

ENTERED
Office of Chief Counsel
December 3, 2025
Part of
Public Record

Proviso Railroad, Inc., an Illinois corporation) Finance Docket # FD 36874
)

By: Max Callahan, Esq.
Fulcrum Rail
180 North Wacker Drive, Suite 400
Chicago, Illinois 60606
312-629-0222

Proviso Rail, Inc.

Date Filed: December 3, 2025

December 3, 2025
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
December 3, 2025
SURFACE
TRANSPORTATION BOARD

Proviso Railroad, Inc., an Illinois corporation) Finance Docket # FD 36874
)

L. Neill Cartage Co., Inc. owns the Berkeley Transload Facility. The trackage is used in conjunction with interchanging to and from Union Pacific Railroad, boxcar loads of bulk commodities (i.e., paper and packaging-related materials, lumber, and polystyrene bead). Product is cross-docked and transloaded to trucks for final delivery.

There is currently 712.5 linear feet of track located on the Berkeley Transload Facility.

In this circumstance, the Berkeley Transload Facility is properly considered to be a line of railroad under 49 U.S.C. §10901 pursuant to the Board's tenant-use test, rather than spur, switching, or side tracks excepted from Board authority over their acquisition and operation by virtue of 49 U.S.C. §10906. The tenant-use test is described in the Board's decision denying reconsideration in *Effingham Railroad Company – Petition for Declaratory Order – Construction at Effingham, IL*, STB Docket No 41986 and embraced proceedings, 1998 STB LEXIS 253, decision served September 18, 1998; *aff'd sub nom. United Transportation Union v. Surface Transportation Board*, 183 F.3d 606 (7th Circuit, 1999).

In that case, as here pertinent, Agracel Corporation transloaded beer from rail to track at a warehouse that it operated in an industrial park at Effingham, Illinois. Agracel owned approximately 206 feet of right-of-way and track that extended between its warehouse and trackage owned and operated by Conrail. Previously, Conrail had operated over the Agracel trackage to provide service to Agracel. It was proposed that Effingham Railroad Company (ERRC), a noncarrier, substitute for Conrail as provided of the rail service over the Agracel trackage. ERRC filed a notice of exemption under 49 C.F.R. §1150.31 for its operation over that trackage. The United Transportation Union (UTU) contended that the Board lacked authority over the proposed operation because Agracel trackage is spur, switching, or side track excepted from Board operation authority under 49 U.S.C. §10906.

In finding that the Agracel trackage was a line of railroad under 49 U.S.C. §10901, the Board said (1998 STB LEXIS 253, at 8-19 (emphasis in original)):

...(I)n those cases where a tenant's railroad's intended use of a track segment is different from the use made by the railroad owning the track, we have determined that the tenant's use, rather than the character of the trackage itself, is controlling with regard to its own operations, subject to

consideration of the purpose and effect of the construction under *Texas & Pacific* (citations omitted).

In the initial notice, even under its new approach, ERRC became the operator of a line of track connecting Conrail to the site of the industrial park. Conrail clearly had operated this short track segment as an exempt siding or spur. However, because it was ERRC's initial railroad operation, this track segment became ERRC's entire line of railroad and was not, as to ERRC, a siding or spur. This small piece of trackage initiated ERRC's service from a connection or interchange point with Conrail to a shipper's facility within the industrial park. Thus ERRC's becoming the operator was the proper subject of the initial notice of exemption and was not statutorily exempt under section 10906.

It is apparent from the Board's decision in that case that the tenant-use test also applies when a new rail carrier is using trackage pursuant to an operating agreement rather than a lease, and when the prior use of the track was by a third-party carrier rather than by the shipper-owner of the trackage. In upholding the Board's decision in that case, the reviewing court held that it was reasonable for the Board to classify the trackage by virtue of the tenant's use. *United Transp. Union vs. Surface Transportation Bd.*, *supra*. 193 F.3d at 614. *Accord: Chicago Rail Link LLC – Lease & Oper. – Union Pacific R.R. Co.*, 2 S.T.B. 534 (1997), *aff'd sub nom. United Transp. Union – Illinois Surface Transp.*, 169 F.3d 474 (7th Cir. 1999).

