from Charlotte.

Charlotte requests that the Board dismiss the Notice because, as is set forth below, the arrangements governing the proposed transaction are designed to avoid Charlotte's acquisition of a "railroad line" as defined under 49 U.S.C. § 10901 and, accordingly, will not result in Charlotte acquiring or assuming any common carrier status over the Assets. The right to conduct common carrier and related freight services over the Assets will remain exclusively with NSR. As such, the proposed transaction has been carefully structured to satisfy the Surface Transportation Board's (the "Board") long-standing *State of Maine*¹ legal construct, which is regularly invoked by public entities such as Charlotte, to facilitate the transfer of railroad assets while preserving in the transferor the exclusive right to provide common carrier and related freight services.

NSR's retained Easement interests will be protected under the terms of a Contract of Purchase and Sale ("PSA") and a Comprehensive Rail Agreement ("Comprehensive Agreement") and will be reflected in the deeds ("Deeds") that will be duly recorded upon effectuation of the proposed transfer of the Assets. Under the retained Easement, NSR will continue providing common carrier and related freight services on the Assets, as it has done for decades, and will coordinate its freight operations in the future with Charlotte's intended passenger rail service provider – Charlotte Area Transit System ("CATS") – pursuant to the Comprehensive Agreement at such time as CATS commences commuter service over the Assets. As detailed more fully below, these arrangements conform to the criteria set forth in *State of*

¹ *State of Me., Dep't of Transp.—Acquisition Exemption—Me. Cent. R.R. Co.*, 8 I.C.C.2d 835, 835-38 (1991) ("*State of Maine*").

Maine and its progeny to support a Board holding that the present transaction does not entail the transfer of a railroad line (and does not involve Charlotte’s acquisition of railroad common carrier rights and obligations) subject to the Board’s authorization powers at 49 U.S.C. § 10901 and the agency’s corresponding non-carrier line acquisition and operation exemption procedures at 49 C.F.R. part 1150, subpart D. Under such a holding, the Board should, in turn, dismiss Charlotte’s Notice, effective as of the requested Board Decision’s service date.

Charlotte also requests that the Board expeditiously consider, and act favorably upon, the present Motion, but in no case later than August 16, 2024, so the parties may have reasonable time to prepare for closing on the mutually-binding date of September 9, 2024. Expedited Board consideration of the present Motion would facilitate an orderly transfer of the Assets, in keeping with the budgeting and planning expectations of both Charlotte and NSR.

BACKGROUND

Charlotte is a municipal corporation and a political subdivision of the State of North Carolina, and the county seat and largest city of Mecklenburg County, North Carolina. CATS, a department of the City of Charlotte, is responsible for an array of public transportation services in the Charlotte metropolitan area. Neither Charlotte nor CATS are railroad common carriers subject to the Board’s jurisdiction under 49 U.S.C. § 10501. Where, as here, a public agency seeks a *State of Maine* determination for a proposed transaction, the Board will assess the transaction – typically, but not always, within the context of a class exemption proceeding combined with a motion to dismiss – to determine whether the proposed transaction requires Board authorization.²

² See, e.g., *Mass. Bay Transp. Auth.—Acquisition Exemption—CSX Transp., Inc.*, FD 36669 (STB served Mar. 29, 2023) (“*MBTA—Milford Secondary*”); *Va. Passenger Rail Auth.—*

Charlotte seeks to purchase the Assets as part of its strategic plan to provide commuter rail service to communities north of the city. Through its acquisition of the Assets, Charlotte will assume ownership of a railroad corridor and various improvements located upon it that would be essential to a significant, new CATS commuter rail service offering. The acquisition of the Assets is part of Charlotte's larger goal to expand transit services, support regional growth, and to provide related environmental, quality-of-life, and safety benefits. Acquisition of the Assets under an arrangement that protects NSR's ability to fulfill its common carrier obligations and other related freight services over the same will afford Charlotte greater latitude in the strategic planning and implementation of other infrastructure and service improvements to the CATS commuter rail system, which, in turn, will facilitate the joint interests of freight and commuter rail service in the Charlotte area.

NSR is a Class I common carrier freight railroad with its corporate headquarters in Atlanta, Georgia, and a railroad network spanning the eastern and central United States. NSR owns and operates the O-Line, including the Assets proposed to be sold to Charlotte. Under the proposed transaction, NSR will retain an Easement in the Assets so as to allow it to continue its common carrier and related freight services on the Assets after they are sold to Charlotte, pursuant to the terms of the PSA, the Comprehensive Agreement, and the Deeds.

Acquisition and Operations of Certain Assets of Norfolk S. Ry. Co. in Montgomery and Roanoke Counties, and the Cities of Salem and Roanoke, Va., FD 36588 (STB served May 31, 2022) ("Va. Passenger Rail—Salem Line"); *Mass. Dep't of Transp.—Acquisition Exemption—Certain Assets of Pan Am S. LLC*, FD 35943 (STB served Dec. 4, 2015); *Mass. Dep't of Transp.—Acquisition and Operation Exemption—Certain Assets of Housatonic R.R. Co., Inc.*, FD 35866 (STB served May 22, 2015); and *Mass. Dep't of Transp.—Acquisition Exemption—Certain Assets of CSX Transp., Inc.*, FD 35982 (STB served Mar. 16, 2015).

DISCUSSION

As *State of Maine* and its progeny have established, public entities like Charlotte may, under certain circumstances, acquire assets from a common carrier freight railroad and manage them without needing Board authorization. Where the railroad asset seller retains an exclusive common carrier freight service easement, and that seller is extended sufficient post-transaction rights to enable it to conduct freight rail operations without unreasonable interference from the purchaser of the assets, the public entity acquirer will not require Board authorization for the purchase, and it will not become a common carrier subject to the Board's jurisdiction with respect to the railroad assets.

A. *State of Maine* under 49 U.S.C. § 10901

Generally, a non-carrier entity such as Charlotte must obtain Board authorization pursuant to 49 U.S.C. § 10901(a)(4) to acquire a railroad line. However, the Board's precedent, beginning with *State of Maine*, clearly distinguishes between – (1) the purchase of a railroad line requiring Board authorization and (2) the acquisition of right-of-way and track assets by a public agency that is, under the terms of the transaction, subject to the seller railroad's retention of a permanent, exclusive common carrier freight service easement. In reviewing such transactions, the Board commonly finds that federal authorization is unnecessary, because the transactions do not entail the conveyance of a “railroad line” as defined at 49 U.S.C. § 10901(a)(4). Transactions falling within this latter category are known generally as “*State of Maine*” transactions, after the seminal 1991 decision of the Board's predecessor agency, the Interstate Commerce Commission (“ICC”).³

³ *State of Maine*, 835 I.C.C.2d at 835-38.

State of Maine transactions are hardly novel.⁴ “Since 1991, the ICC and the Board have followed *State of Maine* in more than 60 cases,” most of which involved the acquisition of the physical assets of railroad lines used for (or to be used in the furtherance of) commuter rail transportation (in addition to freight service), and as such, regional, state, and local agencies responsible for commuter transportation have come to rely on this precedent.⁵ The Board consistently has explained that rail asset transactions do not involve the acquisition of a “railroad line” requiring authorization under 49 U.S.C. § 10901(a)(4) where (1) the seller railroad retains a key element of the bundle of the available rail assets (*i.e.*, the rights and obligations of the freight carrier); and (2) the railroad retaining common carrier rights, typically by way of a permanent and exclusive easement, cannot be forced to discontinue or abandon service without advance Board authorization under governing standards and requirements.⁶

The federal judiciary has ratified this legal construct. Specifically, the United States Court of Appeals for the District of Columbia Circuit has determined that the acquisition of “a portion of a railroad” consisting of the “physical assets,” divorced from the common carrier rights and obligations affixed to those assets, need not constitute the sale of a railroad line under 49 U.S.C. §§ 10901 and 10902.⁷ The court specifically rejected the argument that the federal statutes governing the sale of railroad lines require that the Board either authorize or exempt a

⁴ See, *e.g.*, *Mass. Dep’t of Transp.—Acquisition Exemption—Certain Assets of CSX Transp., Inc.*, FD 35312 (STB served May 3, 2010) (“*MassDOT—CSXT Assets*”) at 4-8, *aff’d sub nom. Bhd. of R.R. Signalmen v. Surface Transp. Bd.*, 638 F.3d 807 (D.C. Cir. 2011) (“*Brotherhood*”).

⁵ *Id.* at 6; *Brotherhood*, 638 F.3d at 815.

⁶ *State of Maine*, 835 I.C.C.2d at 837.

⁷ *Brotherhood*, 638 F.3d at 811-13.

non-carrier’s acquisition of railroad assets, such that the purchaser would have to become a regulated railroad common carrier by virtue of the transaction.⁸

Instead, the *Brotherhood* court affirmed that the term “railroad line” is not “necessarily limited to a portion of a railroad’s assets; it may refer to a railroad’s entire railroad operation,” adding that the Board reasonably applied the concept of a “railroad line” to “the interstate freight transportation authority attached to the physical property” rather than to the physical assets themselves.⁹ The *Brotherhood* court further observed that focusing on the physical assets, in isolation from the common carrier obligation, “ignores the [purchaser’s] intended use of the [r]ailroad [a]ssets, which is the key to determining whether [the purchaser would become] a rail carrier subject to the Board’s jurisdiction.”¹⁰

The *Brotherhood* court also acknowledged that, in *State of Maine* transactions, “the seller does not relinquish its rights and obligations with respect to providing rail freight transportation,” so that the “non-carrier that purchases the physical assets of a rail line does not thereby assume any common carrier obligation” and does not become “a rail carrier providing transportation and the acquisition is not subject to [S]ection 10901(a)(4)’s authorization requirement.”¹¹ Since *Brotherhood* was decided, the Board consistently has relied upon that case, and the precedents which that decision effectively upheld, in subsequent proceedings wherein the transaction at issue was designed to satisfy the Board’s *State of Maine* criteria.¹²

⁸ *Id.* at 812 (internal citations omitted).

⁹ *Id.* (internal citations omitted).

¹⁰ *Id.* at 813 (internal quotation marks omitted).

¹¹ *Id.* at 812.

¹² See generally *Va. Passenger Rail—Salem Line; Commonwealth of Va.—Acquisition Exemption—Certain Assets of CSX Transp., Inc.*, FD 36441 (STB served Dec. 14, 2020); *N.J. Transit Corp.—Acquisition Exemption—Consol. Rail Corp. in the Cnty. of Middlesex, N.J.*, FD

B. The *State of Maine* Standard

For a transaction to meet the *State of Maine* standard, the agreements governing the sale of the assets and post-transaction operations over them must protect the freight carrier from unreasonable interference in its provision of common carrier freight service.¹³ Again, “the sale of the physical assets of a railroad line by a carrier to a state or other public agency does not constitute the sale of a railroad line within the meaning of 49 U.S.C. § 10901, *if certain conditions are met.*”¹⁴ In practice, these conditions are as follows:

- a designated freight railroad carrier (the seller or, in some cases, its designee) must retain an exclusive, perpetual freight service easement, or similar rights, in the assets which are the subject of the transaction; and
- the freight rail carrier must retain the ability to fulfill its common carrier obligations without undue interference from the entity which is purchasing them.¹⁵

36195 (STB served Aug. 30, 2018); *Wis. Dep’t of Transp.—Pet. for Declaratory Ord.—Reedsburg Line Near Madison, Wis.*, FD 35854 (STB served Nov. 6, 2014); *Cent. Puget Sound Reg’l Transit Auth.—Acquisition Exemption—Certain Assets of City of Tacoma in Pierce Cnty., Wash.*, FD 35812 (STB served Oct. 27, 2014); *Fla. Dep’t of Transp.—Pet. for Declaratory Ord.—Rail Line of CSX Transp., Inc., between Riviera Beach and Miami, Fla.*, FD 35783 (STB served Oct. 1, 2014) (“*FlaDOT—Riviera Beach*”); *N.J. Transit Corp.—Acquisition Exemption—Norfolk S. Ry. Co.*, FD 35638 (STB served Mar. 27, 2013); *Santa Cruz Reg’l Transp. Comm’n—Pet. for Declaratory Ord.*, FD 35653 (STB served Sept. 27, 2012); *Wis. Dep’t of Transp.—Pet. for Declaratory Ord.—Gibson Line in Milwaukee, Wis.*, FD 35401 (STB served Aug. 15, 2012) (“*WisDOT—Gibson Line*”); *State of Mich. Dep’t of Transp.—Acquisition Exemption—Certain Assets of Norfolk S. Ry. Co.*, FD 35606 (STB served May 8, 2012) (“*MichDOT—NSR Assets*”); *Santa Cruz Reg’l Transp. Comm’n—Pet. for Declaratory Ord.*, FD 35491 (STB served Dec. 15, 2011); *Wis. Dep’t of Transp.—Pet. for Declaratory Ord.—Rail Lines in Almena, Cameron, and Rice Lake, Barron Cnty., Wis.*, FD 35455 (STB served Nov. 20, 2011) (“*WisDOT—Almena Line*”); and *Va. Port Auth.—Acquisition Exemption—Norfolk & Portsmouth Belt Line R.R. Co.*, FD 35532 (STB served Aug. 1, 2011) (“*Va. Port Auth.*”).

¹³ *MichDOT—NSR Assets* at 2; *Va. Passenger Rail—Salem Line* at 5-6.

¹⁴ *Fla. Dep’t of Transp.—Acquisition Exemption—Certain Assets of CSX Transp., Inc.*, FD 35110 (STB served Dec. 15, 2010) (“*FlaDOT—CSXT Assets*”) at 3 (emphasis added).

¹⁵ See, e.g., *Va. Passenger Rail—Salem Line* at 6; see also *Port of Seattle—Acquisition Exemption—Certain Assets of BNSF Ry. Co.*, FD 35128 (STB served Oct. 27, 2008) (“*Port of Seattle*”) at 3.

In this two-part analysis, the Board “looks to whether [the seller] would obtain a permanent, exclusive freight easement and would have sufficient interest in and control over the [railroad line at issue] to permit it to carry out its common carrier freight rail obligation” without unreasonable interference from the public entity acquiring the assets in question.¹⁶

In certain past *State of Maine* cases, the agreements controlling post-transaction operations contained language that could have been construed to enable the state subdivision to control (and terminate) the provision of freight service without authorization from the Board, despite language elsewhere purporting to grant the rail carrier a permanent and exclusive freight easement. Yet, even in those circumstances (which Charlotte is confident do not exist in this case), the Board has construed contract terms to support a *State of Maine* determination, as should be done here in the event of any inadvertent ambiguity.¹⁷

C. This Transaction Satisfies the *State of Maine* Criteria

Charlotte and NSR have carefully modeled this transaction after others which the Board has determined satisfy the *State of Maine* standard. For example, the Easement which NSR will retain after the sale is permanent and exclusive and, as described below, the terms of the PSA and Comprehensive Agreement specifically preclude Charlotte from providing, or interfering with, NSR’s provision of common carrier and other freight services to customers. Accordingly, the terms of the Charlotte’s Assets acquisition satisfy *State of Maine* criteria.

To that end, and building upon the easement rights retained by NSR, the PSA and Comprehensive Agreement contain provisions protecting NSR’s post-transaction common carrier

¹⁶ *MichDOT—NSR Assets* at 3; *Akron Metro Reg’l Transit Auth.—Acquisition Exemption—CSX Transp., Inc.*, FD 33838 (STB served Oct. 10, 2003) at 4; *N.J. Transit Corp.—Acquisition Exemption—Certain Assets of Conrail*, 4 S.T.B. 512, 514 (2000).

¹⁷ *See, e.g., WisDOT—Gibson Line* at 4-5 (discussing construction of contract terms); *see also WisDOT—Almena Line* at 4-5 (same).

and freight operations. That, combined with the express understanding that Charlotte cannot hold itself out to be a common carrier of freight, establish that its acquisition of the Assets would not involve Charlotte assuming any common carrier obligation, and therefore the proposed transaction does not require Board authorization.¹⁸

Beyond the protections for common carrier and related freight services discussed above, Charlotte is acquiring the Assets as part of a plan to provide commuter rail service in the Charlotte metropolitan area. Charlotte's transaction objective involves transportation over which the Board does not have jurisdiction: public transportation (mass transit) provided by a State or political subdivision of a State.¹⁹ Further, the agreements controlling the proposed transaction are carefully structured to enable freight and commuter rail service to coexist on the Assets. Moreover, the parties anticipate no substantial changes in NSR freight service densities or service patterns for the foreseeable future.

Under the terms of the Comprehensive Agreement, after a transition period (once commuter rail service has commenced) Charlotte may either assume train dispatching

¹⁸ *Cent. Puget Sound Reg'l Transit Auth.—Acquisition Exemption—BNSF Ry. Co.*, FD 34747 (STB served Nov. 18, 2005) (“*Puget Sound*”) at 2; *Metro-North Commuter R.R. Co.—Acquisition and Operation Exemption—Line of Norfolk S. Ry. Co. and Pa. Assets LLC*, FD 34293 (STB served May 13, 2003) (“*Metro-North*”) at 2-3; *WisDOT—Gibson Line* at 4-5; *WisDOT—Almena Line* at 4-5.

¹⁹ 49 U.S.C. § 10501(c)(2); *Mass. Bay Commuter R.R. Co., LLC—Pet. for Declaratory Ord.*, FD 34332 (STB served June 5, 2003) at 3; see also *Regulations on Safety Integration Plans Governing R.R. Consolidations, Mergers, and Acquisitions of Control; and Procedures for Surface Transp. Bd. Consideration of Safety Integration Plans in Cases Involving R.R. Consolidations, Mergers, and Acquisitions of Control*, EP 574, FRA Docket No. 1999-4985, Notice No. 4 (STB served Mar. 8, 2002) at 58 n.14 (quoting *Norfolk & W. Ry. Co.—Pet. for Declaratory Ord.—Lease of Line in Cook and Will Counties, Ill., to Commuter Rail Div. of the Reg'l Transp. Auth. of Ne. Ill.*, FD 32279 (STB served Feb. 3, 1999) (“Under 49 U.S.C. § 10501(c), the Board does not have jurisdiction over [commuter rail service] provided by a local government entity. Thus, a transaction involving a railroad subject to the Board's jurisdiction and a commuter railroad is . . . a one railroad transaction over which [the Board] does not have jurisdiction[.]”).

responsibilities, or have NSR retain dispatching responsibilities as a paid service to the City over the Assets, and will assume track maintenance responsibilities on the Assets.²⁰ Subject to contract provisions designed to prevent discrimination against freight service,²¹ Charlotte will undertake appropriate and timely track maintenance to prevent freight (and passenger) service disruption.²² Further, NSR recent and forecasted freight traffic density is modest, consisting primarily of a 5-days-per-week local train, which makes it less likely that commuter rail service, which will be implemented only with due regard for the Easement and NSR's common carrier obligations, will present an obstacle to continued freight rail service.

1. The Freight Easement

In keeping with those considered in previous *State of Maine* transactions, the Easement reserves to NSR a permanent and exclusive freight service right along the Assets. The Easement would terminate on any or all of the Assets only if NSR obtains Board authorization to discontinue service or abandon the Easement on all or any relevant portions of the Assets.²³ Because the Easement cannot be terminated absent appropriate Board action, and runs with the land indefinitely, and because Charlotte cannot compel NSR under the governing agreements to abandon NSR's freight service, this Motion should, for this reason also, be granted in keeping with *State of Maine* precedent.²⁴ These factors, coupled with Charlotte's contractual

²⁰ Draft Comprehensive Rail Agreement, Ex. D ("Comprehensive Agreement"), art. 6.1.

²¹ Contract of Purchase and Sale, Ex. C ("PSA"), § 7(f); Comprehensive Agreement at art. 6.1.

²² Comprehensive Agreement at art. 7.2.

²³ *Id.* at art. 4.2.

²⁴ *Cf. Wis. Dep't of Transp.—Pet. for Declaratory Ord.*, FD 34764 (STB served Dec. 2, 2005) at 2; *S. Pac. Transp. Co.—Abandonment*, 8 I.C.C.2d 495, 507 (1992), *recons. denied*, 9 I.C.C.2d 385, 393 (1993); *Sacramento-Placerville Transp. Corridor Joint Powers Auth.—*

commitment (and desire) not to hold itself out as a common carrier of freight over the Assets, this transaction does not involve the transfer of a common carrier freight obligations, and therefore does not require Board authorization.²⁵

Further, the Deeds clearly reserve to NSR a perpetual Easement in gross for the exclusive provision of common carrier and other freight services over the Assets, further providing that Charlotte would not assume any common carrier status via its purchase of the Assets.²⁶ Since NSR's Easement is reserved in perpetuity, it is not subject to unilateral revocation or cancelation by Charlotte. Accordingly, because this is not a case where the Easement is subject to periodic renewal at Charlotte's direction, or where Charlotte has the contractual right to compel NSR's abandonment or discontinuance of common carrier freight service, this Motion should be granted, in keeping with *State of Maine*.

2. Contractual Protections against Unreasonable Interference with Common Carrier Freight Service

The PSA and Comprehensive Agreement set forth a uniform standard to control Charlotte's stewardship of the Assets: Charlotte may not unreasonably interfere with NSR's operating rights or obligations pursuant to its common carrier freight service Easement.²⁷ The Comprehensive Agreement specifically accounts for NSR's ongoing freight operations, provides equitable standards for the dispatching of freight and commuter trains, and requires Charlotte to maintain the Assets to no less than a standard acceptable for freight service.²⁸

Acquisition Exemption—Certain Assets of S. Pac. Transp. Co., FD 33046 (STB served Oct. 28, 1996) ("*Sacramento-Placerville*") at 2.

²⁵ *Metro-North* at 2-3; *Puget Sound* at 2.

²⁶ Draft Non-Warranty Deeds, Ex. B, 2-3.

²⁷ PSA at § 7(f); Comprehensive Agreement at arts. 4.2, 6.1.

²⁸ Comprehensive Agreement at art. 7.2.

These contractual terms balance the competing interests of freight and commuter operations involving the same railroad corridor and may in fact lead to the improvement of both types of service along the route. Put another way, the transaction, as proposed, will provide an example of a public entity and a private entity partnering to achieve two objectives, namely – (1) to preserve and promote rail freight service and (2) to provide for new commuter rail service along that same rail corridor. Notably, the PSA and Comprehensive Agreement are modeled on agreements which the Board found to be consistent with the *State of Maine* provisions in a prior sale by NSR, specifically to the Virginia Rail Passenger Authority in 2022, as will be elaborated upon below.

Further, the parties anticipate no significant post-transaction changes in freight service demand on the Assets, and they expect NSR will be able to meet the existing, and reasonably foreseeable, needs of customers considering the protective terms as outlined in the conveyance of property, PSA, and Comprehensive Agreement. Accordingly, NSR's obligations to customers located along the subject railroad corridor can and will be reasonably accommodated, both at the time of the transaction and in the future. Charlotte takes its contractual commitments, including its assurances to respect and protect freight rail service on the Assets, seriously, and anticipates that the Board may hold it to these assurances, as effectively set forth in the PSA and Comprehensive Agreement.²⁹

3. *Specific Terms of the Purchase and Sale Agreement*

The PSA and Comprehensive Agreement have specific terms expressly protecting NSR's freight service in nearly every facet of the proposed transaction, including maintenance and infrastructure, train dispatching, operations, and capital expansion.

²⁹ Cf. *Port of Seattle* at 5.

Maintenance and Infrastructure

Once commuter rail operations have commenced, Charlotte will be responsible for maintaining the track, and has committed to doing so without unreasonably interfering with freight operations.³⁰ Further, Charlotte will be responsible for maintaining and inspecting the Assets to (or above) the standards as set forth in the Comprehensive Agreement.³¹ The Comprehensive Agreement contains further provisions addressing the highly unlikely scenario in which, if Charlotte were unable or unwilling to perform their maintenance obligations, NSR would be entitled to enter onto the Assets to undertake such maintenance as may be necessary to protect its freight operations.³² These provisions mirror those the Board previously found comport with the requirements of *State of Maine* in a another, recent NSR asset sale.³³

A public entity's assumption of the "responsibility for track maintenance by itself does not constitute an acquisition of a railroad line requiring Board authorization."³⁴ In fact, the Board repeatedly has found that a proposed transaction satisfies *State of Maine* criteria where a public agency acquiring railroad assets assumes responsibility for their maintenance, and where the transaction and operating agreements – (1) protect freight service; (2) require the public agency to maintain the line to specified FRA track safety standards; and (3) grant the freight carrier the right to undertake necessary repairs if the public agency does not.³⁵ The

³⁰ Comprehensive Agreement at art. 7.2.

³¹ *Id.*

³² *Id.*

³³ *Va. Passenger Rail—Salem Line* at 5.

³⁴ *See, e.g., MBTA—Milford Secondary* at 5; *Va. Passenger Rail—Salem Line* at 5; and *Va. Port Auth.* at 4.

³⁵ *See, e.g., MBTA—Milford Secondary* at 5; *Va. Passenger Rail—Salem Line* at 5; and *FlaDOT—Riviera Beach* at 5.

Comprehensive Agreement has the same or similar provisions. Accordingly, Charlotte's assumption of control over maintenance of the Assets will not impose a common carrier status or obligation upon it, and such an assumption of control will not unduly interfere with NSR's freight operations.

Moreover, Charlotte and NSR have arrived at terms concerning present and future infrastructure along the corridor that would protect NSR's provision of freight service. For example, among other, relevant provisions of the Comprehensive Agreement, prior to initiation of commuter rail service, Charlotte and NSR will design and build an initial series of capital improvements, to help ensure the physical infrastructure necessary to ensure NSR's freight service at near-term forecasted levels is accounted for as part of the City's commuter rail service plans.³⁶ NSR has the contractual right to fund additional capital improvements in the event freight service demand increases post-transaction. NSR will possess the contractual right to expand, contract, modify, or discontinue its freight service in response to traffic changes along the corridor. NSR will also possess the right, if necessary, to install additional rail infrastructure which might be indicated by rail traffic capacity modeling and analysis. These Comprehensive Agreement provisions have been carefully negotiated to ensure adequate protections for NSR's common carrier freight service after Charlotte assumes ownership of the Assets, while also advancing Charlotte's objective to provide expanded transportation options for the region, again all in keeping with *State of Maine* criteria.

³⁶ See Comprehensive Agreement at art. 4.2 (applicable to the entire discussion of the present Motion paragraph).

Dispatching

The Board has embraced the legitimate justification driving public agencies to assume control over dispatching responsibilities under *State of Maine* analyses.³⁷ Further, the Board has stated that “while a permanent easement to provide freight service is still required . . . the public agency may assume responsibility for . . . dispatching freight operations if the operating procedures are reasonable and do not discriminate against freight”³⁸

Moreover, the Board has stated that “dispatching control has less importance in its own right than it has as a means of enforcing the service priorities in the operating agreement. If the operating agreement, considered as a whole, is not likely to unreasonably impair freight service, as is the case here, the passenger operator’s control over dispatching will not by itself create such an obstacle, because the latter merely implements the former.”³⁹

In this case, the Comprehensive Agreement requires Charlotte to “ensure that the dispatch operating procedures do not discriminate against the Freight Rail Service or unreasonably interfere with NSR’s performance of its common carrier obligation or other Freight Rail Service pursuant to the Freight Easement and/or force NSR to modify its service windows

³⁷ See, e.g., *MBTA—Milford Secondary* at 5; see also *Los Angeles Cnty. Transp. Comm’n—Pet. for Exemption—Acquisition from Union Pac. R.R. Co.*, FD 34374 (STB served July 23, 1996) at 3 (needs of commuter rail service provided state agency with additional incentive to fulfill track maintenance obligations).

³⁸ *MassDOT—CSXT Assets* at 9-10.

³⁹ *Id.*; see also *Va. Rail Passenger—Salem Line* at 5 (transfer of dispatching allowable where contract guaranteed passenger service would not interfere with freight service).

or increase its operating cost.”⁴⁰ The Board has found that similar dispatching arrangements have satisfied the *State of Maine* criteria.⁴¹

Operations

As mentioned before, the Comprehensive Agreement contains a uniform standard governing Charlotte’s stewardship of the Assets: Charlotte, as the Asset owner, may not unreasonably interfere with NSR’s Easement rights to conduct common carrier service.⁴²

Adherence to this governing standard ensures that the entirety of the rail operations on the Assets will be managed in keeping with the requirements of *State of Maine*.⁴³

Spur Tracks and Capital Improvements

The Comprehensive Agreement does not mandate the removal of spur track or switches connecting to main line trackage where such sidings or spur tracks serve freight customers. In fact, the agreement requires that all existing connections used by the respective parties “shall continue to be maintained and repaired by and at the expense of the party or parties

⁴⁰ Comprehensive Agreement at art. 6.1.

⁴¹ See *MBTA—Milford Secondary* at 5; see also *FlaDOT—Riviera Beach* at 9 (finding eventual transfer of dispatching duties from freight carrier to public agency is permissible, where specific protocols for movement of passenger and freight trains are mutually agreed to between the parties); *Va. Port Auth.* at 4 (noting agency control of dispatching is permissible where dispatching will not impair or interfere with freight service); *MichDOT—NSR Assets* at 3 (permitting state department control of dispatching because it will account for needs of both freight and passenger service); cf. *Va. Passenger Rail—Salem Line* at 6 (seller’s retention of dispatching control over both freight and passenger service, and dispatching protocols that allowed for optimization of passenger and freight service that could only be modified upon mutual agreement, found not to interfere with common carrier obligation).

⁴² Comprehensive Agreement at arts. 2.2, 4.2.

⁴³ See, e.g., *MBTA—Milford Secondary* at 5-6 (commuter rail agency’s acquisition of assets consistent with *State of Maine* where relevant agreements protected freight service easement); see also *Va. Passenger Rail—Salem Line* at 7 (same); *MichDOT—NSR Assets* at 2 (providing terms of sale agreements must protect common carrier obligations from undue interference).

responsible for such maintenance, repair, and renewal[.]”⁴⁴ Further, the Comprehensive Agreement provides for capital improvements directed to freight service improvement and expansion at NSR’s discretion. The contractual provisions controlling these capital improvements specifically provide, among other things, that Charlotte may not unreasonably interfere with NSR’s common carrier and other freight services.⁴⁵

REQUEST FOR EXPEDITED CONSIDERATION

The City and NSR have been engaged in lengthy discussion and coordination to conclude the proposed transaction and, accordingly, have committed to a timetable for its completion, under which the parties plan to close on the proposed transaction no later than September 9, 2024. Expedited Board consideration of the present Motion is requested to facilitate an orderly transfer of the Assets consistent with the tax, budgeting, and planning expectations of NSR.

The City therefore moves the Board to act on this Motion before August 16, 2024, effective on its service date, so the transaction can close no later than September 9, 2024.⁴⁶ A favorable decision on or before August 16, 2024, would facilitate closing in accordance with the parties’ timetable for concluding the sale. Additionally, a Board decision granting this Motion, effective on or before August 16, 2024, would benefit NSR, Charlotte, and (by extension) the

⁴⁴ Comprehensive Agreement at art. 8.1.

⁴⁵ *Id.* at art. 8.2.

⁴⁶ *See, e.g., Va. Passenger Rail* at 3, 6 (STB granting motion to dismiss effective on service date in view of agency’s request for expedited consideration); *see also State of Me.—Pet. for Declaratory Order*, FD 35440 (STB served Dec. 29, 2010) at 3 (requiring prompt submission of additional evidence considering agency’s request for expedited consideration, to enable swift decision).

public, and no party will be prejudiced by expedited consideration and an expedited Board decision.

CONCLUSION

For the reasons stated herein, Charlotte respectfully moves the Board to dismiss the Notice of Exemption filed in this docket effective on its service date, no later than August 16, 2024.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish

Thomas J. Healey

Stephen J. Foland

Fletcher & Sippel LLC

29 North Wacker Drive, Suite 800

Chicago, Illinois 60606-3208

rwimbish@fletcher-sippel.com

Telephone: (312) 252-1504

**ATTORNEYS FOR THE CITY OF
CHARLOTTE, NORTH CAROLINA**

Dated: June 10, 2024

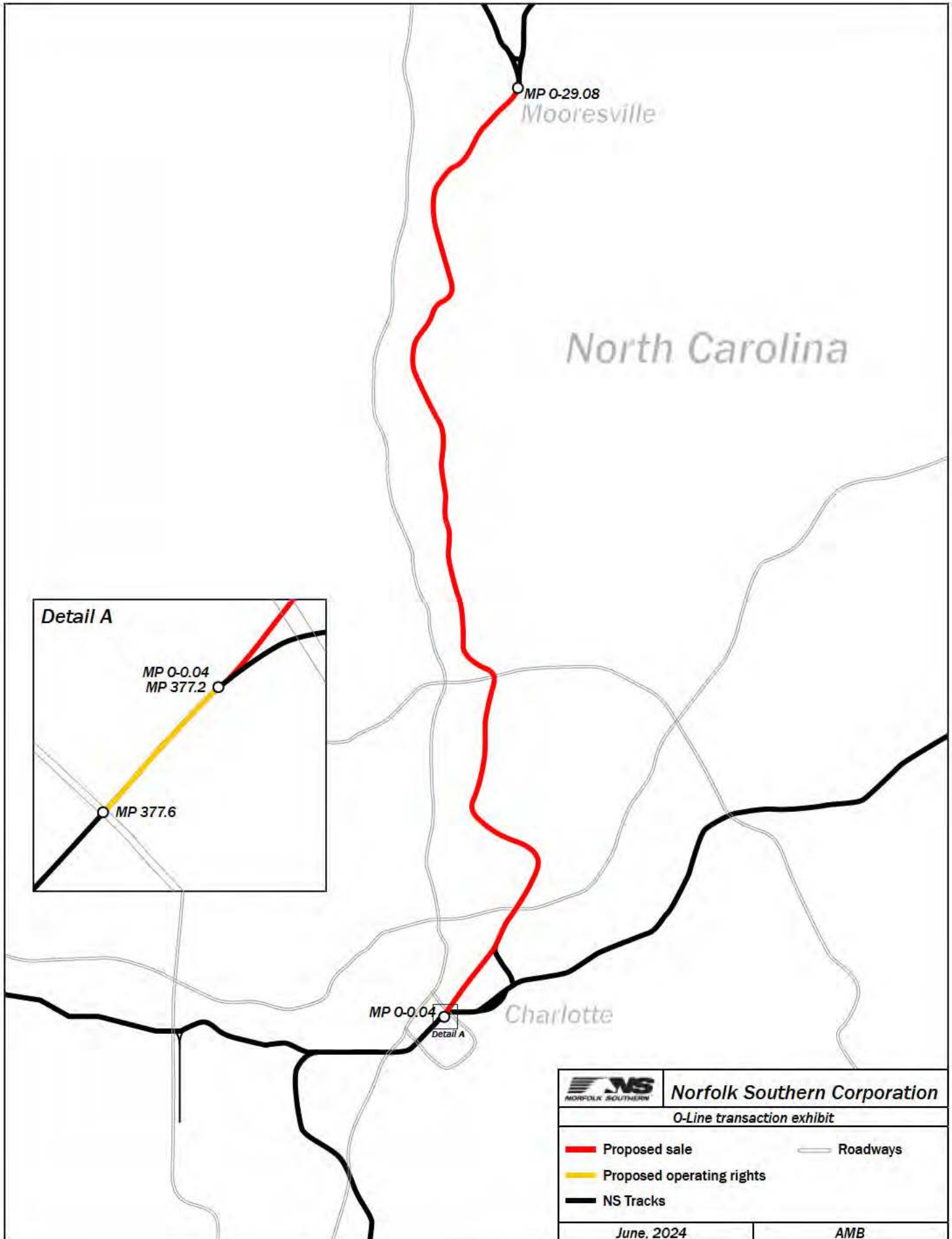
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36785

**CITY OF CHARLOTTE, NORTH CAROLINA
—ACQUISITION EXEMPTION—
NORFOLK SOUTHERN RAILWAY COMPANY**

EXHIBIT A

MAP



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36785

**CITY OF CHARLOTTE, NORTH CAROLINA
—ACQUISITION EXEMPTION—
NORFOLK SOUTHERN RAILWAY COMPANY**

EXHIBIT B

DRAFT NON-WARRANTY DEEDS

This instrument prepared by:

Howard D. McFadden
Senior General Attorney
Norfolk Southern Corporation
650 West Peachtree St., NW
Atlanta, GA 30308

Return to:

Grantee

STATE OF NORTH CAROLINA

NON-WARRANTY DEED

COUNTY OF MECKLENBURG

Excise Tax: \$ _____

THIS NON-WARRANTY DEED, made this _____ day of September, 2024, between
NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, Grantor, party of the
first part, having an address of 650 West Peachtree St., NW Atlanta, GA 30308; and the CITY
OF CHARLOTTE, a municipality in the State of North Carolina, Grantee, with a tax mailing
address of 600 East 4th Street, Charlotte, NC 28202, party of the second part:

W I T N E S S E T H:

THAT the said Grantor, for and in consideration of the sum of _____
DOLLARS (\$_____.00) and other good and valuable consideration in hand paid at and
before the sealing and delivery of these presents, the receipt of which is hereby acknowledged,
by these presents does release, remise, convey, and quitclaim all of Grantor's right, title and
interest, without representation or warranty as to the quality, nature or extent of Grantor's title,
unto the said Grantee, its successors and assigns, the following described property.

ALL THAT piece or parcel of land situate, lying and being between the City of
Charlotte, Mecklenburg County, State of North Carolina, and the Town of Mooresville, Iredell
County, State of North Carolina, and being more particularly described and depicted as follows,
to wit:

SEE EXHIBITS A & B

TOGETHER WITH, and subject to, all conditions, restrictions, reservations, easements,
licenses and leases, whether or not of record, to the extent affecting the property conveyed
herein.

