

ASSIGNMENT AGREEMENT OF AGREEMENT OF PURCHASE AND SALE

THIS ASSIGNMENT AGREEMENT OF AGREEMENT OF PURCHASE AND SALE ("Assignment Agreement") is made this 19th day of July 2022, by and between

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, whose address is 650 West Peachtree St., NW, Atlanta GA 30308 (hereinafter referred to as "NSR" or as "Seller"), and

OPEN SPACE INSTITUTE LAND TRUST, INC., a New York non-profit corporation, whose address is 1350 Broadway, Suite 201, New York, NY 10018 (hereinafter referred to as "OSI" or as "Contract Purchaser"), and

THE STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION (hereinafter referred to as "NJDEP" or as "Assigned Purchaser"), whose address is 401 E. State Street, Trenton, NJ 08625.

NSR, OSI, and NJDEP are collectively referred to herein as the "Parties."

WHEREAS, on January 31, 2020, OSI entered into an Agreement of Purchase and Sale ("APS"), as "buyer," with NSR, as "Seller," for the purchase of real property, which is specifically identified herein at Schedule A and consists of approximately 138.81 acres located between Milepost WD 2.9 (near Station 255+61) in Jersey City, Hudson County to Milepost WD 11.5 (near Station 600+48) in Montclair Township, Essex County (hereinafter referred to as "Property"), for the total purchase price of SIXTY-FIVE MILLION DOLLARS AND ZERO CENTS (\$65,000,000.00) minus Two Million Four Hundred Ten Thousand (\$2,410,000) Dollars paid by New Jersey Transit to NSR pursuant to the 2nd Amendment to the APS; and

WHEREAS, a true copy of the contract between OSI and NSR (with all subsequent amendments to date) is attached hereto as Schedule B; and

WHEREAS, pursuant to Section 14 of the APS, the APS may be assigned to the State of New Jersey without NSR's consent; and

WHEREAS, OSI intends to assign the APS to NJDEP; and

WHEREAS, NJDEP intends to assume OSI's interest in the Property, subject to the terms and conditions of the APS as modified herein.

THEREFORE, IT IS AGREED as follows:

1. OSI hereby transfers and assigns to NJDEP all of the right, title and interest of OSI in and to the APS, and NJDEP hereby accepts the foregoing assignment and assumes all obligations of OSI under the APS from and after the date hereof. This Assignment Agreement is made without any covenant, warranty or representation by, or recourse against, OSI of any kind whatsoever. Notwithstanding the foregoing, OSI shall remain liable for the payment of: (i) all title work/services rendered by Old Republic Title Insurance Company under Section 6 of the APS; (ii) all requested updates to appraisal reports, surveys, stormwater siting studies, reports, other studies, or other related documents obtained by OSI as part of the transaction contemplated by the APS; and (iii) all requested legal opinions, memoranda, filings and analyses related to the transaction including, but not limited to, opinions and filings related to railbanking, Surface Transportation Board approvals, acquisition of residual common carrier obligations, and related issues.
 2. Survey. Section 4 of the APS is hereby supplemented to require that the survey be prepared in accordance with the "NJDEP Green Acres Standard Scope of Work," as stipulated by the State of New Jersey, Department of Environmental Protection, Green Acres Program. The cost of the survey work shall be borne entirely by OSI.
 3. Mutual Release. The following is hereby incorporated into the APS as a new, separate section 25 and entitled, "25. **Mutual Release**."
 - A. All indemnity obligations of Buyer included in Sections 11, 12 and 13 of the APS shall, with respect to NJDEP as the Assigned Purchaser, be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., and appropriations and the availability of funding. NJDEP shall be responsible for, at its own expense shall defend itself against, and hereby releases Seller from any and all suits, claims, losses, demands, expenses, or damages of whatsoever kind or nature, arising out of or in connection with any act or omission of NJDEP, its employees, representatives, agents, independent contractors or invitees, related to Sections 11, 12 and 13 of the APS.
 - B. Seller shall be responsible for, at its own expense shall defend itself against, and hereby releases NJDEP from any and all suits, claims losses, demands, expenses, or damages of whatsoever kind or nature, arising out of or in connection with any act or omission of Seller, its employees, representatives, agents, independent contractors or invitees, related to Sections 11, 12, and 13 of the APS.
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4. Political Contributions. The following is hereby incorporated into the APS as a new, separate section 26 and entitled, "26. **Political Contributions.**"

A. P.L.2005, c.51 ("Chapter 51")

- i) In order to safeguard the integrity of state government procurement by imposing restrictions to insulate the award of state contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, Chapter 51 was signed on March 22, 2005. Pursuant to the requirements of Chapter 51, the terms and conditions set forth in this section are material terms of this Agreement. Chapter 51 defines the relevant terms as follows:

- (a) Contribution – means a contribution reportable by the recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act." P.L. 1973, c. 83 (C. 19:44A-1 et seq.) made on or after the effective date of said act. See also implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Only contributions in excess of \$300.00 during a reporting period are deemed "reportable" under Chapter 51.
- (b) Business Entity – means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association, or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. It also includes: (1) all principals who own or control more than ten percent (10%) of the profits or assets of a business entity or ten percent (10%) of the stock in the case of a business entity that is a corporation for profit, as appropriate; (2) any subsidiaries directly or indirectly controlled by the business entity; (3) any political organization organized under 26 U.S.C.S. § 527 that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (4) if a business entity is a natural person, that person's spouse or child, residing in the same household.

ii) Executive Order No. 117 (2008) ("EO 117")

EO 117 extends the provisions of Chapter 51 in three ways:

(a) The definition of "business entity" is revised and expanded so that contributions by the following individuals also are considered contributions attributable to the business entity: (1) officers of corporations and professional corporations, with the term "officer" being used in the same manner as in the regulations of the Election Law Enforcement Commission regarding vendor disclosure requirements (N.J.A.C. 19:25-26.1), with the exception of officers of non-profit entities; (2) partners of general partnerships, limited partnerships, and limited liability partnerships and members of limited liability companies (LLCs), with the term "partner[ship]" being used in the same manner as in the regulations of the Election Law Enforcement Commission regarding vendor disclosure requirements (N.J.A.C. 19:25-26.1); and (3) spouses, civil union partners, and resident children of officers, partners, LLC members and persons owning or controlling ten percent (10%) or more of a corporation's stock are included within the new definition, except for contributions by spouses, civil union partners, or resident children to a candidate for whom the contributor is eligible to vote or to a political party committee within whose jurisdiction the contributor resides.

(b) Reportable contributions (those over \$300.00 in the aggregate) to legislative leadership committees, municipal political party committees, and candidate committees or election funds for the Lieutenant Governor are disqualifying contributions in the same manner as reportable contributions to state and county political party committees and candidate committees or election funds for the Governor have been disqualifying contributions under Chapter 51.

(c) The State shall not enter into a contract to procure from any Business Entity services or any material, supplies, or equipment, or to acquire, sell, or lease any land or building, where the value of the transaction exceeds \$17,500.00, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of governor, or to any state or county political party committee during certain specified time periods.

iii) Breach of Terms of Chapter 51 Deemed Breach of Contract

(a) It shall be a breach of the terms of this Agreement for Seller to: (1) make or solicit a contribution in violation of Chapter 51; (2) knowingly conceal or misrepresent a contribution given or received; (3) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (4) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of governor, or to any state or county party committee; (5) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by Seller himself, would subject Seller to the restrictions of Chapter 51; (6) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (7) engage in any exchange of contributions to circumvent the intent of Chapter 51; or (8) directly or indirectly, through or by any other person or means, do any act which would subject Seller to the restrictions of Chapter 51.

iv) Certification and Disclosure Requirements

(a) Seller shall submit with this Agreement a "Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions" form (attached hereto as Schedule C), certifying that no contributions prohibited by Chapter 51 and/or EO 117 have been made by Seller and reporting all contributions Seller made during the preceding four (4) years to any political organization organized under 26 U.S.C.S. § 527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7 (Please note that forms and instructions are available for review at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134>).

(b) Seller is required, on a continuing basis, to report any contributions Seller makes prior to the closing of title ("Closing"), and at the time any such contribution is made.

B. P.L.2005, c.271 ("Chapter 271")

i) Certification and Disclosure Requirements

Seller shall submit with this Agreement a "Vendor/Bidder Certification and Political Contribution Disclosure Form" (attached hereto as Schedule D), which describes the terms of disclosure.

ii) ELEC Reporting

Seller is advised of the responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c.271, s.3) if Seller receives contracts in excess of \$50,000.00 from public entities in a calendar year. It is Seller's responsibility to determine if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

C. State Treasurer Review

The disclosures to be submitted pursuant to this Agreement shall be subject to the review of the State Treasurer. If the State Treasurer determines that any such contribution or action by Seller poses a conflict of interest in the sale of the Property to Purchaser or constitutes a breach of contract pursuant to this Agreement, the State Treasurer shall disqualify Seller from selling the Property to the State of New Jersey.

5. Closing. Section 8 of the APS is hereby supplemented to reflect that Closing may occur by mail.

6. Closing Documents/Deliverables.

- a. Section 9(a)(2)(b) of the APS is hereby modified to reflect that NJDEP shall not be responsible for preparing or filing a 1099-S. A 1099-S will be prepared by Old Republic National Title Insurance Company, solely at NSR's explicit request. NSR and NJDEP will also request Old Republic National Title Insurance Company to return at Closing the Deposit to OSI since NJDEP will be funding the full amount of the Purchase Price.
- b. Section 9(a)(5) of the APS is hereby modified to require that NSR set forth in its Affidavit of Title that the Property is not subject to the requirements of the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

7. Adjustments at Closing.

a. Section 10(a) of the APS is hereby stricken and replaced with the following:

a) *General.* The Parties agree that Seller's portion of the Property that constitutes "main stem" as defined in N.J.S.A. 54:29A-2 is not subject to property tax in New Jersey pursuant to N.J.S.A. 54:29A-7. If it is determined that any real estate tax liability exists for the Property through the end of the tax quarter in which Closing occurs, to the extent the Property does not constitute "main stem," NSR shall pay the full amount of such liability prior to or at Closing. NSR shall be reimbursed for any overpayment of such real estate tax liability from the day after Closing until the end of the tax quarter in which Closing occurs. To the extent the Property does not constitute "main stem," NJDEP shall assume responsibility for the payment of real estate taxes on the Property, if any, as of the first day of the property tax quarter following Closing through December 31 of the calendar year of the Closing.

b. Section 10(b) of the APS is hereby modified to reflect that OSI shall pay for any and all title work/services (including but not limited to examinations, updates, rundowns, endorsements, settlement services, and title insurance policy).