Inasmuch as the subject transaction will be Proviso Railroad's initial railroad acquisition, and the Berkeley Transload Facility trackage will constitute the entire line of the Proviso Railroad, it follows that the Berkeley Transload Facility trackage is a line of railroad under 49 U.S.C. §10901, rather than a spur, switching, or side track excepted from Board acquisition and operation authority by virtue of 49 U.S.C. §10906.

INFORMATION REQUIRED BY 49 C.F.R. §1150.33

(a) The full name and address of the applicant;

The full name and address of the applicant in Finance Docket Number 36874 is Proviso Railroad, Inc., 5400 Proviso Drive, Berkeley, Illinois, 60163.

(b) The name, address, and telephone number of the representative of the application who should receive correspondence;

Proviso Railroad, Inc.'s representative is Max Callahan, Esq., Fulcrum Rail, LLC., 180 North Wacker Drive, Suite 400, Chicago, Illinois, 60606. 312-629-0222

(c) A statement that an agreement has been reached or details when an agreement will be reached;

An Operating Agreement between Neill Cartage and Proviso Railroad, Inc., concerning the Berkeley Transload Facility trackage has been executed on August 25, 2025. A copy of the Operating Agreement is provided herewith.

(d) The operator of the property;

Proviso Railroad, Inc. will be the operator of the property.

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property;

The above entity in Finance Docket 36874 is L. Neill Cartage Co., Inc., a non-railroad corporation, 5400 Proviso Drive, Berkeley, Illinois, 60163.

(2) The proposed time schedule for consummation of the transaction,

Proviso Railroad, Inc. will enter into an Operating Agreement with Neill Cartage within the next 30 days. Operations are proposed to be consummated on or about September 1, 2025.

(3) The mile-posts of the subject property, including any branch lines, and

The Berkeley Transload Facility is not described by milepost numbers. The trackage on the subject property is described and depicted in Appendix 1-A and 1-B attached to this Notice.

(4) The total route miles being acquired;

A total of approximately 712.5 linear feet (0.14 mile) of trackage is to be operated by Proviso Railroad, Inc.

(f) A map that clearly indicates the area to be serviced, including origins, termini, stations, cities, counties, and states;

The required map is attached to this Notice as Appendix 1-B.

(g) A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.

The required certificate is attached to this Notice as Appendix 2.

CAPTION SUMMARY

A caption summary required by 49 C.F.R. §1150.34 for Finance Docket Number 36874 is attached to this Notice as Appendix 3.

ENVIRONMENTAL AND HISTORIC REPORT

The proposed acquisition and operation do not require environmental and historic reporting. See 49 C.F.R. §1105.6(c)(2)(i) and 49 C.F.R. §1105.8(b)(1).

LABOR PROTECTION

Pursuant to 49 U.S.C. §10901(c), labor protection requirements do not apply to this transaction.

VERIFICATION

The verification is attached to this Notice as Appendix 4.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 30 days of the filing of this Notice, the Director of the Board's Office of Proceedings should publish notices in the Federal Register of the filing of notices of exemption in Finance Docket Number 36874. See 49 C.F.R. §1150.32(b).

Respectfully submitted,

Proviso Railroad, Inc., an Illinois corporation

By: Max Callahan, Esq.
Fulcrum Rail, L.L.C.
180 North Wacker Drive, Suite 400
Chicago, Illinois 60606
312-629-0222

*Attorney for Applicant
in Finance Docket Number FD36874*

Applicant in Finance Docket Number: FD36874

DATE FILED: December 3, 2025

Finance Docket Number: FD 36874

Appendix 1-A

LENGTH OF PROVISO RAILROAD, INC.
BERKELEY TRANSLOAD FACILITY

Total Track: 712.5 = .14 mile



- Orange highlight is track owned/associated with the subject facility
- Blue highlight is track connecting the subject facility's track to mainline track and not associated with the subject facility

Berkeley Transload Facility

5400 Proviso Drive

Berkeley, Illinois

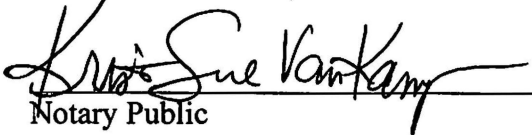
CERTIFICATION UNDER 49 C.F.R. §1150.33(g)

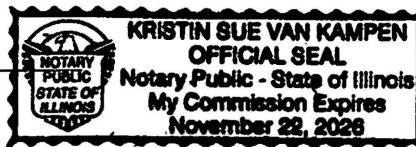
Proviso Railroad, Inc. hereby certifies under 49 C.F.R. §1150.33(g) that the projected revenues from the acquisition and operation proposed in this matter do not exceed those that would qualify it as a Class III rail carrier and will not exceed Forty-Seven Million Two Hundred and Ninety-Nine Thousand Eight Hundred and Fifty-One Dollars (\$47,299,851).