EXCEPTING AND RESERVING unto Grantor, its successors, and assigns and affiliates,
a permanent, perpetual, exclusive, transferable, assignable and irrevocable retained freight
service easement in the Premises as necessary to fulfill Grantor's common carrier obligation and
as necessary to physically serve, with its own crews and locomotives, or the crews and
locomotives of its owners, affiliates, transferees or assigns, present and future rail customers with
access to the Premises, provide overhead freight service to other portions of Grantor's rail
systems or to the rail systems of connecting freight railroads and temporary detour or emergency
overhead rail operations. Grantee acknowledges Grantor's retained rights, and Grantee neither
has nor will have any right to serve present and future shippers and will make no attempt to

construct additional sidings to serve such shippers for its own account or to circumvent this Deed by other means, directly or indirectly. Grantor’s exercise of the freight service easement and right to operate on the Premises is subject to the terms and conditions of that certain Comprehensive Rail Agreement dated [_____2024]. Where apparent discrepancies are perceived between this Quitclaim Deed and the Comprehensive Rail Agreement, the Comprehensive Rail Agreement shall control.

And the Grantor makes no warranty or representation, express or implied, as to the title to the property hereinabove described.

All or a portion of the property herein conveyed ____ includes or X does not include the primary residence of Grantor.

TO HAVE AND TO HOLD said property, with all and singular the rights, members and appurtenances thereof, the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee, its successors and assigns, forever.

FURTHER, Grantee shall take the property subject to the following covenants, which shall run with the land in perpetuity and bind the successors and assigns of Grantor and Grantee:

- i) the property conveyed herein shall [REDACTED]
- [REDACTED], and (ii) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED].

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed, and its seal to be hereunto affixed and attested by its officers, thereunto duly authorized, the day and year first above written.

NORFOLK SOUTHERN RAILWAY
COMPANY

BY: _____
Print: Kristi B. Glahn
Real Estate Manager

STATE OF GEORGIA)
)ss:
COUNTY OF _____)

I, _____, a Notary Public of the County and State aforesaid, do hereby certify that _____ personally came before me this day and acknowledged that the aforesaid individual is the Real Estate Manager of Norfolk Southern Railway Company and the foregoing instrument was signed by him/her, being authorized to do so, and that he/she voluntarily executed the foregoing on behalf of the corporation for the purposes stated therein.

WITNESS my hand and official seal this _____ day of September, 2024.

Notary Public

(NOTARY SEAL)

My Commission Expires: _____

This instrument prepared by:
Howard D. McFadden
Senior General Attorney
Norfolk Southern Corporation
650 West Peachtree St., NW
Atlanta, Georgia 30308

EXHIBIT A
Legal Description

DRAFT

This instrument prepared by:

Howard D. McFadden
Senior General Attorney
Norfolk Southern Corporation
650 West Peachtree St., NW
Atlanta, GA 30308

Return to:

Grantee

STATE OF NORTH CAROLINA

NON-WARRANTY DEED

COUNTY OF IREDELL

Excise Tax: \$ _____

THIS NON-WARRANTY DEED, made this _____ day of September, 2024, between
NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, Grantor, party of the
first part, having an address of 650 West Peachtree St., NW Atlanta, GA 30308; and the CITY
OF CHARLOTTE, a municipality in the State of North Carolina, Grantee, with a tax mailing
address of 600 East 4th Street, Charlotte, NC 28202, party of the second part:

W I T N E S S E T H:

THAT the said Grantor, for and in consideration of the sum of _____
DOLLARS (\$_____.00) and other good and valuable consideration in hand paid at and
before the sealing and delivery of these presents, the receipt of which is hereby acknowledged,
by these presents does release, remise, convey, and quitclaim all of Grantor's right, title and
interest, without representation or warranty as to the quality, nature or extent of Grantor's title,
unto the said Grantee, its successors and assigns, the following described property.

ALL THAT piece or parcel of land situate, lying and being between the City of
Charlotte, Mecklenburg County, State of North Carolina, and the Town of Mooresville, Iredell
County, State of North Carolina, and being more particularly described and depicted as follows,
to wit:

SEE EXHIBITS A & B

TOGETHER WITH, and subject to, all conditions, restrictions, reservations, easements,
licenses and leases, whether or not of record, to the extent affecting the property conveyed
herein.

EXCEPTING AND RESERVING unto Grantor, its successors, and assigns and affiliates,
a permanent, perpetual, exclusive, transferable, assignable and irrevocable retained freight
service easement in the Premises as necessary to fulfill Grantor's common carrier obligation and
as necessary to physically serve, with its own crews and locomotives, or the crews and
locomotives of its owners, affiliates, transferees or assigns, present and future rail customers with
access to the Premises, provide overhead freight service to other portions of Grantor's rail
systems or to the rail systems of connecting freight railroads and temporary detour or emergency
overhead rail operations. Grantee acknowledges Grantor's retained rights, and Grantee neither
has nor will have any right to serve present and future shippers and will make no attempt to

construct additional sidings to serve such shippers for its own account or to circumvent this Deed by other means, directly or indirectly. Grantor’s exercise of the freight service easement and right to operate on the Premises is subject to the terms and conditions of that certain Comprehensive Rail Agreement dated [_____2024]. Where apparent discrepancies are perceived between this Quitclaim Deed and the Comprehensive Rail Agreement, the Comprehensive Rail Agreement shall control.

And the Grantor makes no warranty or representation, express or implied, as to the title to the property hereinabove described.

All or a portion of the property herein conveyed ____ includes or X does not include the primary residence of Grantor.

TO HAVE AND TO HOLD said property, with all and singular the rights, members and appurtenances thereof, the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee, its successors and assigns, forever.

FURTHER, Grantee shall take the property subject to the following covenants, which shall run with the land in perpetuity and bind the successors and assigns of Grantor and Grantee:

- i) the property conveyed herein shall [REDACTED]
[REDACTED], and (ii) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed, and its seal to be hereunto affixed and attested by its officers, thereunto duly authorized, the day and year first above written.

NORFOLK SOUTHERN RAILWAY
COMPANY

BY: _____
Print: Kristi B. Glahn
Real Estate Manager

STATE OF GEORGIA)
)ss:
COUNTY OF _____)

I, _____, a Notary Public of the County and State aforesaid, do hereby certify that _____ personally came before me this day and acknowledged that the aforesaid individual is the Real Estate Manager of Norfolk Southern Railway Company and the foregoing instrument was signed by him/her, being authorized to do so, and that he/she voluntarily executed the foregoing on behalf of the corporation for the purposes stated therein.

WITNESS my hand and official seal this _____ day of September, 2024.

Notary Public

(NOTARY SEAL)

My Commission Expires: _____

This instrument prepared by:
Howard D. McFadden
Senior General Attorney
Norfolk Southern Corporation
650 West Peachtree St., NW
Atlanta, Georgia 30308

EXHIBIT A
Legal Description

DRAFT

EXHIBIT B
Survey

DRAFT

EXHIBIT B
Survey

DRAFT

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36785

**CITY OF CHARLOTTE, NORTH CAROLINA
—ACQUISITION EXEMPTION—
NORFOLK SOUTHERN RAILWAY COMPANY**

EXHIBIT C

PURCHASE AND SALE AGREEMENT

CONTRACT OF PURCHASE AND SALE

This Contract of Purchase and Sale (this “**Agreement**”), dated this 26th day of March, 2024 (the “**Effective Date**”), is made by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation, hereinafter called “**Seller**”, and the **CITY OF CHARLOTTE**, a municipality in the State of North Carolina, hereinafter called “**Purchaser**”. Purchaser and Seller are sometimes referred to herein individually as a “**Party**” and, collectively, as the “**Parties**”.

WITNESSETH:

WHEREAS, Seller has agreed to sell to Purchaser, and Purchaser has agreed to purchase from Seller, certain railroad assets, including right-of-way, structures, track, signals, fixtures, and other track materials along and within a corridor extending between the City of Charlotte, Mecklenburg County, State of North Carolina, and the Town of Mooresville, Iredell County, State of North Carolina, consisting of the assets of a rail line designated by Seller as the “O-Line” located between a point of connection to be determined by the Parties situated in Charlotte, NC, near W 9th Street (at or about MP O-0.04) (the “**POC**”) to Mooresville, NC at MP O-29.08, (as further depicted in **Exhibit A** (Valuation Maps) and described in **Exhibit B** (Real Property Description), each attached hereto and made a part hereof, (the “**Premises**”), subject to Seller’s retention of a permanent and exclusive freight common carrier service easement (the “**Freight Easement**”); and

WHEREAS, Purchaser desires to purchase the Premises in order to commence commuter rail service (“**Commuter Operations**”) over the existing rail infrastructure on the Premises and such rail infrastructure as shall be constructed on the Premises and the Charlotte-POC Segment (as defined herein) pursuant to the terms and conditions of the Comprehensive Rail Agreement (as defined herein); and

WHEREAS, [REDACTED]

[REDACTED]; and [REDACTED]

WHEREAS, Seller would retain the Freight Easement over the Premises that would allow for the continued operation of freight service in fulfillment of Seller’s freight common carrier obligation on the Premises;

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals**. The recitals set forth above shall be incorporated into this Agreement as if fully set forth herein.

2. **Premises.** Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, all of Seller's right, title and interest, if any, in and to (i) the Premises, together with all servitudes, easements, appurtenances and hereditaments appertaining thereto, and (ii) all tracks, rails, ties, switches, crossings, bridges, tunnels, trestles, culverts, buildings, signals, crossing protection devices, communication lines, poles and auxiliary tracks (to the extent of Seller's ownership interest therein), improvements, structures, landscaping, appurtenances, and any and all personal property situated on the Premises (the "**Transaction**"). For the avoidance of doubt, the Premises shall not include, and Seller shall reserve, any easements as otherwise specified in this Agreement for occupation, ingress/egress, and supporting utilities (as applicable), for: (a) continuation of freight common carrier services,



3. **Purchase Price.** The Purchase Price for the Premises as of the Effective Date is . The term "**Purchase Price**" means the purchase price for the Premises as of the Effective Date. The Purchase Price may be modified pursuant to Section 6 and Section 7. The parties shall agree on the Final Purchase Price (as defined in Section 6), which may reflect modifications made to the Purchase Price pursuant to Section 6 and Section 7 prior to Closing (as defined herein).

4. **Legal Description.** Seller shall prepare a general written description of the Premises based on a reference to the center line of the track as located in reference to those certain Valuation Maps as set forth in Exhibit A and the Real Property Description set forth in Exhibit B. Within thirty (30) days before the Closing Date, Purchaser shall, at Purchaser's expense, obtain a survey meeting Seller's specifications and subject to Seller's approval specifically demarcating the common property boundaries between the Premises and Seller's property adjoining the Premises at its endpoints.

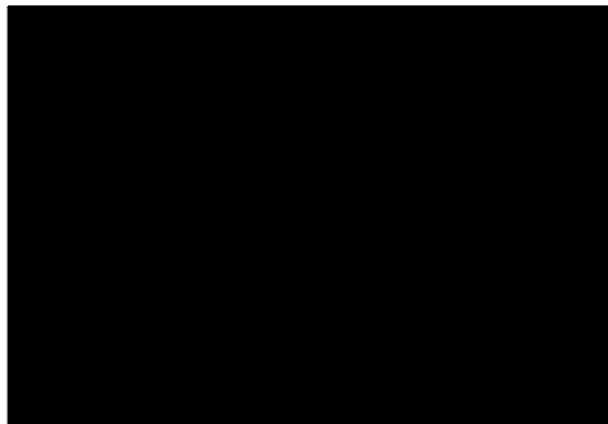
5. **Type of Conveyance.** At Closing (as defined in Section 6), Seller shall convey the Premises to Purchaser by Quitclaim Deed substantially in the form set forth in **Exhibit E** (Quitclaim Deed Form) attached hereto and made a part hereof, being without covenants, representations, or warranties, which grants, transfers, and quitclaims to Purchaser Seller's interest in the Premises, subject to the following:

- (a) Local real estate taxes for the year of closing (but not any taxes that are in arrears) and subsequent years not yet due and payable;
- (b) Applicable zoning laws and regulations; and
- (c) All easements, conditions, reservations, leases, licenses, and restrictions whether or not of record or may be apparent by an inspection of the Premises.

Unless and specifically where it is deemed to be unnecessary, by both Parties, the Quitclaim Deed for the Premises shall contain the following reservations and exceptions to title:

- (i) *EXCEPTING AND RESERVING unto Grantor, its successors, and assigns and affiliates, a permanent, perpetual, exclusive, transferable, assignable and irrevocable retained freight service easement in the Premises as necessary to fulfill Grantor's common carrier obligation and as necessary to physically serve, with its own crews and locomotives, or the crews and locomotives of its owners, affiliates, transferees or assigns, present and future rail customers with access to the Premises, provide overhead freight service to other portions of Grantor's rail systems or to the rail systems of connecting freight railroads and temporary detour or emergency overhead rail operations. Grantee acknowledges Grantor's retained rights, and Grantee neither has nor will have any right to serve present and future shippers and will make no attempt to construct additional sidings to serve such shippers for its own account or to circumvent this Deed by other means, directly or indirectly. Grantor's exercise of the freight service easement and right to operate on the Premises is subject to the terms and conditions of that certain Comprehensive Rail Agreement dated [_____]2024]. Where apparent discrepancies are perceived between this Quitclaim Deed and the Comprehensive Rail Agreement, the Comprehensive Rail Agreement shall control.*

(ii)

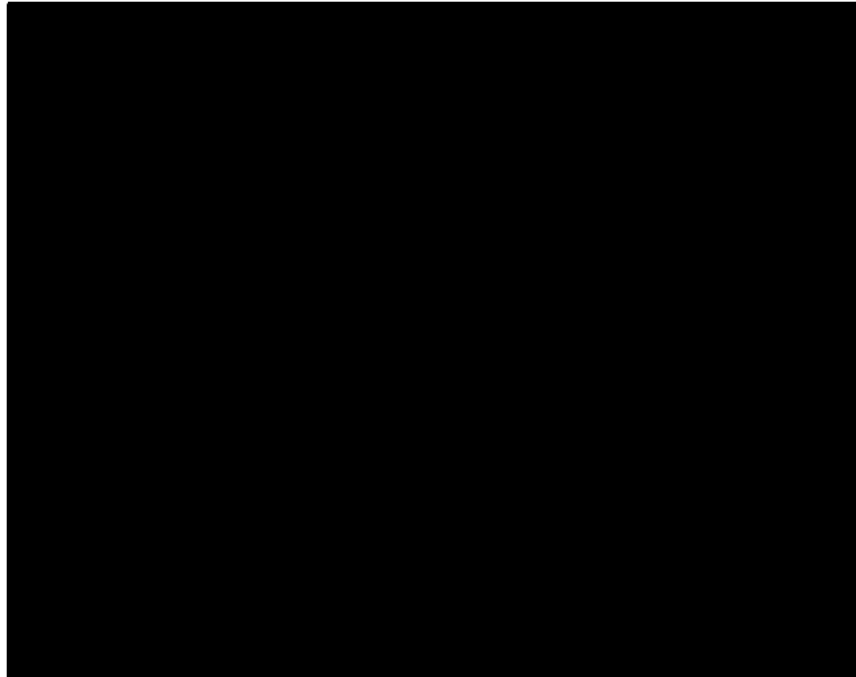





6. **Closing.** Subject to Section 12 below, the closing of the Transaction shall be held at a mutually agreed upon location, date and time, or by overnight mail, on or before September 10, 2024 (such date as mutually agreed, the “**Closing Date**”) (the process described herein to occur on the Closing Date being “**Closing**”). At or before Closing, as applicable in each case, the following items shall be effected:

- (a) Seller and Purchaser shall mutually agree, pursuant to any modifications made in accordance with Sections 3 and 7 herein, upon a final purchase price (the “**Final Purchase Price**”) and memorialize such Final Purchase Price in a statement executed by both Parties (the “**Price Statement**”)
- (b) Seller shall deliver to Purchaser the duly executed and acknowledged Quitclaim Deed conveying the Premises to Purchaser as provided in Section 5 hereof. If any mortgage or trust encumbers the Premises, Seller shall provide a deed or deeds of release to release the lien of any mortgage or trust that may encumber the Premises. If any judgment liens, other liens for the payment of money (other than mortgages and deeds of trust) or lis pendens encumber the Premises at Closing, Seller shall either cause such lien or lis pendens to be released, provide a corporate surety bond with respect to such lien or lis pendens or execute and deliver to Purchaser or its title insurer an indemnity agreement, in form and substances reasonably satisfactory to Purchaser, Seller, and Purchaser’s title insurer, with respect to such liens or lis pendens.
- (c) Purchaser shall pay to Seller the Final Purchase Price by wire transfer. Seller will provide Purchaser with wiring instruction prior to Closing.
- (d) Purchaser shall deliver to Seller the Comprehensive Rail Agreement (as defined in Section 7) executed by Purchaser, and Seller shall deliver to Purchaser the Comprehensive Rail Agreement executed by Seller.
- (e) Purchaser shall deliver to Seller the Assignment and Assumption Agreement executed by Purchaser, and Seller shall deliver to Purchaser the Assignment and Assumption Agreement executed by Seller.

- (f) General real estate taxes for the then-current year relating to the Premises, rents, water, sewer, and electric charges, if any, shall be prorated as of the closing date and shall be so adjusted at Closing. If Closing shall occur before the tax rate is fixed for the then-current year, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuations. All special taxes or assessments accrued subsequent to the Closing Date shall be paid by Purchaser if required by North Carolina law. All general taxes, assessments, and water, sewer, and electric charges in arrears on the Closing Date shall be paid by Seller. Seller has represented that there are no outstanding charges for taxes, water, sewer, and electric charges. However, to the extent that the Premises contain any property classified as operating property (and therefore, is not locally assessed by the applicable taxing authority of each county or city in which the applicable portion of the Premises is situated), then Seller shall continue to pay all sums applicable to the portions of the Premises deemed operating property without pro-ratio or adjustment between the Parties, with Seller making the necessary adjustments to the next franchise tax return filed on the portion of the Premises deemed as operating property, and Purchaser paying any taxes, as may be applicable to Purchaser, that may become due and payable on and after the Closing Date after conveyance.
- (g) Seller shall pay for the Quitclaim Deed preparation, transfer taxes and Seller's attorneys' fees.
- (h) Purchaser shall pay for all costs, taxes, recording and filing fees not otherwise addressed in Section 6(d) and Purchaser's attorneys' fees.
- (i)

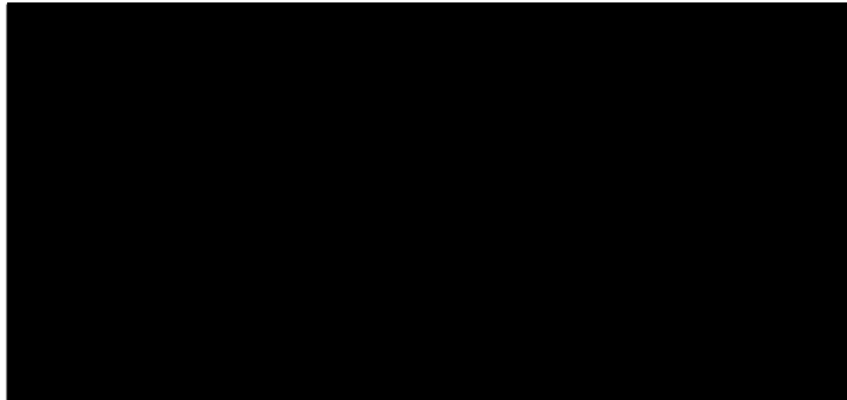


7. **Due Diligence Inspections; Negotiation of Comprehensive Rail Agreement.**

- (a) Purchaser and its employees and agents shall, until the sale contemplated herein has been completed or this Agreement has been terminated or has expired by limitation, have the right and permission, after the Effective Date, to enter upon the Premises or on any part thereof at all reasonable times for the purpose of inspecting, examining and surveying the Premises, as well as making soil tests, borings, percolation tests and other necessary tests for engineering and planning for the Corridor Infrastructure, as defined herein, and determination of surface, sub-surface and topographic conditions; PROVIDED, HOWEVER, (i) Purchaser's presence and activities shall not unreasonably interfere with Seller's common carrier obligations; (ii) Purchaser shall not have the right to perform any invasive environmental testing unless Seller shall have first consented in writing to any such testing proposed in writing by Purchaser, which consent Seller may withhold in its sole discretion; and (iii) notwithstanding any other provision of this Agreement, and to the extent permitted by North Carolina law, Purchaser agrees, and agrees to require all contractors retained by Purchaser for these purposes, to indemnify and hold Seller (which word, for the purposes of this subsection (a), shall be deemed to include any corporation controlling, controlled by or under common control with Seller, together with the officers, employees, agents and servants of any of them) harmless from and against any claims or liability for personal or bodily injuries to (including death of) persons or damage to or loss of property, real or personal, or expense in any manner connected with such undertakings hereunder and, at Seller's option, to defend any lawsuit brought against Seller on account of any such claims and to pay any judgment against Seller resulting from any suit, whether or not any such claim, demand or suit purports to arise from the negligence of Seller or otherwise, and Purchaser shall also indemnify and hold harmless Seller, and require that all contractors retained by Purchaser for these purposes, from and against loss or damage occasioned by such entry, including, without limitation, any mechanic's liens or claims that may be filed or asserted against the Premises by contractors, sub-contractors or materialmen performing such work for Purchaser. Purchaser shall provide copies of all tests performed on the Premises to Seller upon request at no cost to Seller.
- (b) If, as a result of Purchaser's inspection as provided in subsection (a) above or any other determination or analysis of the Premises by Purchaser, Purchaser discovers any geotechnical conditions concerning the Premises

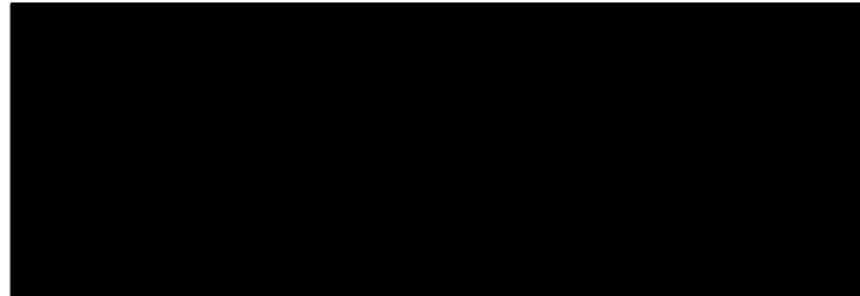
that render it unsuitable for its purposes or reveal the existence of toxic/hazardous chemicals and waste substances, or the presence of asbestos, in such quantities as to give rise to possible liability under federal, state or local environmental laws and regulations, Purchaser shall have sixty days prior to the Closing Date to furnish Seller with a written statement of such conditions affecting the suitability of the Premises for Purchaser's purposes or that give rise to possible liability under federal, state or local environmental laws and regulations. Seller shall have thirty (30) days after receipt of such notice to remedy such conditions, but shall be under no obligation so to do, and if Seller declines to or fails to remedy such conditions within the prescribed time, or if Seller declines to give Purchaser permission to perform any environmental testing as provided in subsection (a) above, then, at Purchaser's option evidenced by written notice to Seller, Purchaser may either (i) terminate this Agreement or (ii) waive any or all objections not cured by Seller and proceed to close hereunder without diminution in price. In the event this Agreement is terminated, neither Party shall be liable to the other Party for damages on account of the termination.

(c)



(d) Purchaser and Seller may each perform an appraisal of the Premises. The parties will determine whether and in what amount the appraisals should contribute to determining the Final Purchase Price.

(e)



(f) Purchaser and Seller shall engage in negotiations in an effort to reach mutual agreement on a document that will govern the relationship between Seller

and Purchaser (and any party performing Commuter Operations on behalf of Purchaser) in the operation, maintenance, and future development of the Premises and Commuter Operations over the Charlotte-POC Segment (the “**Comprehensive Rail Agreement**”). The Comprehensive Rail Agreement will address, among other things:

- (i) The necessity of an additional Rail Traffic Controller (“**RTC**”) study, performed at Purchaser’s sole cost and expense, to determine infrastructure required to carry out Commuter Operations in a manner that does not unreasonably interfere with Seller’s Freight Easement or the provision of common carrier freight rail service (“**Corridor Infrastructure**”). In the event Purchaser conducts the RTC study, Seller must approve the sufficiency of the defined Corridor Infrastructure to ensure no unreasonable interference with the Freight Easement or Seller’s provision of common carrier freight service. If, by the start of service of Commuter Operations, Purchaser makes a material change in the level of Commuter Operations, as defined in the Comprehensive Rail Agreement, Purchaser will perform a new or supplemental RTC study, as appropriate, based on Purchaser’s material change, at Purchaser’s sole cost and expense.
- (ii) Construction of the Corridor Infrastructure, which would be performed at Purchaser’s sole cost and expense, and in a manner that would not unreasonably interfere with Seller’s Freight Easement or its common carrier freight operations;
- (iii) The terms and conditions associated with Commuter Operations on the Charlotte-POC Segment, including price and volume of trains;
- (iv) Provision for potential expansion of Commuter Operations on the Charlotte-POC Segment, including the performance of Rail Traffic Controller studies at Purchaser’s sole cost and expense to determine the viability and requirements of expansion at any given time;
- (v) Seller’s exercise of its retained permanent, exclusive freight rail operating easement for the purpose of providing common carrier freight service, including the price to be paid to Purchaser both during the period between the Closing Date and the date that Commuter Operations commence (the “**Transition Period**”) and after the Transition Period;
- (vi) 

- (vii) Seller's right to expand freight service, [REDACTED]
- (viii) Maintenance of the Premises, both during and after the Transition Period, and ensuring that such maintenance obligation does not unreasonably interfere with Seller's Freight Easement or common carrier freight operations;
- (ix) Dispatching of the Premises, both during and after the Transition Period and the development of standards and protocols to ensure that the Purchaser's dispatching practices and protocols do not unreasonably interfere with Seller's Freight Easement or common carrier obligation;
- (x) Liability allocations related to rail operations on the Premises and the Charlotte-POC Segment, including liability assumption requirements with respect to any party performing Commuter Operations on behalf of Purchaser;
- (xi) Installation of Positive Train Control at Purchaser's sole cost and expense; and
- (xii) Purchase Agreement(s) between the parties for land required by Purchaser for [REDACTED] and/or any other stabling or other land acquisition for the Commuter Operations;

8. **Real Estate Commissions.** Purchaser and Seller each represents to the other that no real estate commissions are due and owing to any party with respect to the Transaction. Each Party hereby agrees to indemnify and save harmless the other Party from and against any and all claims or liability for real estate commissions arising out of the Transaction attributable to the indemnifying Party.

9. **Assignment.** This Agreement may not be assigned by Purchaser to any other party without the written consent of Seller, which consent may be withheld for any reason, except in the case of an assignment to an entity of which Purchaser has a controlling interest or is the general partner, in which case such consent shall not be unreasonably withheld. Seller expressly reserves the right to assign or delegate all or any part of Seller's rights and duties hereunder with respect to all or any portion of the Premises to one or more third parties, including a qualified intermediary as defined by Treasury Regulation Section 1.1031 (K)-1(g)(4).

10. **Disclaimers.**

- (a) Purchaser agrees to purchase the Premises “as is, where is” and acknowledges that Seller has not made any express or implied representation or warranty with respect to the condition or suitability of the Premises, including, but not limited to, title, the condition of the soil, the presence of hazardous materials, substances, wastes or other environmentally regulated substances, or other contaminants in the soil or improvements, whether known or unknown, (referred to herein as “contamination of the Premises”) and other physical characteristics. Purchaser shall perform at its own expense and rely solely upon its own independent investigation concerning the physical condition of the Premises (including, but not limited to, an environmental assessment) and compliance of the Premises with any applicable law and regulations, provided that nothing in this subsection (a) constitutes a condition precedent to Closing.
- (b) Seller has not and does not hereby make any express or implied representation or warranty or give any indemnification of any kind to Purchaser concerning the Premises except as provided in the Owner’s Affidavit, its condition or suitability or its compliance with any statute, ordinance or regulation, including, but not limited to, those relating to the environment . Purchaser acknowledges that neither Seller nor any of its agents or representatives have made, and Seller is not liable for, or bound in any manner by, any express or implied warranties, guarantees, promises, statements, inducements, representations or information pertaining to the Premises or any part thereof, the physical condition, size, zoning, income potential, expenses or operation thereof, the uses that can be made of the same or in any manner or thing with respect thereof, including, without limitation, any existing or prospective leasing or occupancy of all or any part thereof.
- (c) Purchaser hereby agrees that, following its purchase of the Premises, Purchaser will protect, indemnify and hold harmless Seller from and against any and all damages, penalties, fines, claims, demands, causes of action, liens, suits, liabilities, costs (including, without limitation, cleanup and remedial action costs), judgments, and expenses (including, without limitation, attorney’s and experts’ fees and expenses) of every kind and nature suffered by, incurred by (whether voluntarily or by court or administrative order or direction) or asserted against Seller or Purchaser as a direct or indirect result of any hazardous materials, substances, wastes or other environmentally regulated substances located on, in or under the Premises that were caused or created by Purchaser, whether before or after closing. This provision shall survive Closing.
- (d) Nothing in this Section 10 shall abrogate or supersede any allocations of liability between Purchaser and Seller as will be set forth in the

Comprehensive Rail Agreement. The provisions of Section 10 shall survive Closing.

11. **Eminent Domain.** If, at any time prior to Closing hereunder, any action or proceeding is filed under which the Premises, or a substantial portion thereof, may be taken pursuant to any law, ordinance or regulation or by condemnation or the right of eminent domain, then, at the option of either Seller or Purchaser, (a) this Agreement shall be terminated or (b) this Agreement shall remain in full force and effect and Seller, at the time of closing hereunder, shall transfer and assign to Purchaser all of Seller's right, title and interest in any proceeds received or which may be received by the taking, or a sale in lieu thereof, said option to be exercisable by either Party by delivering to the other Party written notice of such exercise on or before the thirtieth (30th) day following the day on which the respective Party receives notice that such suit has been filed.

12. **Conditions Precedent to Closing.** The obligation of each Party to close the Transaction is conditioned upon satisfaction of all the following conditions precedent:

- (a) The Parties shall have agreed upon the Final Purchase Price.
- (b) The Parties shall have agreed upon the terms and conditions of the Comprehensive Rail Agreement and the Assignment and Assumption Agreement. Where apparent discrepancies are perceived between this Agreement and the Comprehensive Rail Agreement, the Comprehensive Rail Agreement shall control.
- (c) The Surface Transportation Board (the "STB") shall have determined that the Transaction, as structured under the various transactional agreements, does not entail the purchase and sale of a line of railroad, and, accordingly, that Buyer will not by virtue of the Transaction incur a railroad common carrier obligation with respect to the Premises, or, in the alternative, the STB shall have authorized the Transaction. To that end, within thirty (30) days of the Effective Date, Purchaser shall (i) file a notice of exemption (the "NOE") covering its proposed acquisition of the Premises, accompanied by a motion to dismiss the NOE on the basis that the Transaction does not require STB regulatory approval, and (ii) request expedited STB review of the motion to dismiss. The Parties shall cooperate with each other in connection with all filings made with the STB, and neither Party shall make any filing with the STB related to this Transaction without first having delivered a draft copy of such filing to the other Party at least five (5) business days before such filing is made.
- (d) The Transaction shall not be subject to a stay or injunction by the STB or by any court of competent jurisdiction as of the Closing Date.
- (e) No material claim, litigation, labor dispute, or work stoppage is threatened or pending in connection with the Transaction or any agreement to be executed in connection herewith.

- (f) Seller shall have received all necessary approvals from its Board of Directors to enter into this Agreement and consummate the Transaction contemplated by this Agreement under the terms and conditions hereof.
- (g) Purchaser shall have received all necessary approvals from the Charlotte City Council, and all other government entities with authority over the Purchaser, to enter into this Agreement and consummate the Transaction contemplated by this Agreement under all of the terms and conditions hereof.
- (h) 

13. **Responsibility for Labor Protection.** Each Party shall bear the full cost of protection of its own employees under employee protective conditions, if any, that may be imposed on it by the STB or that apply under any agreements made by either Party with its respective employees, and of grievances filed by its own employees under its collective bargaining agreements with its employees. The Party held responsible for protection or grievances by this Section 13 shall and hereby does release, indemnify, protect, defend and hold harmless the other Party (and its officers, directors, agents and employees) from and against such responsibility.

14. **New and Undisclosed Agreements.**

- (a) Neither Party shall enter into any new agreement pertaining to the Premises between the Effective Date and either the Closing Date or the termination date of this Agreement without the written consent of the other Party.
- (b) Each Party shall defend, hold harmless and indemnify the other Party for any losses, claims, expenses, fees and costs arising in connection with any obligations under any agreements related to the Premises that were (i) entered into by the indemnifying Party during the indemnifying Party's ownership of the Premises and (ii) in the case that any such agreement entered into by Seller is not disclosed to Purchaser by the Closing Date, provided that Seller's obligations under this Section 14(b) with respect to a given agreement shall not extend beyond the date a copy of such agreement is provided to Purchaser.
- (c) 
- (d) 

15. **Relocation Act.** Provided the Transaction is consummated pursuant to this Agreement, Seller acknowledges and agrees that it will be fully compensated and is not entitled to any further assistance under the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act (42 U.S.C. § 4601, et seq), or any other federal, state or local law, ordinance or regulation requiring the provision of relocation assistance to persons displaced by action of public agencies, by reason of the Transaction contemplated by this Agreement.

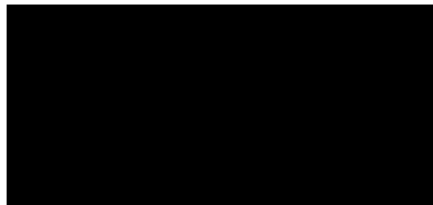
16. **Notices.** Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Postal Service, postage prepaid, registered, or certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address set forth below.

Seller:



Purchaser:

City of Charlotte
Charlotte Area Transit System
600 East Fourth Street
Charlotte, NC 28202
Attn: CATS CEO



City of Charlotte
Charlotte Area Transit System
600 East Fourth Street
Charlotte, NC 28202
Attn: City Attorney- CATS

17. **Miscellaneous Provisions.**

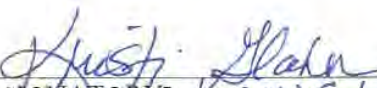
- (a) This Agreement embodies the full understanding between the Parties of the Transaction, as of the Effective Date, and cannot be varied except by the written agreement of the Parties. No representation, promise, or inducement not included in this Agreement shall be binding upon the Parties hereto.
- (b) Time is of the essence of this Agreement.
- (c) All the terms and conditions of this Agreement are hereby made binding on the successors and permitted assigns of both Parties hereto.
- (d) This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.
- (e) This Agreement shall not be effective or binding until fully executed by the Parties hereto.
- (f) Any provision of this Agreement that imposes an obligation after termination or expiration of the Agreement, including without limitation all indemnifications and releases, will survive closing.

- (g) If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- (h) Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.
- (i) The Parties agree that this Agreement may be transmitted between them by facsimile machine or electronic mail. The Parties intend that faxed or scanned signatures shall constitute original signatures and that a faxed or electronically mailed agreement containing the signatures (faxed or scanned) of all the Parties is binding on the Parties.
- (j) This Agreement may be signed in one or more counterparts, each of which will constitute an original and all of which shall comprise one and the same Agreement.

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EXECUTED in duplicate, each part being an original, as of the day and year set forth above.

NORFOLK SOUTHERN RAILWAY COMPANY

By: 
[NS SIGNATORY] *Kristi Glahn*
[NS SIGNATORY TITLE] *Real Estate Manager*

CITY OF CHARLOTTE

By: 
[CITY SIGNATORY]
[CITY SIGNATORY TITLE]
Marcus D. Jones
City Manager

EXHIBIT A
VALUATION MAPS

MECKLENBURG COUNTY, N.C.

CHARLOTTE

STATION MAP

SOUTHERN RAILWAY COMPANY

Operating

SOUTHERN RAILWAY COMPANY

STATION 4715 TO STATION 445-22

SCALE 1 IN. = 100 FT. DECEMBER 31, 1927.

Office of Railroad Engineer

Charlotte, N.C.