8. Due Diligence Inspections. All requirements and obligations within Section 11(b) of the APS pertaining to OSI's indemnification of NSR and/or the survivability of OSI's indemnity obligations to NSR are hereby subject to the newly added Mutual Release section, incorporated into the APS via paragraph number 3 above.
9. Real Estate Commissions. All requirements and obligations within Section 12 of the APS pertaining to buyer indemnification of seller are hereby subject to the newly added Mutual Release section, incorporated into the APS via number 3 above.
10. Subdivision. All requirements and obligations within Section 13 of the APS pertaining to subdivision are hereby deemed inapplicable to NJDEP. Further, all requirements and obligations within Section 13 of the APS pertaining to buyer indemnification of seller are hereby subject to the newly added Mutual Release section, incorporated into the APS via number 3 above.
11. Assignment. Section 14 of the APS is hereby modified to reflect that NJDEP is the Assignee and a funding agency under paragraph 6(d) of the APS, subject to the requirements, limitations, and restrictions established within this Agreement.
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12. Special Conditions. The following shall replace Section 15(c) of the APS:

NJDEP's obligation to complete this acquisition is contingent upon the appropriation and availability of funds for this acquisition on or before the Closing Date. Unless NJDEP obtains and confirms appropriation by the Closing Date, either NJDEP or NSR shall thereafter have the right to terminate this Agreement upon twenty (20) days' written notice (with right of NJDEP to "cure" by giving NSR notice within twenty (20) days and proceeding to Closing). In the event of any such termination, neither Party shall be liable to the other for damages on account of such termination.

13. Representations. Section 16 of the APS is hereby supplemented to include the following representations, all of which shall survive Closing:

- a. NSR represents that all utility services shall be terminated prior to Closing.
- b. NSR represents that NSR is in substantial compliance with the laws, orders, and regulations of each governmental department, commission, board, or agency having jurisdiction over the Property and has received no notices of non-compliance or violation.
- c. NSR represents that it has the requisite corporate authority to enter into and execute this Agreement and to undertake all required acts to complete the transaction contemplated thereunder. A copy of NSR's certificate(s) of incumbency, or equivalent authorizing documentation, to sell is attached hereto and incorporated herein as Schedule E.

14. Notice. Section 21 of the APS shall be supplemented to include the following contact/notice information for NJDEP.

Assigned Purchaser:

State of New Jersey, Department of Environmental Protection
401 E. State Street
P.O. Box 420
Mail Code 401-07B
Trenton, New Jersey 08625-0420
Attention: Fawn McGee

15. Environmental Contingencies. Section 18 of the APS ("As Is' Purchase") is hereby supplemented by the following.

Notwithstanding the foregoing, NSR and NJDEP agree that the environmental clean-up responsibilities of NSR set forth herein are subject to NJDEP's site inspections and approval as specified herein or as otherwise required by federal, state, or local regulations. NSR shall notify NJDEP one (1) week in advance of the starting date for any anticipated work conducted pursuant to this Agreement.

a) Removal/Disposal of Debris and Waste:

- (1) NSR shall remove from the Property any and all man-made debris, solid waste, hazardous materials and/or rubbish identified on EXHIBIT 1 hereto or agreed upon by NSR and NJDEP as requiring removal (the "Waste Removal Pre-Closing Inspection") prior to closing, subject to the confirmation of removal of same by NJDEP at the site inspection further detailed in EXHIBIT 1 (the "Final NJDEP Waste Removal Inspection"). Debris, rubbish, solid waste, and/or hazardous materials shall include but is not limited to, abandoned equipment, vehicles, household chemical containers, appliances, televisions, household items, pesticide containers, petroleum product containers, paint cans, tires, lumber, discarded tree stumps, concrete, asphalt, bricks, plaster and wallboard, roofing materials, insulation sheeting, paper, metal, plastic, glass, and any other solid waste agreed upon by NSR and NJDEP as requiring removal during the Waste Removal Pre-Closing Inspection. NSR shall properly dispose of all identified materials off-site and in accordance with all applicable federal, state, and local regulations. For the avoidance of doubt, debris, rubbish, and solid waste does not include material such as a twig, a single gum wrapper, or a bottle cap, and this clean-up obligation shall exclude areas of the Property that are subject to active leases where third-parties are operating businesses on the Property. NSR commits to use all best efforts to remove all man-made debris, solid waste, hazardous materials, and/or rubbish identified on EXHIBIT 1 prior to Closing.
- (2) Notwithstanding the above, NSR and NJDEP agree that NSR shall deposit Fifty Thousand and 00/100 Dollars (\$50,000.00) into an escrow account, pursuant to an escrow agreement to be executed and to become effective at closing between NSR, NJDEP, and an escrow agent (the "Environmental Contingency Escrow Agreement"). NJDEP shall have the right to use the escrowed funds to effectuate and fund all necessary actions towards the removal of man-made debris, solid waste, hazardous material, and/or rubbish, identified in EXHIBIT 1, that remain on the Property post-closing. The Environmental Contingency Escrow Agreement shall be effective for two (2) years from the last date of the month of Closing. Any amount in escrow after the expiration of the Environmental Contingency Escrow Agreement, if applicable, shall be returned to NSR. All terms and conditions governing the disbursement of the escrowed funds shall be included in the Environmental Contingency Escrow Agreement. This paragraph 15(a)(2) shall survive Closing.

- (3) All disturbed areas shall be graded and stabilized with an adequate quantity of certified clean soil fill, in accordance with applicable federal, state, and local regulations, in order to: (a) meet the elevations of adjacent areas; (b) create a smooth surface, free from irregular surface changes; (c) create a smooth transition between adjacent existing grades and new grades; (d) prevent soil erosion; and (e) prevent storm water runoff. The fill material shall be free of concrete, asphalt, brick, cinder/cement block, wood, trees, roots, branches, non-decomposed vegetative matter, metal, plastic or any other form of construction debris, and shall not contain any contaminants at concentrations above the most stringent Remediation Standards set forth in N.J.A.C. 7:26D-1.1 to -7.5. If the fill material is from a virgin source (e.g. commercial quarry or sand pit), NSR shall provide documentation from the supplier certifying that the material is clean. If the fill material is not from a virgin source, NSR shall provide sampling results verifying that the material does not contain any contaminants at concentrations above the most stringent Remediation Standards set forth in N.J.A.C. 7:26D-1.1 to -7.5.

a) Wells:

NSR shall decommission existing wells identified on EXHIBIT 2 using a New Jersey licensed well driller in accordance with Well Construction And Maintenance; Sealing Of Abandoned Wells Rules, N.J.A.C. 7:9D, prior to Closing and shall submit documentation to NJDEP to confirm such decommissioning.

c) Underground Septic Tanks/Systems:

NSR shall have any underground septic tank/system identified on the Property prior to Closing pumped, crushed, and backfilled in accordance with applicable state and local regulations prior to Closing and shall provide NJDEP with permit documentation to confirm closure of the septic tank/system in the foregoing manner.

d) Above Ground Storage Tanks:

NSR shall remove and properly dispose of any existing above ground storage tanks identified on EXHIBIT 3 in accordance with applicable state and local regulations. In the event that NJDEP identifies any past or present discharge(s) associated with an above ground storage tank, then NJDEP agrees to evaluate the ground below the tank, including the collection and laboratory analysis of soil samples as described in the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. If the environmental soil testing reveals any conditions not satisfactory to NJDEP, then NSR may be responsible to correct same to NJDEP's satisfaction. If NSR were to not correct to NJDEP's satisfaction, then NJDEP has the right to terminate this Agreement.

e) Underground Storage Tanks:

(i) With respect to any regulated underground storage tanks (USTs) identified prior to Closing, NSR may be required to furnish documentation to NJDEP's satisfaction that the requirements governing regulated underground storage tank facilities and individuals and business firms regulated by N.J.S.A. 58:10A-21 and N.J.A.C. 7:14B, have been satisfied. All regulated USTs identified on the Property prior to Closing shall be removed in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and all other applicable state and local regulations. If NSR fails to furnish documentation to NJDEP's satisfaction, then NJDEP shall have the right to terminate this Agreement.

(ii) With respect to any unregulated USTs, NSR shall close all unregulated USTs identified on EXHIBIT 4, as defined in N.J.A.C. 7:14B-1.4, in accordance with applicable state and local regulations. In that case, NSR must provide two (2) weeks' notice to NJDEP prior to beginning tank closure activities so that NJDEP or its agents may be present. In the event NJDEP identifies, prior to Closing, any past or present discharge(s) associated with a UST, NJDEP has the right to terminate this agreement. If removal of any unregulated USTs identified prior to Closing is required, NSR will, at NSR's cost and expense, collect samples in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E at the location of each closed tank. If NSR's evaluation identifies contamination above the New Jersey Department of Environmental Protection's Soil Remediation Standards (N.J.A.C. 7:26D) or Ground Water Quality Standards (N.J.A.C. 7:9C), then NSR shall address same to NJDEP's satisfaction. If, upon closing a tank, identified prior to Closing, evidence of discharge is apparent, NSR shall contact the New Jersey Department of Environmental Protection's Environmental Hotline, 1-877-WARN DEP and shall address the contamination to NJDEP's satisfaction. If NSR is directed to but does not close all unregulated USTs, or evidence of discharge is apparent, NJDEP shall have the right to terminate this Agreement.

16. Lease and Encroachment Areas. The following is hereby incorporated into the APS as a new, separate section 27 and entitled, "27. **Lease and Encroachment Areas.**"

Except as to leases or encroachments that are specifically permitted to remain by NJDEP, NSR shall provide written notice of termination to all holders of leases on the Property and written notice to remove encroachments to all encroaching parties on the Property at or before Closing, consistent with the terms and conditions of the leases that NSR issued to tenants on the Property. Such notice shall require that: (i) tenants vacate the Property; and (ii) encroaching parties remove the encroachment, and that tenants and encroaching parties shall remove and properly dispose of all tenant equipment, man-made debris, solid waste, hazardous materials, rubbish, and encroachments located on the Property in accordance with all applicable federal, state, and local regulations. Debris, rubbish, solid waste, and/or hazardous materials shall include but is not limited to abandoned equipment, vehicles, household chemicals, appliances, televisions, pesticides, petroleum products, paints, tires, wood, tree parts, tree stumps, concrete, asphalt, bricks, plaster and wallboard, roofing materials, paper, metal, plastic, glass, and any other solid waste.

The list of leases and encroachments that require notice of termination or notice of removal shall be agreed to, between the parties, prior to Closing (the "List"). NSR shall obtain NJDEP written approval of the template notice of termination and notice to remove encroachments before issuing any notices and NSR shall provide NJDEP copies of all notices issued. NSR commits to use all best efforts to remove all lessees and/or encroachments included on the List, prior to Closing.

Notwithstanding such commitment, NSR and NJDEP agree that NSR shall deposit Three Hundred Thousand and 00/100 Dollars (\$300,000) into an escrow account, pursuant to an escrow agreement to be executed and to become effective at Closing, between NSR, NJDEP and an escrow agent (the "Escrow Agreement"). NJDEP shall have the right to use the escrowed funds to effectuate and fund all necessary actions towards the eviction of tenants and the removal of encroachments, identified on the List, that remain on the Property post-Closing including physical removal of tenants, equipment, encroachments, and remediation of environmental conditions in any way related to such tenants. The Escrow Agreement shall be effective for three (3) years from the last date of the month of Closing. Any amount in escrow after the expiration of the Escrow Agreement, if applicable, shall be returned to NSR. All terms and conditions governing the disbursement of the escrowed funds shall be included in the Escrow Agreement. This paragraph 16 shall survive Closing.