Max Callahan
Authorized Representative of
Proviso Railroad, Inc.

SUBSCRIBED and SWORN to before me
this 3rd day of December, 2025.


Notary Public



Finance Docket Number: FD 36874

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NUMBER: FD 36874

PROVISO RAILROAD, INC.

- ACQUISTION EXEMPTION -

RAIL LINE OF L. NEILL CARTAGE CO., INC.

AT BERKELEY TRANSLOAD FACILITY, BERKELEY, ILLINOIS

Proviso Railroad, Inc. has filed a Notice of Exemption to acquire and operate from L. Neill Cartage Co., Inc., a non-carrier, approximately 712.5 feet / .14 mile of right-of-way and trackage and L. Neill Cartage Co., Inc.'s Berkeley Transload Facility in Berkeley, Illinois. Comments must be filed with the Board and be served on Proviso Railroad, Inc.'s representative, Max Callahan, Fulcrum Rail, LLC, 180 North Wacker Drive, Suite 400, Chicago, Illinois, 60606, 312-629-0222.

This Notice is filed under 49 C.F.R. §1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*.

THIS AGREEMENT CONTAINS AN AUTOMATIC RENEWAL PROVISION

OPERATING AGREEMENT

THIS AGREEMENT, made and entered into as of the 25 day of August, 2025, between L. NEILL CARTAGE and PROVISO RAILROAD, INC.

WITNESSETH:

WHEREAS, Proviso Railroad, Inc. has acquired by Access Agreement from L. Neill Cartage, Co. of approximately 712.5 linear feet (0.14 mile) of right-of-way and trackage located at L. Neill Cartage Co.'s Transload Facility, in Berkeley, Illinois, more particularly described in Appendix 1 attached hereto ("the Berkeley Transload Facility trackage"); and

WHEREAS, Proviso Railroad, Inc. desires to operate and maintain the Berkeley Transload Facility trackage for the provision of rail service in the name of, and in behalf of L. Neill Cartage Co.; and

WHEREAS, L. Neill Cartage Co. is agreeable to such operation and maintenance upon the terms and conditions herein contained.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein the parties hereto agree as follows:

ARTICLE ONE

**GRANT OF RIGHT TO OPERATE AND
MAINTAIN THE
BERKELEY TRANSLOAD FACILITY TRACKAGE**

Subject to the terms and conditions provided in the Access Agreement between L. Neill Cartage Co. and Proviso Railroad, Inc., (i) L. Neill Cartage Co. hereby grants to Proviso Railroad, Inc. the right to operate its rolling stock and equipment with its crews over the Berkeley Transload Facility trackage for the purpose of providing rail-related service to shippers

and receivers located on such lines and to transport shipments by rail over such lines, and to maintain the Berkeley Transload Facility trackage, and (ii) Proviso Railroad, Inc. agrees to operate and maintain the Berkeley Transload Facility trackage. Proviso Railroad, Inc. reserves the right to operate equipment on an as-needed basis, using its own personnel. Proviso Railroad, Inc. will perform all necessary freight transloading at the Berkeley Transload Facility and will operate all freight car loading and unloading facilities.

ARTICLE TWO

TERM; TERMINATION

Section 2.01 Term. Subject to earlier termination as provided herein, the term of this Agreement shall be one year from the date of this Agreement shown above; provided, however, that this Agreement will be renewed automatically for additional one year periods unless, no later than 60 days before its expiration, either L. Neill Cartage Co. or Proviso Railroad, Inc. provides written notice to the other party of its intent not to renew this agreement.

L. Neill Cartage Co. may terminate this Agreement upon ten (10) calendar days written notice if by any reason most of the circulating shares in Proviso Railroad, Inc. with right to a vote are no longer property of L. Neill Cartage Co., or its parent or affiliated companies, or if any shares in Proviso Railroad, Inc. are owned, directly or indirectly, by a competitor of L. Neill Cartage Co.

Section 2.02 Termination For Default. Either party may terminate this Agreement by written notice if the other party fails to perform any obligation required of it hereunder and fails to remedy such default within thirty (30) days after receipt of written notice of such default.