Copyright 1927 by Southern Railway Company

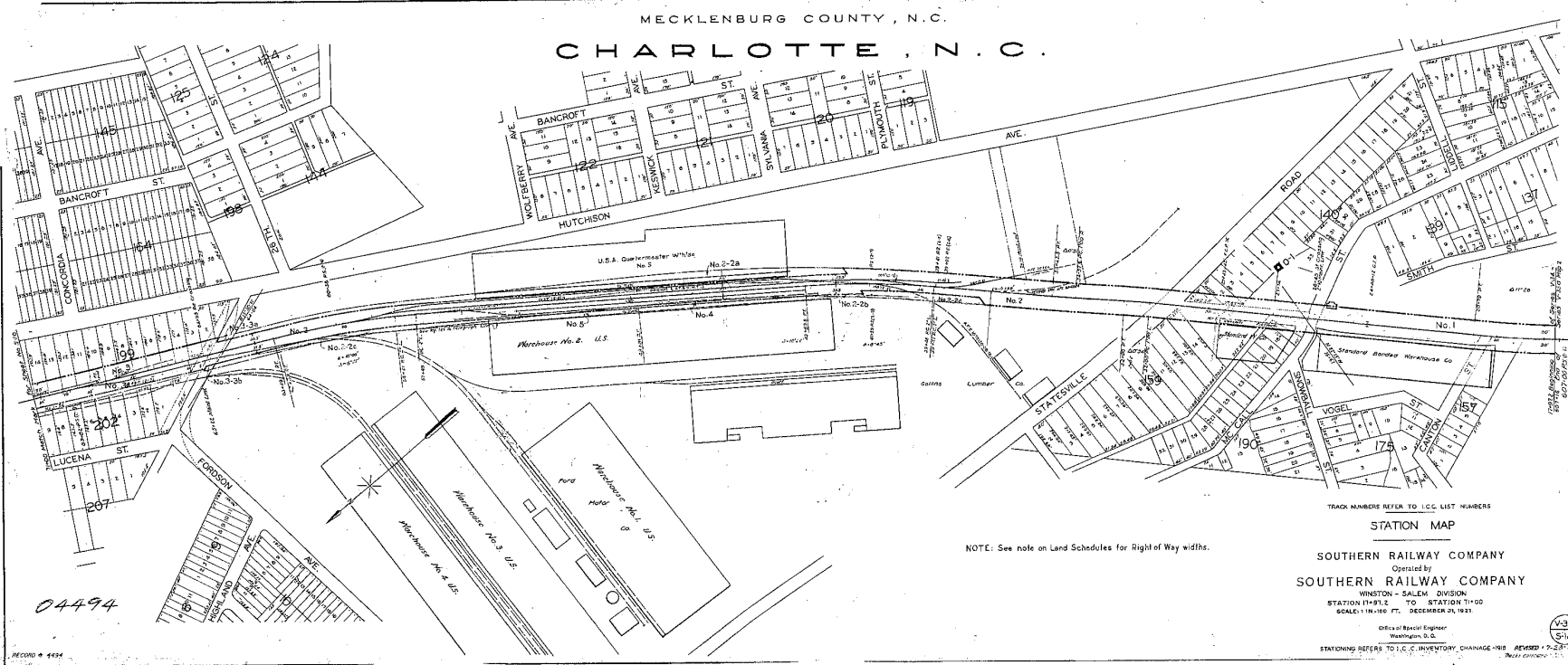
NOTE: See notes on Land Schedules for Map of Way Widths.

TRACK NUMBERS REFER TO L.S.F. NUMBERS

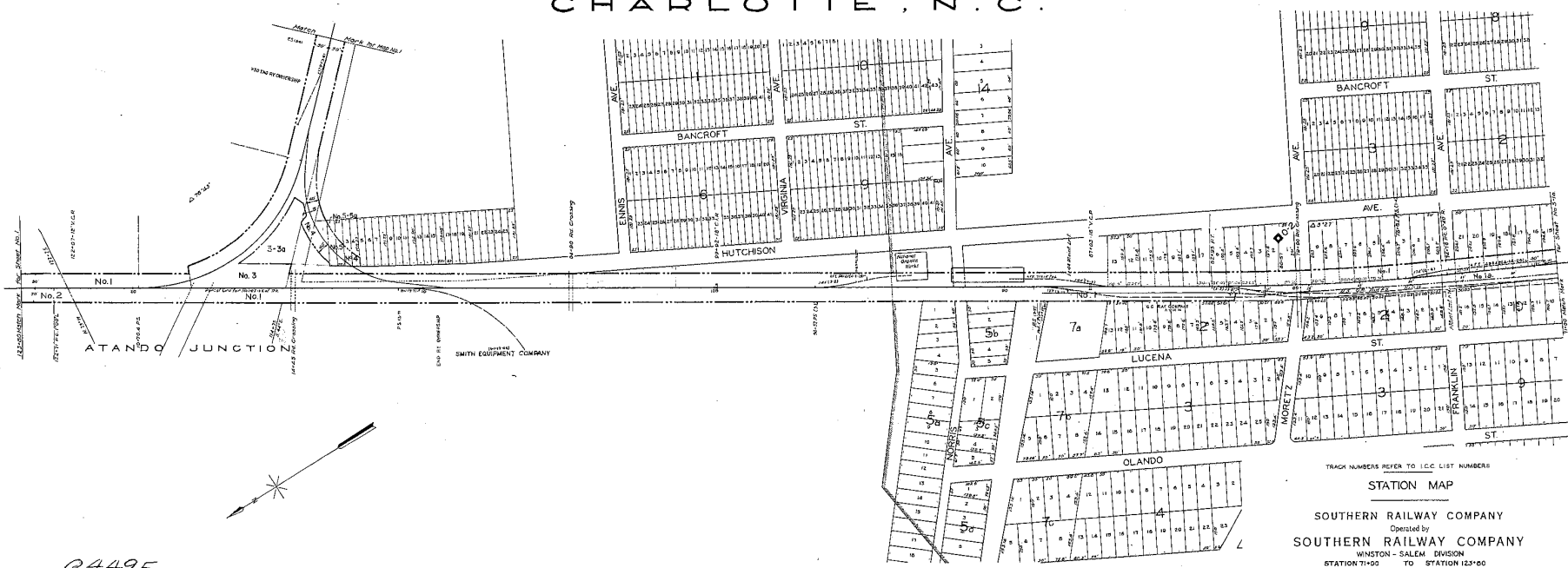
STATION MAP

OFFICE OF SPECIAL ENGINEER
WASHINGTON, D. C.

2



MECKLENBURG COUNTY, N.C.
CHARLOTTE, N.C.



TRACK NUMBERS REFER TO I.C.C. LIST NUMBERS

STATION MAP

SOUTHERN RAILWAY COMPANY
 Operated by
SOUTHERN RAILWAY COMPANY
 WINSTON - SALEM DIVISION

STATION 71+00 TO STATION 123+00
 SCALE: 1 IN. = 100 FT. DECEMBER 31, 1927

Office of Special Engineer
 Washington, D.C.

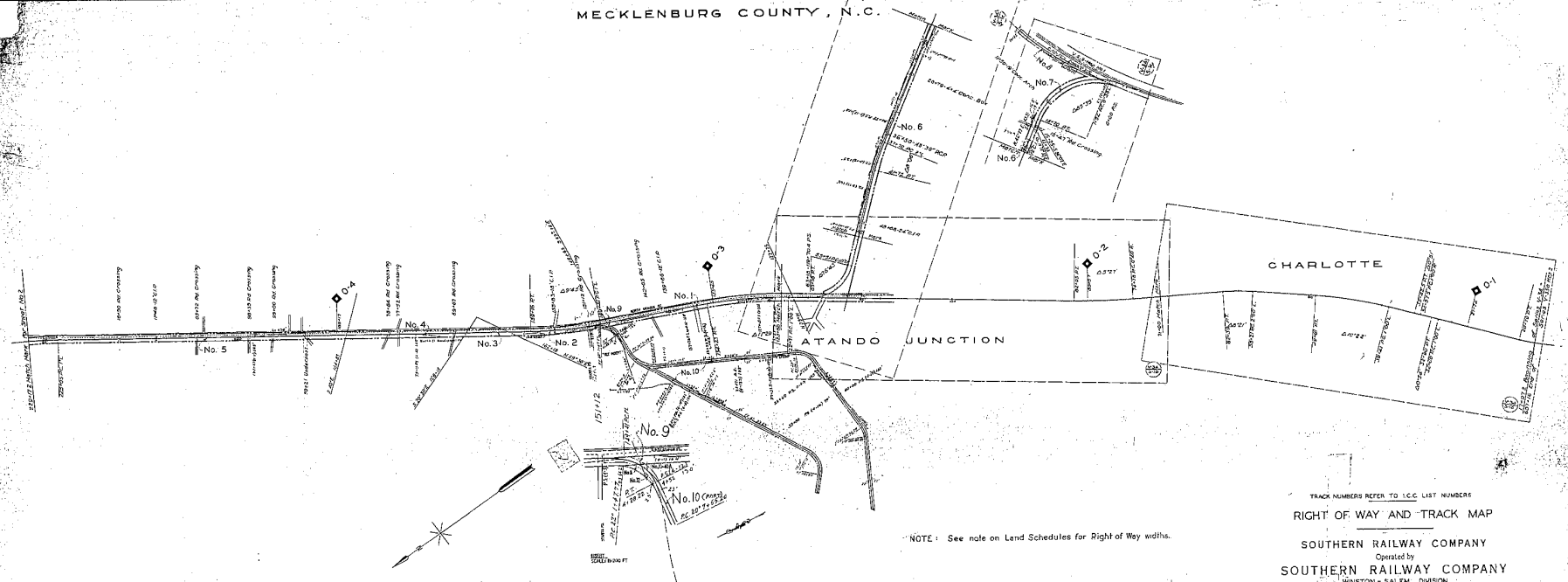
STATIONING REFER TO I.C.C. INVENTORY CHAINAGE - 618

Y-34
 S-1b

NOTE: See note on Land Schedules for Right of Way widths.

04495

4495 A



NOTE: See note on Land Schedules for Right of Way widths.

RIGHT OF WAY AND TRACK MAP

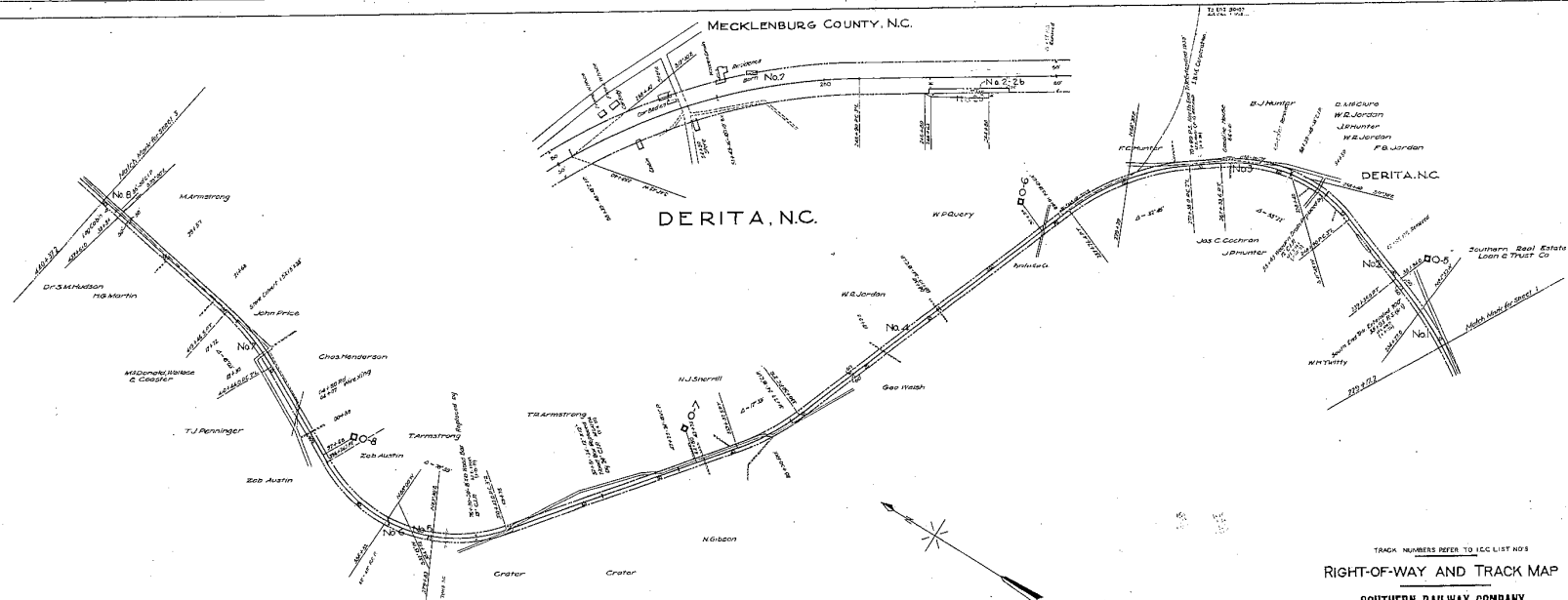
SOUTHERN RAILWAY COMPANY
Operated by
SOUTHERN RAILWAY COMPANY

WINSTON - SALEM DIVISION
STATION 19+97.2 TO STATION 229+17.2
SCARF IN 400 FT. DECEMBER 31, 1927.

Office of Special Engineer
Washington, D. C.

STATIONING REFERS TO I.C. & INVENTORY CHARGE

V-34



04497

NOTE: See note on Land Schedules for Right of Way widths.

TRACK NUMBERS REFER TO ILC LIST NOS

RIGHT-OF-WAY AND TRACK MAP

SOUTHERN RAILWAY COMPANY

Operated by the

SOUTHERN RAILWAY COMPANY

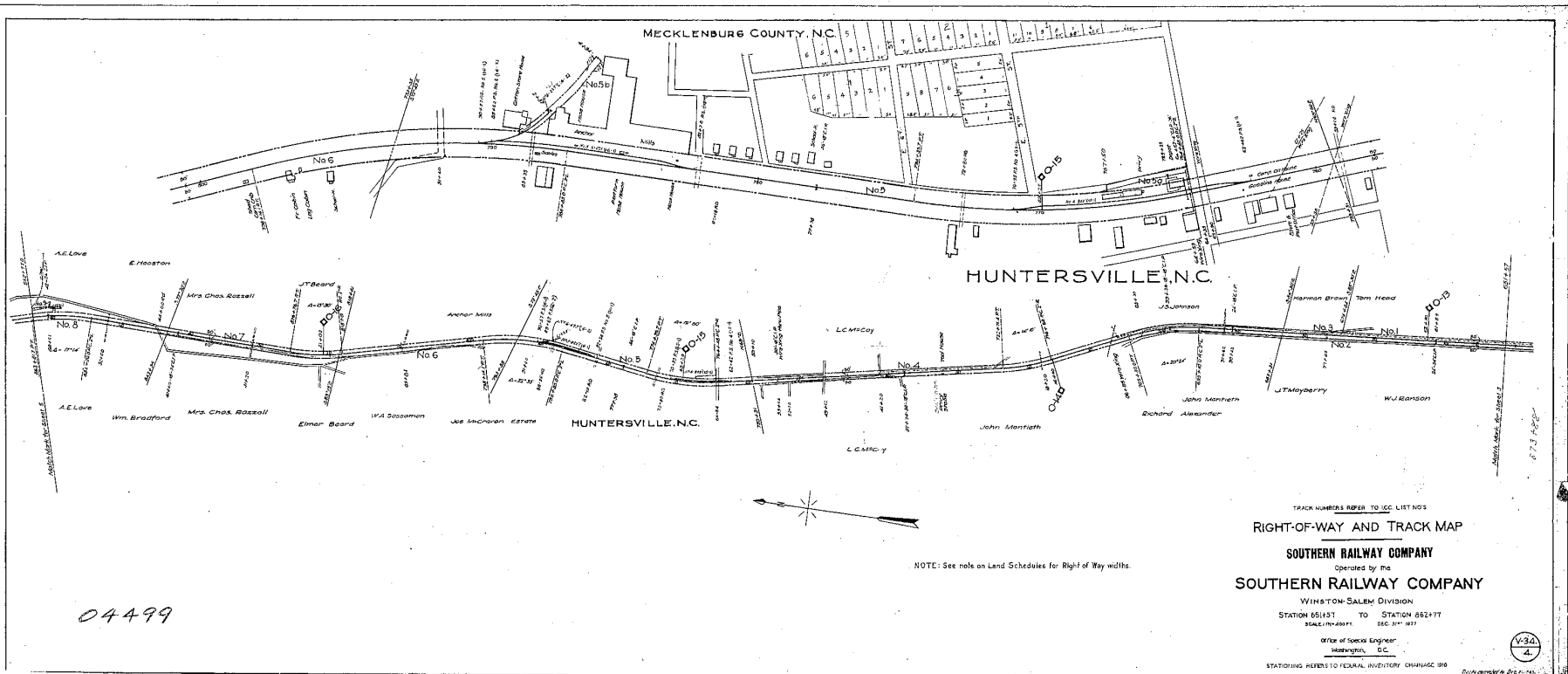
WINSTON-SALEM DIVISION

STATION 229+17.2 TO STATION 440+37.2
SCALE 1 IN = 400 FT. DEC. 31ST 1927

Office of Special Engineer
Washington, D.C.
STATIONING REFERS TO FEDERAL CHAINAGE 1946

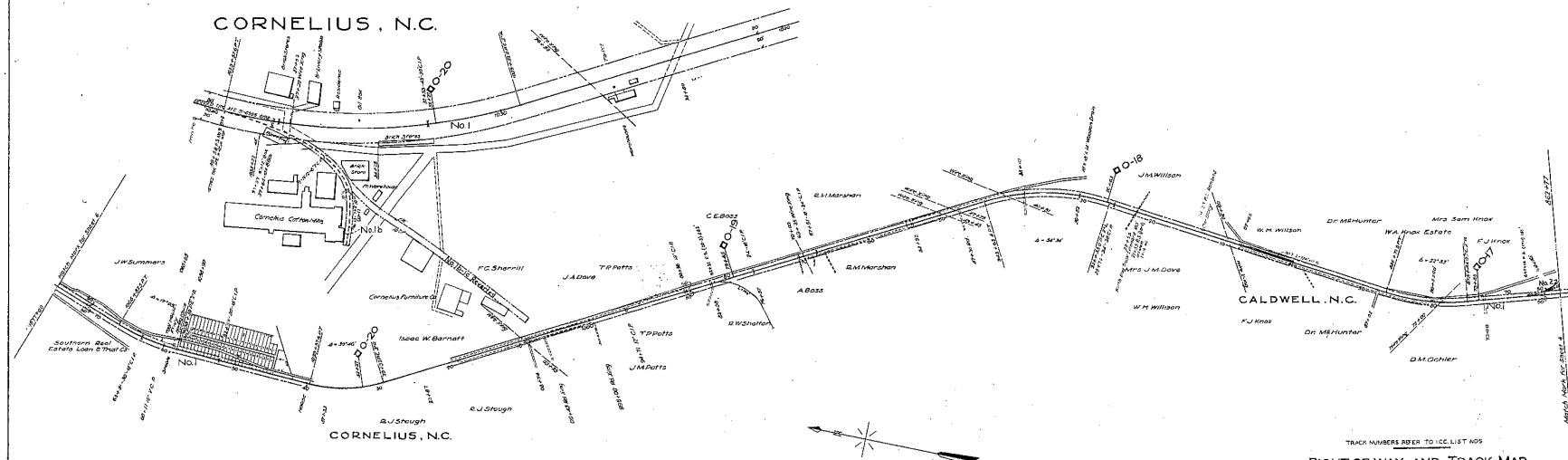






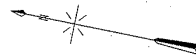
MECKLENBURG COUNTY, N.C.

CORNELIUS, N.C.



CORNELIUS, N.C.

CALDWELL, N.C.



NOTE: See note on Land Schedules for Right of Way widths.

TRACK NUMBERS REFER TO ICE LIST NOS
RIGHT-OF-WAY AND TRACK MAP

SOUTHERN RAILWAY COMPANY
Operated by the
SOUTHERN RAILWAY COMPANY

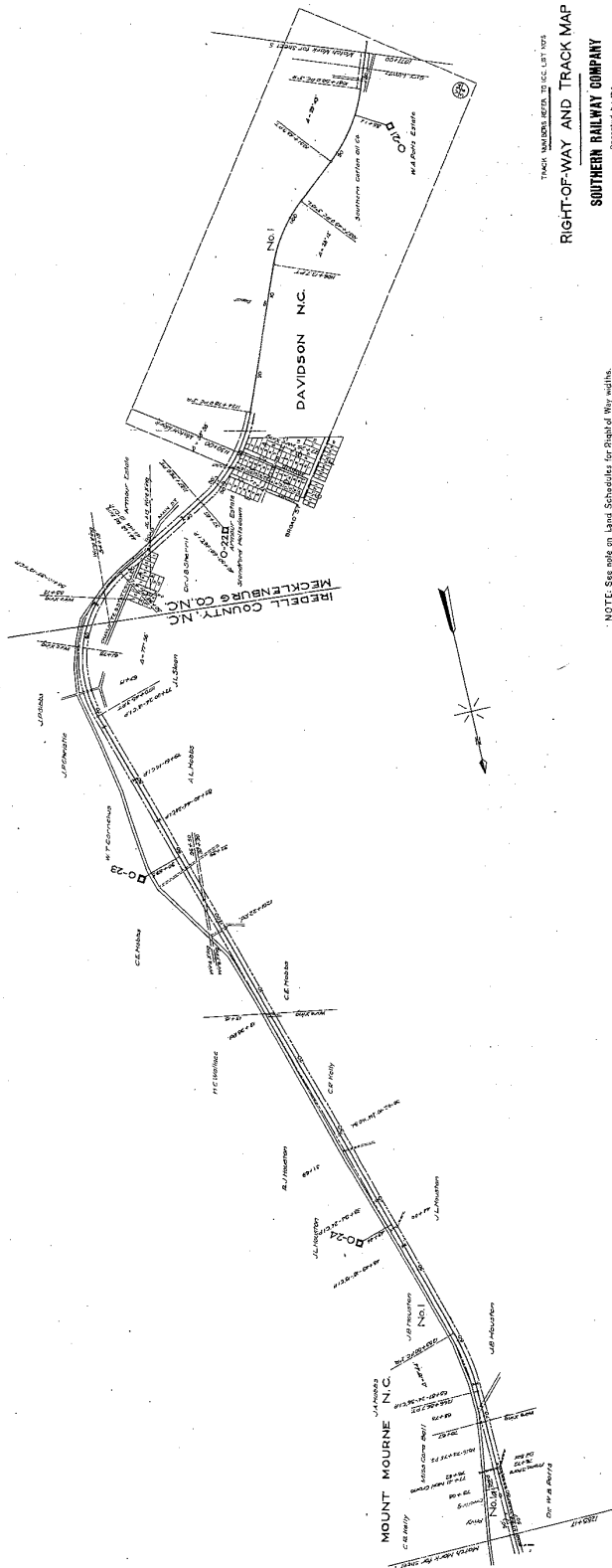
WINSTON-SALEM DIVISION
STATION 022 + 77 TO STATION 1073 + 97
SCALE 1:100,000 FT. DEC. 31, 1937

Office of Special Engineer
Washington, D.C.

STATIONING REFERS TO FEDERAL INVENTORY CHAINAGE 1938

V.34
5

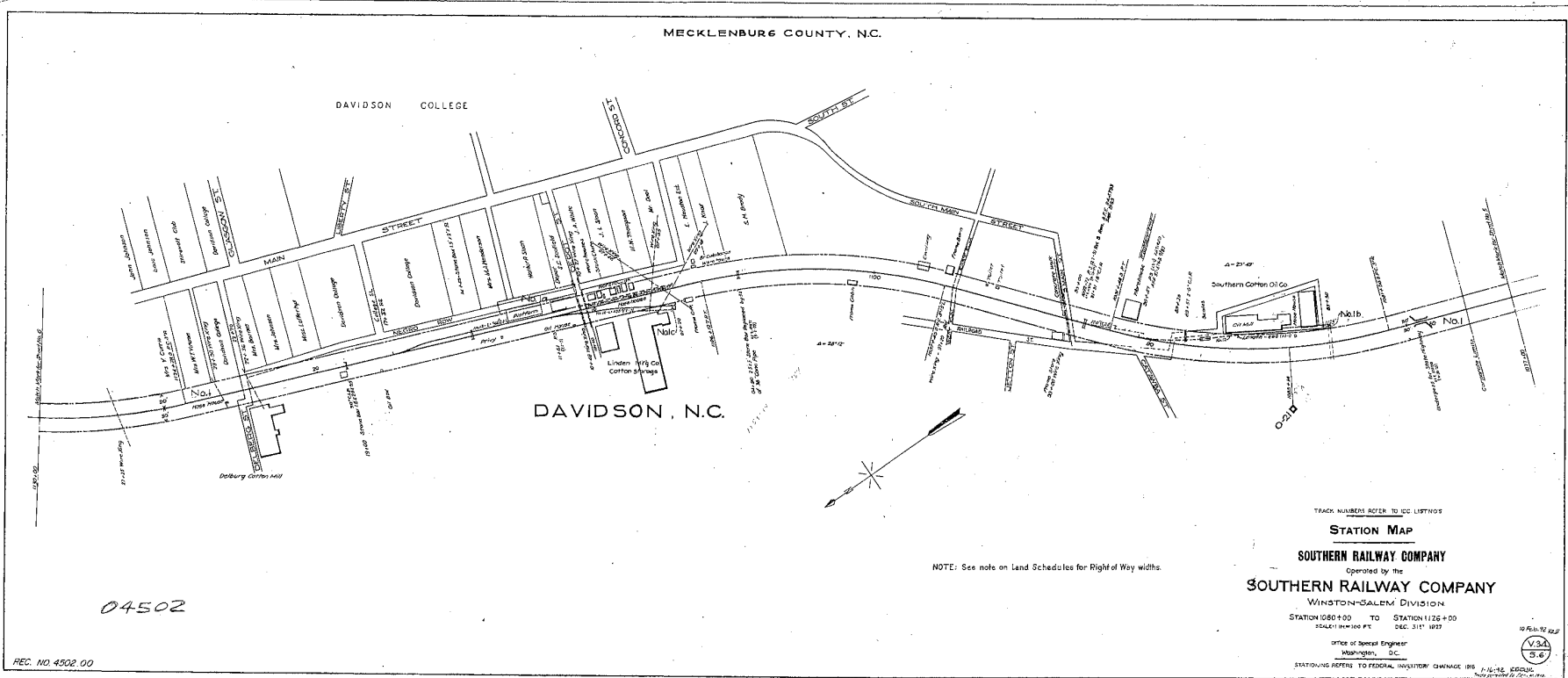
04500



TRACK MAPS REFER TO SEE LEFT SIDE
RIGHT-OF-WAY AND TRACK MAP
 SOUTHERN RAILWAY COMPANY
 Operated by the
SOUTHERN RAILWAY COMPANY
 WINSTON-SALEM DIVISION
 STATIONED TO THE RIGHT
 DATE 12-1-1917
 OFFICE OF SPECIAL ENGINEER
 WASHINGTON, D.C.
 SECTIONING REFERS TO FEDERAL INVENTORY 188

NOTE: See note on Land Schedules for Right of Way widths.

04501



IREDELL COUNTY, N.C.

MOORESVILLE, N.C.

04503

RN# 4503

NOTE: See note on Land Schedules for Right of Way widths.

TRACK NUMBERS REFER TO LCC LIST NOS
RIGHT-OF-WAY AND TRACK MAP

SOUTHERN RAILWAY COMPANY
Operated by the
SOUTHERN RAILWAY COMPANY

WINSTON-SALEM DIVISION
STATION 1285+17 TO STATION 1694+37
SCALE 1:10,000 DEC. 31, 1927

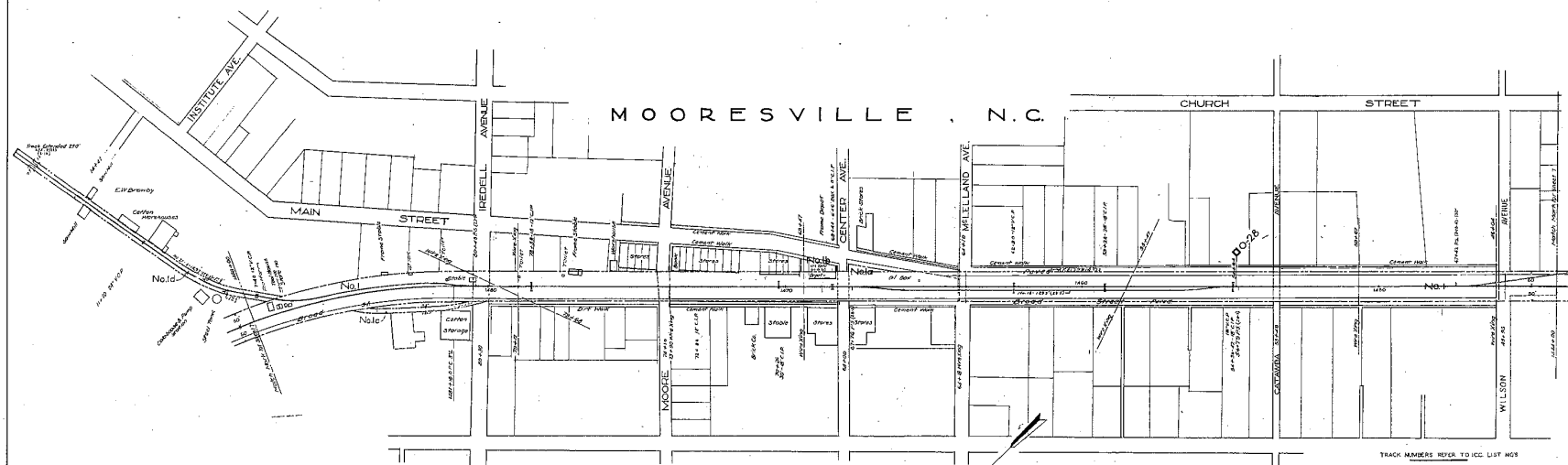
Office of Special Engineer
Washington, D.C.
STATIONING REFERS TO FEDERAL INVENTORY CHAINAGE 304

V-34
7

NOT TO SCALE
Revised 10/10/28

IREDELL COUNTY, N.C.

MOORESVILLE, N.C.



TRACK NUMBERS REFER TO ICC LIST NOS.

STATION MAP

SOUTHERN RAILWAY COMPANY

Operated by the

SOUTHERN RAILWAY COMPANY

WINSTON-SALEM DIVISION

STATION 1424 +00 TO STATION 1466 +00
SCALE 1"=100'-00" FT.

Office of Special Engineer
Winston, N.C.

STATIONING REFERS TO FEDERAL INVENTION CHAINAGE 188

NOTE: See note on Land Schedules for Right of Way widths.

04504

1.34
5.7

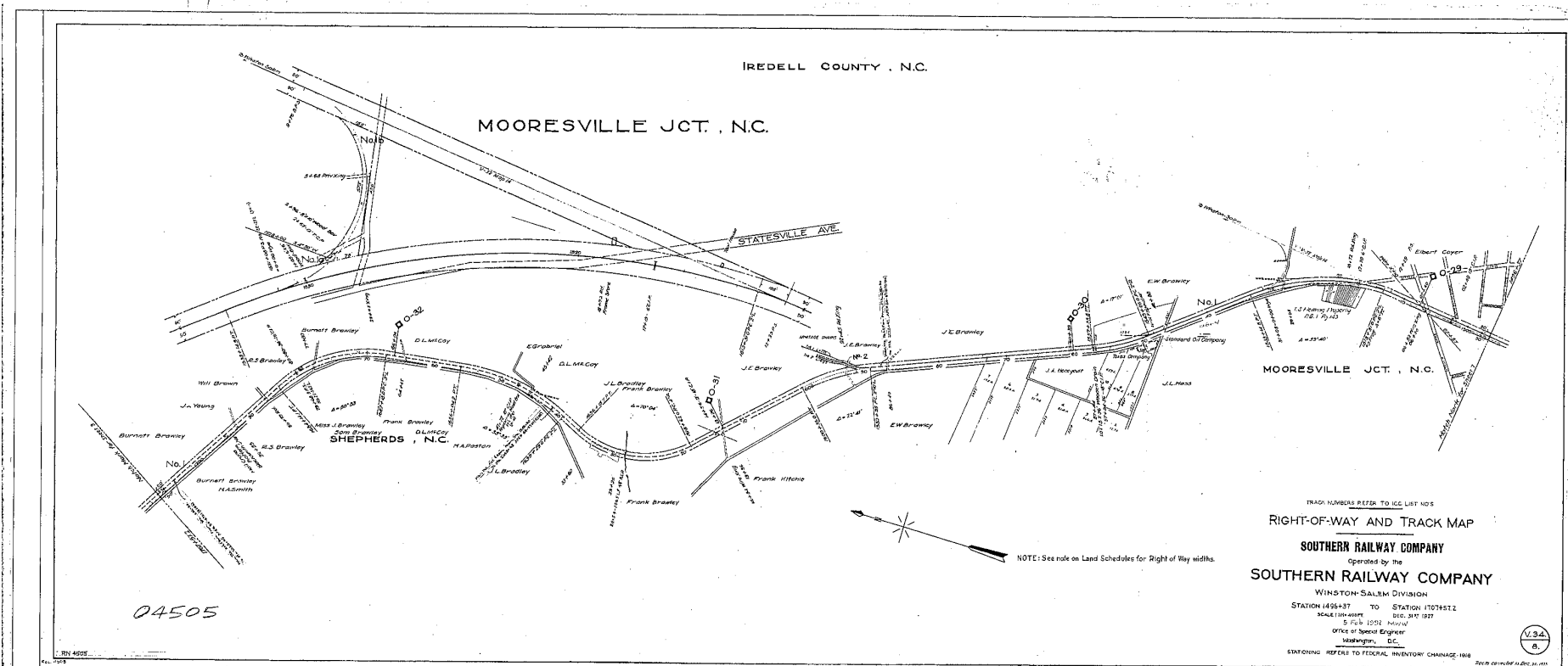


EXHIBIT B
REAL PROPERTY DESCRIPTION

ALL RIGHT TITLE AND INTEREST IN RAILWAY LINE BEING COMMONLY KNOWN AS NORFOLK SOUTHERN RAILWAY COMPANY'S "O-LINE," LYING AND SITUATE IN THE COUNTIES OF MECKLENBURG AND IREDELL IN THE STATE OF NORTH CAROLINA, BEING COMPRISED OF THE RIGHT-OF-WAY FOR MAIN TRACKS, BRANCH LINES, SIDINGS AND OTHER APPURTENANT RAILROAD FACILITIES, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING IN THE CITY OF CHARLOTTE, COUNTY OF MECKLENBURG, STATE OF NORTH CAROLINA, ON OR ABOUT RAILWAY MILE POST 0 0.04+/-, AS DEPICTED ON RAILWAY VALUATION MAP V-34-NORTH CAROLINA/1AS, THENCE CONTINUING ALONG RAILWAY CENTERLINE IN A GENERALLY NORTHERLY DIRECTION WITH A STRIP OF LAND 50 FEET IN WIDTH ON EACH SIDE OF THE CENTERLINE OF TRACK FOR A DISTANCE OF 29.04 MILES +/-, TO A POINT IN THE CITY OF MOORESVILLE, COUNTY OF IREDELL, STATE OF NORTH CAROLINA, AT OR ABOUT RAILWAY MILE POST 0 29.08.

Excluding, however, any property described or agreed to pursuant to Exhibits C and D to the Purchase and Sale Agreement.