17. Warranty of No Solicitation. The following is hereby incorporated into the APS as a new, separate section 28 and entitled, "28. **Warranty of No Solicitations.**"

NSR hereby warrants that the Agreement has not been procured in violation of Chapter 48 of the Laws of 1954, N.J.S.A. 52:34-15 et seq., or in violation of Executive Order No. 189.

18. Tidelands. The following is hereby incorporated into the APS as a new, separate section 29 and entitled, "29. **Tidelands**."

If the Property contains structures existing waterward of the mean high water line that are subject to a license to the New Jersey Department of Environmental Protection, Bureau of Tidelands Management ("Bureau") or is subject to a lien specifically resulting from an action by the Bureau due to unlicensed structures existing on the Property that are waterward of the mean high water line, NJDEP agrees to accept title to the Property subject to said license or liens. This provision shall only apply if said structure(s) can be removed as part of any approved demolition activity. In the event that NJDEP determines that the structure(s) cannot be removed during demolition, it may require NSR to pay the lien and/or work with the NJDEP and the Bureau of Tidelands Management to cancel the license or transfer the license to NJDEP prior to and as a condition of Closing. Nothing herein is intended to obligate NSR to maintain a tidewater license for said structure(s) after Closing. This provision shall not apply to any unlicensed fill existing on the Property that is waterward of the mean high water line or any other license, lien, judgment, or other encumbrance to the title of the Property.

19. Salvage of Rails and Ties. NSR shall manage the salvage of the tracks and ties on the Property (including the tracks and ties on any bridges, but not the bridge structures). NSR will assume all costs and responsibility related to the salvage and legal disposal of the tracks and ties, select a qualified contractor to perform the salvage operation; oversee the contractor to ensure adherence to all applicable agency regulatory and permitting requirements; ensure that the work is done in a proper and timely manner; pay for the costs of obtaining any regulatory permits and approvals required solely for the purpose of salvaging the tracks and ties (and not related to the establishment and development of a trail); and, if necessary, pay the contractor its/their net costs in excess of the value of the track and ties to be salvaged. Any excess value of the track and ties in excess of the cost of removal shall inure to the benefit of NSR. NSR and NJDEP agree, post-Closing, to negotiate in good faith the terms of an agreement for the retention and storage at an appropriate location on the Property, a specific amount of track and ties which NJDEP intends to utilize in the design and development of the Property as historical design features related to the former rail use.

20. Comptroller Audit and Review. The following is hereby incorporated into the APS as a new, separate section 30 and entitled, "30. **Comptroller Audit and Review**."

Pursuant to N.J.A.C. 17:44-2.2, NSR and OSI shall maintain all documentation related to products, transactions, or services under contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

21. Executive Order 166. The following is hereby incorporated into the APS as a new, separate section 31 and entitled, "31. **Executive Order 166.**"

Pursuant to Executive Order No. 166, signed by Governor Murphy on July 17, 2020, the Office of the State Comptroller ("OSC") is required to make all approved State contracts for the allocation and expenditure of COVID-19 Recovery Funds available to the public by posting such contracts on an appropriate State website. Such contracts will be posted on the New Jersey transparency website developed by the Governor's Disaster Recovery Office (GDRO Transparency Website).

This Agreement is subject to the requirements of Executive Order No. 166. Accordingly, the OSC will post a copy of this Agreement and other related contract documents for the above contract on the GDRO Transparency website.

Seller may designate specific information as not subject to disclosure. However, Seller must have a good faith legal or factual basis to assert that designated specific information: (i) are proprietary and confidential financial or commercial information or trade secrets; or (ii) must not be disclosed to protect the personal privacy of an identified individual. The location of any such designation should be clearly stated in a cover letter, and a redacted copy of the information should be provided. Seller's failure to designate such information as confidential shall result in waiver of such claim.

The State reserves the right to make the determination regarding what is proprietary or confidential and will advise the Seller accordingly. The State will not honor any attempt by Seller to designate the entire Agreement as proprietary or confidential and will not honor a claim of copyright protection for the Agreement. In the event of any challenge to the Seller's assertion of confidentiality with which the State does not concur, the Seller shall be solely responsible for defending its designation.

22. Miscellaneous Provisions. Section 24(c) of the APS is hereby modified to reflect that the terms and conditions of the APS will be made binding on NJDEP, subject to the limitations and restrictions set forth in this Agreement. In addition, the following miscellaneous provisions are incorporated into Section 24 of the APS.

- a. Captions. The captions in this Agreement have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- b. Modification. No amendment, modification, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the Parties. Such modification or waiver shall be effective only for the specific instance and for the specific purpose for which given.
- c. Waiver of Breach. A waiver by any Party of any breach of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or provision.
- d. Electronic Signatures. Pursuant to the New Jersey Uniform Electronic Transactions Act ("UETA"), N.J.S.A. 12A:12-1 et seq., the Parties agree that they have the right to use electronic signatures in connection with this Agreement. The Parties acknowledge the right to opt-out of this arrangement and can request hard copies of the applicable documents to sign and review upon thirty (30) days' written notice to the other(s). The Parties agree to reserve the right to refuse to conduct other transactions by means of electronic signatures.
- e. Contract Provisions for Non-Federal Entity Contracts under Federal Awards. The Parties agree to comply with the provisions listed in the "General Terms and Conditions" attached hereto and incorporated herein as Schedule F, as applicable, to this Agreement. Pursuant to 2 C.F.R. Part 200, Appendix II, said provisions must be included in this Agreement as a contract made under a Federal Award (the "American Rescue Plan Act of 2021," (ARP Act) P.L. 117-2, the "Coronavirus State Fiscal Recovery Fund," subtitle M of the ARP Act, and amended Title VI of the Social Security Act, 42 USC 801 et seq., Sections 602 and 603).
- f. Termination. The Parties agree that this Agreement may be terminated for cause and for convenience by the State of New Jersey.

IN WITNESS WHEREOF, the parties have signed this Agreement, and in the case of a corporation, this Agreement has been signed by its proper corporate officers, and its corporate seal has been affixed.

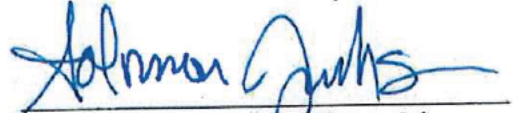
WITNESS




Date: 7/12/2022

SELLER:

Norfolk Southern Railway Company


Solomon Jackson, Real Estate Manager

WITNESS

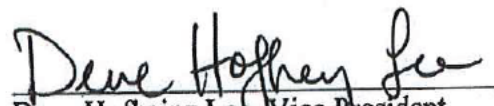

Rebecca Lee

Date:

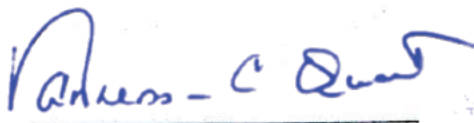
7/11/2022

CONTRACT PURCHASER:

Open Space Institute Land Trust, Inc.

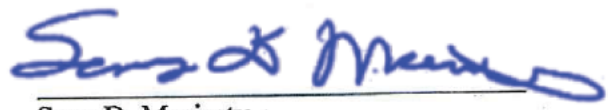

Dene Hofheinz Lee, Vice President
Northeast Land Program

WITNESS




ASSIGNED PURCHASER:

State of New Jersey, Department of
Environmental Protection


Sean D. Moriarty
Deputy Commissioner

Date: July 19, 2022

Approved as to form by:


Chloe Gogo, Deputy Attorney General
State of New Jersey

Date: 07/18/2022

SCHEDULE A

Tax Maps / Inventory of Parcels

LEGAL DESCRIPTION

All right title and interest of Grantor in that line of railroad being a portion of the former Erie Lackawanna Railway Company (formerly Erie Railroad Company), being known as the Erie Lackawanna Boonton Line (formerly Erie Greenwood Lake Line), comprised of land and right of way for main tracks, branch lines, siding and other appurtenant railroad facilities lying and being in Essex County, New Jersey, being further identified as USRA Line Code 6101 as described in a deed from Thomas F. Patton and Ralph S. Tyler, Jr., as Trustees of the Property of Erie Lackawanna Railway Company, to Consolidated Rail Corporation, dated March 31, 1976, as recorded with the Office of the Register of Essex County, New Jersey, in Deed Book 4843, Page 536, and being more particularly described as follows:

Said portion of railroad beginning at a point on the track centerline of said railroad at the common line between the Town of Kearny, Hudson County and the City of Newark, Essex County, New Jersey, said point being located at Railroad Valuation Station 398+55, more or less, as shown on Railroad Valuation Map V-11-NJ/6; thence, with said railroad in a general northwestwardly direction with a strip of land of varying width on each side of the centerline of track of said railroad for a distance of 20,530 feet, more or less, to the point of ending in the Town of Montclair, said point being located at railroad Valuation Station 603+85, more or less, as shown on Railroad Valuation Map V-11-NJ/10, said point also being on the southerly line of that property conveyed by Consolidated Rail Corporation to the State of New Jersey by deed dated September 15, 1978. Said line of railroad being substantially as shown on Railroad Valuation Maps V-11-NJ/6 through V-11-NJ/10, inclusive, attached hereto and made a part hereof.

EXCEPTING from the above all those parcels shown in Exhibit B Attached hereto and made part of.

ALL that certain tract or parcel of land, situated, lying and being in the County of Essex, State of New Jersey, more particularly described as follows:

Montclair - Block 4211, portion of Lot 18

Glen Ridge - Block 151, Lots 1, 2, 3, 4 and 5

Belleville - Block 702, Lots 1, 2 and 3

Bloomfield - Block 511, Lot 100; Block 515, Lot 50; Block 518, Lot 30; Block 284, Lot 30; Block 285, Lot 13; Block 291, Lot 50; Block 292, Lot 3; Block 458, Lot 20; Block 459, Lot 20; Block 482, Lot 80; Block 484, Lot 10

This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

LEGAL DESCRIPTION
(continued)

Newark - Block 852, Lot 40; Block 849.01, Lot 40, Block 849, Lot 50; Block 844, Lot 30; Block 843, Lot 60; Block 838, Lots 29 and 60; Block 837, Lot 30; Block 832, Lot 20; Block 831, Lot 30; Block 827.01, Lot 10

Further shown on Preliminary Survey prepared by Brad Joshnick, Professional Land Surveyor, described as follows:

Metes & Bounds Description to be supplied and approved by this company

Subject to change upon completion of said survey

NOTE: Lot and Block shown for informational purposes only.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance [issued by Westcor Land Title Insurance Company]. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

LEGAL DESCRIPTION

Erie Lackawanna Boonton Line

Also, that portion of railroad known as the Erie Lackawanna Boonton Line, being further identified as USRA Line Code 6101, as acquired by Grantor pursuant to the above-described deed as recorded with the Secretary of State on August 24, 1979.

Said portion of the former Boonton Line, beginning at a point on the track centerline of the aforesaid line, said point being located at Railroad Valuation Station 147+01, more or less, as shown on Railroad Valuation Maps V-11NJ/1 and V-11NJ/2; thence, with said railroad in a general westwardly direction with a strip of land of varying width on each side of the centerline of track of said railroad for a distance of 25,154 feet, more or less, to a point at the centerline of the Passaic River, said point being at the common line between the Town of Kearny, Hudson County and the City of Newark, Essex County, New Jersey and being further located at Railroad Valuation Station 398+55, more or less, as shown on Railroad Valuation Map V-11NJ/6. Said line of railroad being substantially as shown on Railroad Valuation Maps V-11NJ/1 through V-11NJ/6, inclusive, attached hereto and made part hereof.