Section 2.03 Termination for Bankruptcy, Etc. Either party may immediately terminate this Agreement by written notice if the other party enters into or is placed in bankruptcy or

receivership or is nationalized, become insolvent, or makes an assignment for the benefit of its creditors.

ARTICLE THREE

SCOPE OF OPERATIONS AND MAINTENANCE AND COMPENSATION THEREFORE

The scope of operations and maintenance and the agreed compensation therefore are contained in Appendix 2 attached hereto. The parties may amend Appendix 2 from time to time by executing an amended scope of operations and maintenance and compensation.

ARTICLE FOUR

GOVERNMENT APPROVAL, ETC.

Proviso Railroad, Inc. at its own expense shall obtain any and all governmental approvals, authorizations, permits, licenses, and exemptions that may be required for its operation and maintenance of the Berkeley Transload Facility trackage.

ARTICLE FIVE

MANAGEMENT AND OPERATIONS

Proviso Railroad, Inc. shall comply with the provisions of the Federal Safety Appliance Act, as amended, and all other federal, state, and local laws, regulations and rules respecting (i) the operations and maintenance of the Berkeley Transload Facility trackage, (ii) the operation, condition, inspection and safety of Proviso Railroad, Inc.'s rolling stock and equipment while such equipment is being operated over the Berkeley Transload Facility trackage. Proviso Railroad, Inc. shall indemnify, protect, defend, and save harmless L. Neill Cartage Co. and its officers, agents and employees from and against all fines, penalties and liabilities imposed upon Proviso Railroad, Inc. or its officers, agents and employees under such laws, rules and regulations by any public authority or court having jurisdiction in the premises, when attributable

in any manner to the failure of Proviso Railroad, Inc. to comply with its obligations under this article.

ARTICLE SIX

LIABILITY AND INDEMNITY

Whenever any loss of, damage to, or destruction of any property whatsoever, or injury or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of Proviso Railroad, Inc., Proviso Railroad, Inc. shall assume all liability therefore, and shall forever protect, defend, indemnify and save harmless L. Neill Cartage Co. and its officers, agents and employees from and against any such liability, cost and expense, except if such loss, damage, injury or death was caused by Proviso Railroad, Inc.

ARTICLE SEVEN

ENVIRONMENTAL CONDITIONS

L. Neill Cartage Co. shall indemnify Proviso Railroad, Inc. for any and all Losses resulting from environmental conditions existing on the Berkeley Transload Facility trackage as of the commencement of operations by Proviso Railroad, Inc. Proviso Railroad, Inc. shall indemnify L. Neill Cartage Co. for any and all Losses resulting from environmental conditions occurring or arising on the Berkeley Transload Facility trackage during the term of this Agreement except to the extent caused by the act or omission of L. Neill Cartage Co.

ARTICLE EIGHT

THIRD PARTY CLAIMS RELATING TO OWNERSHIP OPERATION

Proviso Railroad, Inc. shall not cause any lien, claim, or encumbrance to be placed against the Berkeley Transload Facility trackage. If any such lien, claim or encumbrance shall

be filed or placed against the Berkeley Transload Facility trackage or any part thereof, Proviso Railroad, Inc. agrees to discharge the same within 30 days after Proviso Railroad, Inc. has notice thereof. If Proviso Railroad, Inc. fails to do so, L. Neill Cartage Co. shall have the right (but not the obligation) to pay or discharge any such liens, claims or encumbrances without inquiry as to their validity and any amount so paid, including interest, fees, charges, and expenses, shall be paid by Proviso Railroad, Inc. to L. Neill Cartage Co., as applicable.

ARTICLE NINE

FINANCIAL STATEMENTS

If L. Neill Cartage Co. shall so request, Proviso Railroad, Inc. shall be required on a quarterly basis to provide statements reflecting its financial condition, such as a balance sheet and profit-loss statement.

ARTICLE TEN

CONFIDENTIALITY

Proviso Railroad, Inc. will keep secret and confidential at all times and will not disclose, divulge, or communicate any confidential or proprietary information provided by L. Neill Cartage Co. hereunder, in any manner, directly or indirectly, to any third party, except as permitted by this Agreement, and except where that information:

- (a) is or later become publicly known under circumstances involving no breach of this Agreement by Proviso Railroad, Inc.
- (b) was already known to Proviso Railroad, Inc. at the time it was received from L. Neill Cartage Co., not under an obligation of confidentiality, as evidenced by written documents in the possession of Proviso Railroad, Inc.; or

(c) is made available to Proviso Railroad, Inc. by a third party without secrecy obligations and without breach of an obligation to L. Neill Cartage Co.