EXHIBIT C



EXHIBIT D



Cust #	Other Party	Status	Document Type	City	County	State	Exec Date	Rev Date	Expira tion	Comments	Pre fix	From	To
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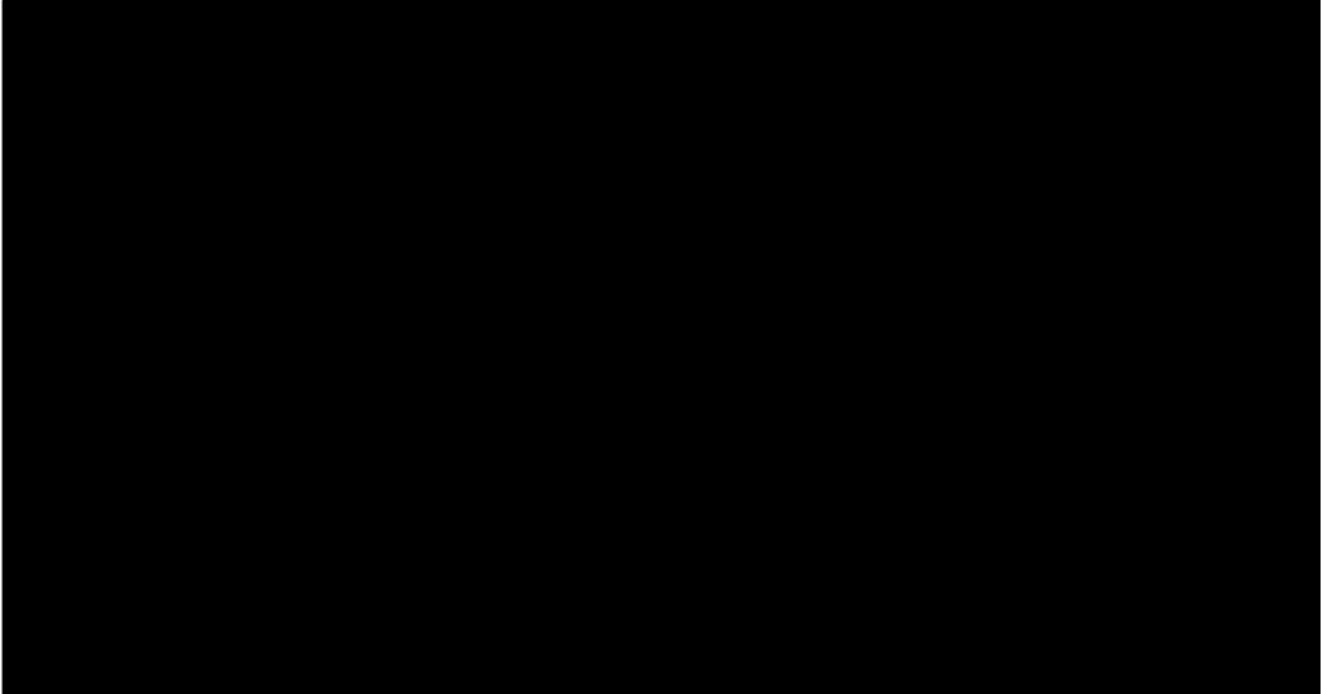
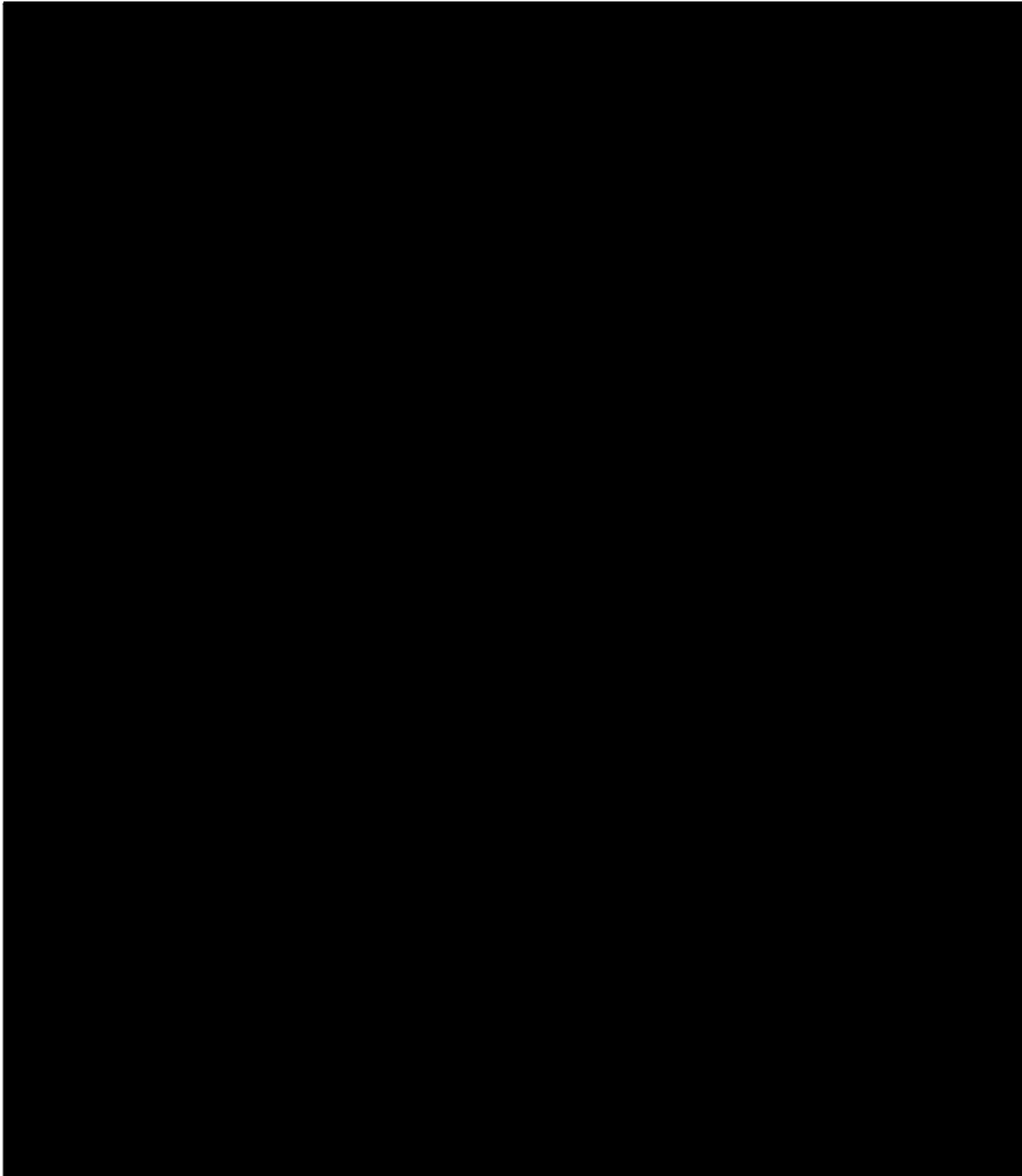
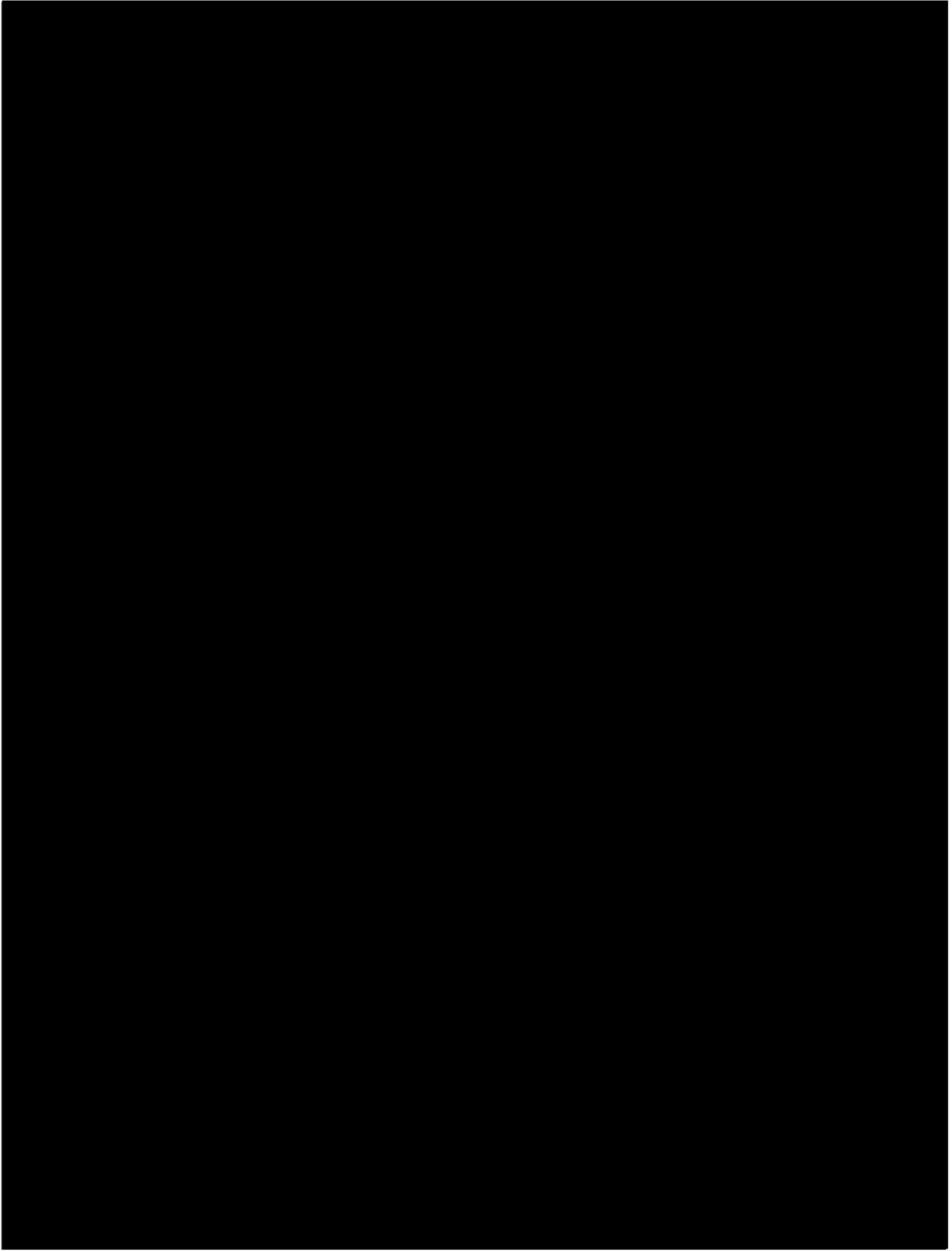


EXHIBIT E





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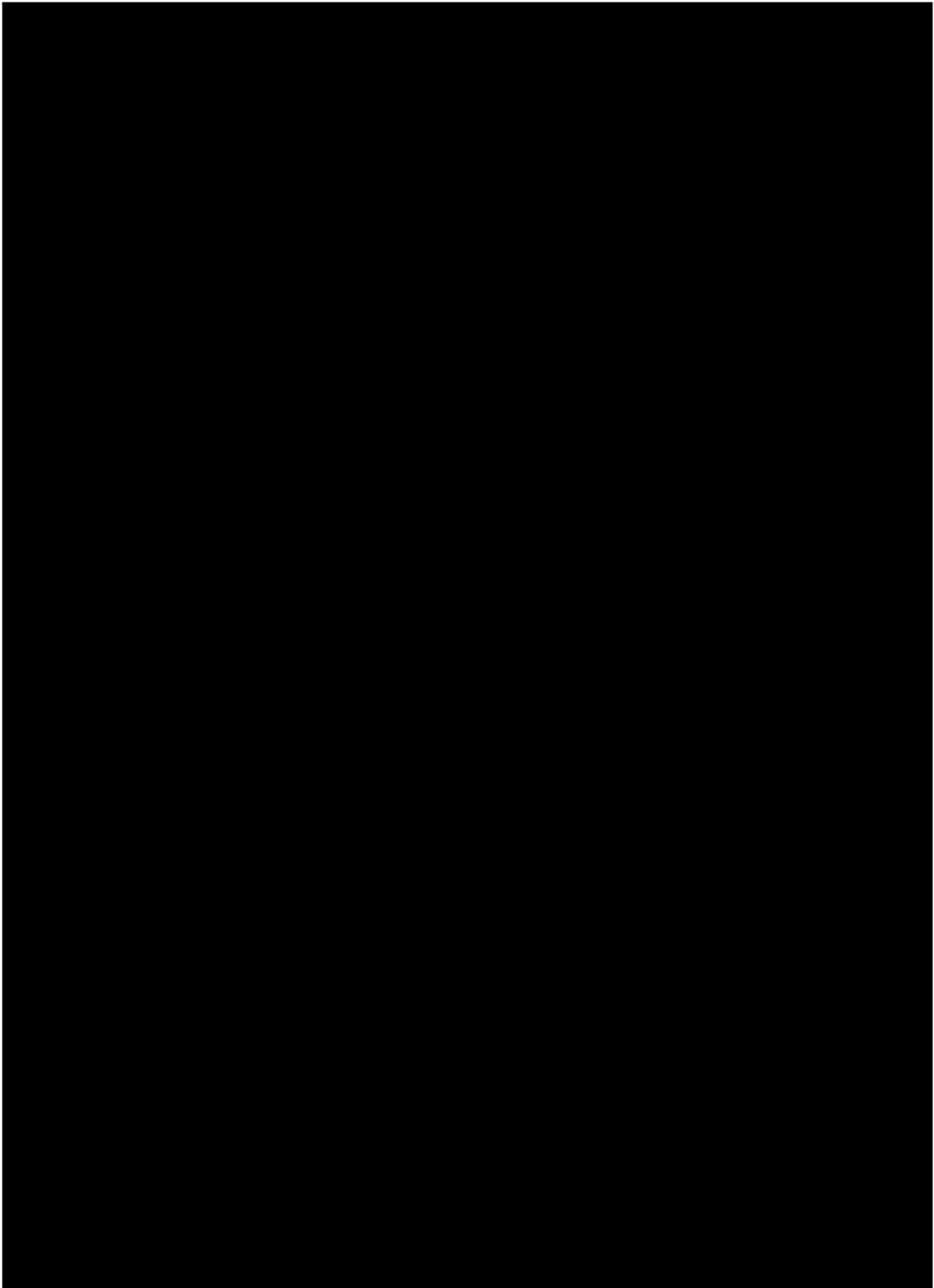
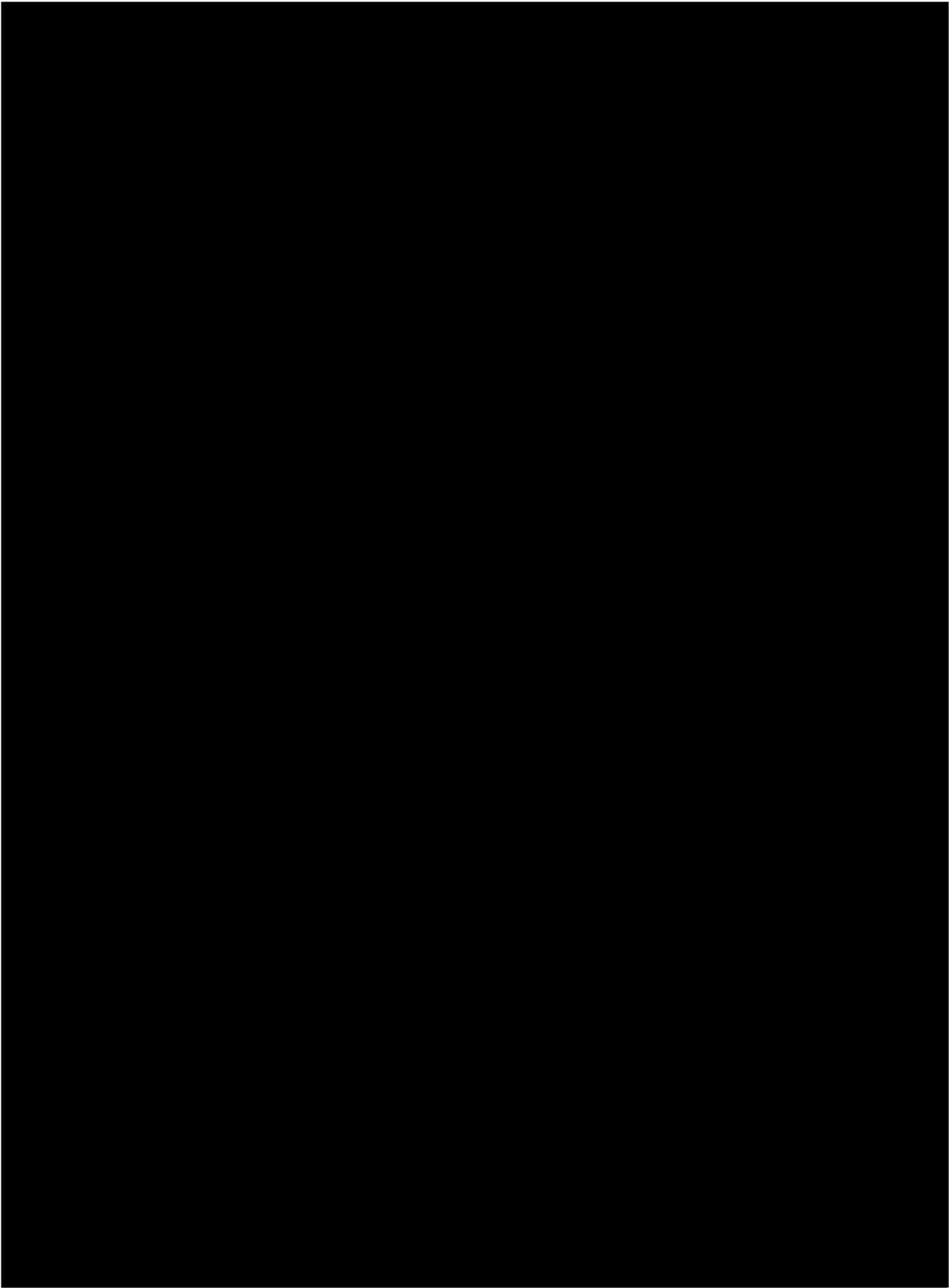
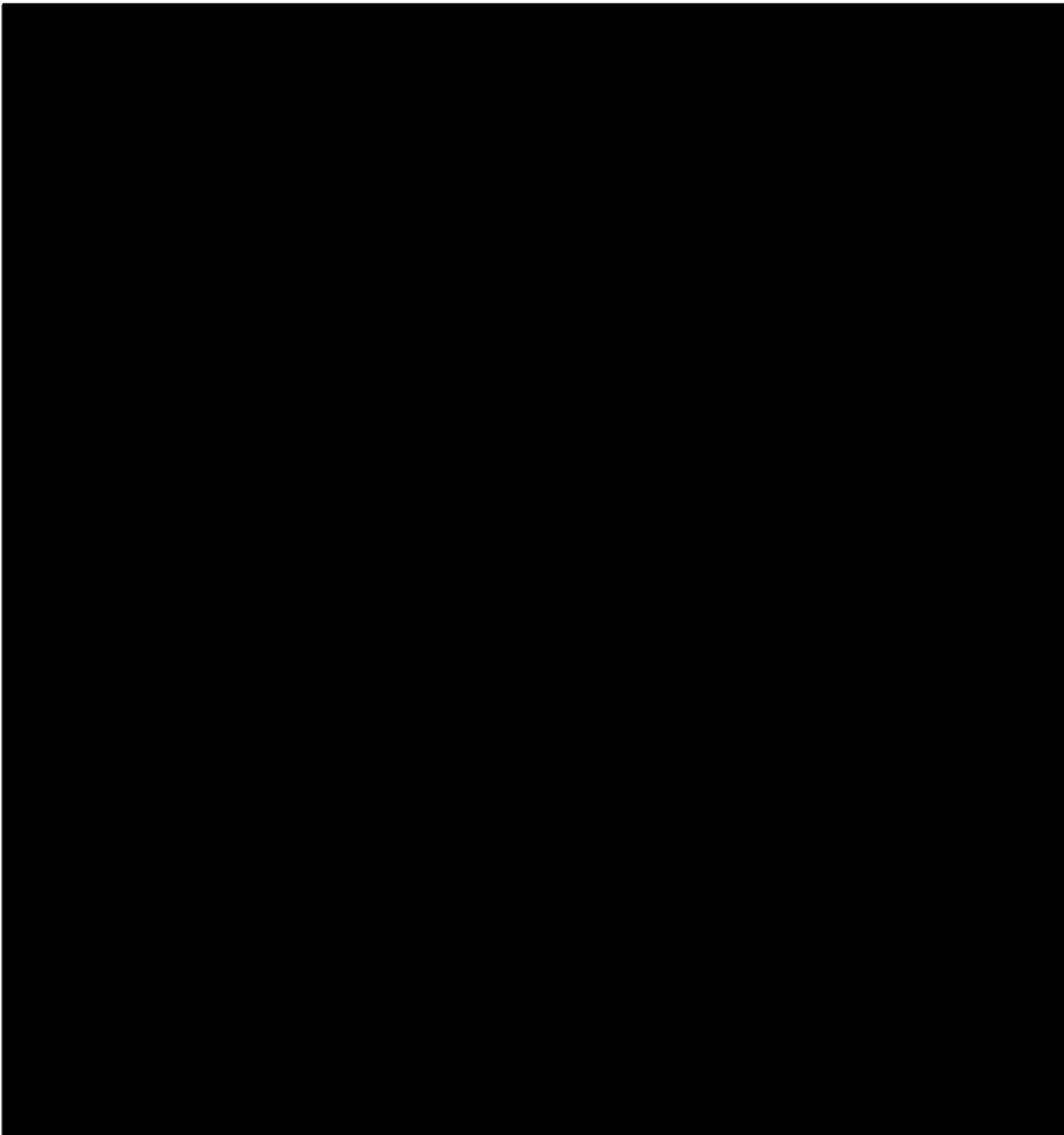


EXHIBIT A
Legal Description

4

EXHIBIT B
Survey





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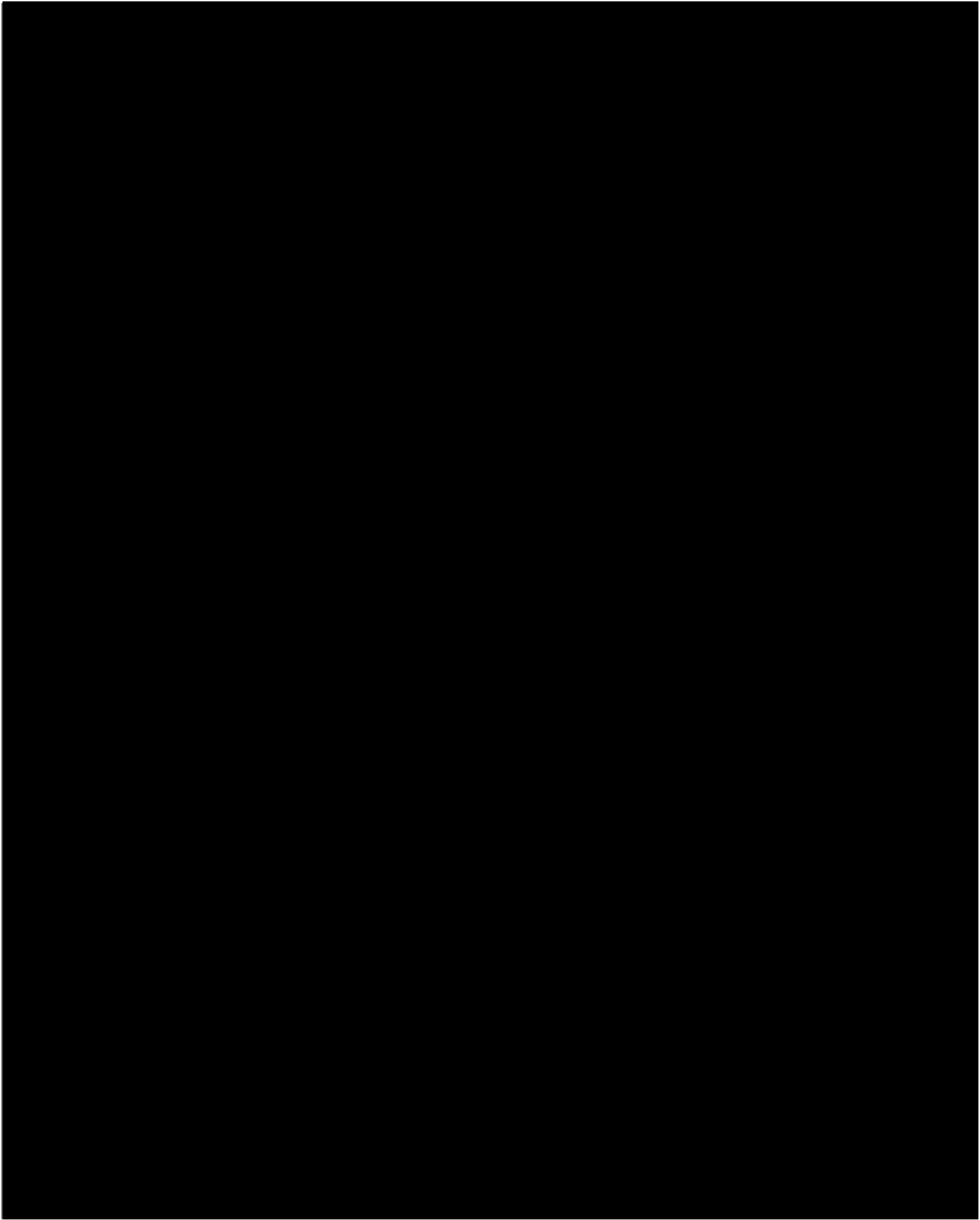
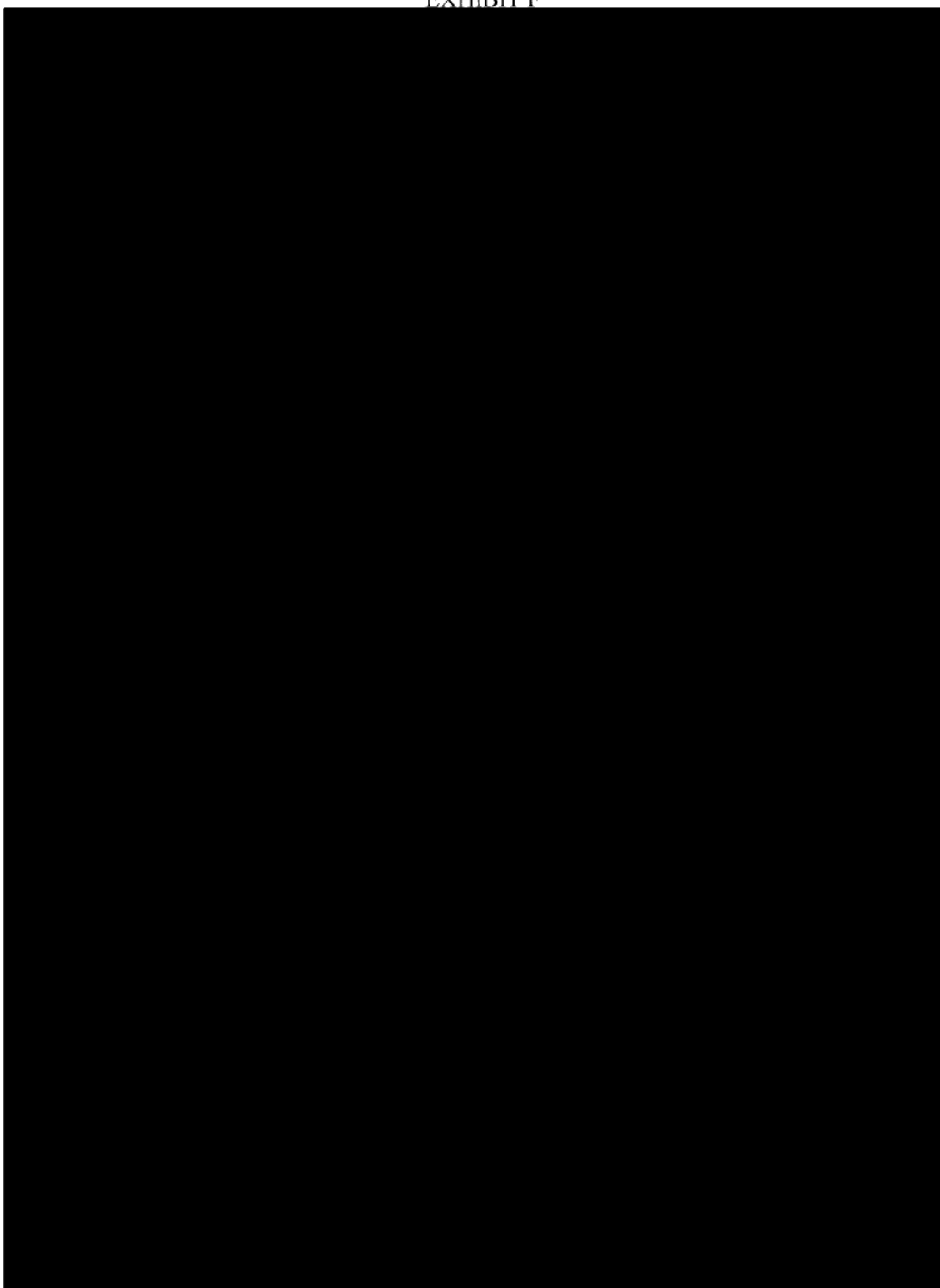
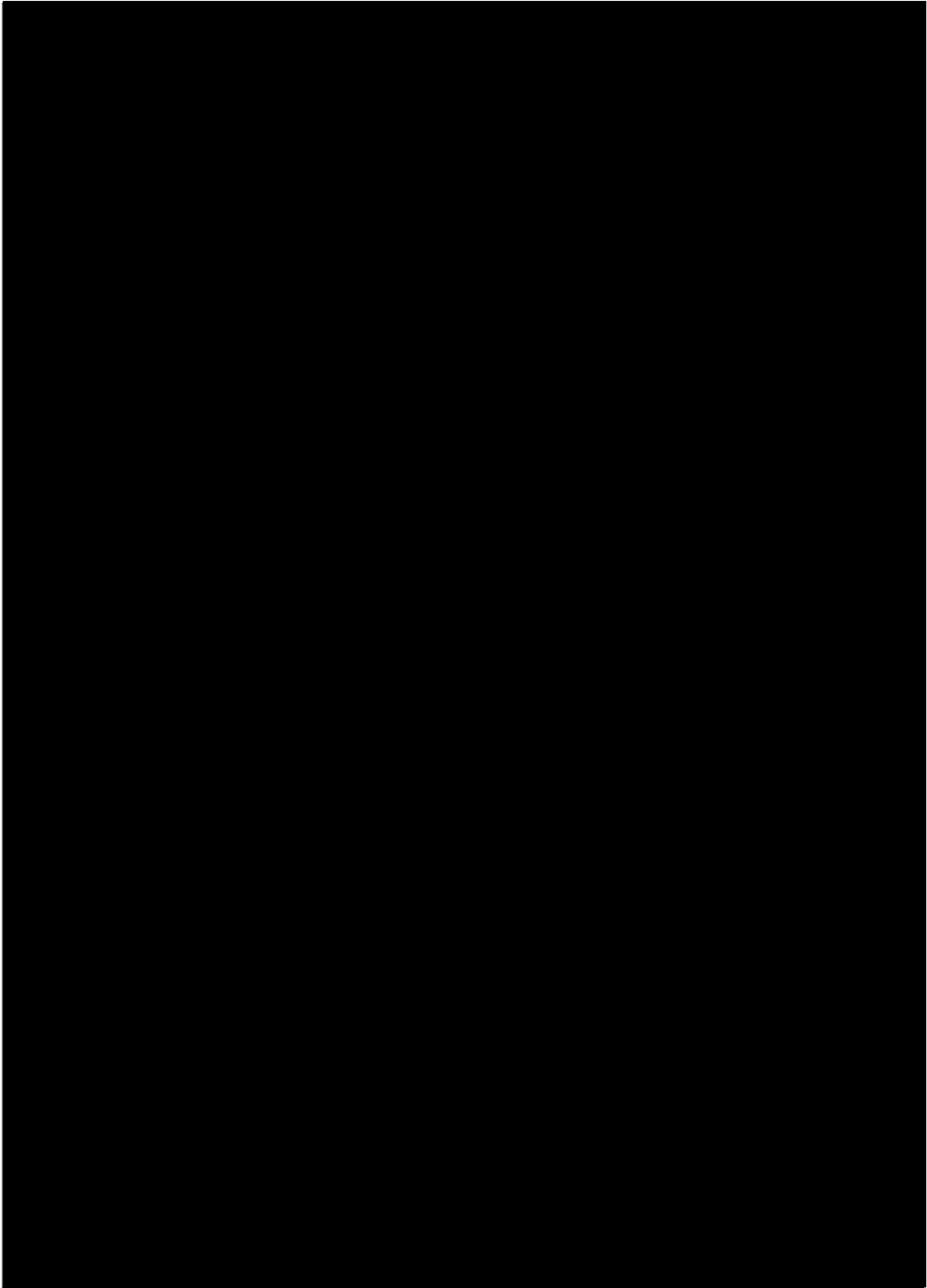


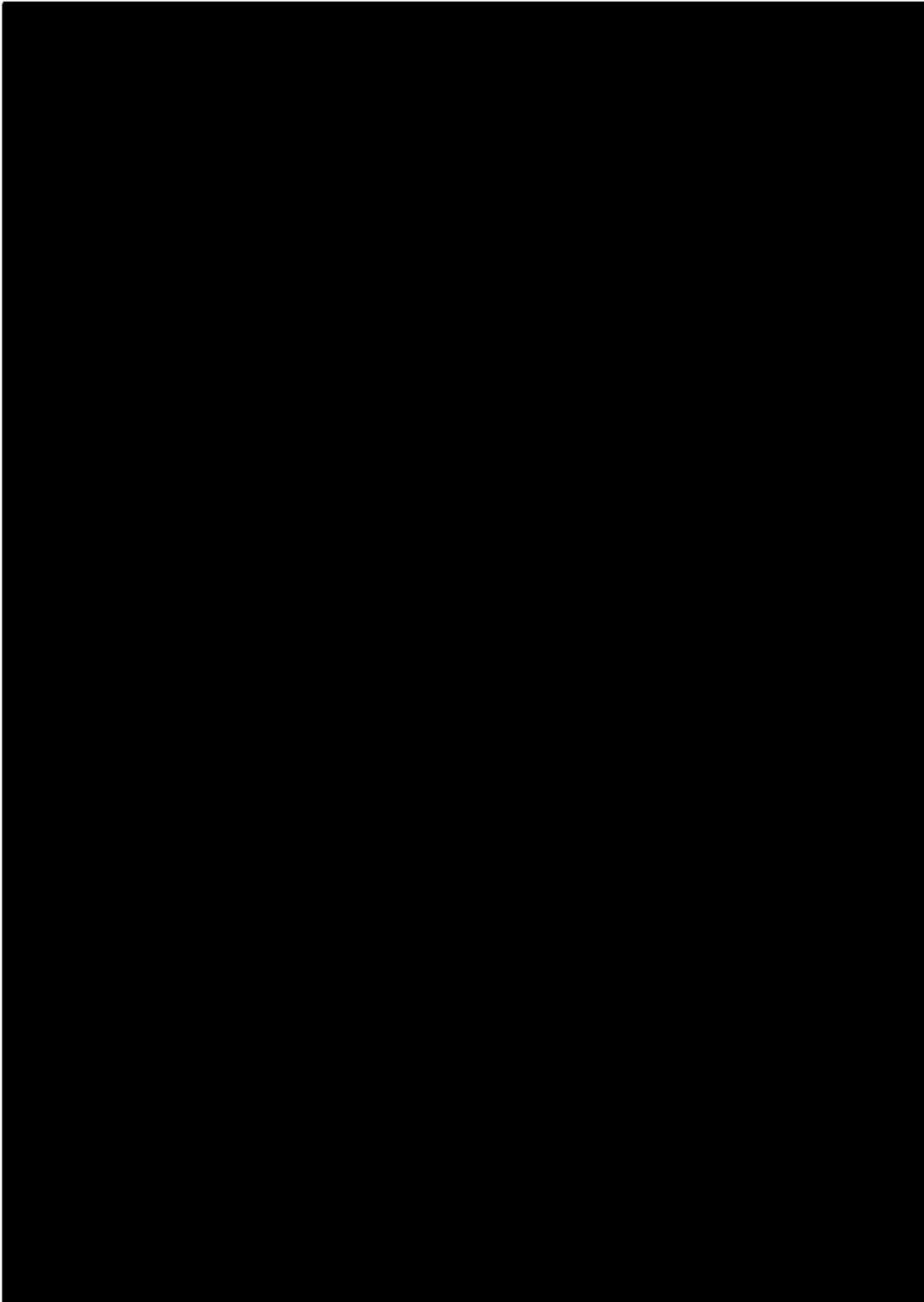
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Legal Description