EXCEPTING from the above all those parcels shown in Exhibit B Attached hereto and made part of.

ALL that certain tract or parcel of land, situated, lying and being in the County of Hudson, State of New Jersey, more particularly described as follows:

Kearny – Block 82, Lots 1, 2, 3, 4, 5, 6 and 8; Block 182, Lots 22 and 23; Block 178, Lot 32; Block 184, Lot 6.02; Block 178, Lot 32; Block 185, Lot 1; Block 287, Lots 1, 2, 3, 16 and Lot 2R, and Block 149, Lot 12

Secaucus – Block 4, Lots 1

Jersey City – Block 7402, Lots 25, 26, 32 and Block 3101, Lots 19, 20, 21, 39, 40, 41, and 45

Further shown on Preliminary Survey prepared by Brad Joshnick, Professional Land Surveyor

Described as follows:

Metes & Bounds Description to be supplied and approved by this company

This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

LEGAL DESCRIPTION
(continued)

Subject to change upon completion of said survey and such state of facts shown on said survey

NOTE: Lot and Block shown for informational purposes only.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance [issued by Westcor Land Title Insurance Company]. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

SCHEDULE B

Original NSR-OSI Contract with Amendments

AGREEMENT OF PURCHASE AND SALE

[Essex Hudson Greenway]

This Agreement of Purchase and Sale (hereinafter called this "**Agreement**"), dated the 31st day of January, 2020 (hereinafter called the "**Effective Date**") between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation with a principal place of business at Three Commercial Place, Norfolk, VA 23510 (hereinafter called "**Seller**"), and **OPEN SPACE INSTITUTE LAND TRUST, INC.**, a New York not-for-profit corporation with a principal place of business at 1350 Broadway, Suite 201, New York, New York 10018 (hereinafter called "**Buyer**"). The Seller and Buyer are referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

- A. Seller has agreed to sell and Buyer has agreed to purchase certain property located in the Counties of Essex and Hudson, New Jersey consisting of an 8.63-mile long, approximately 138.81-acre unused railroad right of way, located between Milepost WD 2.9 (near Station 255+61) in Jersey City, Hudson County to Mile Post WD 11.6 (near Station 600+46) in Glen Ridge Borough, Essex County (hereinafter referred to as the "**Property**"). The Property being sold to Buyer shall include the associated lands and/or easements more fully described in Exhibit A attached hereto and made a part hereof. The rail line located on the Property is sometimes referred to herein as the "**Line**."
- B. Seller intends to file a "Notice of Exemption" from the provisions of 49 U.S.C. §10903 to abandon the Line.
- C. Buyer and Seller have agreed to negotiate an agreement for interim trail use of the Line pursuant to and in accordance with 49 C.F.R. 1152.29 and Section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d) (the "Interim Trail Use Agreement"), a copy of which Interim Trail Use Agreement is attached hereto as Exhibit B and made a part hereof.

TERMS OF SALE

For and in consideration of the mutual covenants described below, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Property.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, subject to the receipt of final approval from Seller's Senior Management prior to February 29, 2020, and all other terms and conditions hereinafter set forth; the Property, including all improvements

thereon and all rights, members, hereditaments, and appurtenances to said premises belonging or in any wise incident or appertaining.

2. **Purchase Price for the Property.** The purchase price for the Property (hereinafter called the "**Purchase Price**") is SIXTY-FIVE MILLION AND NO/100 DOLLARS (\$65,000,000.00).

3. **Deposit.** Not later than five (5) business days after Buyer receives approval from its board of trustees as more fully set forth in Section 8 below, Buyer shall deposit with Buyer's title company, Old Republic Title National Title Insurance Company (the "**Escrow Agent**") the sum of Fifty Thousand (\$50,000.00) Dollars (the sum, including interest thereon, hereinafter referred to as the "**Deposit**") by good check payable to Old Republic Title. The Deposit shall be held and disbursed in accordance with the escrow agreement to be entered into between the Parties and the Escrow Agent (the "**Escrow Agreement**") on or before the Deposit is funded pursuant to this paragraph, and the form of such Escrow Agreement is attached hereto as Exhibit C and made a part hereof.

4. **Survey.** The exact area of the Property is to be determined by a survey (herein called the "**Survey**") made by a registered land surveyor licensed in the State of New Jersey, which shall be obtained by, and at the sole cost of, Buyer. Within three hundred thirty (330) days after the Effective Date, Buyer shall furnish Seller with a copy of the Survey for its approval, which approval shall not be unreasonably withheld or delayed. The Survey shall show the location of all improvements, buildings, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, encumbrances, encroachments, easements, and rights of way on or adjacent to the Property and shall set forth the total number of square feet or acres contained within the Property, together with a metes and bounds description of those parcels. If the Survey reveals any matters which cause the title to the Property not to be marketable, then Buyer shall have those rights and remedies with respect thereto as are set forth in Section 6, below. Upon any termination of this Agreement prior to Closing (other than through the default of Seller), Buyer shall deliver to Seller all of the survey work, maps, notes and other work product in its possession prepared by the registered land surveyor to the extent completed prior to termination of the Agreement.

5. **Type of Conveyance.** At closing, the Seller shall convey the Property to Buyer by bargain and sale deed with covenants against grantor's acts deed, properly invoking Section 8(d) of the National Trails Systems Act, 16 U.S.C. § 1247(d) with respect to the Property, subject to the Permitted Exceptions (as defined below).

6. **Quality of Title.**

a) **General.** Title to the Property shall be good, marketable and insurable at regular rates pursuant to a standard ALTA owner's form of policy by a reputable title insurance company doing business in the State of New Jersey selected by Buyer (the "**Title Insurer**"), and shall be free and clear of all liens and encumbrances, adverse claims and other matters affecting Seller's title to or possession of the Property except for the Permitted Exceptions (as defined in this Section 6. Subject to Section 6(d) below, the term "**Permitted Exceptions**" shall mean (1) all

defects in and exceptions to title disclosed in the Commitment (except for Monetary Encumbrances) as to which Buyer fails to submit a statement of Title Objections to Seller in accordance with Section 6(b) below, and (2) those Title Objections, if any, as to which Seller has given Buyer a notice of election not to cure, and which Buyer has elected to take title subject to as provided in Section 6(c) below.

b) *Notice of title objections.* Within ninety (90) days after the Effective Date, Buyer shall obtain a commitment to issue a title policy (the "**Commitment**") from the Title Insurer and deliver to Seller or Seller's attorney a copy of the commitment. Within fifteen (15) business days after delivering the Commitment to Seller, Buyer shall deliver to Seller a statement of any defects in or objections to title revealed by the Commitment ("**Title Objections**") that Buyer requires to be removed from the title policy to be issued at Closing ("**Title Policy**"). Subject to the provisions of Section 6(d) below, if Buyer does not submit Title Objections to Seller or Seller's attorney within such fifteen (15) -day period, Buyer shall be deemed to have waived the right to make Title Objections as to all exceptions to title disclosed in the Commitment other than encumbrances securing the payment of money, including mortgages, mechanics liens, judgment liens and similar financial liens ("**Monetary Encumbrances**"), and such exceptions (other than Monetary Encumbrances) shall, in such event, be deemed to constitute Permitted Exceptions (hereinafter defined). If the Commitment discloses any Monetary Encumbrance, Buyer shall automatically be deemed to have objected thereto and Seller shall be obligated to pay and discharge the same at Closing out of the proceeds of the Purchase Price. For the avoidance of doubt, Seller shall have no right to elect not to cure Monetary Encumbrances and Buyer shall under no circumstances be obligated to take title subject to Monetary Encumbrances.

c) *Seller's election.* If Seller is not willing, or is not able, to cure the Title Objections on or before the Closing Date, such that the Title Insurer would be willing to omit same from the Title Policy, Seller shall so notify Buyer in writing within fifteen (15) business days after receipt by Seller or by Seller's attorney of Buyer's statement of Title Objections (the "**Seller Election Period**"). If Seller fails to give Buyer written notice of such election before the end of the Seller Election Period, Seller shall be deemed to have elected to cure the Title Objections. Seller's notice must be delivered to Buyer or Buyer's attorney by hand delivery or via overnight delivery service for next-business day delivery. Buyer shall have until twenty (20) days from the date it receives Seller's notice electing not to cure one or more of the Title Objections to determine whether to take title to the Property subject to such Title Objections and, if Buyer does elect to take title subject to same, to so notify the Seller in writing. If Buyer does not elect to take title subject to the same, it shall so notify Seller in writing and this Agreement shall be terminated and neither Seller nor Buyer shall have any further liability or obligation to each other except for the return of the Deposit to the Buyer. If Buyer fails to notify Seller that it elects to take title subject to such uncured Title Objections, Buyer shall be deemed to have elected to take title to the Property subject to such Title Objections.

d) *Objections by funding agencies.* Notwithstanding the provisions of Sections 6(b) and (c) above, or the expiration of any time period set forth therein, if any funding agency or entity on which Buyer is relying to provide financing for the purchase hereunder shall raise any

objection to the state of Seller's title, such objection shall be deemed a Title Objection as if it had been delivered by Buyer and shall not be deemed a Permitted Exception, notwithstanding any failure on the part of Buyer to make time objection to the matter in question as provided above. If a funding agency or other entity on which Buyer is relying to provide financing for the purchase hereunder raises an objection to the state of Seller's title under this paragraph (d) and Seller is not willing, or is not able, to cure the Title Objections on or before the Closing Date, such that the Title Insurer would be willing to omit same from the Title Policy,, Seller and Buyer shall follow the process set forth above in paragraph (c) above. Seller acknowledges that Buyer's ability to complete the purchase contemplated by this Agreement depends upon the availability of funding and that Buyer has no control over the timing of title review by its funding sources. If one or more objections to title are raised by any funding agency or entity, Buyer shall so notify Seller in writing, Seller shall thereupon be given a further Seller Election Period for ten (10) business days after receipt by Seller or by Seller's attorney of such sources' statement of Title Objections, and Section 6(c) above shall apply with respect to the matter or matters as to which objection has been made.

e) *Inability to cure despite good faith efforts.* If Seller elects or is deemed to have elected to cure any one or more of the Title Objections, Seller shall make a diligent, good faith effort to effect such cure and shall have until the Closing Date to complete same. If Seller is unable to complete such cure notwithstanding having made a diligent, good faith effort to do so, then Buyer at its option may either: (1) accept such title as Seller can convey without any reduction in the Purchase Price other than for Monetary Encumbrances, (2) agree with Seller to extend the time period for Seller to effectuate a cure, or (3) terminate this Agreement.

f) *Failure to make good faith effort to cure.* If Seller fails to make a diligent, good faith effort to cure such Title Objections after having elected to do so, or been deemed to have made such an election, then Buyer at its option may either: (1) accept such title as Seller can convey without any reduction in the Purchase Price other than for Monetary Encumbrances, (2) terminate this Agreement by written notice to Seller; or (3) enforce specific performance of this Agreement.