Proviso Railroad, Inc. may disclose confidential information only to those of its directors, officers, and employees who legitimately require it for the purposes permitted by this Agreement, and will use its best efforts to prevent any unauthorized disclosure by them.

Notwithstanding the termination of this Agreement, the obligations of Proviso Railroad, Inc. under this Section 11 shall continue in force for ten (10) years after termination.

ARTICLE ELEVEN

REAL PROPERTY TAXATION

L. Neill Cartage Co. shall assume responsibility for property taxes on the Berkeley Transload Facility for the tax year 2025. Commencing in 2026, Proviso Railroad, Inc. agrees to file Illinois Department of Revenue Railroad Property Tax Returns (including but not limited to PTAX 500 through 513 and 520A through 523, and 537), listing the Berkeley Transload Facility property as “railroad operating property” as defined in the applicable Illinois statutes. Proviso Railroad, Inc. shall pay the resulting property taxes or immediately fully reimburse L. Neill Cartage Co. if L. Neill Cartage Co. pays such taxes.

ARTICLE TWELVE

AMENDMENTS

This Agreement represents the entire understanding between the parties and supersedes and replaces any and all prior agreements between the parties relating to the subject matter hereof. This Agreement may not be amended except by a written instrument signed on behalf of each party by its authorized representatives.

ARTICLE THIRTEEN

ASSIGNMENT

Neither party may assign this Agreement without the prior written consent of the other, except that L. Neill Cartage Co. may assign this Agreement to any entity which succeeds, by sale, merger, acquisition, transfer, or otherwise, to all or substantially all of its assets or business at its Berkeley Transload Facility.

ARTICLE FOURTEEN

MISCELLANEOUS

Section 15.01 Any notices, requests, or other communications hereunder shall be in writing and shall be deemed to have been duly given when made upon a party by personal service at any place where they may be found or by mailing such notices, requests, or communications by certified mail, postage prepaid and return receipt requested, or by nationally recognized courier, or by transmitting such notice by facsimile, in each case to the following addresses or facsimile numbers, as the case may be:

- (a) If to L. Neill Cartage Co.:
- (b) 5400 Proviso Drive, Berkeley, IL, 60163

- (a) If to Proviso Railroad, Inc.:
- (b) 5400 Proviso Drive, Berkeley, IL, 60163

Either party may provide changes in the above addresses to the other party by a notice given to the other party in this Section 15.01.

Section 15.02 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

Section 15.03. Severability. If any provision in this Agreement shall for any reason be

determined to be invalid or unenforceable, the balance of such provision and the remaining provisions of this Agreement shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable provision had not been a part hereof.

Section 15.4 Titles. The title of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