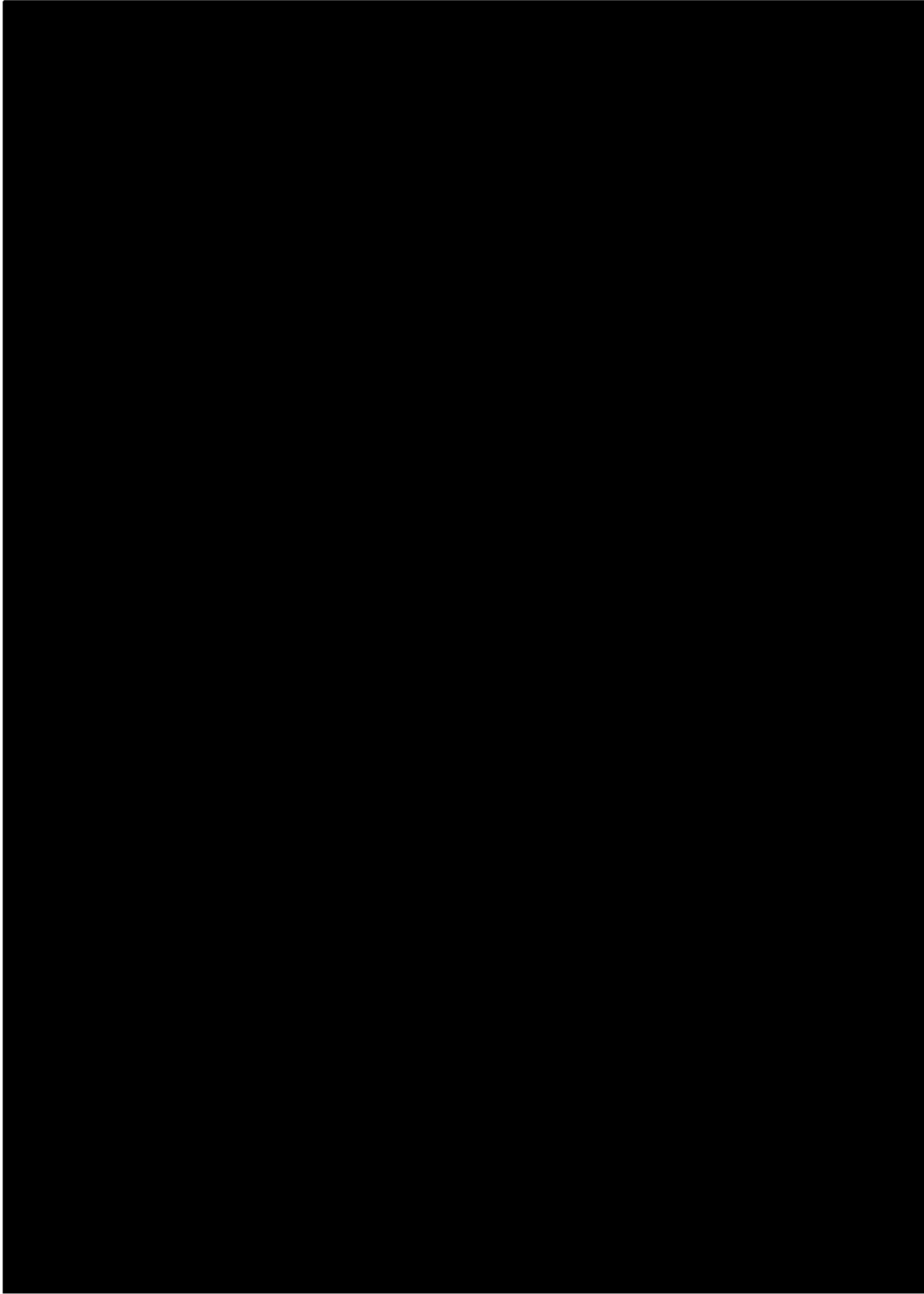
EXHIBIT B
Survey

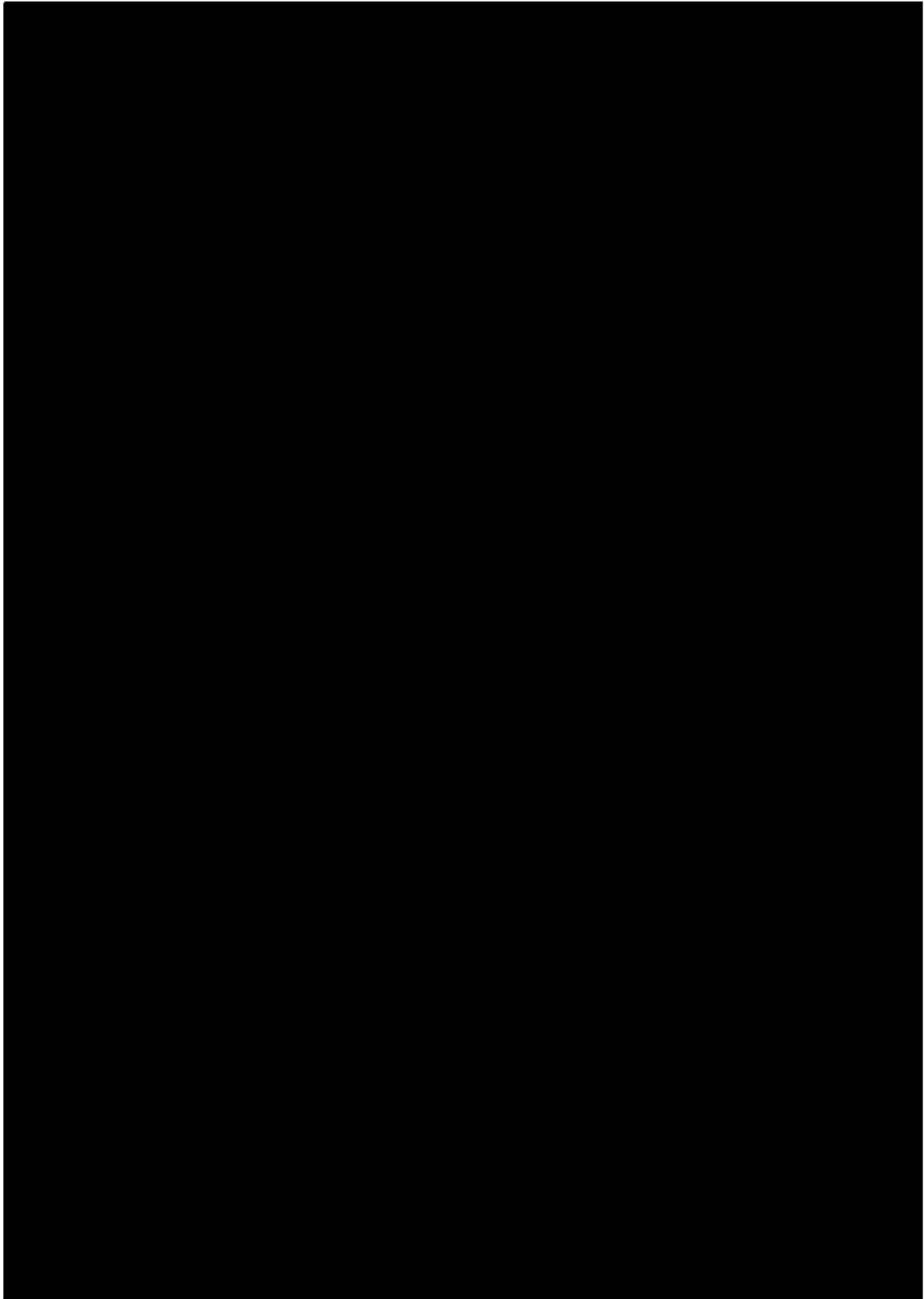
EXHIBIT F

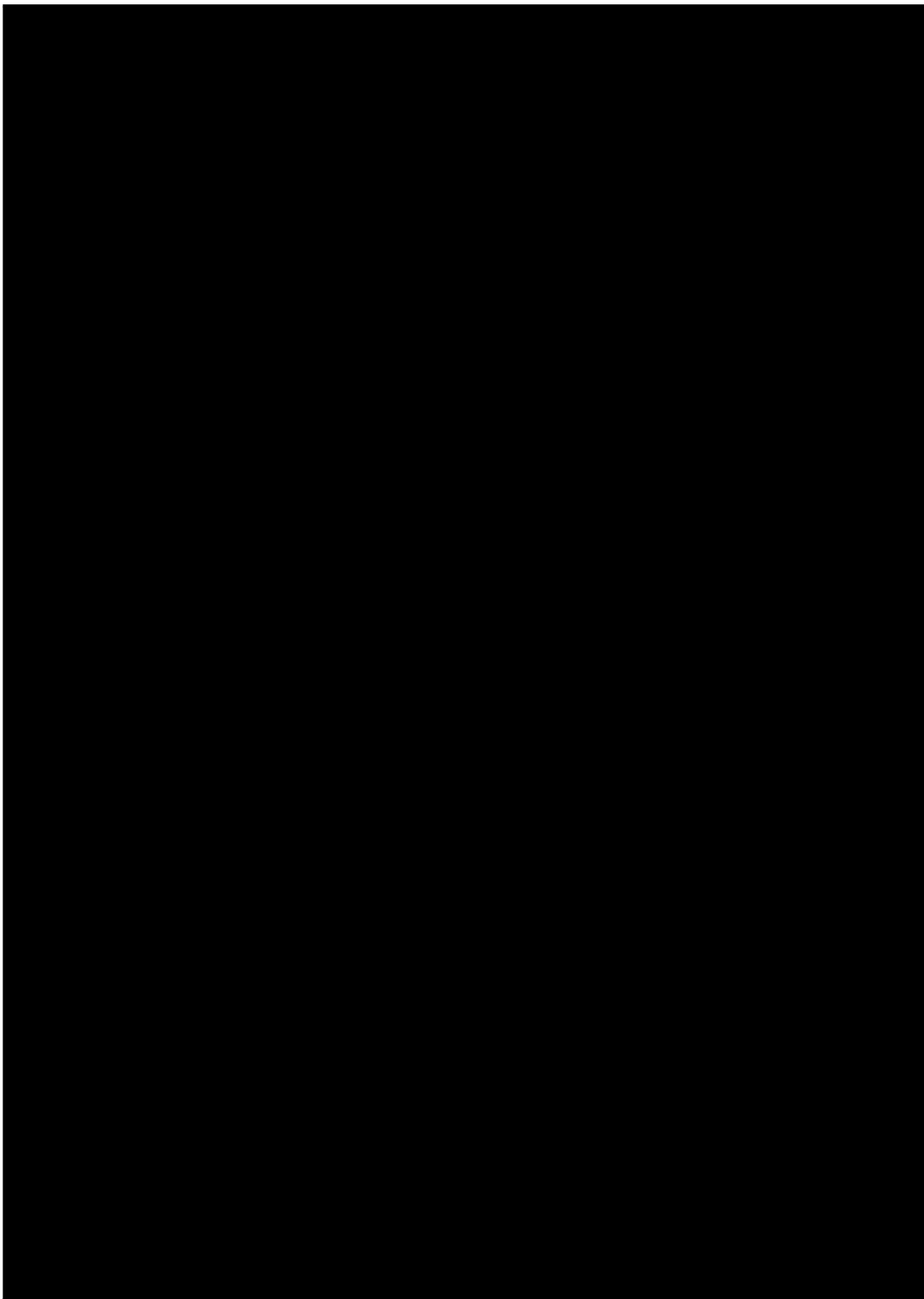


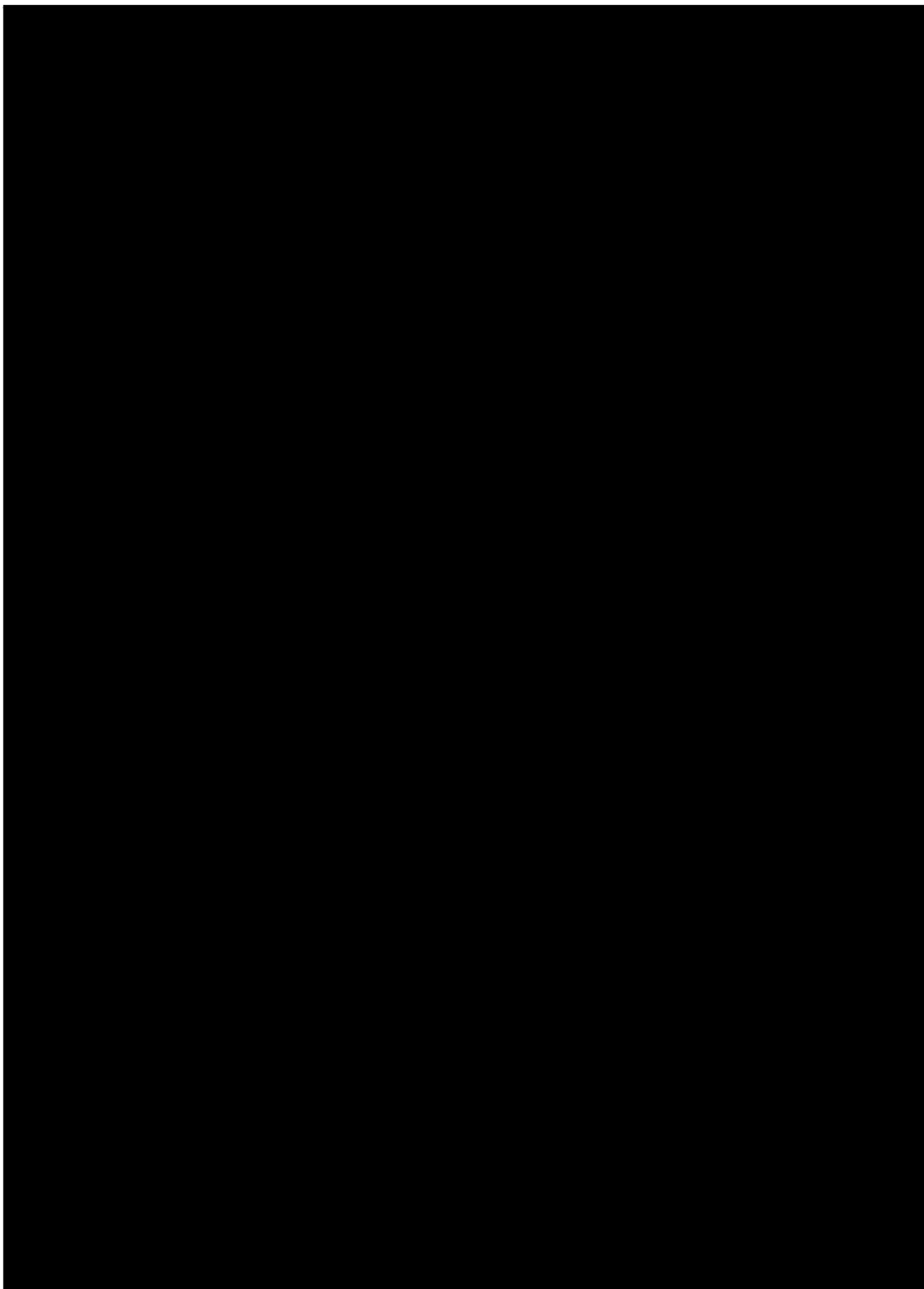


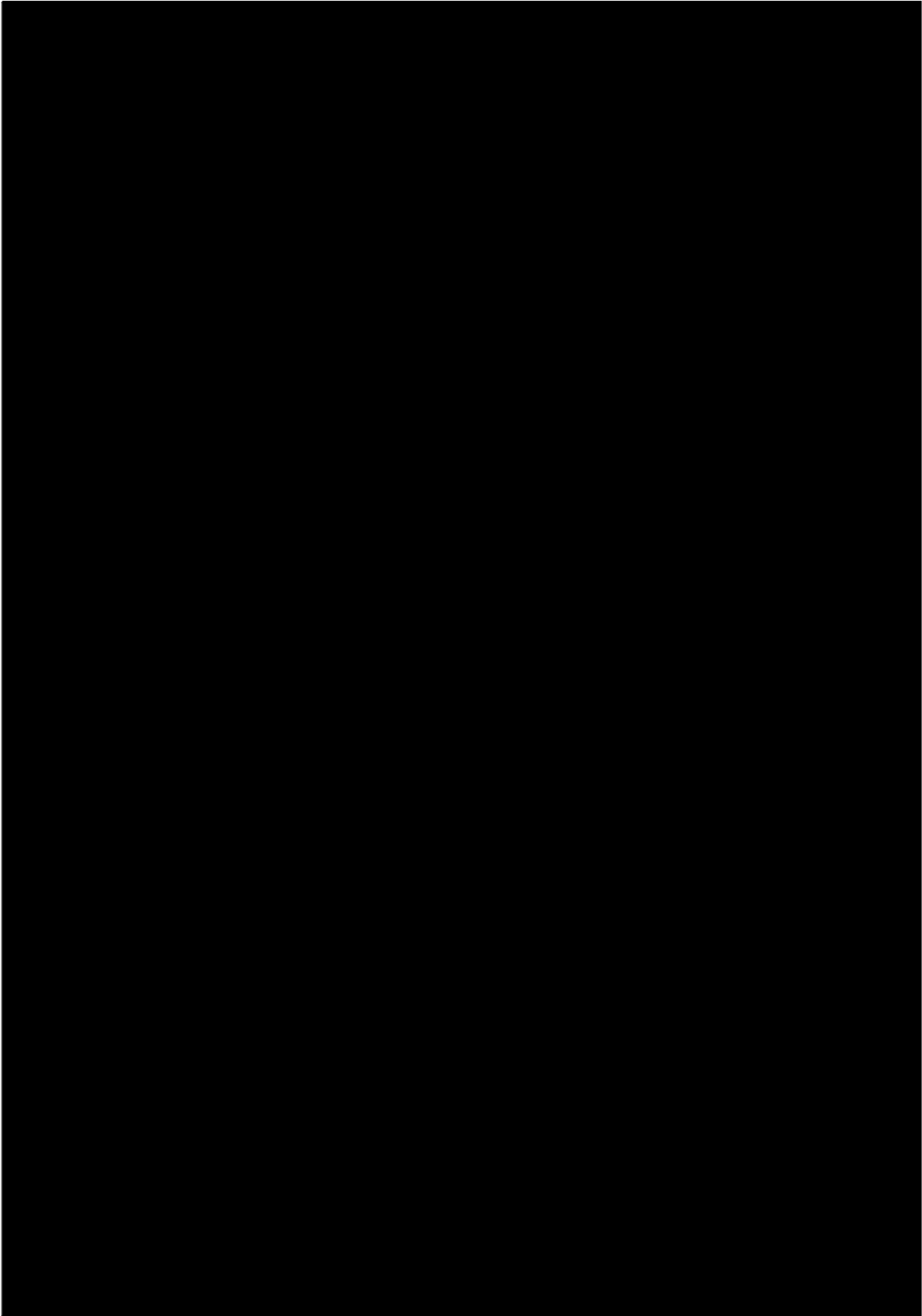


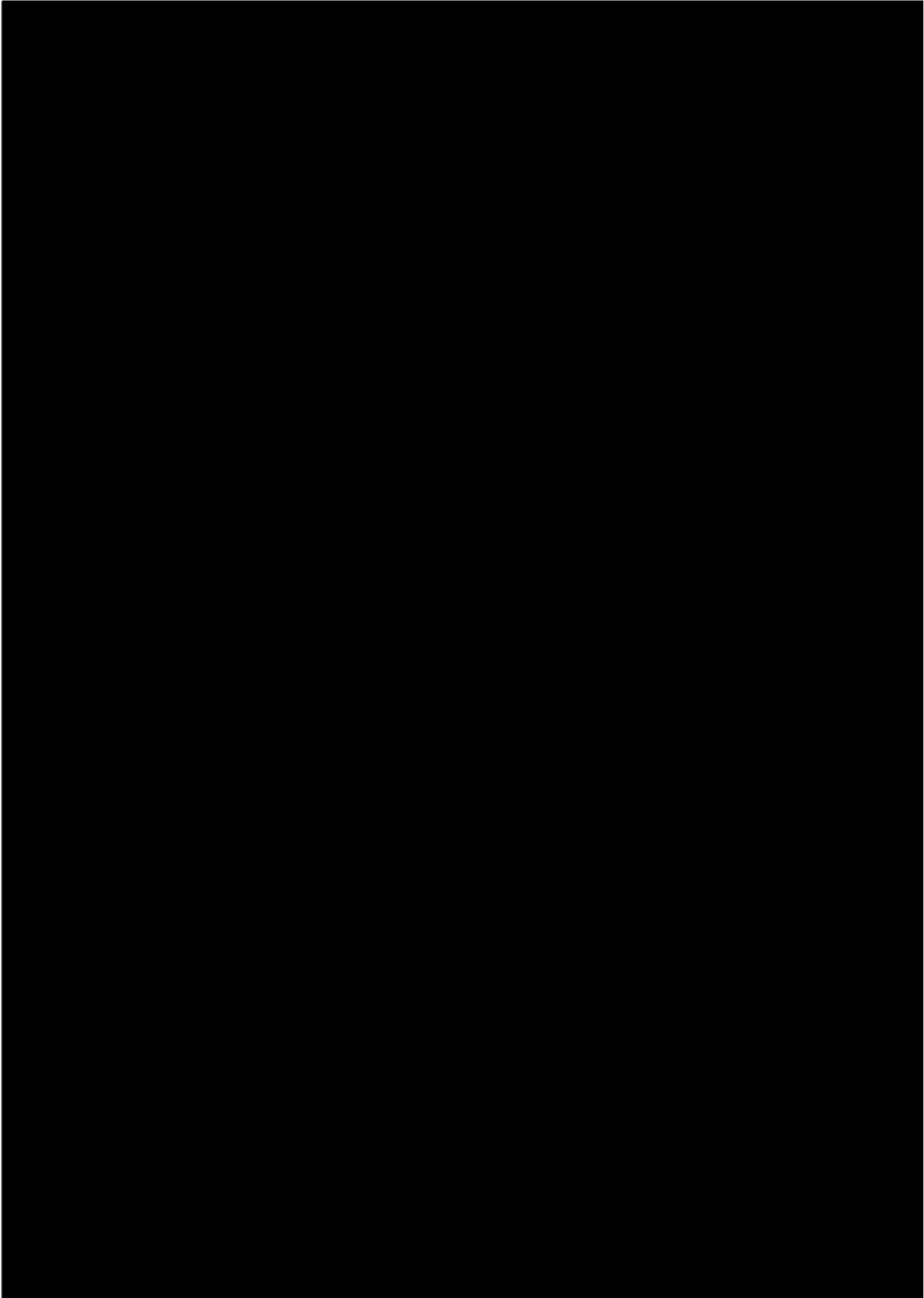


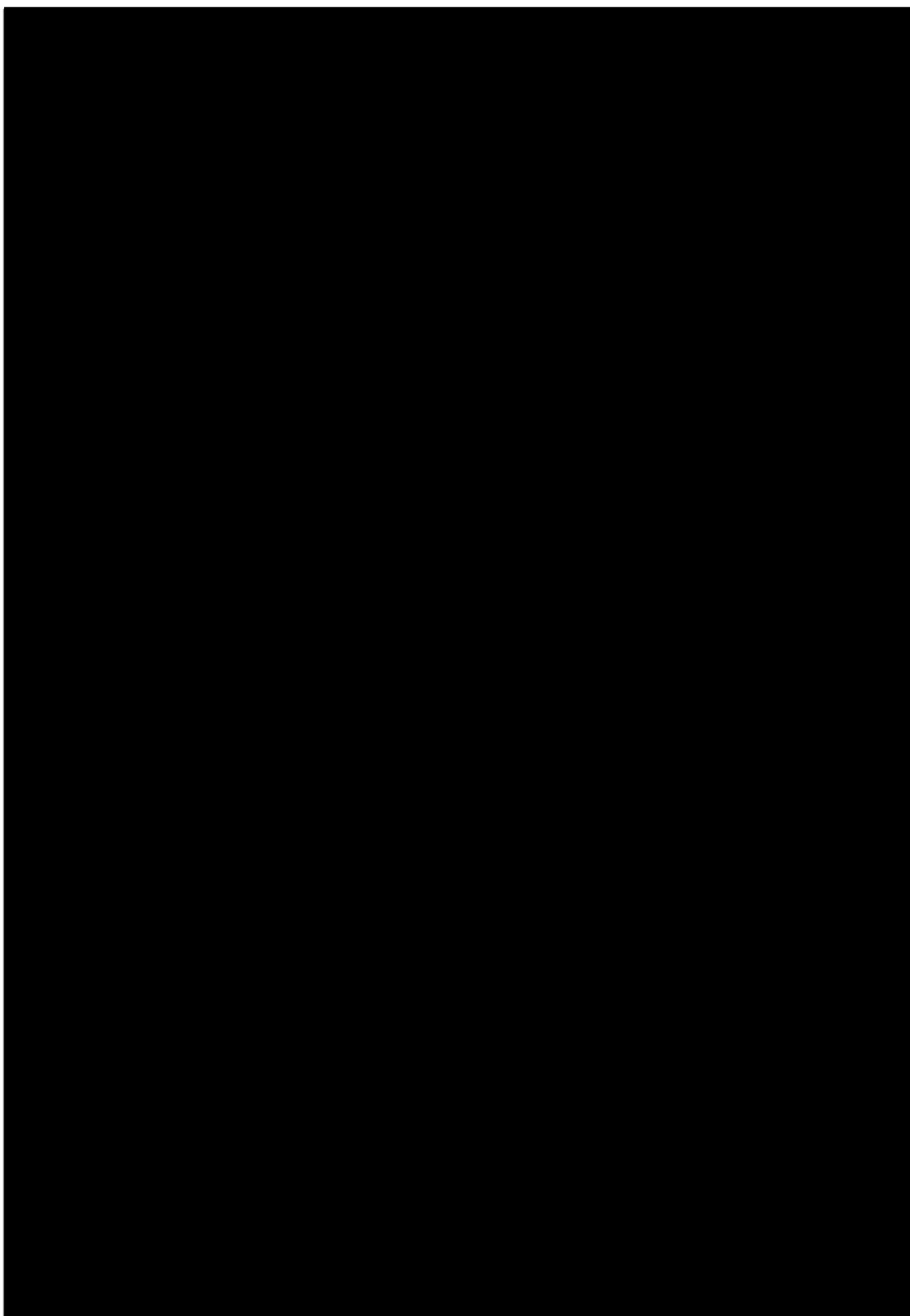


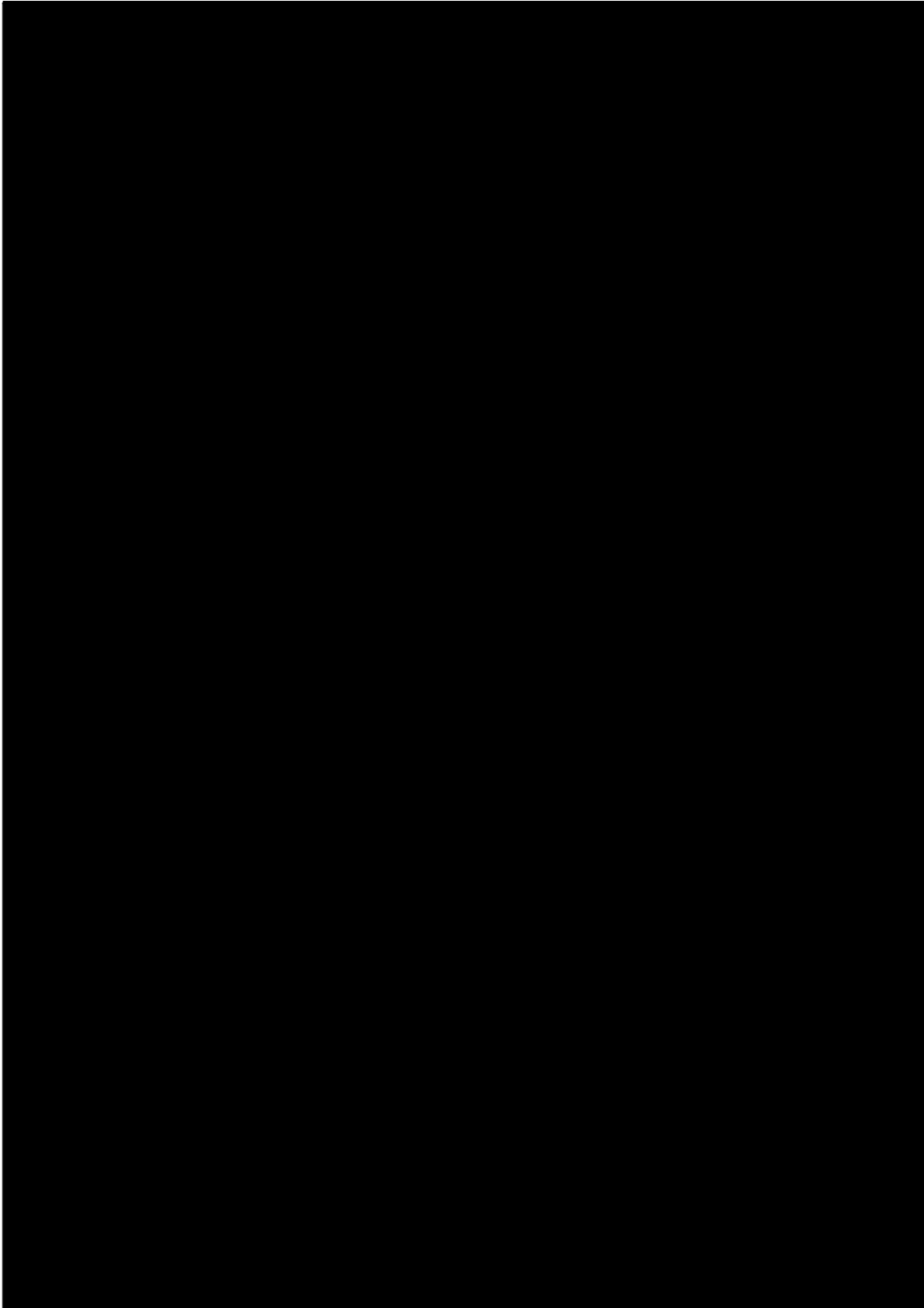


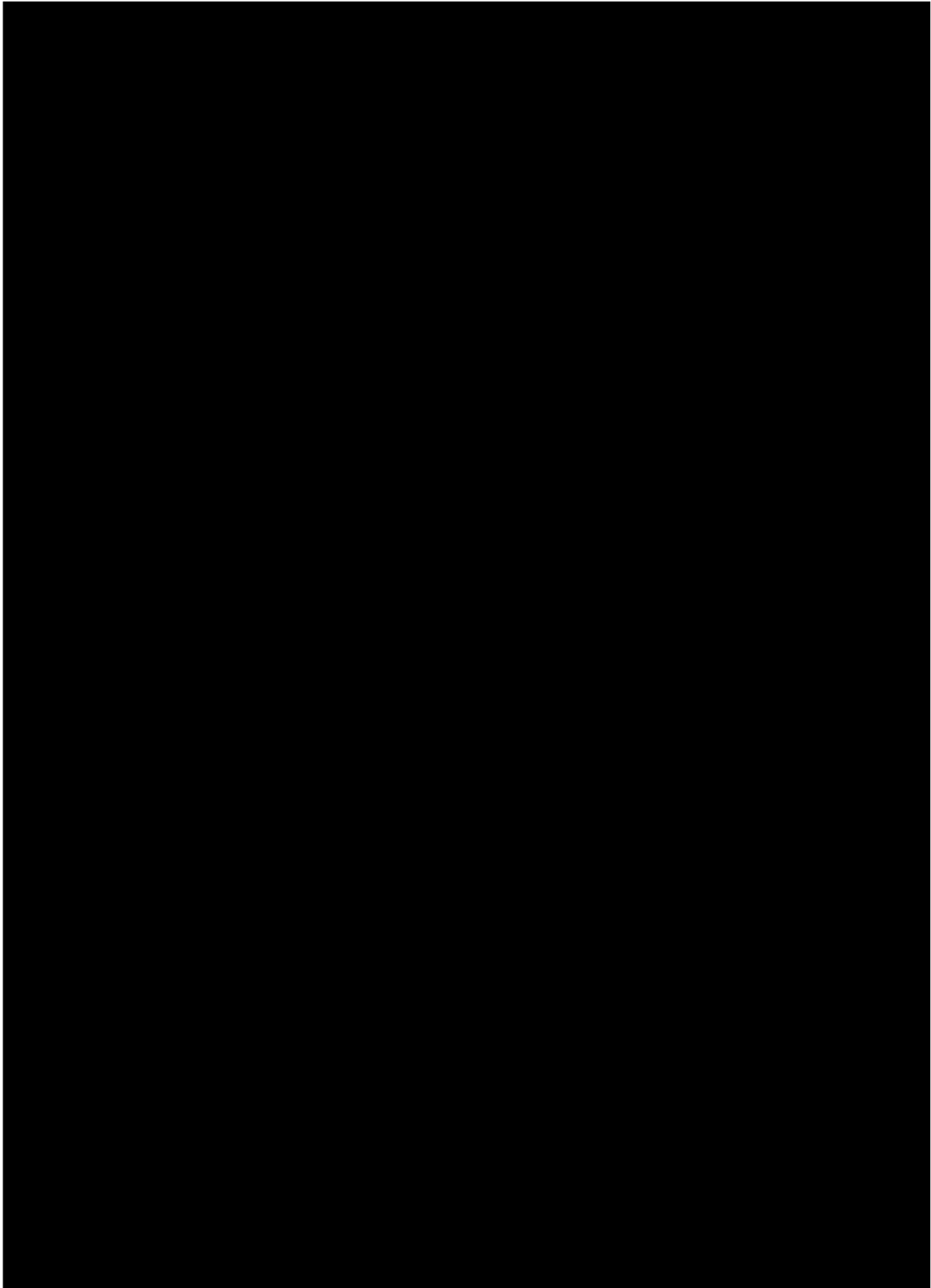


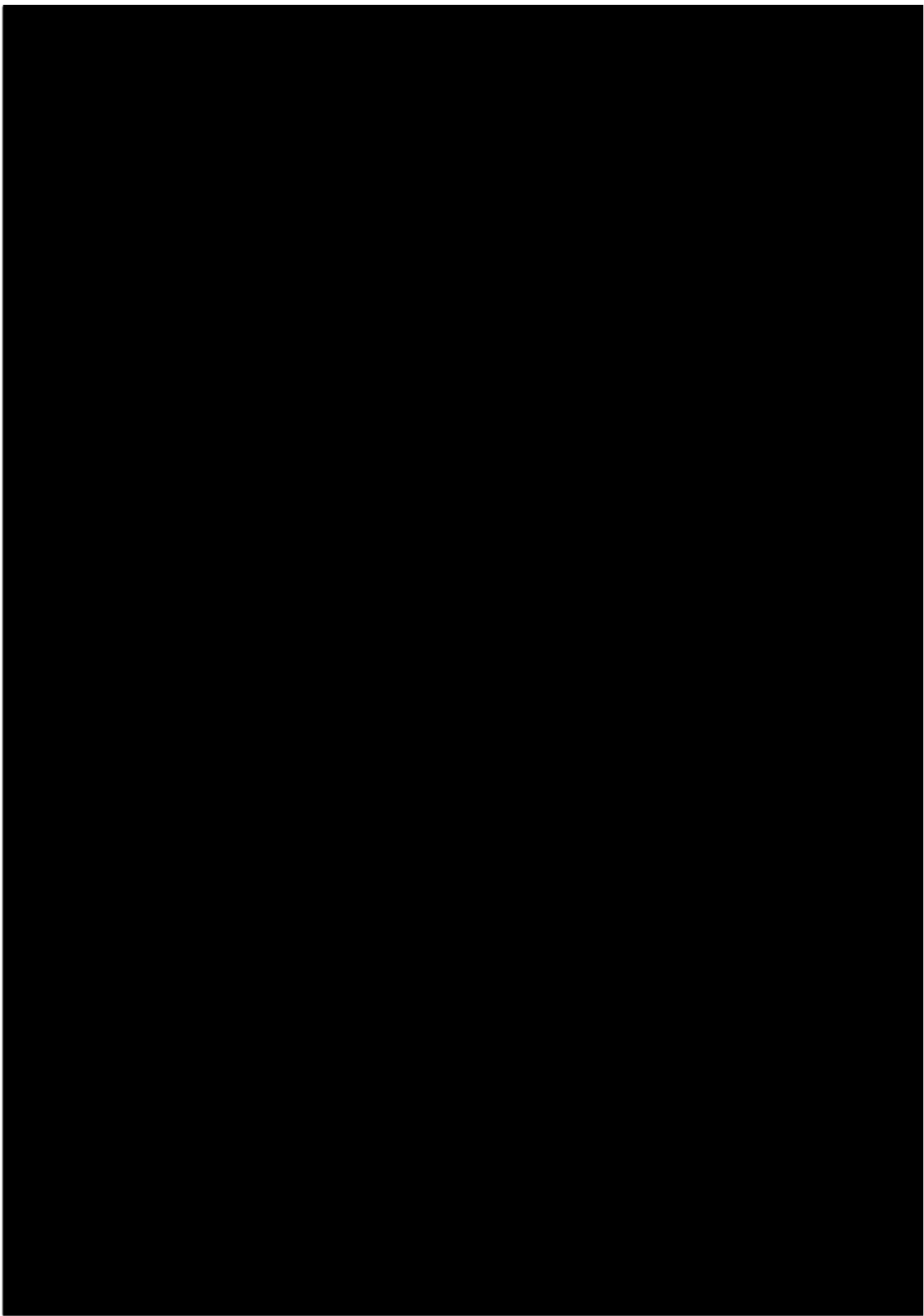


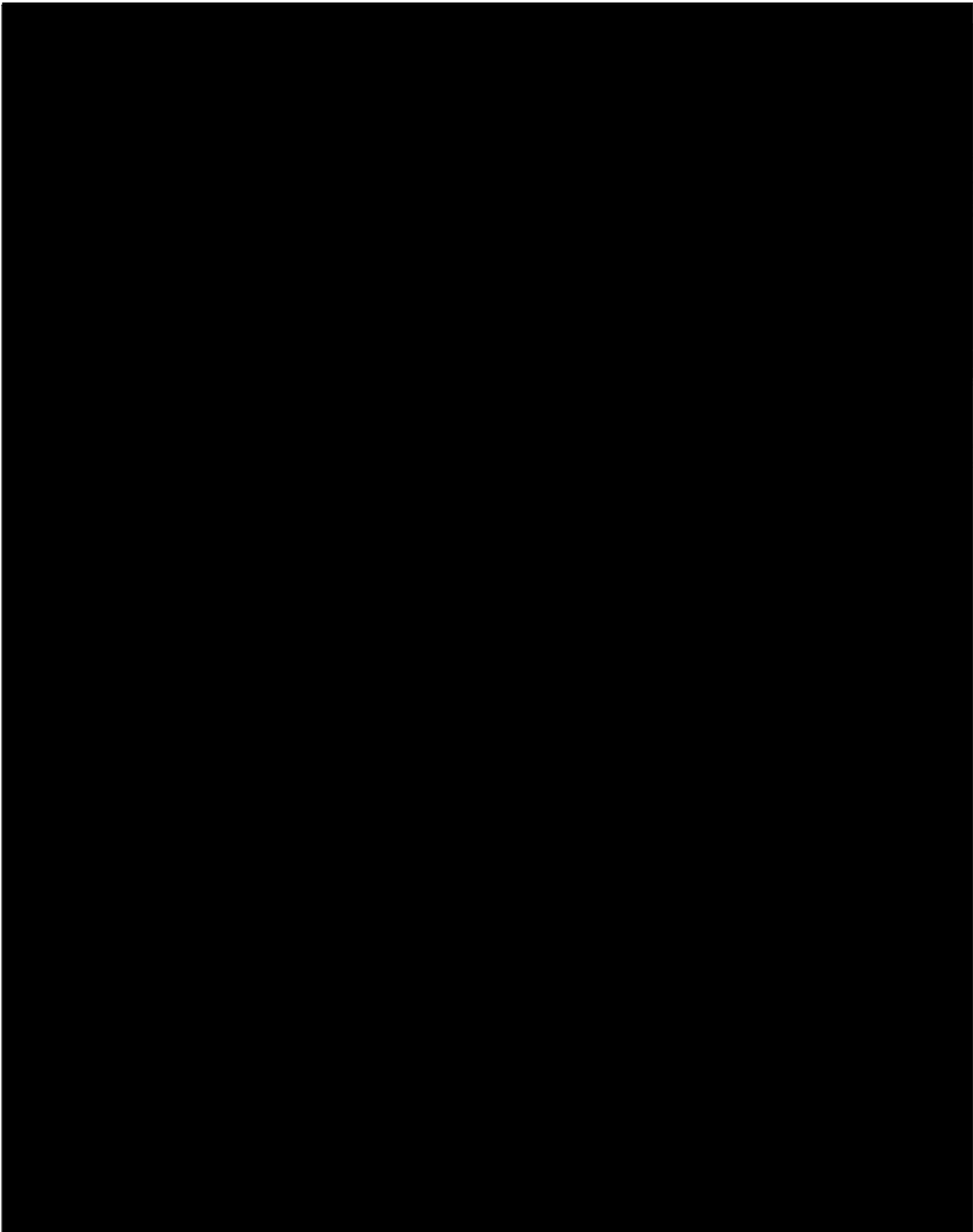












**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36785

**CITY OF CHARLOTTE, NORTH CAROLINA
—ACQUISITION EXEMPTION—
NORFOLK SOUTHERN RAILWAY COMPANY**

EXHIBIT D

DRAFT COMPREHENSIVE RAIL AGREEMENT

PROPRIETARY AND BUSINESS CONFIDENTIAL INFORMATION

COC Draft 6-9-2024

NSR edits 6-7-2024

**COMPREHENSIVE RAIL AGREEMENT BETWEEN
NORFOLK SOUTHERN RAILWAY COMPANY AND
THE CITY OF CHARLOTTE, NORTH CAROLINA**

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DRAFT

COMPREHENSIVE RAIL AGREEMENT

THIS COMPREHENSIVE RAIL AGREEMENT (this “**Agreement**”) is made and entered into as of this [____] day of [●], 2024] (“**Effective Date**”), by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation, (herein referred to as “**NSR**”) and the **CITY OF CHARLOTTE**, a municipality in the State of North Carolina (hereinafter referred to as “**City**”). NSR and City hereinafter sometimes may be referred to collectively as the “**Parties**” or individually as a “**Party**.”