7. **Railroad Abandonment/Railbanking.** Seller's obligations under this Agreement are contingent upon the final approval of Seller's abandonment of the Line on the Property for Seller's railroad uses and purposes, and the railbanking of the Line in accordance with all applicable law, rules regulations ("**Railroad Abandonment**"). Seller agrees, at Seller's own cost, to diligently pursue approval of the Railroad Abandonment from the Surface Transportation Board ("**STB**") commencing upon the execution of this Agreement. Buyer agrees to cooperate reasonably with Seller in obtaining the approval of the Railroad Abandonment. Seller shall pay all applicable STB and other filing fees arising from Railroad Abandonment. Seller and Buyer expressly acknowledge that the STB may alter the terms of this Agreement as part of the approval process, in which event Seller will notify Buyer of the STB's action with respect to this Agreement. Neither Seller nor Buyer shall be liable for any failure to discharge their respective rights or obligations as a result of any STB action or failure to act. If the STB disapproves the request for Railroad Abandonment, Seller shall so notify Buyer and this Agreement shall thereupon terminate. If the STB alters the terms

of this Agreement in a manner unacceptable to either Seller or Buyer and such party notifies the other within thirty (30) days of its receipt of notice of such alteration, then this Agreement shall terminate on written notice from the party unwilling to accept such alteration in terms. If this Agreement is terminated hereunder, the Earnest Money and any other funds held hereunder for the benefit of Buyer shall be immediately returned to Buyer.

8. **Closing.** The Closing for the transaction described in this Agreement shall take place on or about the date which is twelve (12) months from the Effective Date, unless such Closing date shall be extended in accordance with this Agreement or by mutual consent of the Parties. Closing shall take place at the offices of Buyer's counsel, Coughlin Duffy LLP, 350 Mount Kemble Avenue, Morristown, New Jersey, or at such other place as may be mutually agreed upon in writing by Buyer and Seller. Notwithstanding the foregoing, Buyer may elect to extend the time for Closing by an additional twelve (12) months for a fee of \$1,000 to be paid by Buyer to Seller.

Notwithstanding anything herein to the contrary, Buyer's obligations under this Agreement (including Buyer's obligation to fund the Deposit in accordance with Section 3 of this Agreement) are conditioned on Buyer obtaining approval from its board of trustees to execute this Agreement and fund the Deposit. If Buyer has not notified Seller in writing by February 29th, 2020 that it has obtained board approval for executing this Agreement and funding the Deposit, this Agreement shall be terminated and neither Seller nor Buyer shall have any further obligation or liability to each other under this Agreement.

9. **Deliveries at Closing.**

- a) *Seller's deliveries.* At the Closing, Seller shall deliver to Buyer the following:
 - 1) a Bargain and Sale Deed with Covenants Against Grantor's Acts in form reasonably satisfactory to Buyer, its counsel, and the Title Insurer effective to transfer to Buyer all of Seller's right, title and interest in the Property, subject to the terms and conditions of the National Trails System Act;
 - 2) (a) an affidavit of Seller certifying that Seller is not a "foreign person" under the Foreign Investment in real Property Tax Act of 1980, (b) a completed W-9 form to enable the settlement agent or Buyer to prepare and file for 1099-S, (c) the form of affidavit of title reasonably required by Buyer's title company to remove from the title policy the preprinted exceptions for mechanics' liens, unrecorded leases and other matters, (d) a Seller's Residency Certification/Exemption Form or, if Seller cannot qualify for the Residency/Exemption form on the date of Closing, the appropriate form required of non-residents, it being acknowledged that if Seller is a non-resident and is not exempt, Buyer may be required to withhold a portion of the Purchase Price at Closing for New Jersey income tax purposes, (e) if Seller is exempt or partially exempt from payment of the New Jersey Realty Transfer Tax, the appropriate affidavit of consideration required by applicable New Jersey law, and (f) documentation as reasonably required by

Buyer's title company to evidence Seller's authority to enter into this Agreement and consummate the transactions contemplated herein;

- 3) discharges, releases or satisfactions sufficient to remove the lien of any mortgage, judgment, tax sale certificate, financing statement, or other monetary encumbrance that may apply to the Property;
- 4) [Intentionally omitted.]
- 5) a duly executed certificate from Seller certifying that the transfer of the Property is not subject to the provisions and requirements of the New Jersey Industrial Site Recovery Act; and
- 6) a duly executed Bulk Sales Act escrow agreement in form reasonably satisfactory to counsel for Buyer and Seller, if same is necessary.

(b) *Buyer's deliveries.* At the Closing, Buyer shall deliver to Seller the following:

- 1) cash, by wire transfer of immediately available funds or one or more certified, bank or attorney's trust account checks representing the Purchase Price, reduced by a credit for all deposits paid by Buyer hereunder (if any) and any applicable prorated items;
- 2) duly executed Closing Statement;
- 3) if appropriate, any additional amounts payable to Seller as a result of prorated items under Section 11 (Adjustments at Closing); and
- 4) a duly executed Bulk Sales Act escrow agreement in form reasonably satisfactory to counsel for Buyer and Seller, if same is necessary.

c) *Additional documents.* Seller and Buyer agree to execute and deliver such additional documents as may be reasonable and necessary to carry out the provisions and intent of this Agreement. After closing, the parties agree to promptly execute any documents reasonably necessary to correct any inadvertent errors in the documents delivered at Closing or to supply any documents inadvertently omitted from the Closing deliveries upon reasonable request therefor.

d) *Possession.* Seller will deliver exclusive possession of the Property to Buyer at Closing, free of all tenants, occupants, and rights to possession in others; provided, however, that if there are any existing leases or licenses affecting the Property that are Permitted Exceptions, Seller will assign same to Buyer at Closing and all rents and/or license payments associated with such leases or licenses shall be apportioned as of the Closing date.

10. **Adjustments at Closing.**

a) *General.* General real estate taxes for the then current year relating to said Property, utility charges and rents, if any, shall be prorated as of the day immediately prior to the date of Closing and shall be so adjusted at Closing. If the 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. If there is any error in the prorationing of real estate taxes relating to the Property at Closing, such effort shall be rectified by Seller and Buyer within six (6) months after the Closing.

b) *Transfer taxes and other closing expenses.* Buyer shall pay for any title examination and owner's title insurance policy and its recording fees. Seller shall be responsible for all transfer, recordation and similar taxes imposed upon sellers of real property, including the New Jersey Realty Transfer Tax, and any income or other tax withholding or escrow requirements imposed by law. The Parties shall each pay their own attorneys' fees.

11. Due Diligence Inspections.

a) *Seller's documents.* To assist Buyer with its inspection and investigation, Seller agrees, in good faith and within thirty (30) days after execution of this Agreement, to provide Buyer with documents in its possession, if any, related to the Property including, but not limited to, deeds, charters, surveys, maps, plans, drawings, engineering reports, environmental reports, leases, easements, bridge inspection reports and other agreements and undertakings affecting the Property. Buyer acknowledges that Seller is voluntarily providing this information to assist Buyer but is making no representations or warranties that it is producing all of the relevant documents that exist regarding the Property. Buyer recognizes that it is responsible for reviewing all of such relevant documents as exist to allow it to make an informed decision on whether or not to purchase the Property at the close of its due diligence investigation. Buyer further recognizes that it is agreed between the Parties that Seller will retain all rights to and be under no obligation to assign License Agreements relating to municipal or public utilities crossing over or under the Property.

b) *Right to inspect.* Buyer shall have the privilege at any time during the existence of this Agreement of going upon the Property to inspect, examine, survey and make test borings, soil bearing tests and other engineering, environmental, or landscaping tests or surveys which it may deem necessary on the Property. Buyer hereby indemnifies and agrees to hold Seller harmless from and against any and all liens which may arise as a result of Buyer's activities on the Property and claims for death or injury to persons or property, arising out of or as a result of Buyer's entry upon such land and any activities pursuant to the provisions of this Section 11. Buyer shall promptly restore the Property to the condition existing before Buyer's entry onto the Property after all such tests or surveys. The foregoing indemnity and obligations shall survive Closing or the termination of this Agreement.

c) *Termination right.* In the event that Buyer shall determine, in Buyer's sole and absolute judgment and discretion, that the Property is in any manner unsuitable or unsatisfactory to Buyer, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving

written notice thereof to Seller at any time during the term of this Agreement, including extensions, in which event Buyer shall be entitled to a refund of the Earnest Money, and neither party shall be liable to the other for damages on account of the termination. Seller acknowledges that Buyer will expend time, money and other resources in connection with the examination and investigation of the Property, and that, notwithstanding the fact that Buyer may terminate this Agreement pursuant to this Section 11(c), such time, money and other resources expended constitute good, valuable, sufficient and adequate consideration for Seller's execution of and entry into this Agreement. If this Agreement is terminated prior to Closing for any reason other than the Seller's default, Buyer shall deliver to Seller all of the environmental reports, documents, tests, correspondence and other materials in its possession relating to the due diligence investigations of the Property.

12. **Real Estate Commissions.** Buyer and Seller each represent that no real estate commissions are due and owing to any other party with respect to this transaction. Buyer hereby agrees to indemnify and save harmless Seller from and against any and all claims or liability for real estate commissions arising out of this transaction. Seller hereby agrees to indemnify and save harmless Buyer from and against any and all claims or liability for real estate commissions arising out of this transaction.

13. **Subdivision.** In the event the conveyance contemplated hereunder shall constitute a subdivision, and if as a prerequisite to the recording of such conveyance it shall become necessary to comply with applicable subdivision ordinances and regulations, Buyer agrees that it will, with reasonable diligence, arrange and pay for the filing of any necessary plat with the appropriate authorities. Buyer will do all other acts and file such other papers as may be necessary to obtain any and all required approvals thereof. Seller agrees to execute such documents and plats as are reasonably necessary to accomplish such subdivision, and otherwise to cooperate with Buyer's efforts in connection therewith. All costs, expenses, and attorneys' fees incurred in complying with any such subdivision ordinances and regulations shall be borne solely by Buyer (other than Seller's internal costs), and Buyer agrees that Buyer will indemnify and save Seller harmless from any and all claims, demands, suits, costs or expenses arising or in any way growing out of any failure by Buyer to fully comply with such subdivision ordinances and regulations.

14. **Assignment.** This Agreement may not be assigned by Buyer 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 one of more of Essex County, Hudson County, the State of New Jersey and/or other political subdivision thereof (hereinafter the "**Assignee**"), in which case the consent of Seller is not required. Upon making a valid assignment, the Assignee will be treated as the Buyer under this Agreement for all purposes. Seller and, upon assignment, the Assignee, expressly reserve the right to assign or delegate all or any part of its respective rights and duties hereunder with respect to all or any portion of the Property to one or more third parties, including a qualified intermediary as defined by Treasury Regulation Section 1.1031 (K)-1(g)(4) and any governmental entity or other conservation organization that may be required to take an interest in the Property at Closing in order to satisfy the requirements of any agency that is providing

funding for the acquisition of the Property. Seller and Buyer shall also cooperate with any notification required by STB in connection with such assignment. From and after the date of assignment, the Seller will look solely to the Assignee for all obligations of Buyer, including with respect to any post-Closing obligation. This provision shall survive Closing.