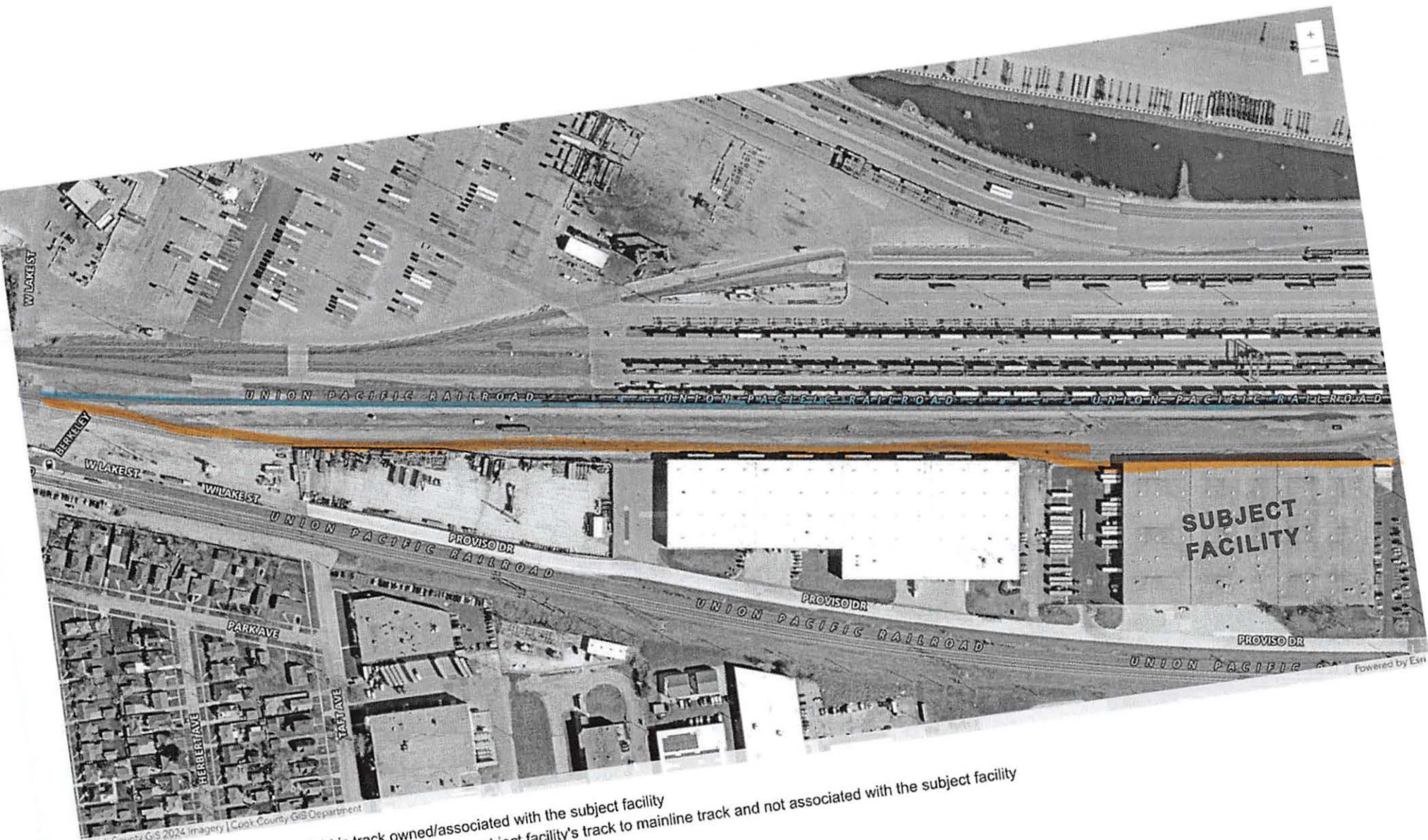
IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

L. Neill Cartage Co.

Proviso Railroad, Inc.

By: 
Title: President

By: 
Title: Vice President



Orange highlight is track owned/associated with the subject facility
Blue highlight is track connecting the subject facility's track to mainline track and not associated with the subject facility

Berkeley Transload Facility

5400 Proviso Drive

Berkeley, Illinois

SCOPE OF WORK

L. Neill Cartage Co. and Proviso Railroad, Inc. hereby agree to the following scope of work in accordance with Article Three (3) of the Operating Agreement between them made and entered into as of August 25, 2025.

A. Operation

Proviso Railroad, Inc. will furnish and properly trained and qualified railroad operating crew to provide transload services at the Berkeley Transload Facility, Berkeley, Illinois (work site). It is expected that the operating crew will work eight hours a day, Monday through Friday (full time) or as required. If such railroad services do not occupy that number of hours of operation on any day, the operating crew shall utilize the remaining hours of any such day doing one or more of the following activities: (1) hand check gauge within all tracks and turnouts; (2) clean and lubricate any and all moving parts of all switches, if applicable; (3) hand check bolts within switch and track area; and (4) perform other railroad-related projects as needed. At the reasonable request of L. Neill Cartage Co. from time to time, the operating crew will work a greater number of hours per day than the numbers identified above.

Proviso Railroad, Inc. will furnish such equipment that will facilitate the railroad-related services identified herein and pursuant to the Operating Agreement.

B. Maintenance

The operating crew will perform light track maintenance and daily inspection of the trackage at the work site. Proviso Railroad, Inc. will provide sufficient properly trained and qualified maintenance personnel to perform other maintenance activities, as needed (collectively, maintenance crew). The number of persons in the maintenance crew will vary depending on the

maintenance work to be done. However, in most cases, a maintenance crew will consist of two persons. Proviso Railroad, Inc. will provide equipment and tools as required for maintenance activity.