RECITALS

WHEREAS, City and NSR are parties to that certain Contract of Purchase and Sale dated as of March 26, 2024 (the “**Primary PSA**”), a full copy of which is included in Exhibit B hereto and made a part hereof, pursuant to which City has agreed to purchase from NSR, and NSR has agreed to sell to City, certain railroad assets, including right-of-way, structures, track, signals, fixtures, and other track materials along and within a corridor extending between the City of Charlotte, Mecklenburg County, State of North Carolina, and the Town of Mooresville, Iredell County, State of North Carolina, consisting of the assets of a rail line designated by NSR as the “**O-Line**,” located between a point of connection at or about MP O-0.04, situated near W 9th Street, Charlotte, NC, to MP O-29.08 in Mooresville, NC, being further defined in the Primary PSA as the Premises and defined herein as the “**Purchased O-Line**”;

WHEREAS, City and NSR are [REDACTED]

WHEREAS, the Parties desire to enter into this Agreement pursuant to Section 7(f) of the Primary PSA and [REDACTED] as a condition to Closing;

WHEREAS, City desires to commence Commuter Rail Service on the Purchased O-Line and over certain other railway assets currently owned by or under the primary control of NSR, located between [REDACTED] and a point of connection at or near MP O-0.04, near W 9th Street, Charlotte, NC (such NSR assets the “**Charlotte-POC Segment**”);

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

Article 1. Definitions; Incorporation

1.1 Definitions

All capitalized terms used in this Agreement and not otherwise expressly defined in this Agreement, the Primary PSA, or [REDACTED] shall have the respective meanings set forth in Exhibit A.

1.2 Incorporation

Each of the foregoing recitals is incorporated herein as if the contents thereof were set out in full herein. Attached hereto and forming an integral part of this Agreement are Exhibits A – L, all of which are incorporated into this Agreement as fully as if the contents thereof were set out in full herein at each point of reference thereto.

Article 2. Purchase Price and Easement

2.1 Purchase Price

The final purchase price under the Primary PSA for the Purchased O-Line is [REDACTED]. This Section 2.1 shall serve as the Price Statement as defined in the Primary PSA.

2.2 Freight Easement

As set forth in the Primary PSA, NSR reserves, via the Deed, a freight easement for NSR's continued use and operation of a freight railroad across the Purchased O-Line after Closing ("**Freight Easement**"). The Freight Easement shall not extend to modifications and improvements to the Purchased O-Line installed by and at the cost of the City that are specifically identified by the City from time to time, such as passenger station tracks or passenger train overnight and service facilities ("**Commuter Exclusive Use Property**"). City shall not sell or otherwise dispose of any portion of the Purchased O-Line in a manner that diminishes the Freight Easement and/or Freight Rail Service rights of NSR without prior written approval of NSR.

Article 3. Representations and Warranties; Condition Precedent to Closing

3.1 NSR's Representations

NSR hereby represents and warrants to City, as of the Effective Date and the Closing Date, as follows:

- (a) *Knowledge of NSR.* As used herein and elsewhere in this Agreement, the phrase "actual knowledge of NSR" or similar reference shall refer to the actual knowledge as of the Effective Date and the Closing Date of (i) Jennifer Schilke with respect to the representations in subsection (b) below; (ii) Kristi Glahn with respect to the representations in subsections (c), (d) and (k) below; (iii) Thomas Zoeller with respect to subsection (h) below; and (iv) David Lehlbach with respect to subsection (i) and (j) below after reasonable inquiry with regard to such representations (which reasonable inquiry shall be limited to review of internal documents in the actual possession of NSR and with NSR personnel that have actual knowledge with regard to such representations).
- (b) *Assessments.* To NSR's actual knowledge, no assessments have been made against the Purchased O-Line or [REDACTED] that are unpaid (except ad valorem taxes for the current year), whether or not they have become liens.

PROPRIETARY AND BUSINESS CONFIDENTIAL INFORMATION

- (c) *Boundary Lines of Land.* To NSR's actual knowledge, there is no pending litigation or dispute concerning the location of the lines and corners of the Purchased O-Line or [REDACTED].
- (d) *No Condemnation.* To NSR's actual knowledge, there is no pending (or to NSR's actual knowledge, threatened) condemnation, expropriation, eminent domain, change in grade of public street or similar proceeding affecting all or any portion of the Purchased O-Line or [REDACTED].
- (e) *Authorization.* NSR has taken all necessary corporate action to authorize the execution of this Agreement, and those Persons executing this Agreement on behalf of NSR, are authorized to do so; provided, however, that no officer, director, shareholder, beneficial owner, agent or employee of NSR shall be personally liable for any obligation hereunder.
- (f) *Good Standing.* NSR is a duly organized and validly existing corporation under the Laws of the State of North Carolina and duly authorized and registered to transact business in the State of North Carolina.
- (g) *Binding.* This Agreement is a legal, valid, and binding agreement of NSR, enforceable against NSR in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or other similar Laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law).
- (h) *No Violation.* Entering into this Agreement by NSR is not a violation of any applicable Law or order.
- (i) *No Consummated Abandonment.* To NSR's actual knowledge, there have been no consummated abandonments, as that term is used in the Interstate Commerce Commission Termination Act of 1995, concerning the mainline trackage of NSR that are located on the Purchased O-Line.
- (j) *Trackage Rights Agreements.* To NSR's actual knowledge, the list of NSR Trackage Rights Agreements contained in Exhibit H are all of the Trackage Rights held by other rail carriers on the Purchased O-Line or [REDACTED] as of the Effective Date.
- (k) *Assigned Agreements and Instruments.* To NSR's actual knowledge, NSR is not a party to any pending litigation alleging a material breach of any agreement or instrument that will be assigned to City.
- (l) *Disclaimer.* Other than as expressly set forth in this Agreement, the Primary PSA, [REDACTED], or other agreements between the parties related to the Purchased O-Line or [REDACTED], NSR has not and does not hereby make any express or implied representation or warranty or give any indemnification of any kind to City concerning the Purchased O-Line or [REDACTED].

3.2 City's Representations

City hereby represents and warrants to NSR, as of the Effective Date and at the Closing Date, as follows:

- (a) *Binding.* This Agreement is a legal, valid and binding agreement of City, enforceable against City in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law).
- (b) *No Violation.* Entering into this Agreement by City is not a violation of any applicable Law or order.
- (c) *Authorization.* City has taken all necessary action to authorize the execution of this Agreement, and those Persons executing this Agreement on behalf of City are authorized to do so; provided, however, that no officer, director, beneficial owner, agent or employee of City shall be personally liable for any obligation hereunder.
- (d) *Disclaimer.* Other than as expressly set forth in this Agreement, the Primary PSA, [REDACTED], or other agreements between the parties related to the Purchased O-Line or [REDACTED], City has not and does not hereby make any express or implied representation or warranty or give any indemnification of any kind to NSR concerning the Purchased O-Line or [REDACTED].

3.3 Survival and Breach of Representations

NSR's and City's representations and warranties in this Article 3 shall survive until the sixth anniversary of the Closing Date. Any Claims related to breaches of representations and warranties in this Article 3 must be (a) based on a material breach of a representation or warranty and (b) made on or prior to the sixth anniversary of the Closing Date.

3.4 Condition Precedent to Closing

City and NSR agree as a precondition to Transaction Closing to take all reasonably necessary steps to secure favorable review and disposition from the Surface Transportation Board in accordance with Sections 12 and 13 of the PSA.

Article 4. Rail Services

4.1 Commuter Rail Service

- (a) Upon and after the completion of: (i) the Initial Charlotte Improvements, as described in Exhibit E and (ii) the Initial O-Line Improvements as described in Exhibit F, City shall have the right to provide or cause to be provided Commuter Rail Service by a City Operator over the Purchased O-Line and the Charlotte-POC

Segment (together, the Purchased O-Line and the Charlotte-POC Segment referred to as the “**Corridor**”), subject to NSR Operating Rules and the terms and conditions of this Agreement and the Operating Schedule, as follows:

- (i) up to forty-two (42) one-way daily trips, over the Corridor between [REDACTED] and the northern terminus of the Purchased O-Line at MP O-29.08 for through movement to/from Huntersville, Cornelius, Davidson and/or Mooresville (“**Charlotte Commuter Service**”);
 - (ii) Special Train Service for events and holidays, consisting of an additional unscheduled train operated on a one-time or non-recurring basis in addition to Charlotte Commuter Service, as further defined in and in accordance with Exhibit G;
 - (iii) Excursion Passenger Rail Service (which NSR shall accommodate, including on weekends and holidays, if such service does not unreasonably interfere with NSR’s performance of its common carrier obligation and other Freight Rail Service pursuant to the Freight Easement and/or force NSR to modify its service windows or materially increase its operating cost); and
 - (iv) In the event the passenger platform(s) along the Corridor are operated by a City contractor different from the City Operator, City shall be responsible for arranging with such station operators for access to and use of the passenger platform(s) along the Corridor and for any coordination between the City Operator and any such station operator.
 - (v) In the event City elects, in its sole discretion, to reduce its Charlotte Commuter Service, whether temporarily or permanently, City shall provide notice in writing to NSR no less than seven (7) days in advance of implementing such reduction. Prior approval from NSR for a reduction of Commuter Rail Service pursuant to this Section shall not be required. In the event City elects to reduce Charlotte Commuter Service in accordance with this Section, City reserves all rights herein, including such rights set forth in Section 4.1(d).
- (b) City’s use of the Charlotte-POC Segment shall be in common with NSR and any other rail provider to which NSR may grant operating rights (“**NSR User**”). NSR shall require any and all NSR Users to comply with the applicable terms of this Agreement. NSR’s right to use the Charlotte-POC Segment for freight transportation shall not be diminished by this Agreement. Subject to the terms of this Agreement, it is the intention of the Parties that the Charlotte-POC Segment shall be used in an integrated way by all Users providing passenger or Freight Rail Service such that there shall be no assigned windows for the operation of either without agreement of the Parties. Notwithstanding the foregoing and unless otherwise required by statute or order of the STB or other agency or court exercising jurisdiction, City’s Charlotte Commuter Service shall receive

dispatching preference above all Users of the Charlotte-POC Segment to meet the Operating Schedule set forth in Exhibit G attached hereto, as may be revised from time to time by the Parties. City may designate the Commuter Rail Service provider of its choosing, including City, as a City Operator. Any City Operator will be required to provide to NSR, under a direct agreement with NSR (hereinafter referred to as a “**City Operator Contract**”), the indemnification and insurance protections in accordance with Section 13.3(a). No Commuter Rail Service on the Charlotte-POC Segment shall be performed by any City Operator unless and until such City Operator has entered into a City Operator Contract with NSR in conformance with the provisions of this Section 4.1(b).

- (c) If a City Operator is removed or otherwise ceases to exist without a designated successor or assign, City shall have the right to designate the successor for the purposes of this Agreement and the designated successor shall be deemed a City Operator for purposes of this Agreement and shall have the right to operate passenger trains on the same routes and at the same frequencies as the former City Operator, subject to the provisions of Section 4.1(c).
- (d) City reserves the right to expand or otherwise modify its Commuter Rail Service up to and including the capacity assumptions used to perform rail traffic capacity modeling prior to the Closing Date. Any modifications or expansions implemented by NSR pursuant to its Freight Easement or in accordance with Section 4.2(d), shall preserve capacity as identified in this Section for Commuter Rail Service.
- (e) City may, at any time following the commencement of the Charlotte Commuter Service, propose the commencement of additional modification, enhancement, and/or expansion of passenger or passenger-related services on the Corridor, including modifications of the Operating Schedule, as City, in its sole discretion, determines. Upon receipt of such proposal, NSR will develop, at City’s expense, a capacity analysis and rail traffic capacity modeling that will inform the Parties on whether introduction of the additional passenger or passenger-related services would unreasonably interfere with NSR’s performance of its common carrier obligation and other Freight Rail Service pursuant to the Freight Easement and/or force NSR to modify its service windows or materially increase its operating costs, or whether reasonable adjustment to any of the requested changes to the Charlotte Commuter Service, the construction of infrastructure, or a combination of the foregoing, would permit the introduction of the proposed additional passenger or passenger-related services without such unreasonable interference. If the Parties agree to the modification, enhancement, and/or expansion, along with the means for mitigating interference, if any, then the Parties will implement such changes.
- (f) In the event the Transition Period has not terminated and Commuter Rail Service has not commenced on or before the tenth (10th) anniversary of the Closing Date, then NSR thereafter shall have the right, but not the obligation, to temporarily or permanently assign its Freight Easement to a third-party set forth in Section 19.1 herein. Notwithstanding the foregoing, or anything to the contrary herein, the rights

pursuant to this Section 4.1(f) shall not be interpreted to limit any rights set forth in Section 19.1.

4.2 Freight Rail Service

- (a) The Freight Rail Service rights include the right of NSR and any NSR Users to operate Trains, locomotives, cars, and Equipment with its or their own crews over the Purchased O-Line. The Parties acknowledge that the Freight Rail Service rights reserved pursuant to the Freight Easement are for the purpose of NSR or an NSR User using the same for bridging Trains operated by NSR or an NSR User to transport cargo, serving existing and future freight industries located over, along, adjacent and near the Purchased O-Line, having connections made, after prior notice and subject to ongoing coordination with City, to the Purchased O-Line to serve existing and future industries, and operating haulage or any other freight service of any kind or character for itself or any other freight rail carrier. Subject to Section 19.1, City shall not provide, and may not assign, license, transfer (in whole or in part and including the grant of any freight trackage rights to others) or otherwise permit any other Person to use the Purchased O-Line to provide Freight Rail Service.
- (b) Without limitation to the granting of dispatching preference in Section 6.1, NSR's use of the Purchased O-Line shall be in common with the City Operator. City's right to use the Purchased O-Line shall not be diminished by this Agreement. Subject to the terms of this Agreement, it is the intention of the Parties that the Purchased O-Line shall be used in an integrated way by all Users providing commuter or Freight Rail Service, such that there shall be no assigned windows for the operation of either without prior consent of the Parties, which consent may be withheld in their respective discretion. The Parties understand and agree that the capacity analysis and rail traffic capacity modeling for the Initial O-Line Improvements are based on the Operating Schedule attached hereto as Exhibit G. Notwithstanding the foregoing and unless otherwise required by statute or order of the STB or other agency or court exercising jurisdiction, City's Charlotte Commuter Service shall receive dispatching preference above all Users of the Charlotte-POC Segment.
- (c) NSR shall have the right to perform the Freight Rail Service over the Purchased O-Line at such levels of activity that NSR deems to be appropriate, consistent with the terms of this Agreement. NSR shall have the right to operate in either direction on the Purchased O-Line trackage and shall have the right to provide overhead and local Freight Rail Service to existing and future customers located on or near the Purchased O-Line subject to and in accordance with the provisions set forth in Article 8 herein. The rights hereunder shall be connective with NSR's Charlotte Mainline, the NGK Lead, the Danville District to Winston Salem, North Carolina, and the Charlotte-POC Segment.
- (d) NSR's rights shall include the right to expand, modify, discontinue or abandon freight service as is reasonable or necessary to respond to market demands and conditions, including the right to locate and serve new freight customers on either

side of the Purchased O-Line at NSR's sole expense, and the definition of the Purchased O-Line shall be expanded, modified or contracted in conformance therewith; provided, however, that any such expansion or modification of the freight service shall be coordinated with City and any City Operator so as to not unreasonably interfere with Commuter Rail Service. NSR shall consult with City and City shall, in its sole discretion, determine if any such expansion or modification is an unreasonable interference, but City shall not prevent NSR from such expansion or modification of freight service, provided that NSR shall be responsible for any additional infrastructure, if warranted, under this Agreement. If the Parties deem necessary, and if NSR chooses, in its sole discretion, to materially expand its Freight Rail Service pursuant to this Section, NSR will develop, at NSR's expense, a capacity analysis and rail traffic capacity modeling that will inform the Parties on whether introduction of the additional freight or additional freight-related services would unreasonably interfere with City's Commuter Rail Service and/or force City to modify its Operating Schedule or materially increase its operating costs, or whether reasonable adjustment to any of the requested changes to NSR's freight service, the construction of infrastructure, or a combination of the foregoing would permit the introduction of the proposed additional freight or additional freight-related services without such unreasonable interference. Modifications to NSR's proposed freight service changes, modifications to design plans of Commuter Rail Service, and/or the construction of additional infrastructure required to not unreasonably interfere with Commuter Rail Service shall be incorporated at NSR's sole expense.

- (e) Within [] days] after the Closing, NSR and City shall use commercially reasonable efforts to undertake an initial review of the Purchased O-Line to identify inactive industry switches as of the Closing Date, if any, that could be removed and City shall remove those identified inactive industry switches upon NSR approval, at City's cost. During the Term, City shall have the right to remove inactive industry switches along the Purchased O-line, at City's sole cost and only upon NSR approval, which shall be granted in accordance with standard NSR protocols, which may change from time to time, for the removal of inactive industry switches. In the event a customer seeks service that requires new industry switches to be installed, including at a location where an industry switch was removed in accordance with this Section, NSR may install new industry switches consistent with standard NSR protocols. Unless the Parties agree otherwise, City shall have no obligation to pay for such installation. NSR shall have the right to move some or all of its Charlotte mainline operations to the Purchased O-Line provided that NSR provides sufficient capacity on the Purchased O-Line to handle such operations, without a material impact on Commuter Rail Service, including NSR handling of interfering encroachments, if any.
- (f) NSR reserves the right to construct capacity improvements, [REDACTED]. After commencement of the Charlotte Commuter Service, if NSR proposes to construct additional capacity improvements on the Purchased O-Line, NSR will develop, at NSR's expense, a capacity analysis and rail traffic capacity modeling that will inform the

Parties on whether introduction of the capacity improvements would unreasonably interfere with the Charlotte Commuter Service and/or force City to modify its Operating Schedule, or whether the construction of additional passenger capacity improvements would be needed to mitigate interference, at NSR's cost. If the Parties agree to the modification, enhancement, and/or expansion, along with the means for mitigating interference, if any, then the Parties will implement such changes.

- (g) NSR shall not be permitted to grant trackage rights to any third party without City's prior consent in writing, which consent shall not be unreasonably withheld, delayed, or conditioned. NSR shall have the right to grant haulage or trackage rights to any other freight carrier if such other carrier commits to the same conditions as NSR under the Freight Easement and this Agreement, or as otherwise required by STB or other agency determination.

4.3 Operating Schedule

- (a) Except as set forth in Section 4.1(a), the Parties acknowledge and agree that the schedule for Charlotte Commuter Service (which is exclusive of Excursion Passenger Rail Service or Special Train Service) set forth in Exhibit G ("**Operating Schedule**") is intended to be permanent in accordance with conditions described therein, subject to amendment of the Operating Schedule by the mutual consent of the Parties. In the event that either Party desires to amend the Operating Schedule and makes such request in writing, the Parties shall cooperate in good faith to conduct capacity analysis and rail traffic capacity modeling to determine the feasibility of such request, as reasonably required and at the cost of the requesting party, and to negotiate in good faith any such proposed amendment to the Operating Schedule.
- (b) If, before completion of the Initial Charlotte Improvements and/or the Initial O-Line Improvements, City requests such amendment or modification of the Charlotte Commuter Service that requires an addendum to or substitute for the Operating Schedule within two years after the Closing Date, or seeks modification of the Initial O-Line Improvements or Initial Charlotte-POC Improvements, NSR would commence a capacity analysis and rail traffic capacity modeling to determine the feasibility of such request, as reasonably required and at City's cost, within 60 days after City's request and use commercially reasonable efforts to complete the analysis within 180 days after commencing. If City requests such amendment or modification of the Charlotte Commuter Service that requires an addendum to or substitute for the Operating Schedule or seeks modification of the Initial O-Line Improvements or Initial Charlotte-POC Improvements after two years of the Closing Date, NSR will determine whether NSR and City need to execute a modeling agreement that will set out assumptions and timing, including schedule, for such capacity analysis and rail traffic capacity modeling, to be completed at City's cost, and the Parties will negotiate in good faith any such proposed amendment to the Operating Schedule or modified scope of work.

- (c) Upon and after the completion of the Initial Charlotte Improvements and the Initial O-Line Improvements, City shall be entitled to begin the Charlotte Commuter Service in accordance with the Operating Schedule. NSR shall provide notice to City when NSR determines that the Initial Charlotte Improvements are complete, and City shall have thirty (30) days to consent to NSR's determination, with such consent not to be unreasonably withheld, delayed, or conditioned. City shall provide notice to NSR when City determines that the Initial O-Line Improvements are complete, and NSR shall have thirty (30) days to consent to City's determination, with such consent not to be unreasonably withheld, delayed or conditioned. The Initial Charlotte Improvements and the Initial O-Line Improvements will be deemed complete for purposes of this Article 4 upon consent from City and NSR, respectively. In the event either City or NSR objects to the notice of completion of the Initial Charlotte Improvements or the Initial O-Line Improvements, respectively, then the parties shall make good faith efforts to complete the Initial Charlotte Improvements and the Initial O-Line Improvements in a manner satisfactory to the other Party, in a manner consistent with the terms and intent of this Agreement.

Article 5. Initial Charlotte Improvements

Subject to the conditions in this Article 5, NSR shall be responsible for designing and constructing, at City's cost, the improvements on the Charlotte-POC Segment as depicted in Exhibit E (the "**Initial Charlotte Improvements**").

5.1 City Review

Within one hundred twenty (120) days of receiving notice from City, NSR shall provide to City preliminary plans for the Initial Charlotte Improvements, including the track and other rail facility additions, modifications, or betterments, cost estimates, as well as a proposed schedule ("**Description of Charlotte Work**") for City's review and approval, not to be unreasonably withheld or delayed. NSR shall not proceed with work pursuant to the Description of Charlotte Work prior to City's approval. City shall have sixty (60) days to review the Description of Charlotte Work, provide comments, and propose any changes it reasonably deems necessary. Within sixty (60) days of receipt of City's comments, City and NSR shall consult and work in good faith until the Parties agree on a final Description of Charlotte Work. City's review of the Description of Charlotte Work shall focus on interoperability, timeliness of work, and conformance with the terms herein. The Description of Charlotte Work and the Initial Charlotte Improvements shall be subject, as applicable, to the National Environmental Policy Act, 42 U.S.C. §4321 et. seq ("**NEPA**"), with all reporting, reviews, and other NEPA obligations at City's cost.

5.2 Reimbursement

Subject to Section 5.4 herein, City shall reimburse NSR for all costs incurred by NSR in designing and constructing the Initial Charlotte Improvements. NSR shall invoice City for such costs not more than once per calendar month. Each invoice shall include: (i) the actual costs incurred by NSR for the Initial Charlotte Improvements invoice period, (ii) reasonable

supporting documentation to substantiate costs, as such documentation is maintained by NSR in its normal business practices, and (iii) the total costs of the Initial Charlotte Improvements reimbursed by City as of the date of the invoice. City shall remit payment to NSR with respect to each invoice in a timely manner, subject to state or federal prompt payment requirements as applicable for delivery of such payment by City. No such payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the Parties shall be adjusted in the accounts of a subsequent month. The Parties acknowledge and agree that additional terms and conditions for design and construction of the Initial Charlotte Improvements and the Initial O-Line Improvements, and any reimbursements thereto, will be the subject of one or more future agreement(s) between the Parties.

5.3 NSR Audit

Subject to any additional requirements that may be imposed by applicable federal or state requirements, all cost records and accounts for the Initial Charlotte Improvements shall be subject to audit by City for a period of three (3) years following NSR's receipt of final payment for the Initial Charlotte Improvements. NSR shall maintain/make all books, documents, papers, accounting records, and such other evidence either in hard copy or electronic form as may be appropriate and in accordance with NSR's business practices to substantiate costs incurred under this Agreement. Nothing herein shall subject NSR to the Single Audit Act and the Parties acknowledge and agree that NSR is not subject to and shall not be required to comply with the Single Audit Act.

5.4 Consequence of Early Termination

In the event that this Agreement terminates prior to the completion of the Initial Charlotte Improvements, then NSR shall have no further obligation to continue to design and/or construct any Initial Charlotte Improvements and, following a termination for any reason other than an NSR Default, City shall make reimbursements to NSR for NSR's costs of the Initial Charlotte Improvements actually incurred before the date of termination, plus any reasonable demobilization, but shall have no further obligation to make any reimbursements for future costs of the Initial Charlotte Improvements incurred after the date of termination.

5.5 Compliance with Law

NSR shall at all times observe and comply in all material respects with all Laws applicable to the construction of the Initial Charlotte Improvements. Any and all City approvals and reviews are conditioned upon compliance with applicable Laws, including, where applicable for City funded projects, obligations under NEPA, which shall be undertaken at City's cost.

Article 6. Management and Operations

6.1 Dispatching

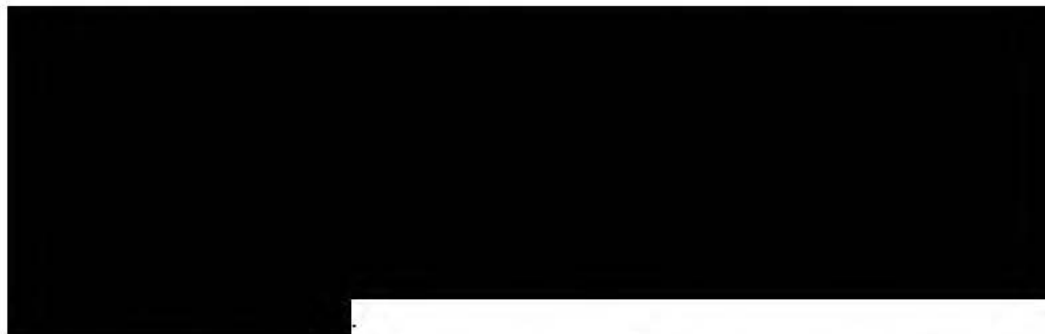
- (a) NSR shall retain the responsibility to dispatch the Purchased O-Line until City initiates Charlotte Commuter Service. From and after the pre-revenue testing phase

of City Charlotte Commuter Service and throughout the remaining duration of this Agreement, City may either assume dispatching responsibilities of the Purchased O-Line or elect to have NSR retain dispatching responsibility as a paid service to City. If City assumes dispatching responsibility, City shall ensure that the dispatch operating procedures do not discriminate against the Freight Rail Service or unreasonably interfere with NSR's performance of its common carrier obligation or other Freight Rail Service pursuant to the Freight Easement and/or force NSR to modify its service windows or materially increase its operating cost. Notwithstanding the foregoing provisions of this Section 6.1(a) and unless otherwise required by statute or order of the STB or other agency or court exercising jurisdiction, Commuter Rail Service shall have dispatching preference.

- (b) The Purchased O-Line and the Charlotte-POC Segment shall be dispatched in accordance with sound dispatching principles. The dispatcher for the Purchased O-Line and the dispatcher for the Charlotte-POC Segment shall give due regard to the needs of freight and passenger carriers and their respective customers, provided that Commuter Rail Service on the Purchased O-Line and the Charlotte-POC Segment shall be given dispatching preference, unless otherwise required by statute or order of the STB or other agency or court exercising jurisdiction.
- (c) Dispatching preference will make all reasonable efforts to achieve the Operating Schedule in Exhibit G, as may be amended from time to time by the Parties, and the Parties understand that service windows will not include temporal separation between Commuter Rail Service and Freight Rail Service absent agreement to the contrary by the Parties.

6.2 Compliance

- (a) NSR shall comply in all material respects and shall require all NSR Users to comply in all material respects, and City shall comply in all material respects and shall require all City Operators to comply in all material respects, with any and all applicable provisions of the Federal Railroad Safety Act, the Federal Locomotive Inspection Act, and the Federal Safety Appliance Act, each as amended, and any other applicable Laws respecting the operation, condition, inspection and safety of its Trains, locomotives, cars and Equipment while such Trains, locomotives, cars, and Equipment are being operated over the Purchased O-Line. City shall comply in all material respects and shall require all City Operators to comply in all material respects with any and all applicable provisions of the Federal Railroad Safety Act, the Federal Locomotive Inspection Act, and the Federal Safety Appliance Act, each as amended, and any other applicable Laws respecting the operation, condition, inspection and safety of its Trains, locomotives, cars and Equipment while such Trains, locomotives, cars, and Equipment are being operated over the Charlotte-POC Segment.
- 



- (b) Upon and after City's commencement of the Charlotte Commuter Service, while using the Purchased O-Line, NSR shall comply in all material respects, and while using the Purchased O-Line and the Charlotte-POC Segment, City shall require all City Operators to comply in all material respects, with the applicable operating rules, timetables, equipment handling rules and special instructions of the applicable dispatcher. The movement of Trains, locomotives, cars, and Equipment over the Charlotte-POC Segment shall at all times be subject to the orders of the transportation officers of NSR, and upon and after City's commencement of the Charlotte Commuter Service, the movement of Trains, locomotives, cars, and Equipment over the Purchased O-Line shall at all times be subject to the orders of the Chief Operating Officer of City, or such other Person as City shall designate from time to time; provided, however, that such operating rules, timetables, and special instructions and orders of such transportation officers shall not unjustly discriminate between Users, except that, unless otherwise required by statute or order of the STB or other agency or court exercising jurisdiction, Commuter Rail Service shall be given dispatching preference on the Purchased O-Line and the Charlotte-POC Segment. City shall not make any rule or restriction applying to Trains of NSR that does not apply equally to all other Users' Trains. No User's Trains shall include locomotives, cars, or Equipment that exceed the width, height, weight or other restrictions or capacities, as further identified in Exhibit L attached hereto, of the Purchased O-Line and the Charlotte-POC Segment as of the Closing Date.

6.3 Removal of Employees

NSR (as to the Charlotte-POC Segment) and City (as to the Purchased O-Line) (in each case, the "**Respective Owner**") shall have the right to exclude from its tracks any employee of NSR (as to the Purchased O-Line) or City or a City Operator (as to the Charlotte-POC Segment) determined by the Respective Owner to be in violation of the Respective Owner's rules, regulations, orders, practices, or instructions promulgated in the normal course of business in writing by the Respective Owner in its timetable or otherwise, and provided in advance to the other Party. The decision to bar any employee(s) of NSR from City's tracks will not be interpreted as a request for NSR to fire the individual(s). The decision to bar any employee(s) of City or a City Operator will not be interpreted as a request for City or said City Operator to fire the individual(s). Each Party shall be responsible with respect to its own employees for any Claims and expenses arising from a Respective Owner excluding such employee from its tracks.

6.4 Qualification of Crews

Prior to commencement of the Charlotte Commuter Service, procedures for qualification and occupancy of any portion of Corridor shall be arranged by the local supervision of NSR. Upon and after City's commencement of the Charlotte Commuter Service, procedures for qualification and occupancy of any portion of the Purchased O-Line shall be arranged by the local supervision of City or the City Operator, and on any portion of the Charlotte-POC Segment shall be arranged by the local supervision of NSR. Procedures for qualification and occupancy shall be administered in a non-discriminatory manner.

6.5 Communications with Dispatcher

When operating over the Purchased O-Line, each of NSR's locomotives and crews shall be equipped to communicate with the dispatcher on radio frequencies normally used by the dispatcher in directing train movements on the Purchased O-Line. When operating over the Charlotte-POC Segment, each City Operator's locomotives and crews shall be equipped to communicate with NSR's dispatcher on radio frequencies normally used by said dispatcher in directing train movements on the relevant section of the Charlotte-POC Segment.

6.6 PTC

- (a) In the event Positive Train Control or other automatic train control system is required by Law on the Purchased O-Line either to initiate the Charlotte Commuter Service or at any time subsequent to commencement of the Charlotte Commuter Service, then City shall, at its sole cost and expense, install such system on the Purchased O-Line that is compatible with the NSR Positive Train Control or equivalent automatic train control system as it then exists, including any upgrades and modifications.
- (b) During and after the Transition Period, [REDACTED] NSR will provide, at the option of City in City's sole discretion, back-end / administrative PTC services (including, without limitation, use of the Interoperable-Electronic Train Management System) on the Purchased O-Line for so long as NSR is dispatching the Purchased O-Line. If City elects to dispatch the Purchased O-line, City may elect to purchase PTC services from NSR pursuant to a separate agreement between the Parties.

6.7 Train Consist Information

In the event NSR is not the dispatcher of the Purchased O-Line, NSR shall furnish to the dispatcher customary train consist information via EDI transmission. This procedure shall be governed by AAR standard reporting procedures for trackage rights carriers.

Article 7. Purchased O-Line Improvements and Maintenance

7.1 During the Transition Period for the Purchased O-Line

- (a) The Parties acknowledge the need to provide for maintenance of the Purchased O-Line during the period of time between (i) the Closing Date and (ii) the commencement of Commuter Rail Service on the Purchased O-Line (the “**Transition Period**”).
- (b) During the Transition Period, City shall be responsible for the design, financing, and construction of the Initial O-Line Improvements set forth in Exhibit F. City shall provide to NSR preliminary plans for track and other rail facility additions, modifications, or betterments and a proposed schedule for the same (“**Description of O-Line Work**”) for its review and approval, not to be unreasonably withheld or delayed. During the Transition Period, NSR shall have sixty (60) days to review the Description of O-Line Work, provide comments and propose any changes it reasonably deems necessary. Within sixty (60) days of receipt of NSR’s comments, City and NSR shall consult and work in good faith until the Parties agree on a final Description of O-Line Work, NSR’s review of the Description of O-Line Work shall focus on freight interoperability, operation and maintenance, and ensuring that, as a matter of normal operating practices, unattended trains, including storage, and overnight staging, and other passenger train sustenance services are performed in such a manner that NSR Trains using the Purchased O-Line are not unduly delayed. In the event the Description of O-Line Work and/or the Initial O-Line Improvements are modified to meet City’s compliance obligations pursuant to NEPA, such modifications will be subject to review and approval by NSR to ensure they do not unreasonably interfere with NSR’s performance of its common carrier obligation and other Freight Rail Service pursuant to the Freight Easement and/or force NSR to modify its service windows or materially increase its operating cost in accordance with Section 4.3(b), and such modifications will be at City’s cost.
- (c) During the Transition Period, NSR shall perform Expense Maintenance and Capital Maintenance on the Purchased O-Line [REDACTED]
[REDACTED]. During the Transition Period, NSR shall maintain the Purchased O-Line to the same Level of Utility that existed on the Closing Date, as reflected on the applicable track charts and any applicable bulletins in effect on the Closing Date (for clarity, as of Closing Date, the Level of Utility is a track speed of 10 mph), unless directed differently by City in its sole discretion [REDACTED], except that any such direction to change the Level of Utility may not unreasonably interfere with NSR’s performance of its common carrier obligation or other Freight Rail Service pursuant to the Freight Easement and/or force NSR to modify its service windows or materially increase its operating cost on the Purchased O-Line. During the Transition Period, NSR shall notify City of any Capital Maintenance activities it plans to undertake for NSR to be able to fulfill its Freight Rail Service obligations, or otherwise to ensure that the Purchased O-Line mainline tracks are maintained at not less than the Level of Utility existing as of the Closing Date.

- (d) During the Transition Period, the Parties agree to cooperate to develop annual Capital Maintenance plans, with such annual plans being approved by City by October 15 of the year prior to the maintenance year, with such approval not to be withheld or delayed if NSR reasonably demonstrates that such Capital Maintenance is required for NSR to be able to fulfill its Freight Rail Service or to otherwise ensure that the Purchased O-Line tracks meet the Level of Utility as of Closing.
- (e) In the event the Parties agree to add Capital Maintenance that has the effect of increasing the Level of Utility, the Parties will meet and confer to develop a plan for payment, including payment schedule, and any sharing of the cost of such Capital Maintenance.