15. Special Conditions. The following are conditions of performance for the Agreement hereunder for the benefit of Buyer and must be satisfied by the obligated party, or waived by the Buyer and/or Assignee, at or prior to Closing:

a) For the benefit of Buyer, Seller must file to receive abandonment authority for the Property from the STB and the STB must impose a valid Notice of Interim Trail Use for Buyer's interim trail use on the Line.

b) For the benefit of Buyer, Assignee shall (i) consent to Buyer's assignment of this Agreement, (ii) approve the intended purpose of this transaction, and (iii) obtain final approval of this transaction in accordance with its customary requirements. If this condition is not satisfied By Assignee or waived by Buyer, Buyer and/or Assignee shall have the right, at its option, to terminate this Agreement by giving written notice thereof to Seller at any time during the term of this Agreement, including extensions, in which event Buyer shall be entitled to a refund of the Deposit, and neither party shall be liable to the other for damages on account of the termination.

c) For the benefit of Buyer, Buyer and/or Assignee shall have obtained the required funding from the Assignee or other suitable source for the purchase of the Property. If this condition is not satisfied or waived by Buyer, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice thereof to Seller at any time during the term of this Agreement, including extensions. In addition, if through no act, omission or fault on the part of Buyer, and notwithstanding Buyer's diligent efforts to secure the same, any governmental funding, private grants, or other financing for all or any portion of the Purchase Price shall be withdrawn, frozen or otherwise made unavailable to Buyer and /or Assignee to carry out the transactions contemplated by this Agreement, then Buyer and/or Assignee shall have the right to terminate this Agreement by written notice to Seller. In the event of any such termination Buyer shall be entitled to a refund of the Deposit unless (i) Buyer has elected in writing to extend this Agreement for an additional year under Section 8 above, and (ii) Seller is not in default, in which case the Deposit shall be paid to the Seller, and neither party shall be liable to the other for damages on account of the termination.

d) For the benefit of Buyer, notwithstanding anything contained in this Agreement to the contrary, neither Buyer nor Assignee shall be obligated to proceed with Closing unless: (1) there has been no breach or violation of any of the affirmative or negative covenants of Seller contained in this Agreement, (2) each of the representations of the Seller set forth in this Agreement was true when made and remains true in all material respects as of the Closing date, (3) the title to the Property to be sold hereunder is marketable, insurable and otherwise in conformity with the requirements set forth in Section 6 (Quality of Title), (4) all liens against the Property have been satisfied, or arrangements reasonably satisfactory to Buyer have been made

to ensure their satisfaction in connection with the Closing, (5) all other contingencies, conditions and requirements set forth herein or imposed by applicable law have been satisfied or waived, and (6) each of the items required to be delivered by Seller at Closing has been received by, and is reasonably satisfactory to, Buyer and Buyer's counsel, consistent with the terms of this Agreement.

16. **Representations.** Seller warrants and represents to Buyer that: (a) neither Seller, nor, to Seller's knowledge, any other person, has ever caused or permitted any hazardous material to be placed, held, located, or disposed of on, under, or at the Property or any part thereof, in a manner that would constitute a violation of any environmental law; (b) the Property has never been used by Seller or, to Seller's knowledge, and other person or entity as a landfill (whether permanent or temporary) for any hazardous material; (c) neither the Property nor the use, maintenance or operation thereof is in violation of any environmental law as of the date hereof; (d) to Seller's knowledge, no assessments have been made against the Property that are unpaid (except *ad valorem* taxes for the current year), whether or not they have become liens; (e) there are no leases or other agreements for use, occupancy or possession presently in force with respect to all or any portion of the Property, except those which constitute Permitted Exceptions; (f) Seller has taken all necessary corporate action to authorize the execution of this Agreement, and those persons executing this Agreement on behalf of Seller are authorized to do so; (g) between the date hereof and the date of Closing, Seller shall not make or enter into any lease or other agreement for the use, occupancy or possession of all or any part of the Property; and (h) from and after the Effective Date to the date of Closing, Seller shall not convey any portion of the Property or any rights therein, not enter into any conveyance, security documents, easement or other agreement granting to any person or entity any rights with respect to the Property.

17. **Changes in representations.** If between the date of this Agreement and the date of Closing, any party hereto acquires knowledge that any of the foregoing representations, if contemporaneously restated by the Seller, would be untrue, incomplete or misleading in any material respect, such party shall, within ten (10) business days after acquiring such knowledge (but in any event prior to the Closing), give the other party or parties notice of the change in representation, together with a detailed description thereof. Upon receiving notice that a representation is inaccurate in any material respect, or if Seller otherwise obtains actual knowledge that a representation is inaccurate in any material respect, Seller shall diligently and in good faith undertake to cure the condition before the Closing, if the condition is amenable to cure. At Seller's election, the Closing Date may be extended for a period of time reasonably necessary for Seller, acting with due diligence, to cure the condition; provided, however, that Buyer shall not be obligated to agree to any extension that would jeopardize the availability of its intended funding, or to an extension in excess of one hundred twenty (120) days. Buyer shall have the right to terminate this Agreement if in its sole discretion Buyer determines that a representation is untrue, incomplete or misleading in any material respect and is adverse to the availability of funding for the acquisition of the Property..

18. **"As Is" Purchase.** Except as set forth in this Agreement, Buyer acknowledges that Buyer is purchasing the Property "as is," "where is," and "with all faults" in its condition at the Closing

in reliance on Buyer's own investigation and inspection of the Property, and that except as otherwise specifically set forth herein, no representations or warranties of any kind whatsoever, express or implied, have been made by Seller.

19. **Eminent Domain.** If, at any time prior to the Closing hereunder, any action or proceeding is filed under which the Property, 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 Buyer: (a) this Agreement shall be terminated and the Deposit shall be refunded by Seller to Buyer, or (b) this Agreement shall remain in full force and effect and Seller, at the time of Closing hereunder, shall transfer and assign to Buyer 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 Buyer by delivering to Seller written notice of such exercise on or before the thirtieth (30th) day following the day on which Buyer receives actual notice that such suit has been filed.

20. **Default.** In the event of default by Buyer to purchase the Property under the terms of this Agreement that is not cured within 30 days of Seller's notice thereof to Buyer, Seller's sole remedy hereunder shall be to retain the Deposit as liquidated damages, in which event this Agreement shall become null and void, and all parties hereto shall thereupon be released of all further liability hereunder. It is hereby agreed that, without resale, Seller's damages will be difficult to establish and that the Deposit constitutes a reasonable liquidation thereof and is intended not as a penalty, but as full liquidated damages. In the event of a default by Seller under the terms of this Agreement, including any breach of a representation or warranty contained herein that is not cured prior to Closing, Buyer shall have the right to: (a) terminate this Agreement by notice to Seller, in which event Buyer shall be entitled to a refund of the Depositor (b) to enforce this Agreement by action of specific performance of Seller's obligations under this Agreement; *provided, however*, that Buyer shall not bring an action to enforce this Agreement by specific performance unless Seller has first obtained final approval from the STB for the abandonment or railbanking of the Property..

21. **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed delivered, whether or not actually received, when delivered by recognized overnight courier or three business days after being deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, and in each case sent to Seller or Buyer, as the case may be, to the address set forth below.

Seller:

Norfolk Southern Railway Company
1200 Peachtree Street, N.E., 12th Floor
Atlanta, Georgia 30309-3504
Attention: Solomon Jackson

Phone: 404-962-5847

Buyer:

Robert K. Anderberg
SVP and General Counsel
Open Space Institute Land Trust, Inc.
1350 Broadway; Suite 201 Attn:
New York, New York 10018
212-356-4290

E-mail: Solomon.Jackson@nscorp.com randerberg@osiny.org

With a copy to:

Norfolk Southern Railway Company
1200 Peachtree Street, N.E., 12th Floor
Atlanta, Georgia 30309-3504
Attention: Howard D. McFadden, Esq.
Phone:
Email: Howard.McFadden@nscorp.com

22. **Confidentiality.** Seller and Buyer agree that the terms and conditions of this Agreement between Buyer and Seller and all other matters related thereto are confidential and shall be held by the parties in strictest confidence. Seller and Buyer shall not, without the prior written consent of the other party, disclose any of the terms and conditions of this Agreement or any matter related to the purchase and sale of the Property, to any person or entity except: (a) parties owning an interest in the Property whose interest will be affected by the transfer of the Property to Buyer, (b) Seller's and Buyer's lawyers, accountants, and other professional advisers engaged to assist in the transfer of the Property, (c) disclosures as required by applicable law, including to the STB and other governmental agencies having jurisdiction over the sale or financing of the Property and consummation of the transaction contemplated hereby, (d) the existence of this Agreement, (e) the Closing date, (f) individuals and entities funding or potentially funding the transaction, (g) attorneys, accountants and other professional advisers to any of the foregoing. In the event of any such communication permitted by the preceding sentence, Seller and Buyer agree to obligate the recipients of such communication to be bound by the same confidentiality requirements set forth in this paragraph. In the event Seller or Buyer is required by law to make a disclosure in conflict with the requirements set forth in this Section, such party shall provide the other party with prompt written notice thereof so that either or both parties may seek a protective order or other appropriate remedy. Notwithstanding anything in this Agreement to the contrary, this Section shall be binding on the parties and may be enforced by an action in law or in equity, and this Section shall allow for disclosure as necessary in any action to enforce the terms of the Agreement.

23. **Bulk Sales.** Buyer will comply with the applicable provisions of the Bulk Sales Law, including, but not limited to N.J.S.A. 54:32B-22(c) and N.J.S.A. 54:50-38, and Seller shall promptly cooperate with Buyer in connection with such compliance, including providing all information required by Buyer to enable Buyer to complete and deliver the bulk sales notification (form C-9600) in a timely manner. Buyer will not be obligated to close unless and until it has received the written response of the New Jersey Division of Taxation. If, at any time prior to Closing, the New Jersey Division of Taxation informs Buyer that any portion of the proceeds of sale must be remitted to the state of New Jersey or held in escrow at Closing, then Buyer shall withhold the portion of the Purchase Price as directed by such Division, which amount shall be remitted to such Division or placed in an escrow account to be held by Buyer's counsel in accordance with such Division's instructions. In such event, Buyer's counsel will

prepare an appropriate bulk sales escrow agreement and the parties shall cooperate reasonably and in good faith to agree upon the form of such agreement.

24. Miscellaneous Provisions.

a) This Agreement embodies the entire agreement between the parties 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 not of the essence of this Agreement.

c) All the terms and conditions of this Agreement are hereby made binding on the heirs, successors, and assigns of the parties hereto.

d) This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

e) If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

f) 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.

g) This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

h) Buyer shall have until two hundred seventy (270) days after the execution of this Agreement to determine whether it wants Seller to retain ownership, in whole or in part, of the tracks and ties. Buyer shall make its determination in writing, which writing shall be delivered to the Seller within the two hundred seventy (270) day period referenced above. If Buyer elects in writing to have Seller shall retain ownership of all or any portion of any tracks and ties located on the Premises, Seller shall remove said tracks and ties within one hundred eighty (180) days after Closing. If Seller fails to remove said tracks and ties within one hundred eighty (180) days after the Closing, Buyer may remove said tracks and ties and provide a detailed invoice to Seller setting forth the reasonable cost to Buyer of removing said tracks and ties. Such invoice shall be paid by Seller upon receipt.

[Signatures follow on next page]

IN WITNESS WHEREOF, each of the Parties hereto have duly signed and sealed this Agreement of Purchase and Sale as of the day and year first above written.

WITNESSES:

Kendall M. James

SELLER:

NORFOLK SOUTHERN RAILWAY
COMPANY, a Virginia corporation.

By: Solomon Jackson
Printed Name: Solomon Jackson
Title: Real Estate Manager

PURCHASER:

OPEN SPACE INSTITUTE LAND TRUST,
INC., a New York nonprofit corporation

Suzanne Donovan

By: Terrence Nolan
Terrence Nolan
SVP – Conservation Transactions

Attachments:

- Exhibit A (Premises)
- Exhibit B (Interim Trail Use Agreement)
- Exhibit C (Escrow Agreement)

Exhibit A

Description of Property

The Property as defined in Recital A shall also include the following lands and/or exclusive easements:

1. Sufficient land located westerly of MP 2.9 so that a recreational pedestrian trail not less than twenty (20) feet in width can be constructed on the Property which will descend at a grade not to exceed five percent (5%) from the elevation of the railroad tracks at MP 2.9 to the elevation of the adjacent private extension of West Side Avenue, along with a one hundred (100) foot-wide strip of land running from MP 2.9 south along the easterly side of the private extension of West Side Avenue to the point where it becomes a public road (or if that is not feasible, to the intersection of Van Kueren Avenue).
2. To the extent that the Survey confirms that it is owned and/or controlled by the Seller, the strip of land located approximately six hundred thirty (630) feet west of the western spur of the New Jersey Turnpike which runs from the Belleville Turnpike approximately seven hundred (700) feet north to the Premises, and which then runs north of the Premises for an additional 1.02 miles until it connects to the publicly-owned Sawmill Creek Trail.
3. To the extent that the Survey confirms that it is owned and/or controlled by the Seller, the strip of land located approximately 260 feet west of the western spur of the New Jersey Turnpike which runs from the Belleville Turnpike approximately four hundred seventy (470) feet north to the Property.
4. For the avoidance of doubt, the entire strip of land and/or riparian land located at Station 240+00 that runs north approximately 2,469 feet to the Saw Mill Creek, and which is labelled on the Valuation Maps as "NY & GL RR – Branch A", is included in the Property.
5. The conveyance to Purchaser is made together with any appurtenances, strips, or gores that are associated with the Property.

Exhibit B

TRAIL USE AGREEMENT

THIS TRAIL USE AGREEMENT (this "Agreement") is made as of _____, 2020, by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation ("NSR"), and **OPEN SPACE INSTITUTE LAND TRUST, INC.**, a New York non-profit corporation ("OSILT") (each, individually, a "Party" and, collectively, the "Parties").

RECITALS

WHEREAS, NSR is the owner of that certain real estate and rail improvements consisting of an 8.63 mile long, approximately 138.81 acre unused railroad right of way, located between Milepost WD 2.9 (near Station 255+61) in Jersey City, Hudson County, New Jersey to Milepost WD 11.6 (near Station 600+46) in Glen Ridge Borough, Essex County, New Jersey, (the "Segment"); and

WHEREAS, OSILT has negotiated with NSR an Agreement of Purchase and Sale (the "PSA") pursuant to which OSILT intends to acquire the Segment; and

WHEREAS, OSILT desires to develop the Segment for use as a public recreational trail, and, accordingly, OSILT and NSR desire to enter into this Agreement for railbanking and for public space pursuant to and in accordance with 49 C.F.R. 1152.29 and Section 8(d) of the National Trails System Act (also known as the "Rails-to-Trails Act"), 16 U.S.C. 1247(d) (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the "Railbanking Legislation"); and

WHEREAS, the purpose of this Agreement is to delineate the responsibilities of each of the Parties pursuant to the Railbanking Legislation, as such responsibilities may be appropriately allocated during each phase of the development and use of a trail or other facilities by OSILT; and

WHEREAS, the Parties acknowledge that any railbanking or trail use proposed by OSILT, including this Agreement, will be subject to the authorization and jurisdiction of the Surface Transportation Board ("STB" or the "Board"); and

WHEREAS, the Parties acknowledge that OSILT has applied to obtain STB authorization for interim trail use by means of a properly filed Notice of Interim Trail Use ("NITU") for the Segment in accordance with the Board's rules and procedures; and

WHEREAS, the Parties acknowledge that OSILT will apply for, obtain and be the holder of the NITU, and, further, OSILT acknowledges that, pursuant to the requirements of the Railbanking Legislation, freight service may be reactivated on the Segment and OSILT must make the Segment available for such reactivation of freight service; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, NSR and OSILT agree as follows:

AGREEMENT

1. RAIL LINES BEING RAILBANKED

The Segment being railbanked lies between Milepost WD 2.9 and Milepost WD 11.6. A map of the Segment with an indication of the Segment proposed to be railbanked is attached hereto as Exhibit A.

2. RAILBANKING OBLIGATIONS

(a) Unless otherwise defined in this Agreement, terms used herein will have the meanings defined in the Railbanking Legislation.

(b) For the purposes of this Agreement, proposed authorization by the STB of OSILT's trail use will be referred to herein as the "NITU".

(c) Pursuant to 49 C.F.R. 1152.29, OSILT agrees to assume the following obligations in respect to the railbanked Segment in accordance with the Statement of Willingness to Assume Financial Responsibility, which statement is required as a condition precedent to the issuance of a NITU (the "SWAFR"), as follows:

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, with respect to the right-of-way described in this Agreement as the Segment, OSILT is willing to assume full responsibility for: (1) managing the right-of-way, (2) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the owner against any potential liability), and (3) the payment of any and all taxes that may be levied or assessed against the right-of-way. The property extends from railroad Milepost WD 2.9 to railroad Milepost WD 11.6, a distance of approximately 8.63 miles between Jersey City, Hudson County, New Jersey and Glen Ridge Borough, Essex County, New Jersey. .

OSILT acknowledges that use of the right-of-way is subject to the trail sponsor's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

(d) The Parties agree that this Agreement will constitute prima facie evidence of a valid and continuing purpose on the part of OSILT to initiate interim trail use along the Segment.

3. ACQUISITION OF NSR'S COMMON CARRIER OBLIGATION

Within six (6) months of the effective date of this agreement, OSILT commits to seeking to acquire any and all of NSR's remaining common carrier interests in the Railbanked Segments. In particular, OSILT will acquire what is often referred to as NSR's residual common carrier obligation over the Railbanked Segments, i.e., the right to terminate trails use and reactivate rail service. OSILT shall be responsible for and pay all costs related to its acquisition of NSR's remaining common carrier obligation and obtain all regulatory approvals for such acquisition. NSR shall fully cooperate with any regulatory requirements. Upon completion of its acquisition of NSR's residual common carrier obligation, OSILT will be both the trails sponsor and owner and the holder of the right to reactive rail service.

4. TERMINATION OF NITU

If OSILT desires to terminate interim trail use and request that NSR consummate its abandonment of the Segment, OSILT shall so advise NSR in writing. OSILT and NSR shall cooperate to file notice of such termination at the STB pursuant to 49 C.F.R. 1152.29(d)(2), with a request that the NITU be vacated on such date as OSILT and NSR shall specify. NSR shall file notice of consummation of its abandonment as soon as practicable following the STB's issuance of a decision vacating the NITU.

5. NOTICES

Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and shall either be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered via facsimile, with confirmation of receipt with an original deposited postage prepaid in the first class mails of the United States. Such notices shall be addressed to each Party respectively at:

NSR:

Solomon Jackson
Norfolk Southern Railway Company
1200 Peachtree Street NE — 12th Floor
Atlanta, Georgia 30309
Phone: [REDACTED]
Email: [REDACTED]

OSILT:

Robert K. Anderberg
SVP and General Counsel
Open Space Institute Land Trust, Inc.
1350 Broadway, Suite 201
New York, New York 10018
Phone: [REDACTED]
Email: [REDACTED]

With copy to:

Howard D. McFadden, Esq.
Senior General Attorney - Real Estate
Norfolk Southern Corporation
1200 Peachtree St., NE - 12th Floor
Atlanta, GA 30309-3579

or to such person and at such other addresses as either Party may at any time or from time to time designate for itself by notice in accordance herewith. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a Party when received at its address set forth or designated as above provided.

6. GENERAL TERMS

(a) Entire Agreement. This Agreement, together with any amendments or exhibits, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may be modified only by a writing executed by the Parties.

(b) No Third Party Beneficiaries. Except as otherwise provided in this Agreement, nothing contained in this Agreement, in any provision or exhibit to this Agreement, or in any agreement or provision included in this Agreement by reference, will operate or be construed as being for the benefit of any third person.

(c) Parties. Wherever used in this Agreement, the terms "NSR" and "OSILT" shall be construed in the singular or plural as the context may require or admit, and shall include the permitted successors and assigns of such parties.

(d) Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.

(e) Governing Law; Headings; Rules of Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without reference to the conflicts of laws or choice of law provisions thereof. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa. The Parties agree that this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against the maker thereof.

(f) No Waiver. 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.

(g) Assignability. OSILT may assign this Agreement in concert with and pursuant to the "Assignment" provision contained in the PSA, subject to regulatory requirements for transfer of the NITUs.

(h) Time is of the Essence. Time is of the essence in the performance of each Party's obligations under this Agreement.

(i) Incorporation of Exhibits. All exhibits attached to this Agreement will be incorporated by this reference and made a part of this Agreement for all purposes.

(j) Multiple Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

(k) Relationship. Nothing in this Agreement shall be deemed or construed by the Parties, nor by any other person, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties.

(l) Authorization. NSR represents and warrants that it has obtained all necessary corporate approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement will not violate the articles of incorporation or bylaws of such corporation, and will not constitute a material breach of any contract by which such corporation is bound. OSILT represents and warrants that it has obtained all necessary approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement will not violate OSILT's articles of incorporation or bylaws, and will not constitute a material breach of any contract by which OSILT is bound.

(m) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized signatory, effective as of the day and year first above written.

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____
Name:
Title:

OPEN SPACE INSTITUTE LAND TRUST, INC.

By: _____
Name:
Title:

Schedule C

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "**Agreement**") is made as of February __, 2020, by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation ("**NSR**"); **OPEN SPACE INSTITUTE LAND TRUST, INC.**, a New York non-profit corporation ("**OSILT**"); and **OLD REPUBLIC NATIONAL TITLE COMPANY**, a New Jersey Corporation ("**ESCROWEE**") (each, individually, a "**Party**" and, collectively, the "**Parties**").