7.2 After the Transition Period

- (a) The provisions of this Section 7.2 shall apply after the Transition Period.
- (b) As between the Parties, City shall be responsible, [REDACTED], for the maintenance, repair, and renewal of the Purchased O-Line, [REDACTED], which may be performed either with its own supervision and labor or through that of a contractor. As between the Parties, NSR shall be responsible, [REDACTED], for the maintenance, repair, and renewal of the Charlotte-POC Segment, as well as maintenance, repair and renewal of switches and sidings for freight customers on the Charlotte-POC Segment, which may be performed either with its own supervision and labor or through that of a contractor. Responsibility for any Claims arising from either Party's performance or non-performance of maintenance activities after the Transition Period will be handled under the provisions of Article 14 (as between NSR and City or any applicable City Operator). City shall cause City Operators, other than City, to hold NSR harmless for any such Claims.
- (c) NSR shall have the right, but not the obligation, to inspect the track condition on the Purchased O-Line to provide for safe Freight Rail Service and may request in writing that City perform any necessary maintenance, repair, and renewal for such safe operations. In the event that City fails to do so and such failure continues for sixty (60) days after written notice from NSR, NSR shall have the right, but not the obligation, with its own forces or with those of a contractor, to provide for maintenance [REDACTED] on such sections of the Purchased O-Line as may be, in the reasonable judgment of NSR, reasonable or necessary for provision of the current or anticipated Freight Rail Service. [REDACTED]
[REDACTED]
City shall promptly work with NSR to restore City maintenance services over the Purchased O-Line. [REDACTED]
[REDACTED], and NSR shall not have the right to maintain the Commuter Exclusive Use Property. [REDACTED]

- [REDACTED]
- (d) City (through its contractors, which may include NSR) shall keep and maintain the tracks and facilities within the Purchased O-Line at not less than the Level of Utility existing as of the Closing Date, including the speeds shown in Exhibit K. In the event that City fails to do so and such failure continues for sixty (60) days after written notice from NSR, NSR shall have the right, but not the obligation, with its own forces or with those of a contractor, to provide for maintenance on such sections of the Purchased O-Line as may be, in the reasonable judgment of NSR, reasonable or necessary for provision of the current or anticipated Freight Rail Service. [REDACTED]

[REDACTED] City shall promptly work with NSR to restore City maintenance services over the Purchased O-Line. [REDACTED]

- (e) NSR (through its contractors, which may include NSR) shall keep and maintain the tracks and facilities within the Charlotte-POC Segment at not less than the Level of Utility existing as of the Closing Date, including the speeds shown in Exhibit K. In the event that NSR fails to do so and such failure continues for sixty (60) days after written notice from City, [REDACTED]
- (f) City may request in writing that NSR perform additional maintenance on the Charlotte-POC Segment, and, upon concurrence of NSR, NSR will perform such additional maintenance [REDACTED]

Article 8. Additional Capital Improvements

8.1 Existing Connections

Existing connections or facilities on or connected to the Purchased O-Line segment that are jointly used by Users under one or more separate agreements shall continue to be maintained and repaired by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements.

8.2 Right to Propose and Prosecute Future Capital Improvements

This Article 8 applies to Capital Improvements to the Purchased O-Line or the Charlotte-POC Segment that are in addition to the Initial O-Line Improvements and the Initial Charlotte Improvements, respectively. In the event either Party elects to install, construct, or renew Capital Improvements along the Purchased O-Line, the Parties shall cooperate to resolve any encroachments that may materially interfere with the location of such Capital Improvements. To the extent NSR deems it necessary to address any encroachment on the Purchased O-Line that, in NSR's sole judgment, stands to interfere with NSR's Freight Rail Service, the Parties shall cooperate to address such encroachment, including the invocation of such rights of City as owner of the Purchased O-Line as may be necessary or desirable to address such encroachment.

- (a) Except as may be required to maintain a continuous route capable of handling at least the current weight and clearance capacity, including, where extra-dimensional (high/wide) loads can be currently operated, as identified in Exhibit L, City, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Purchased O-Line as shall, in its judgment, be necessary or desirable
- (b) for the economical or safe operation thereof or as shall be required by any Law, provided that such changes, additions, betterments, or retirements do not unreasonably interfere with NSR's performance of its common carrier obligation or other Freight Rail Service pursuant to the Freight Easement and/or force NSR to modify its service windows or materially increase its operating cost on the Corridor, and subject to Section 4.1(e). Such additions and betterments shall become a part of the Purchased O-Line and such retirements shall be excluded from the Purchased O-Line. [REDACTED]
[REDACTED]. City shall have the right, with sixty (60) days advance notice and the provision of supporting materials detailing any reasonably anticipated negative impact to NSR or delay to Freight Rail Service arising therefrom, to prosecute future Capital Improvements on the Purchased O-Line.
- (c) NSR shall have the right to propose future Capital Improvements to the Purchased O-Line reasonable or necessary to serve new or existing customers, subject to Section 4.2. In such a case, NSR shall submit plans for track and other rail facility additions, modifications, or betterments and a proposed schedule for the same ("**Description of Future NSR Work**") to City. City shall have sixty (60) days to review the Description of Future NSR Work, provide comments and propose any changes it reasonably deems necessary. The Parties shall work reasonably and in good faith, provided that City shall be obligated to accept any proposal for Capital Improvements that does not unreasonably interfere with City's Commuter Rail Service or force City to modify its Operating Schedule or otherwise reduce City's rights pursuant to this Agreement, but the design and construction thereof shall be subject to the procedures set forth in Section 4.2.

8.3 Responsibility for Performance of Work

All work associated with Capital Improvements undertaken pursuant to this Article 8 shall be the responsibility of NSR when the Capital Improvement is made on the Charlotte-POC Segment (excluding, for the avoidance of doubt, the Purchased O-Line). All work associated with Capital Improvements undertaken pursuant to this Article 8 shall be the responsibility of City when the Capital Improvement is made on the Purchased O-Line or [REDACTED], unless otherwise agreed by the Parties. However, either Party shall be entitled to freely subcontract any components of such work for which it is responsible under this Section 8.3. The Parties agree that either Party may satisfy any flagging requirements to access the Corridor by providing its own flaggers, provided that such flaggers comply with the operational and safety standards set forth by the Respective Owner. [REDACTED]

8.4 Funding Responsibility for Capital Improvements

[REDACTED]

Article 9. Clearing of Wrecks

9.1 Clearing of Wrecks

- (a) Whenever NSR's use of the Purchased O-Line requires rerailling, wrecking service or wrecking train service, NSR shall be responsible to perform or provide such service, including the repair and restoration of roadbed, track, and structures so as to minimize the impact on City and NSR operations, unless otherwise agreed in writing between the Parties. [REDACTED]

[REDACTED]. All locomotives, cars, and Equipment and salvage from the same so picked up and removed that are owned by or under the management and control of or used by a City Operator at the time of such wreck shall be promptly delivered to the City Operator.

- (b) Whenever City's use of the Purchased O-Line requires rerailling, wrecking service or wrecking train service, City shall be responsible to perform or provide such service, including the repair and restoration of roadbed, track, and structures so as to minimize the impact on City and NSR operations, unless otherwise agreed in writing between the Parties. [REDACTED]
[REDACTED]. All locomotives, cars, and Equipment and salvage from the same so picked up and removed that are owned by or under the management and control of or used by NSR at the time of such wreck shall be promptly delivered to NSR.
- (c) Whenever City's use of the Charlotte-POC Segment requires rerailling, wrecking service or wrecking train service, NSR shall be responsible to perform or provide such service, including the repair and restoration of roadbed, track, and structures so as to minimize the impact on City and NSR operations, unless otherwise agreed in writing between the Parties. [REDACTED]
[REDACTED]. All locomotives, cars, and Equipment and salvage from the same so picked up and removed that are owned by or under the management and control of or used by a City Operator at the time of such wreck shall be promptly delivered to the City Operator.

Article 10. Catastrophic Events

10.1 Catastrophic Event

In the event that a portion of the Corridor owned by a given Party (a "**Casualty Party**") is damaged or destroyed as a result of a catastrophic event (including cyberattack, fire, earthquake, flood, tornado, hurricane, explosion, wreck (including derailment), act of terrorism, or other casualty) (each a "**Catastrophic Event**"), the Casualty Party shall not have an obligation under this Agreement to restore such portion of the Corridor (the "**Respective Portion**") except to the extent of a failure to fulfill the Casualty Party's obligation under Article 7. Notwithstanding the immediately preceding sentence, within sixty (60) days of the occurrence of any such Catastrophic Event (or a longer period of time if such extension is required to resolve an insurance claim), the Casualty Party shall notify the other Party (the "**Non-Casualty Party**") of the Casualty Party's intent to restore or decline to restore the damaged or destroyed portion of the Corridor.

10.2 Non-Casualty Party Option

If the Casualty Party makes the notification in Section 10.1, the Non-Casualty Party shall have the right (but not the obligation) to bear the cost and expense of restoration of the damaged or destroyed portion of the Corridor to a level it deems necessary for Freight Rail Service or Commuter Rail Service, as the case may be, provided that the terms and conditions for construction of such restored portion of the Corridor shall be determined in accordance with Article 8.

Article 11. Compensation and Payment of Bills

11.1 Compensation

(a)

[REDACTED]

(b)

[REDACTED]

11.2 Amounts Due

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

(d)

11.3 Compensation of Use

- (a) NSR shall furnish City, in care of [TITLE] of City, or such other person as City shall designate in writing from time to time, by the fifteenth (15th) calendar day of each month, a statement of the number of loaded and empty cars that operated over the Purchased O-Line during the prior month, and the number of miles, or any portion thereof, the cars moved over the Purchased O-Line during the prior month. City shall render billing to NSR for NSR's previous month's use of the Purchased O-Line computed in accordance with the terms and conditions of this Agreement.
- (b) City shall furnish NSR, in care of [TITLE] of NSR, or such other person as NSR shall designate in writing from time to time, by the fifteenth (15th) calendar day of each month, a statement of the number of Trains that operated over the Charlotte-POC Segment during the prior month and the number of miles, or any portion thereof, the Trains moved over the Charlotte-POC Segment during the prior month. NSR shall render billing to City for City's previous month's use of the Charlotte-POC Segment computed in accordance with the terms and conditions of this Agreement.

11.4 Payments

- (a) Bills rendered for charges other than those set forth in Section 11.1 shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by City at the time any work is performed by City for NSR or as specified by NSR at the time any work is performed by NSR for City.
- (b) All payments called for under this Agreement shall be made within sixty (60) days after receipt of bills therefor. No such payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the Parties hereto shall be adjusted in the accounts of a subsequent month. The records of each Party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other Party for a period of three (3) years from the date of billing. The Parties acknowledge that a significant amount of the information contained in the records will be commercially sensitive and highly confidential information and will implement this Section 11.4(b) in a manner so as to best protect that information from public disclosure, subject to Section 22.9.

- (c) All payments shall be made by wire transfer according to instructions supplied on the invoice.

11.5 Audits and Recordkeeping

- (a) The Parties shall establish and maintain accurate records, in accordance with U.S. generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this Agreement (the “**Records**”). Separate records shall be established and maintained for all payments incurred under this Agreement.
- (b) NSR shall maintain the Records for at least three (3) years from the date of the final payment for that year made to City under this Agreement. City shall maintain the Records for at least three (3) years from the date of the final payment for that year made to NSR under this Agreement. In the event of a dispute with regard to the allowable expenses or any other issue under this Agreement, the Parties shall thereafter continue to maintain the Records at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
- (c) The Parties or their representatives may inspect, copy, or audit the Records at any reasonable time after giving reasonable notice during the three (3) year period specified in Section 11.5(b). The Parties acknowledge that a significant amount of the information contained in the Records will be commercially sensitive and highly confidential information and will cooperate to implement this Section 11.5 in a manner so as to best protect that information in accordance with Section 22.9.

Article 12. Mileage and Car Hire

12.1 Mileage and Car Hire

[REDACTED]

Article 13. Insurance

13.1 Insurance Requirement

Each Party shall provide and maintain throughout the Term insurance in the kinds and amounts specified herein. Except where a Party is self-insured for the liabilities hereunder, such insurance must be obtained from one or more insurers: (i) licensed to transact insurance business in the State of North Carolina and (ii) with a current A.M. Best Rating of A:VII or better or a comparable successor rating.

13.2 NSR Insurance

During the pendency of this Agreement, NSR undertakes to act and will continue to act as a self-insurer with respect to certain of its liabilities, if any, and will pay all sums that it will become legally obligated to pay in connection with this Agreement.

13.3 City Obligations

[In negotiation.]

Article 14. Liability

14.1 Applicability and Definitions

Financial responsibility for liability for Damages arising from activities (including, without limitation, Incidental Use) on or about the Purchased O-Line or the Charlotte-POC Segment covered by this Agreement shall be allocated as provided in this Article 14.

[REDACTED]

14.2 General

(a)

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

[REDACTED]

(d)

[REDACTED]

14.3 Certain Allocations of Responsibility

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

(i)

[REDACTED]

(ii) [REDACTED];

(iii) [REDACTED]; and

(iv) [REDACTED]

(d) [REDACTED]

(e) [REDACTED]

(f) [REDACTED]

(g) [REDACTED]

(i) [REDACTED]

[REDACTED]

(ii) [REDACTED]; or

(iii) [REDACTED]

(h) [REDACTED]

(i) [REDACTED]

(j) [REDACTED]

14.4 Installment Payments

[REDACTED]

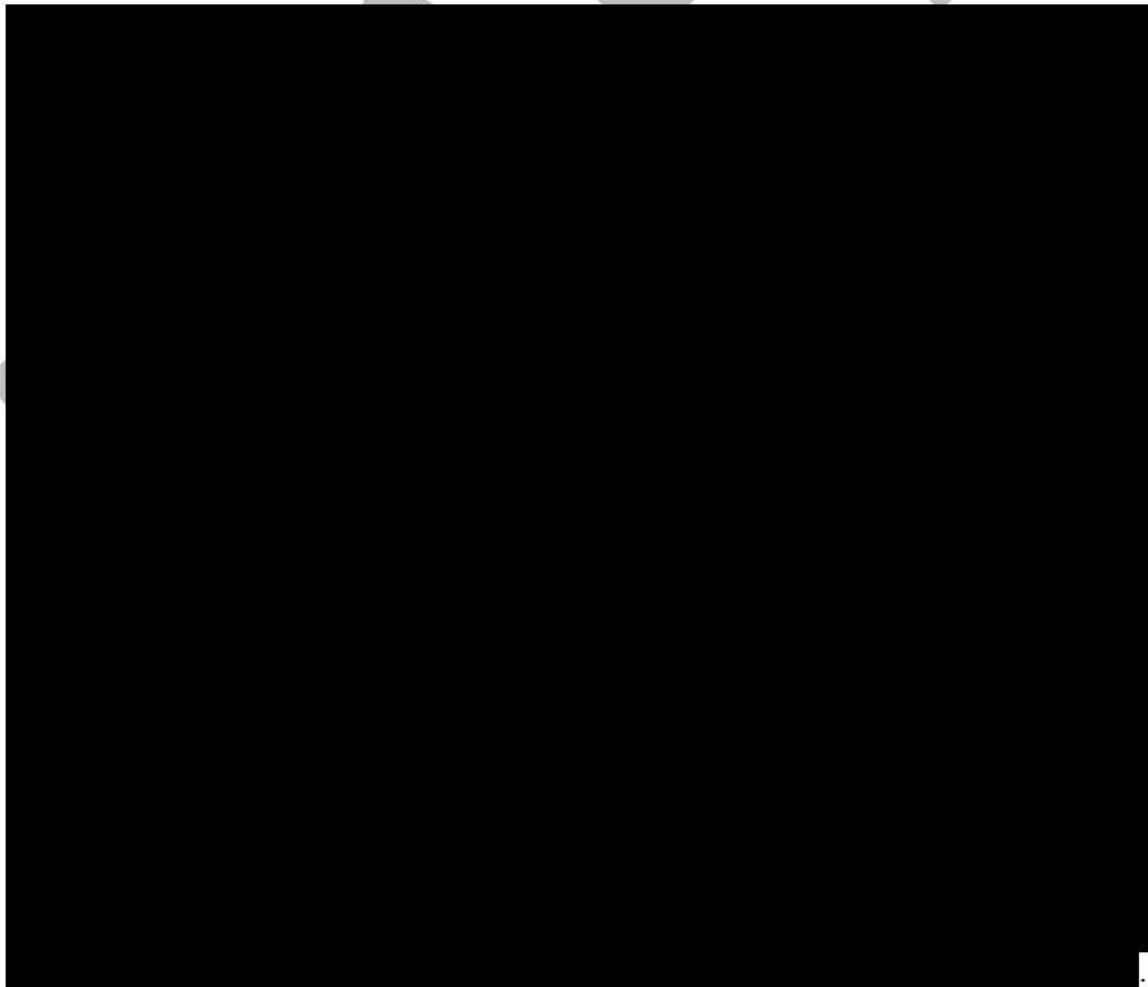
14.5 Validity

Each provision of this Article 14 shall be interpreted so as to be effective and valid. In the event that any provision of this Article 14 shall for any reason be held invalid, illegal or unenforceable in any respect, then this Article 14 shall be construed as if such provision had never been contained herein in order to effect to the fullest extent the purposes of this Article 14 and the intentions of the parties with respect thereto.

14.6 No Third Party Beneficiaries, Other Remedies

Nothing expressed or implied in this Article 14, including, without limitation, Sections 14.3(e) and (f) hereof, is intended to or shall be construed to: (a) confer upon or to give any Person or Governmental Authority other than the Parties, their respective legal representatives, successors, or assigns any right or benefit under or by reason of this Article 14, or (b) limit or restrict either Party from seeking damages, redress or other relief from any Person or Governmental Authority other than the Parties, their respective legal representatives, successors, or assigns.

14.7 Release of Hazardous Materials



14.8 Investigations

[REDACTED]

(b) [REDACTED]

(c) The Party hereto receiving notice of the filing of a claim will promptly notify the other Party of such filing where liability therefor may be joint or that of the other Party. City and NSR will cooperate with each other in all such investigations, adjustments, and defenses, and City and NSR will provide each other, upon request therefor, a copy of all documents and written communications and produce witnesses, experts, or exhibits in their employment or control to assist in the preparation and defense of any such Claim and/or litigation with respect thereto.

(d) In the event a Claim or suit is asserted against any Party that is another's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other Party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit, and the Party relieved of duties in respect of such claim or suit shall cooperate as requested by the Party investigating, adjusting or defending said claim or suit.

(e) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement.

(f) Neither Party shall settle or compromise any claim, demand, suit or cause of action of any employee for which the other Party has any liability under this Agreement without the concurrence of the other Party if the consideration for such settlement or compromise exceeds [REDACTED].

(g) For purposes of this Section 14.10, where City has responsibility for investigation, adjustment, and/or defense, City shall undertake or shall require that City Operator undertakes such investigation, adjustment, and/or defense. It is understood that nothing in this Section 14.10 shall modify or waive the conditions, obligations, assumptions, or apportionments provided elsewhere in this Article 14 or elsewhere in this Agreement.

14.9 Corrective Amendments

The Parties acknowledge and agree that the allocation of liability and other provisions of this Article 14 were a material inducement to both Parties' agreement to enter into this Agreement and that in the event that as a result of legislative action, court decision, regulation or otherwise, said allocations of liability and/or the other provisions of this Article 14 are found to be, or become unenforceable or modified in any manner that would affect the substantive rights of either Party, the Parties shall promptly negotiate such amendments to this Agreement as are mutually satisfactory and necessary to protect the intent of this Article 14. If the statutory modification, court decision, regulation or other event substantially impairs either Party's liability indemnification protection under this Article 14 or the availability of any of the insurance described in Article 13, and the Parties cannot reach agreement on a satisfactory amendment to eliminate such substantive impairment within 30 days from the date of said statutory modification, court decision, regulation, or other event becomes effective, or such longer time as the Parties may agree in writing, then the matter shall constitute a Dispute subject to Article 18.

Article 15. Employee Claims and Remedies

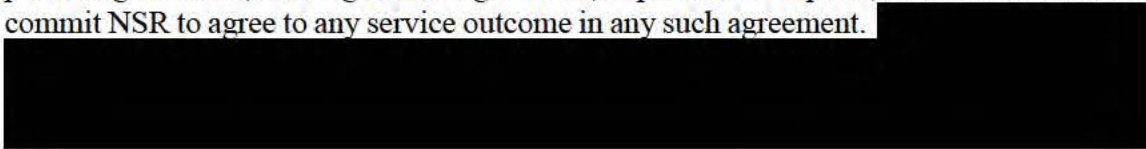
15.1 Employee Claims and Remedies

Each of NSR and City agrees to indemnify and hold harmless the other Party, and City shall cause each City Operator to indemnify and hold NSR harmless, from and against any and all costs and payments, including benefits, allowances, and arbitration, administrative, and litigation expenses, arising out of Claims or grievances made by or on behalf of its own employees or their collective bargaining representatives, either pursuant to applicable employee protective conditions, pursuant to a collective bargaining agreement, or imposed by a Governmental Authority upon the agency's approval or exemption of this Agreement and arising out of the Party's operations hereunder. It is the Parties' intention that each Party or the City Operator, as applicable, shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees, if applicable.

Article 16. Funding Partners

16.1 Funding Partners

The Parties agree to work cooperatively and creatively to reach one or more agreements as may be required for City to satisfy the requirements of any Funding Partner, including any reasonably necessary amendment to this Agreement. Notwithstanding the immediately preceding sentence, nothing in this Agreement, expressed or implied, shall be construed to commit NSR to agree to any service outcome in any such agreement.



Article 17. Assignment

This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties, including any Person, succeeding to the ownership of substantially all of the assets or business of NSR or into which NSR is merged or consolidated. Upon prior notice to NSR, City may assign this Agreement to another agency of the City of Charlotte, North Carolina, or an agency or authority created pursuant to the North Carolina General Statutes to carry out public transit services within the greater Charlotte-Mecklenburg metropolitan area, to undertake City's obligation and the activities contemplated by this Agreement. NSR expressly reserves the right to assign or delegate all or any part of NSR's rights and duties hereunder to one or more third parties, including without limitation a qualified intermediary as defined by Treasury Regulation Section 1.1031(k)1(g)(4), in connection with a tax deferred exchange pursuant to Section 1031 of the Internal Revenue Code (this last type of assignment being called a "**Intermediary Assignment**"), provided, however, that except for an Intermediary Assignment, any such assignment and/or delegation shall be subject to the consent of City, such consent not to be unreasonably withheld or delayed, and provided further that for any such assignment pursuant to a sale of all or substantially all of the assets of NSR by conveyance or the operation of law, such consent shall not be required. Any other assignment, division, license, or transfer of its rights, interests, or obligations hereunder to any other entity shall not result in more than one freight operator operating on any segment of the Purchased O-Line.

Article 18. Dispute Resolution

18.1 Generally

- (a) The Parties shall make good faith efforts to resolve any Disputes during the Term in accordance with the principles set forth in this Article 18.
- (b) The Parties must first use all reasonable efforts to resolve the Dispute by prompt and diligent discussions and negotiations, and then through senior level negotiations in accordance with Section 18.2.
- (c) If the Parties fail to achieve a resolution through Section 18.1(b) or 18.2, before either Party may institute legal action against the other in connection with the Dispute, the Parties must first attempt to resolve the Dispute by referring the matter to a Mediation in accordance with Section 18.3.

18.2 Informal Consideration by the Parties

- (a) Any Dispute that cannot be resolved pursuant to Section 18.1 above within thirty (30) Business Days after it arises (or such other time as the Parties may agree in writing) may be submitted at the written request of either Party to senior representatives of each Party (with authority to make decisions for the respective

Parties). The senior representatives must meet and use all reasonable efforts to resolve the Dispute, with such meetings commencing within seven (7) days of receipt of notification from a Party initiating a Dispute. The negotiations will not exceed thirty (30) consecutive days (or such longer period agreed by the Parties). Written statements, materials and information prepared for, made or presented at or during these negotiation meetings (including any meeting of the senior representatives) are deemed privileged and confidential (and shall be marked as such) and may not be used as evidence in any proceedings. If the senior representatives resolve the Dispute, the Parties shall acknowledge such resolution in writing.

- (b) In the event that the Dispute remains unresolved thirty (30) Business Days after its submission (or such other time as the Parties may agree), the matter may be referred in writing by either Party to City's [TITLE] and NSR's [TITLE] for consideration and resolution. If the dispute still remains unresolved thirty (30) calendar days after its referral to City's [TITLE] and NSR's [TITLE] under this Section, the Parties may jointly agree to submit the matter to meditation under Section 18.3.

18.3 Mediation

- (a) If the Parties are unable to come to a resolution through Section 18.2, then either Party may submit such Dispute to non-binding mediation proceedings to the extent it wishes to continue pursuing any claim associated with such Dispute (a "**Mediation**"). Full compliance with this Section 18 (including, without limitation, Mediation) is a precondition for any party to initiating any form of litigation concerning the Dispute. If after all reasonable good-faith attempts to resolve the Dispute have been made, (1) it appears to the mediator that the Parties are at a stalemate with no significant likelihood of reaching resolution, the mediator so informs the Parties, and issues a written notice of stalemate, or (2) a Party elects to disregard the resolution proposed by the mediator, and informs the other Party of its decision in writing, such occurrence shall conclude the dispute resolution process pursuant to this Section 18, unless the Parties otherwise agree, and either Party may proceed with other remedies available under this Agreement.
- (b) The mediator for any Mediation shall be selected by mutual agreement of the Parties or, if an agreement cannot be reached by the Parties within seven (7) Business Days of submission of the Dispute to Mediation, the mediator must be selected by the American Arbitration Association ("AAA") in accordance with its Commercial Industry Mediation Rules and Procedures then in effect. Any mediator selected by mutual agreement of the Parties or through the AAA selection process must have no current or ongoing relationship with either Party (or an affiliate of either Party). The Parties agree that only one (1) mediator shall be selected as the AAA mediator. The independent mediator shall be properly qualified in the surface transportation industry and have experience in the analysis of transportation operations.

- (c) Each Mediation must:
 - (i) be administered in accordance with AAA's Commercial Industry Mediation Rules and Procedures then in effect;
 - (ii) be held in Charlotte, North Carolina, unless the Parties mutually agree, in writing, to the Mediation being held in a different location;
 - (iii) be concluded within thirty (30) days of the date of selection of the mediator, or within such other time period as may be agreed by the Parties (acting reasonably in regard to the nature of the Dispute).
- (d) During the pendency of such mediation proceedings, the performance by both Parties of this Agreement shall continue in the same manner as before such controversy arose, unless the mediator shall make a preliminary ruling to the contrary.
- (e) The Parties shall share the mediator's fee and any filing or administrative fees equally.
- (f) No mediator will be empowered to render a binding decision as to any Dispute. Any Mediation will be nonbinding.
- (g) Nothing in Section 18.2 or 18.3 shall prevent a Party from initiating any form of litigation as to any Dispute in order to prevent the statute of limitations (or any other similar time-based rule) from expiring with respect to any Dispute. To the extent litigation is filed for this reason, the initiating Party shall file a motion requesting that the underlying court issue a stay sufficient for the Parties to participate in the dispute resolution process contemplated by Section 18.2 and/or 18.3.

Article 19. Abandonment; Force Majeure

19.1 Abandonment and Discontinuance

Subject to the following provisions of this Section 19.1, NSR shall have sole and absolute discretion, in keeping with applicable federal law and regulation, to – (a) retain or to relinquish (in whole or in part) its Freight Easement rights over the Purchased O-Line; and (b) to provide Freight Rail Service over the Freight Easement, or to suspend such Freight Rail Service or any portion of the Freight Easement. Accordingly, under the following terms set forth in this Section 19.1, NSR shall have sole and absolute discretion to seek to abandon, and to effectuate the abandonment of, some or all of its retained Freight Easement in accordance with applicable federal law and regulations pertaining to railroad line abandonments. Similarly, NSR shall, subject to the balance of this Section 19.1, have sole and absolute discretion to seek to discontinue, and to effectuate discontinuance of, its Freight Rail Service operations over some or all of the Freight Easement in accordance with applicable federal law and regulations.

- (a) If NSR wishes to abandon some or all of the Freight Easement, NSR must supply City with written notice of NSR's abandonment plans at least one hundred and

eighty (180) days' before NSR may initiate abandonment proceedings before the Surface Transportation Board ("STB") or any successor agency. Upon receipt of such notice from NSR, the City shall have 150 days to exercise its right, at City's sole and exclusive discretion, to – (a) acquire (subject to applicable federal acquisition authorization) the portion of the Freight Easement that NSR has targeted for abandonment; or (b) arrange for the transfer of the involved portion of the Freight Easement to a party of the City's choosing (again, subject to applicable federal authorization). Under City's exercise of either option for the transfer of NSR's Freight Easement interests, NSR will forego abandonment proceedings in cooperation with the transfer of the affected portion of the Freight Easement to City or to a City-selected third party. For the avoidance of doubt, if NSR elects to abandon all or any portion of the Freight Easement pursuant to this Section 19.1(a), City shall have no obligation to preserve common carrier rail service over the affected portion of the Freight Easement if the City concurs in NSR's abandonment proposal. If, upon appropriate advance notice from NSR, City elects to forego its option either to acquire the Freight Easement itself or to arrange for the transfer of the Freight Easement to a designated third party, NSR may pursue applicable federal authorization either to abandon the affected portion of the Freight Easement, and City shall – (a) not oppose NSR's abandonment efforts; and (b) reasonably cooperate in the NSR-initiated abandonment proceeding; provided however, that, to be so bound to non-opposition and reasonable cooperation, NSR must have supplied 180 days' advance notice to City.

- (b) If NSR wishes to secure appropriate federal authorization to discontinue common carrier operations over some or all of the Freight Easement (rather than to pursue abandonment), NSR must provide 180 days' advance written notice to City of its intentions. In such a circumstance, NSR and City will, at City's sole and exclusive discretion, arrange for the transfer of the affected portion of the Freight Easement to a designee of the City's choosing (which may include the City itself) in lieu of NSR's initiation of discontinuance proceedings at the STB, provided that the City selects a designee no later than 150 days from City's receipt of NSR's notice of intent to initiate a proceeding to secure federal discontinuance authorization. For the avoidance of doubt, if NSR elects to discontinue common carrier service over all or any portion of the Freight Easement pursuant to this Section 19.1(b), City shall have no obligation to preserve common carrier rail service over the affected portion of the Freight Easement if the City concurs in NSR's discontinuance proposal. If, upon appropriate advance notice from NSR, City elects to forego its option either to acquire the Freight Easement itself or to arrange for the transfer of the Freight Easement to a designated third party, NSR may pursue applicable federal authorization to discontinue service over the affected portion of the Freight Easement, and City shall – (a) not oppose NSR's discontinuance efforts; and (b) reasonably cooperate in the NSR-initiated discontinuance proceeding; provided however, that, to be so bound to non-opposition and reasonable cooperation NSR must have supplied 180 days' advance notice to City.

- (c) In the event of a transfer of some or all of NSR's Freight Easement interests to City or City's designee under this Section 19.1(a) or Section 19.1(b), NSR shall, as to

the affected portion of the Freight Easement, no longer be subject to any forward-looking obligations or liabilities set forth in this Agreement from the date of transfer onward. NSR shall transfer the affected portion of the Freight Easement to the City or City's designee for [REDACTED].

- (d) If NSR files for authorization to abandon some or all of the Freight Easement pursuant to Section 19.1(a), and, in response, an interested third party seeks to acquire the affected portion of the Freight Easement via an offer of financial assistance ("OFA") under 49 U.S.C. §10904, NSR shall, at the sole and exclusive discretion of City – (a) agree to negotiate the transfer of the affected portion of the Freight Easement with City or City's designee for [REDACTED] under a competing OFA; (b) withdraw its abandonment request before the STB, and separately negotiate the sale of the affected Portion of the Freight Easement to the City or City's designee; (c) negotiate Freight Easement transfer terms with the third-party offeror.
- (e) Should NSR obtain federal abandonment or discontinuance authorization (as the case may be) for some or all of the Freight Easement, then NSR shall have the sole and absolute discretion to effectuate such abandonment or discontinuance authorization so obtained, subject in all instances to the foregoing provisions of this Section 19.1. City shall not unilaterally seek any such discontinuance or abandonment authorization adverse to NSR's interests. In the event NSR abandons its Freight Easement, in whole or in part, pursuant to this Section 19.1, the Parties shall work in good faith to amend this agreement, as it may be necessary, to reflect such abandonment.

19.2 Force Majeure

City shall not be responsible to NSR, and NSR shall not be responsible to City, for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, acts of God, pandemics, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, actual or threatened acts of terrorism, vandalism or sabotage, fire, accident, wreck (including derailment), washout or explosion, strike, lockout or labor disputes experienced by the Parties hereto, embargoes or AAR service orders, FRA orders, or other Laws.

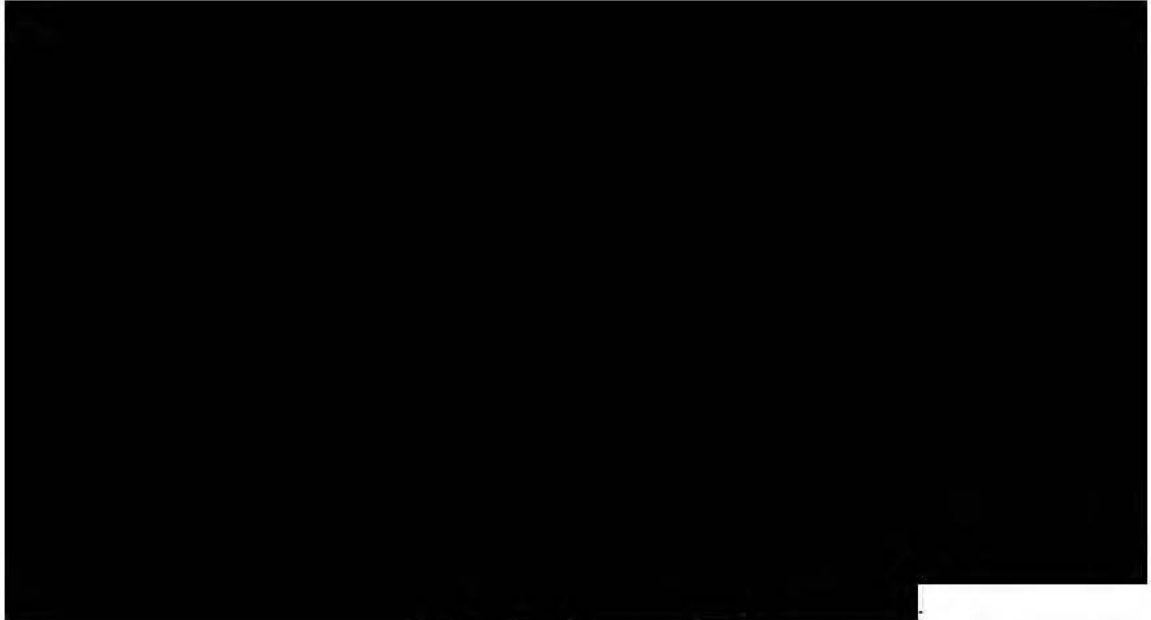
Article 20. Term, Default and Remedies

20.1 Term

This Agreement shall become effective as of the Effective Date and, shall remain in full force and effect for a period of ninety-nine (99) years from the Closing Date (the "**Initial Term**"). Thereafter, this Agreement shall remain in effect unless and until either Party elects to terminate this Agreement by providing not less than six (6) months' prior written notice of such termination to the other Party. The term "**Term**" means the Initial Term and/or any

period after the Initial Term during which this Agreement remains in effect, as the context requires.

20.2 Notice of Purchase Offer



20.3 NSR Defaults

Following the Closing Date, the occurrence of any one or more of the following events during the Term will constitute a “**NSR Default**” pursuant to this Agreement:

- (a) NSR fails to comply with, perform or observe any other material obligation, covenant, agreement, term or condition in this Agreement, which failure materially and adversely affects City’s rights or obligations under this Agreement, and such failure continues without cure for a period of sixty (60) days following the date City delivers to NSR written notice thereof (giving particulars of the failure in reasonable detail); provided, that, if such failure arises out of construction related obligations and if NSR is attempting to cure such failure, the foregoing cure period shall be extended for an additional ninety (90) days (for a total of one hundred fifty (150) days), but only for so long as NSR is attempting to cure such failure; and provided further that this Section 20.2(a) shall not apply to events covered by other provisions in this Section 20.2;
- (b) NSR fails to pay to City when due any undisputed amount payable to City pursuant to this Agreement, and such failure continues without cure for a period of sixty (60) days following the date City delivers to NSR written notice thereof;
- (c) NSR (i) admits, in writing, that it is unable to pay its debts as they become due, (ii) makes an assignment for the benefit of its creditors, (iii) files a voluntary petition under Subchapter IV (Railroad Reorganization) of Title 11 of the U.S. Code, or

files any other petition or answer seeking, consenting to or acquiescing in any reorganization, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any similar Law, or (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of NSR, or of all or any substantial part of its properties (so long as such Person continues to have obligations hereunder); and

- (d) within ninety (90) days after the commencement of any proceeding against NSR seeking any reorganization, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any similar Law, such proceeding has not been dismissed, or, within ninety (90) days after the appointment, without the consent or acquiescence of NSR, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of NSR or of all or any substantial part of its properties, such appointment has not been vacated or stayed on appeal or otherwise, or, within sixty (60) days after the expiration of any such stay, such appointment has not been vacated.

If City provides notice to NSR of a condition or failure that could, with the passage of time and a failure of NSR to cure, become an Event of Default pursuant this Section 20.2, then the matter shall constitute a Dispute subject to Article 18.

20.4 City Defaults

Following the Closing Date, the occurrence of any one or more of the following events during the Term will constitute a “City Default” pursuant to this Agreement:

- (a) City fails to comply with, perform or observe any other material obligation, covenant, agreement, term or condition in this Agreement, which failure materially and adversely affects NSR’s rights or obligations under this Agreement, and such failure continues without cure for a period of sixty (60) days following the date NSR delivers to City written notice thereof (giving particulars of the failure in reasonable detail); provided that, if such failure arises out of construction related obligations and if City is attempting to cure such failure, the foregoing cure period shall be extended for an additional ninety (90) days (for a total of one hundred fifty (150) days), or additional time as the parties agree, which agreement shall not be unreasonably withheld, but only for so long as City is attempting to cure such failure; and provided further that this Section 20.3(a) shall not apply to events covered by other provisions in this Section 20.3;
- (a) City fails to pay to NSR when due any undisputed amount payable to City pursuant to this Agreement, and such failure continues without cure for a period of sixty (60) days following the date NSR delivers to City written notice thereof.

If NSR provides notice to City of a condition or failure that could, with the passage of time and a failure of City to cure, become an Event of Default pursuant to this Section 20.3, then the matter shall constitute a Dispute subject to Article 18.

20.5 Remedies Upon Default

- (a) Upon the occurrence of an Event of Default, the Parties shall cause the Event of Default that is the subject of a Dispute to be subject to the procedures set forth in Article 18, and, to the extent not resolved thereunder, the other Party may, at its option and in its discretion:
 - (i) exercise any rights it has under this Agreement;
 - (ii) proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by the Defaulting Party of the applicable provisions of this Agreement and/or to recover Damages, and/or to seek other remedies; and/or
 - (iii) cure the Event of Default by making any such payment or performing any such obligation, as applicable, at the Defaulting Party's sole expense, without waiving or releasing the Defaulting Party from any obligation.

20.6 Cumulative Rights and Remedies

The rights and remedies described in this Article 20 are and shall be deemed to be cumulative and the exercise of any of them shall not be deemed to be an election excluding the exercise at any time of a different remedy, subject to the limitations set forth in this Article 20.

20.7 No Waiver of Remedies

Any waiver by either Party of any Event of Default under this Agreement or any delay of either Party in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date, nor shall any such waiver in any way affect either Party's right to enforce the Agreement.

Article 21. Notices

21.1 Notices

- (a) Notice under this Agreement shall be in writing and sent by registered or certified mail, return receipt requested, or by courier, express or overnight delivery, and by confirmed e-mail.
- (b) The date such notice shall be deemed to have been given shall be the Business Day of receipt if received during business hours, the first Business Day after the Business Day of receipt if received after business hours on the preceding Business Day, the first Business Day after the date sent by courier, express or overnight ("next day delivery") service, or the third Business Day after the date of the postmark on the envelope if mailed, whichever occurs first.

21.2 If to NSR:

Norfolk Southern Railway Company
Director -Real Estate
650 W. Peachtree Street, NW
Atlanta, GA 30308
Attn:

With a Copy to:

Norfolk Southern Railway Company
General Attorney -Real Estate
650 W. Peachtree Street, NW
Atlanta, GA 30308
Attn:

With a Copy to:

Norfolk Southern Railway Company c/o Norfolk Southern Corporation
Attn: Senior Director Interline Services
650 W. Peachtree Street, NW
Atlanta, GA 30308

21.3 If to City:

City of Charlotte
Charlotte Area Transit System
600 East Fourth Street
Charlotte, NC 28202
Attn: CATS CEO

With a Copy to:

City of Charlotte
Charlotte Area Transit System
600 East Fourth Street
Charlotte, NC 28202
Attn: City Attorney - CATS

Article 22. Miscellaneous

22.1 Compliance with Law

Any and all City approvals, reviews, and reimbursements contemplated in this Agreement are conditioned upon the Parties' compliance with applicable Laws. The Parties

acknowledge that this Agreement, including the payment obligations of the City herein, may be satisfied with federal funding from the Federal Transit Administration and that City may be obligated to comply with additional Laws, including NEPA. In the event NSR undertakes work on behalf of or funded by City that is subject to NEPA, all such work to comply with NEPA shall be at City's sole cost and expense.

22.2 No Liability of Directors

No Party shall hold or attempt to hold any director, officer, member, manager, agent, or employee of any other Party acting within the scope of their employment personally liable for a breach of this Agreement or an Event of Default.

22.3 Brokerage Commission

City and NSR each represent that no real estate or investment bank commissions are due and owing to any party with respect to the Transaction contemplated by this Agreement. To the extent that any third-party broker or agent shall assert a Claim for any such commission, then the party against which such a Claim is asserted shall fully assume and discharge any alleged Claims or liability.

22.4 Benefit

This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of Damages or otherwise against either of the Parties hereto.

22.5 Interpretation

All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

22.6 Headings

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

22.7 Reference to Trains, Locomotives, Cars, or Equipment

As used in this Agreement, whenever reference is made to the Trains, locomotives, cars, or Equipment of one of the Parties or Users, such expression means the Trains, locomotives, cars, and Equipment in the possession of or operated by one of the Parties and Users and includes such Trains, locomotives, cars, and Equipment that are owned by, leased to, or in the account of such Party or User. Whenever such locomotives, cars, or Equipment are owned or leased by one Party or User and are in the possession or account of another Party or User, such locomotives, cars, and Equipment shall be considered those of the other Party or User.

22.8 Drafter

This Agreement is the result of mutual negotiations of the Parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

22.9 Public Records Law

NSR acknowledges that information provided by NSR to City is subject to public inspection in accordance with the North Carolina Public Records Law (“**NCPRL**”). If NSR believes any such information qualifies for an exemption from disclosure under NCPRL, NSR may designate the information as subject to a NCPRL exemption claim prior to, or upon or after submission of, the information to City, or upon notice from City that the undesignated information provided was subject to an exemption (“**Designated Information**”). The City shall keep any Designated Information in strict confidence, in no event exercising less care than the degree of care used to protect its own confidential information. Upon receipt of a request for disclosure of proprietary or Designated Information pursuant to the NCPRL, City shall provide prompt written notice to NSR of the request. NSR may determine after consultation with City, if the Designated Information requested qualifies for an exemption under NCPRL. In the event NSR determines that the request Designated Information qualifies for an exemption under NCPRL and requests that City oppose the disclosure thereof, and such opposition results in litigation, NSR shall indemnify, defend and hold City harmless from and against, any claims, causes of action, damages, fines or penalties arising with respect to City’s failure to disclose the Designated Information.

22.10 Illegality

The Parties agree that if any part, term or provision of this Agreement is held to be illegal or in conflict with any Law, such provision shall be severable, with the remaining provisions remaining valid and enforceable.

22.11 Compliance with Law

Each Party shall be responsible for compliance with any applicable Laws that arise for the rights and obligations found in this Agreement. Subject to the foregoing, to the extent permitted by Law, and as to any City Operator operations, City may delegate responsibility for the same by requiring any City Operator to be responsible for compliance with any such Laws or regulations to said City Operator.

22.12 Governing Law

This Agreement shall be construed and interpreted under the laws of the United States of America and the State of North Carolina.

22.13 Survival

- (a) Expiration or termination of this Agreement shall not relieve or release either Party hereto from any obligations assumed or from any liability that may have arisen or

been incurred by such Party under the terms of this Agreement and prior to expiration or termination hereof.

- (b) Expiration or termination of this Agreement shall have no effect on the Freight Easement, which shall continue until terminated pursuant to Law. Should this Agreement expire or terminate prior to the termination of the Freight Easement, the Freight Easement shall continue under terms and conditions agreed to by the Parties or prescribed therefor pursuant to Law.
- (c) For the avoidance of doubt, the conveyance of the Purchased O-Line at the Closing is intended to be final and irrevocable, such that the expiration or termination of this Agreement after the Closing shall not affect or undo in any way the conveyance consummated at the Closing.
- (d) All provisions regarding indemnification, warranty, remedies, liability and limits thereon, and confidentiality and/or protections of proprietary rights shall survive the termination of this Agreement.

22.14 Remedies Cumulative

Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon the Parties hereto shall be cumulative and in addition to all other rights, powers and remedies hereunder and those available at Law or in equity. All such rights, powers and remedies may be exercised separately or at once, and no exercise of any right, power or remedy shall be construed to be an election of remedies or shall preclude the future exercise of any or all other rights, powers and remedies granted hereunder or available at law or in equity, except as expressly provided herein.

22.15 No Waiver

Except as otherwise expressly provided herein, neither the failure of either Party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

22.16 Condemnation

No provision of this Agreement, including but not limited to the provisions of the Primary PSA or [REDACTED], shall be construed to limit or expand the power of eminent domain vested in City by Law.

22.17 Entire Agreement

This Agreement, the Primary PSA, and [REDACTED], including all of their respective exhibits and attachments, contains the entire agreement of the Parties with respect to the Transaction, and no representations, inducements, promises or agreements, oral or otherwise, between the Parties not embodied herein or incorporated herein by

reference shall be of any force or effect. Any previous agreements or understandings among the Parties (other than the Primary PSA and [REDACTED]) regarding this Transaction are merged into and superseded by this Agreement.

22.18 Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective personal representatives, successors and assigns.

22.19 Amendments

No amendment to this Agreement shall be binding on any of the Parties hereto unless such amendment is in writing and is executed by the Party against whom enforcement of such amendment is sought.

22.20 Non-Appropriation of Funds.

NSR acknowledges that, if the Charlotte City Council does not appropriate the funding needed by the City to make payments under this Agreement for any given fiscal year, City's ability to make payments due beyond the end of the last fiscal year for which funds were appropriated will be restricted until such appropriations are made. In such event, City will promptly notify NSR of the non-appropriation. Nothing in this Section shall constitute a waiver by NSR of any rights of NSR under this Agreement or of any legal remedy available to NSR.

22.21 Counterparts

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

22.22 Severability

If any term, covenant or provision of this Agreement, or the application thereof to any Person or circumstance, shall ever be held to be illegal, invalid or unenforceable, then, in such event, the remainder of this Agreement or the application of such terms, covenants and provisions hereof shall nevertheless remain in full force and effect.

[Remainder of page intentionally left blank]

EXECUTED by the City of Charlotte, North Carolina as of the date first written above.

THE CITY OF CHARLOTTE NORTH CAROLINA

By:

Name:

Title:

DRAFT

PROPRIETARY AND BUSINESS CONFIDENTIAL INFORMATION

EXECUTED by Norfolk Southern Railway Company as of the date first written above.

NORFOLK SOUTHERN RAILWAY COMPANY

By:

Name:

Title:

DRAFT

**EXHIBIT A
DEFINITIONS**

“**AAA**” shall have the meaning ascribed thereto in Section 18.3(b).

“**AAR**” shall mean the Association of American Railroads.

“**AAR Railroad Cost Indexes**” shall have the meaning ascribed thereto in the AAR official website: <https://www.aar.org/rail-cost-indexes/> or similar AAR official publication.

“**Agreement**” shall have the meaning ascribed thereto in the Preamble.

“**A.M. Best Rating**” shall mean the financial strength rating of an insurance company published by A.M. Best & Company, Inc.

“**Business Day(s)**” shall mean that day that is neither a Saturday, a Sunday nor a day observed as a legal holiday by the State of North Carolina or the United States Government.

“**Capital Improvements**” shall mean design, construction, renewal, replacement, or material modification or rehabilitation of track and any structures or things necessary for the support or use thereof, including signals and communications systems, but excluding aesthetic improvements or maintenance work conducted in the ordinary course of business.

“**Capital Maintenance**” shall mean any repair and maintenance that does not qualify as Expense Maintenance.

“**Casualty Party**” shall have the meaning ascribed thereto in Section 10.1.

“**Catastrophic Event**” shall have the meaning ascribed thereto in Section 10.1.

“**C.F.R.**” shall mean the Code of Federal Regulations.

“**Charlotte Commuter Service**” shall have the meaning ascribed thereto in Section 4.1.

“**City**” shall mean the meaning ascribed thereto in the Preamble.

“**City Contractor**” shall have the meaning ascribed thereto in Section 13.3(b).

“**City Default**” shall have the meaning ascribed thereto in Section 20.3.

“**City Indemnified Parties**” shall have the meaning ascribed thereto in Section 6.2(a).

“**City Operator**” shall mean City or any provider of Commuter Rail Service on the Purchased O-Line or the Charlotte-POC Segment between Charlotte and Mooresville pursuant to one or more direct agreements with City, provided that neither City nor any entity for which the principles of sovereign immunity would prevent the City Operator from providing to NSR the protections set forth in Section 14 and Exhibit J, including the indemnity protections, shall be a City Operator.

PROPRIETARY AND BUSINESS CONFIDENTIAL INFORMATION

“City Operator Contract” shall have the meaning ascribed thereto in Section 4.1(b).

“Claim” or **“Claims”** shall mean any and all claims, demands, losses (including the loss of use), costs (including investigation, remedial and clean-up costs), expenses (including attorneys’, consultants’ or experts’ fees and expenses), judgments, awards, penalties, governmental action (including fines and liens), causes of action, liens, suits or liability of every kind and nature suffered, but excluding special or consequential losses or damages.

“Coincidental NSR Employee Passengers” shall mean any employee or agent of NSR that is a fare-paying passenger of a City Operator at the time such employee or agent suffers injury, death, or property damage.

“Commercial Industry Mediation Rules and Procedures” shall mean the rules and procedures created by AAA for commercial industry transactions.

“Commuter Rail Passenger(s)” shall mean and include any and all Persons, ticketed or unticketed, using Commuter Rail Services or engaged in any Incidental Use on or about the Purchased O-Line: first, while on board Trains, locomotives, cars, or Equipment employed in Commuter Rail Services and/or boarding and detraining therefrom; second, while on or about the Purchased O-Line for any purpose related to Commuter Rail Services, including, without limitation, parking, inquiring about Commuter Rail Services or purchasing tickets therefor and coming to, waiting for, leaving from and/or observing rail commuter or other Trains, locomotives, rail cars, or Equipment; and, third, while on or about the Purchased O-Line for any purpose related to any Incidental Use thereof. The term Commuter Rail Passenger(s) shall also mean and include any and all Persons meeting, assisting or in the company of any Person described in the immediately preceding sentence.

“Commuter Rail Operations” shall mean the operation of the Purchased O-Line or the Charlotte-POC Segment for Charlotte Commuter Service, Excursion Passenger Rail Service, and Special Train Service.

“Commuter Rail Service” has the meaning ascribed thereto in Section 4.1(a).

“Commuter Rail Trains” shall mean Trains operated by City Operator to transport passengers and not cargo.

“Corridor” shall have the meaning ascribed thereto in Section 4.1(a).

“Damages” shall mean death, personal or bodily injury, property loss or damage or damage to the environment, including but not limited to:

- (i) loss or damage to, or loss of use of, the property and death or personal or bodily injury to a Person; and
- (ii) environmental investigation, cleanup or remediation costs, fines, and penalties; and

PROPRIETARY AND BUSINESS CONFIDENTIAL INFORMATION

- (iii) any and all damages suffered by or asserted against a Party hereto or third party as a direct or indirect result of or due to the presence, disposal, release or other escape of any Hazardous Materials on or from the Corridor trackage, a Train, locomotive, car, or Equipment, or on or at property subject to this Agreement or any related agreement; and
- (iv) attorney, expert and witness fees, and salaries, wages and benefits of a Party's employees investigating, adjusting or defending Claims, suits or proceedings for which another Party is potentially liable under this Agreement, together with associated support staff and out of pocket costs, and any investigation, litigation, appeal, arbitration, administrative hearing or governmental action cost.

"Defaulting Party" shall mean, when an Event of Default has occurred, the Party which fails to meet any material obligation under this Agreement where such failure continues sixty (60) days after written notice from the other Party.

"Description of Future NSR Work" shall have the meaning ascribed thereto in Section 8.2(b).

"Description of Charlotte Work" shall have the meaning ascribed thereto in Section 5.1.

"Description of O-Line Work" shall have the meaning ascribed thereto in Section 7.1(b).

"Designated Information" shall have the meaning ascribed thereto in Section 22.8.

"Dispute" shall mean any claim, dispute, disagreement or controversy between NSR and City concerning their respective rights and obligations under this Agreement, including concerning any NSR Default, any City Default, or any other alleged breach or failure to perform any remedy under this Agreement.

"EDI" shall mean electronic data interchange.

"Equipment" shall mean and be confined to hi-rail vehicles, track inspection equipment and other non-revenue vehicles and machinery (other than locomotives) capable of being operated on railroad tracks that, at the time of an occurrence, are (i) being operated on the trackage upon which such occurrence takes place, or (ii) are on the trackage upon which such occurrence takes place, or on the adjoining right-of-way, for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

"Event of Default" shall mean an NSR Default or City Default, as applicable.

"Excursion Passenger Rail Service" shall mean passenger rail service and special passenger rail service that is (i) occasional and intermittent, not exceeding two (2) roundtrips per week (subject to an increase in the number of roundtrips per week that may be proposed by City and considered for approval by NSR in good faith); (ii) is operated for purposes of promoting tourism, events, and holidays; and (iii) operating only on the Purchased O-Line and the Charlotte-POC Segment.

"Effective Date" shall have the meaning ascribed thereto in the opening paragraph of this Agreement.

PROPRIETARY AND BUSINESS CONFIDENTIAL INFORMATION

“Expense Maintenance” shall mean repair and maintenance that (i) does not constitute a betterment, restoration, or adaptation, and (ii) the expenses of which may be deducted for Federal tax purposes.

“Federal Locomotive Inspection Act” shall mean 49 U.S.C. §20701.

“Federal Safety Appliance Act” shall mean 49 U.S.C. §20302.

“FRA” shall mean the Federal Railroad Administration.

“Freight Easement” shall have the meaning ascribed thereto in Section 2.2.

“Freight Rail Service” shall mean the use of Trains to transport cargo, and not passengers, pursuant to the Freight Easement.

“Fully-Allocated Cost Basis” shall mean the costs of labor (including allocable employee benefits and employment taxes), material, energy, utilities or other costs directly incurred and normal overhead (including, without limitation, administrative labor costs, maintenance, relevant insurance, depreciation of the equipment and depreciation of the facility) all determined in accordance with GAAP applied on a consistent basis.

“Funding Partners” shall mean any federal or state entity that provides funds to City in support of the Transaction.

“Governmental Authority” shall mean any court, federal, state, local or foreign government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority, which shall include the STB but shall not include City.

“Hazardous Materials” shall mean any material that is regulated under Hazardous Materials Laws, because of its quantity, concentration, or physical or chemical characteristics, is defined or included within the definition of a “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic chemical,” “toxic substance,” “hazardous chemical,” “extremely hazardous substance,” “pollutant,” “contaminant,” “solid waste,” or any other words of similar meaning or significance within the context used under any applicable Hazardous Materials Laws. “Hazardous Material” includes, without limitation, any material or substance defined as a “hazardous substance” or a “pollutant or contaminant” under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., including asbestos-containing materials and lead-based paint, as well as petroleum, including crude oil or any fraction thereof.

“Hazardous Materials Law” shall mean all present and future federal, state, or local Law relating to pollution, protection of the environment or natural resources or to human health and safety as it is affected by environmental conditions in, on, under, or about the Purchased O-Line and the Charlotte-POC Segment, including, without limitation, soil, air quality, water, water quality, and groundwater conditions, including, without limitation, the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), the Hazardous Materials

PROPRIETARY AND BUSINESS CONFIDENTIAL INFORMATION

Transportation Act, 49 U.S.A. §§ 5101 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., and the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j.

“Incidental Use” shall mean the use of ancillary services or facilities (whether or not on the Purchased O-Line) conducted or provided for the convenience and comfort of users of Commuter Rail Services, which shall include, without limitation, the use of such facilities as restaurants, kiosks and retail facilities, a purpose or function of which is to serve the needs of users of Commuter Rail Services.

“Initial Charlotte Improvements” shall mean the improvements set forth in Exhibit E.

“Initial O-Line Improvements” shall mean the improvements set forth in Exhibit F.

“Initial Term” shall have the meaning ascribed thereto in Section 20.1.

“Intermediary Assignment” shall have the meaning ascribed thereto in Article 17.

“Law” or **“Laws”** shall mean any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the Parties, the Transaction, trackage, infrastructure, other facilities, and the Corridor or any portion thereof, including, without limitation, Hazardous Materials Laws, whether or not in the present contemplation of the Parties, including without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws or, all federal, state, and local governments, authorities, courts, and any other body or bodies exercising similar functions, having or acquiring jurisdiction over, or that may affect or be applicable to, the Corridor or any part thereof and of the trackage, infrastructure, and other facilities thereon.

“Level of Utility” shall mean a condition that permits both freight trains and passenger trains to operate at the Federal Railroad Administration maximum authorized freight train or passenger train speeds, respectively, corresponding to the FRA track classification existing as of the Closing Date, with a reasonable degree of reliability.

“Mediation” shall have the meaning ascribed thereto in Section 18.3(a).

“NCPRL” shall have the meaning ascribed thereto in Section 22.8.

“NEPA” shall have the meaning ascribed thereto in Section 5.1.

“Non-Casualty Party” shall have the meaning ascribed thereto in Section 10.1.

“Non-NSR Person” shall mean any of the following Persons:

- (i) employees of City (but it is expressly understood and agreed that any labor furnished by NSR for and on behalf of City under any provision of this Agreement shall not be regarded for the purposes of this definition as employees of City);

PROPRIETARY AND BUSINESS CONFIDENTIAL INFORMATION

- (ii) employees of a City Operator (but it is expressly understood and agreed that any labor furnished by NSR for and on behalf of any City Operator under any provision of this Agreement shall not be regarded for the purposes of this definition as employees of a City Operator);
 - (iii) Commuter Rail Passengers or any Person (including any Coincidental NSR Employee Passenger, but excluding all other NSR Agents or Employees) who is on a Commuter Rail Train (including private cars but excluding business cars of NSR) operated by or for the account of City or a City Operator;
 - (iv) any Person (including any Coincidental NSR Employee Passenger, but excluding all other NSR Agents or Employees) at or adjacent to a commuter station used by any City Operator who is there in connection with the Commuter Rail Service for the purpose of boarding or detraining from any Commuter Rail Train, meeting a Commuter Rail Train, purchasing a ticket, making a reservation, or obtaining information about City Operator's service, conducting business with City or any City Operator (including a vendor from whom City or any City Operator receives compensation), or passengers riding on a Commuter Rail Train;
 - (v) any Person at or adjacent to a commuter station who is providing local transportation to or accompanying a Person described in (iv) above;
 - (vi) at stations that are used by a City Operator and that are not used by NSR or by tenants of NSR, all Persons other than: (a) NSR Agents or Employees (unless the NSR Agents or Employees also meet the definition of Coincidental NSR Employee Passenger) and (b) Persons accompanying or doing business with such NSR Agents or Employees; and
 - (vii) at stations used jointly by NSR and a City Operator, or in which NSR leases space to third parties, any Persons who are at the station for a purpose directly related to City's use, or City Operator's use, of the station (including Persons dealing with a lessee of City and/or a City Operator in that station), and including but not limited to those described in (iii), (iv) or (v), above (including any Coincidental NSR Employee Passenger, but excluding all other NSR Agents or Employees).
- 

"NSR" shall have the meaning ascribed thereto in the Preamble.

"NSR Indemnified Parties" shall have the meaning ascribed thereto in Section 6.2(a).

"NSR Agents or Employees" shall mean any agents or employees of NSR in the course of their agency or employment.

"NSR Default" shall have the meaning ascribed thereto in Section 20.2.

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“NSR Operating Rules” shall mean the codification of NSR’s practices and guidelines for the operation of a Class 1 railroad as required by the Federal Railroad Administration at 49 C.F.R. Part 217 as provided to City and any operating bulletins released by NSR as provided to City.

“NSR User” shall have the meaning ascribed thereto in Section 4.1(b).

“Operating Schedule” shall mean the weekday and weekend Operating Schedule as Section forth in Exhibit G.

“Other Invitee” shall mean any Person or Persons on or about the Corridor in connection with City's or City Operator's use of the Corridor other than those Persons on or about the Corridor to perform Railroad Operations or to engage in Incidental Use. Other Invitee shall also mean and include any and all Persons meeting, assisting, or in the company of any Person described in the immediately preceding sentence.

“Party” and **“Parties”** shall have the meaning ascribed thereto in the opening paragraph of this Agreement.

“Person” shall mean any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority, including City.

“Positive Train Control” and **“PTC”** shall mean any system designed to prevent train-to-train collisions, over-speed derailments, incursions into established work zones, and movements of Trains through switches left in the wrong position.

“Purchased O-Line” has the meaning ascribed thereto in the Recitals.

“Quarterly Indexes of Chargeout Prices and Wage Rates (1977=100)” shall have the meaning ascribed thereto in the AAR official website: <https://www.aar.org/rail-cost-indexes/> or similar AAR official publication.

“Railroad Operations” shall mean any and all Commuter Rail Services and/or Freight Rail Service. For purposes of Article 14, (i) neither Party shall be deemed to be a “contractor” of the other Party, and (ii) all Trains, locomotives, cars, Equipment, officers, agents, contractors, and employees of the City Operator shall be deemed to be Trains, locomotives, cars, Equipment, officers, agents, contractors, and employees of City.

“Records” shall have the meaning ascribed thereto in Section 11.5(a).

“Release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing Hazardous Materials).

“Respective Owner” shall have the meaning ascribed thereto in Section 6.3.

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“**Respective Portion**” shall have the meaning ascribed thereto in Section 10.1.

“**Special Train Service**” shall mean an additional unscheduled train operated on a one-time or non-recurring basis in addition to regularly scheduled service.

“**STB**” shall mean the United States Surface Transportation Board, an independent federal agency that is charged with the economic regulation of various modes of surface transportation, primarily freight rail.

“**Term**” shall have the meaning ascribed thereto in Section 20.1.

“**Trackage Rights**” shall mean those rights conferred on a third party with respect to a Trackage Rights Agreement.

“**Trackage Rights Agreement**” shall mean the rights arising by agreement between NSR and other rail carriers to use the tracks or right-of-way on the Purchased O-Line or the Charlotte-POC Segment for the transport of freight rail traffic, without imparting an ownership interest to the other rail carriers.

“**Train**” shall mean one or more locomotives, coupled with or without cars, whether or not such locomotive or car is moving or stationary.

“**Transaction**” shall have the meaning ascribed thereto in the Recitals.

“**Transition Period**” shall have the meaning ascribed thereto in Section 7.1(a).

“**User**” shall mean any NSR User or any City Operator.

“**Valuation Maps**” shall mean a map or plat created or maintained by NSR that depicts the location of the rail corridor in the Purchased O-Line.

EXHIBIT B
PRIMARY PSA

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EXHIBIT C

A solid black rectangular redaction box covering the content of Exhibit C.

DRAFT

EXHIBIT D

[REDACTED]

[REDACTED]

DRAFT

EXHIBIT E
INITIAL CHARLOTTE IMPROVEMENTS

[REDACTED]

[REDACTED]

[REDACTED]

DRAFT

EXHIBIT F
INITIAL O-LINE IMPROVEMENTS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT G **OPERATING SCHEDULE**

Commuter Rail Service: Charlotte to Mooresville, North Carolina

Red Line Service - Approach 1

(2 trains midday for hourly service and evening trips)

	Southbound		Northbound	
Trainset	Depart	Arrive	Depart	Arrive
1	5:30	6:12	6:25	7:07
2	6:15	6:57	7:15	7:57
3	7:00	7:42	8:10	8:52
4	7:30	8:12	9:20	10:02
1	8:00	8:42	10:20	11:02
2	8:30	9:12	11:20	12:02
3	9:00	9:42		
4	10:10	10:52		
1	11:15	11:57	12:20	1:02
2	12:15	12:57	1:20	2:02
1	1:15	1:57	2:20	3:02
2	2:15	2:57	3:20	4:02
3			4:00	4:42
4			4:30	5:12
1	3:20	4:02	5:00	5:42
2	4:20	5:02	5:30	6:12
3	5:00	5:42	6:00	6:42
4	5:50	6:32	6:45	7:27
1	6:50	7:32	7:45	8:27
2	7:50	8:32	8:45	9:27
1	8:50	9:32	9:45	10:27
2	9:50	10:32	10:45	11:27
1	10:50	11:32	11:45	12:27

42 trips

1. This Exhibit includes the above Operating Schedules for Commuter Rail Service which add Commuter Rail Service frequencies between Charlotte, North Carolina, and Mooresville, North Carolina.
2. All times, stopping patterns, and slot activation horizons listed are conceptual and may change subject to City and NSR approval.

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3. In accordance with Section 4.1(d) of the Agreement, City may at any time following the commencement of Commuter Rail Service, propose adjustments to commuter or commuter-related services on the Corridor on a frequency and Operating Schedule that it, in its sole discretion, determines.
4. The following terms and conditions shall apply to the operation of Special Trains and Excursion Trains, which NSR may permit from time to time as stated in Article 4 of this Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

City would submit request for Special Trains and Excursion Trains in writing at least ten (10) business days prior to the proposed date of operations. No Special Train or Excursion Train would run without the prior written agreement of NSR, [REDACTED]

[REDACTED]. Special Trains and Excursion Trains shall not be entitled to dispatching preference. NSR shall have the right to reject any and all Special Trains or Excursion Train where such Special Train or Excursion Train would unreasonably interfere with NSR's performance of its common carrier obligations and Freight Rail Service pursuant to the Freight Easement. NSR agrees that the following Special Trains may be operated each year of this Agreement on mutually agreeable dates and times:

[Event/Holiday]

EXHIBIT H
NSR TRACKAGE RIGHTS AGREEMENTS

List of Freight and Passenger Trackage Rights Agreements held by other Rail Carriers on the Purchased O-Line:

None identified

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EXHIBIT I
LIABILITY AND INSURANCE REQUIREMENTS FOR CITY CONTRACTORS

[IN NEGOTIATION]

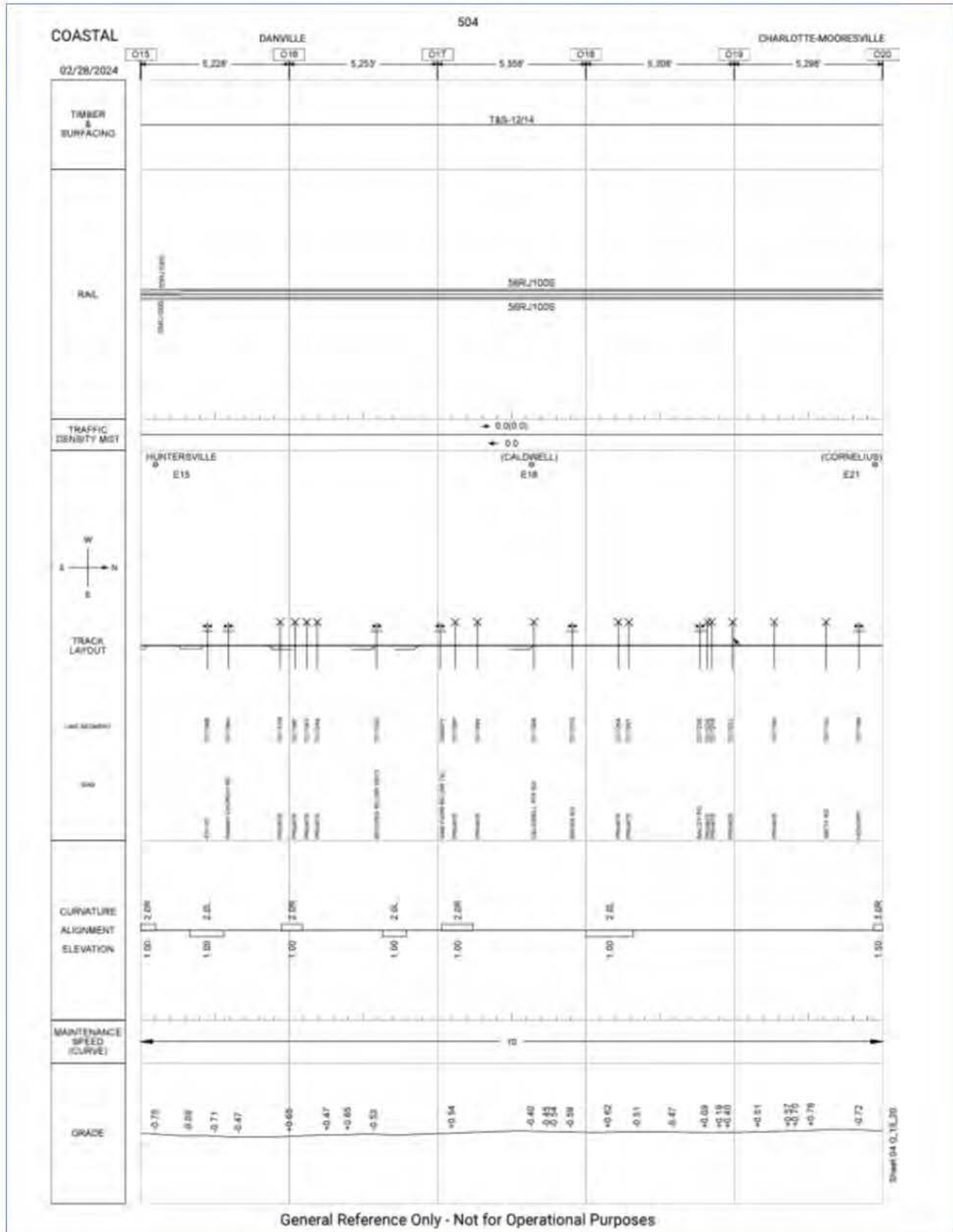
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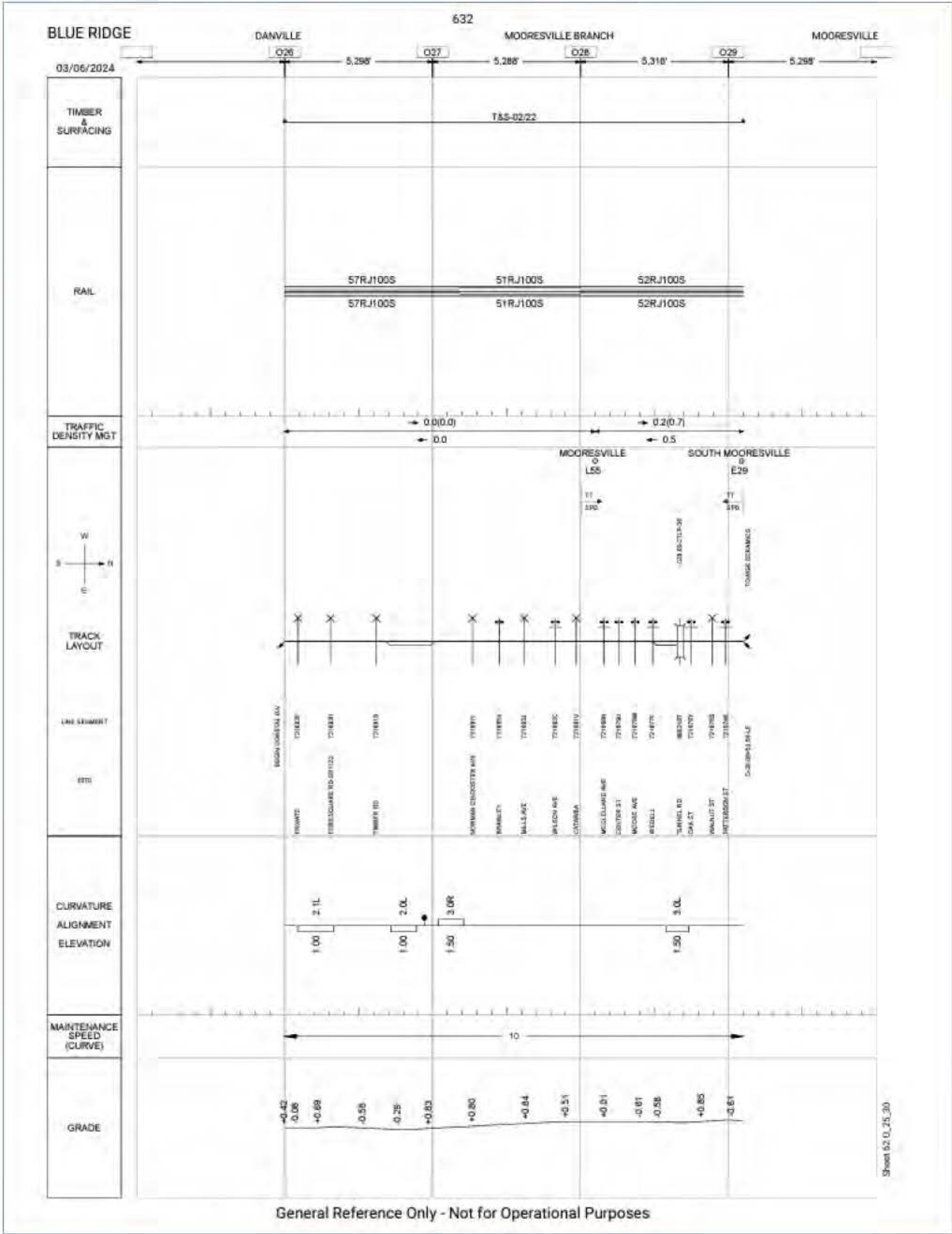
EXHIBIT J
LIABILITY AND INSURANCE PROVISIONS FOR CITY OPERATOR CONTRACT

[IN NEGOTIATION]

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EXHIBIT L
OPERATING RESTRICTIONS ON THE
PURCHASED O-LINE AND CHARLOTTE-POC SEGMENT

[INSERT CLEARANCE REQUIREMENTS]

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