RECITALS

WHEREAS, NSR is the owner of that certain real estate and rail improvements consisting of an 8.63 mile long, approximately 138.81 acre unused railroad right of way, located between Milepost WD 2.9 (near Station 255+61) in Jersey City, Hudson County, New Jersey to Milepost WD 11.6 (near Station 600+46) in Glen Ridge Borough, Essex County, New Jersey, (the "**Property**"); and

WHEREAS, on January 31st, 2020 OSILT and NSR executed an Agreement of Purchase and Sale (the "**PSA**") pursuant to which OSILT intends to acquire the Property;

WHEREAS, the PSA requires OSILT to make a Deposit in the amount of Fifty Thousand (\$50,000.00) Dollars to the ESCROWEE to be held in escrow pursuant to the terms and conditions of this Escrow Agreement (the "**Escrow Agreement**");

WHEREAS, OSILT and NSR desires to have the Escrowee hold the Deposit (as defined below) for this transaction;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, NSR, OSILT and ESCROWEE agree as follows:

AGREEMENT

I. PAYMENT OF DEPOSIT TO ESCROWEE

a) On or before February 28th, 2020, OSILT shall deposit with Escrowee the sum of Fifty Thousand (\$50,000.00) Dollars (the sum, including interest thereon, hereinafter referred to as the "**Deposit**") by good check payable to Escrowee. The Deposit shall be held and disbursed in accordance with the provisions below.

- b) Escrowee shall hold the Deposit in escrow in a federally insured bank account until Closing or sooner termination of this Agreement and shall pay over or apply the Deposit in accordance with the terms of this paragraph. At Closing, the Deposit shall be paid by Escrowee to NSR.
- c) Upon any termination of the Agreement by Buyer prior to Closing as defined in the PSA (other than through breach by Buyer), the Deposit shall be paid to OSILT. Notwithstanding anything in the foregoing to the contrary, if OSILT elects in writing to extend the time for Closing by an additional twelve (12) months as provided for in Section 8 of the PSA, and after such written election there is a termination of the Agreement by OSILT prior to Closing (other than through a breach by the Seller), the Deposit shall be paid to NSA.
- d) If for any reason Closing does not occur and either party gives Notice (as defined below) to Escrowee demanding payment of the Deposit, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive Notice of objection from such other party to the proposed payment within ten (10) business days after the giving of such written notice, Escrowee is hereby authorized and directed to make such payment. If Escrowee does receive such Notice of objection within such ten (10) day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from both Seller and Buyer or a final, non-appealable judgment, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Deposit with the clerk of a court in Essex County, New Jersey and shall give Notice of such deposit to Seller and Buyer. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.
- e) The parties acknowledge that Escrowee is acting solely as a stakeholder at their request and for their convenience and that Escrowee shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this Agreement or involving gross negligence on the part of Escrowee. Escrowee may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel which may be selected by it and shall be fully protected in so acting or refraining from action upon the advice of such counsel.
- f) Escrowee acknowledges receipt of the Deposit by check subject to collection and Escrowee's agreement to the provisions of this paragraph by signing in the place indicated on the signature page of this Agreement.

II. NOTICES

Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and shall either be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered via facsimile, with confirmation of receipt with an original deposited postage prepaid in the first class mails of the United States. Such notices shall be addressed to each Party respectively at:

NSR:

Solomon Jackson
Norfolk Southern Corporation
1200 Peachtree Street NE — 12th Floor
Atlanta, Georgia 30309
Phone: [REDACTED]
Email: [REDACTED]

OSITL:

Robert K. Anderberg
SVP and General Counsel
Open Space Institute Land Trust, Inc.
1350 Broadway, Suite 201
New York, New York 10018
Phone: [REDACTED]
Email: [REDACTED]

With copy to:

Howard D. McFadden, Esq.
Senior General Attorney - Real Estate
Norfolk Southern Corporation
1200 Peachtree St., NE - 12th Floor
Atlanta, GA 30309-3579

ESCROWEE:

Old Republic National Title Insurance Company
119 Cherry Hill Road, Suite 100
Parsippany, New Jersey 07054
Attention: Walter Schwab
Phone: [REDACTED]
Email: [REDACTED]

or to such person and at such other addresses as either Party may at any time or from time to time designate for itself by notice in accordance herewith. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a Party when received at its address set forth or designated as above provided.

5. OTHER TERMS

(a) Entire Agreement. This Agreement, together with any amendments or exhibits, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may be modified only by a writing executed by the Parties.

(b) No Third Party Beneficiaries. Except as otherwise provided in this Agreement, nothing contained in this Agreement, in any provision or exhibit to this Agreement, or in any agreement or provision included in this Agreement by reference, will operate or be construed as being for the benefit of any third person.

(c) Parties. Wherever used in this Agreement, the terms "NSR", "OSILT" AND ESCROWEE shall be construed in the singular or plural as the context may require or admit, and shall include the permitted successors and assigns of such parties.

(d) Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.

(e) Governing Law; Headings; Rules of Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without reference to the conflicts of laws or choice of law provisions thereof. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa. The Parties agree that this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against the maker thereof.

(f) No Waiver. 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.

(g) Assignability. OSILT may assign this Agreement in concert with and pursuant to the "Assignment" provision contained in the PSA.

(h) Multiple Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

(i) Relationship. Nothing in this Agreement shall be deemed or construed by the Parties, nor by any other person, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties.

(j) Authorization. NSR represents and warrants that it has obtained all necessary corporate approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement will not violate the articles of incorporation or bylaws of such corporation, and will not constitute a material breach of any contract by which such corporation is bound. OSILT represents and warrants that on or before February 28th, 2020 it will have obtained all necessary approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement will not violate OSILT's articles of incorporation or bylaws, and will not constitute a material breach of any contract by which OSILT is bound.

(m) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

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**AMENDMENT NO. 1 TO
AGREEMENT OF PURCHASE AND SALE**

[Essex Hudson Greenway]

This Amendment No. 1 to Agreement of Purchase and Sale (hereinafter called this “**Amendment**”), dated the 29th day of April, 2020 (hereinafter called the “**Effective Date**”) between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation with a principal place of business at Three Commercial Place, Norfolk, VA 23510 (hereinafter called “**Seller**”), and **OPEN SPACE INSTITUTE LAND TRUST, INC.**, a New York not-for-profit corporation with a principal place of business at 1350 Broadway, Suite 201, New York, New York 10018 (hereinafter called “**Buyer**”). The Seller and Buyer are referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

- A. Seller and Buyer entered into an Agreement of Purchase and Sale dated January 31, 2020 (the “**Agreement**”) under which Seller agreed to sell and Buyer has agreed to purchase certain property located in the Counties of Essex and Hudson, New Jersey consisting of an 8.6-mile long, approximately 138.81-acre unused railroad right of way, located between Milepost WD 2.9 (near Station 255+61) in Jersey City, Hudson County to Mile Post WD 11.5 (near Station 600+48) in Montclair, Essex County (hereinafter referred to as the “**Property**”), on the terms and conditions set forth in the Agreement.
- B. Seller and Buyer have agreed to modify the terms of the Agreement as set forth more fully herein.
- C. Capitalized terms shall have the meaning set forth in the Agreement unless otherwise defined herein.

AMENDED TERMS OF SALE

For and in consideration of the mutual covenants described below and in the Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

- 1. The definition of “**Property**” in the Agreement shall be amended to provide as follows:

“certain property located in the Counties of Essex and Hudson, New Jersey consisting of an 8.6-mile long, approximately 138.81-acre unused railroad right of way, located between Milepost WD 2.9 (near Station 255+61) in Jersey City, Hudson County to Mile Post WD 11.5 (near Station 600+48) in Montclair, Essex County”.

2. Section 7 of the Agreement is hereby deleted and replaced with the following:

Railroad Abandonment/Railbanking. Seller's obligations under this Agreement are contingent upon the final approval of Seller's abandonment of the Line on the Property for Seller's railroad uses and purposes, and the railbanking of the Line in accordance with all applicable law, rules regulations ("**Railroad Abandonment**"). Seller agrees, at Seller's own cost, to diligently pursue approval of the Railroad Abandonment from the Surface Transportation Board ("**STB**") commencing upon the execution of this Agreement, including without limitation satisfying any environmental or historic conditions imposed by the STB on the Railroad Abandonment and not related to establishment and development of a trail. Buyer agrees to cooperate reasonably with Seller in obtaining the approval of the Railroad Abandonment. Seller shall pay all applicable STB and other filing fees arising from Railroad Abandonment and all costs necessary to satisfy any environmental or historic conditions imposed by the STB on the Railroad Abandonment and not related to establishment and development of a trail. Seller and Buyer expressly acknowledge that the STB may alter the terms of this Agreement as part of the approval process, in which event Seller will notify Buyer of the STB's action with respect to this Agreement. Neither Seller nor Buyer shall be liable for any failure to discharge their respective rights or obligations as a result of any STB action or failure to act. If the STB disapproves the request for Railroad Abandonment, Seller shall so notify Buyer and this Agreement shall thereupon terminate. If the STB alters the terms of this Agreement in a manner unacceptable to either Seller or Buyer and such party notifies the other within thirty (30) days of its receipt of notice of such alteration, then this Agreement shall terminate on written notice from the party unwilling to accept such alteration in terms. If this Agreement is terminated hereunder, the Earnest Money and any other funds held hereunder for the benefit of Buyer shall be immediately returned to Buyer.

3. The Interim Trail Use Agreement attached as Exhibit B to the Agreement is hereby deleted and replaced by the Revised Exhibit B attached hereto.
4. Section 24(h) shall be deleted in its entirety.
5. All other terms and conditions of the Agreement shall continue in full force and effect.

[Signatures follow on next page]

IN WITNESS WHEREOF, each of the Parties hereto have duly signed and sealed this Agreement of Purchase and Sale as of the day and year first above written.

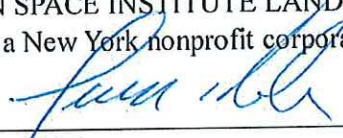
SELLER:

NORFOLK SOUTHERN RAILWAY
COMPANY, a Virginia corporation.

By: 
Solomon Jackson
Director Real Estate

PURCHASER:

OPEN SPACE INSTITUTE LAND TRUST,
INC., a New York nonprofit corporation

By: 
Terrence Nolan
SVP – Conservation Transactions

Attachments:

Revised Exhibit B (Revised Interim Trail Use Agreement)

Revised Exhibit B

REVISED TRAIL USE AGREEMENT

THIS REVISED TRAIL USE AGREEMENT (this “**Agreement**”) is made as of _____, 2020, by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation (“**NSR**”), and _____, a (“**Trail Sponsor**”) **Trail Sponsor** (each, individually, a “**Party**” and, collectively, the “**Parties**”).

RECITALS

WHEREAS, NSR is the owner of that certain real estate and rail improvements consisting of an 8.6 mile long, approximately 138.81 acre unused railroad right of way, located between Milepost WD 2.9 (near Station 255+61) in Jersey City, Hudson County, New Jersey to Milepost WD 11.5 (near Station 600+48 in Montclair, Essex County, New Jersey, (the “**Segment**”); and

WHEREAS, Open Space Institute Land Trust, Inc. (“**OSLIT**”) has negotiated with NSR an Agreement of Purchase and Sale (the “**PSA**”) pursuant to which Trail Sponsor, as OSLIT’s assignee, intends to acquire the Segment; and

WHEREAS, Trail Sponsor desires to develop the Segment for use as a public multimodal and recreational trail, and, accordingly, Trail Sponsor and NSR desire to enter into this Agreement for railbanking and for public space pursuant to and in accordance with 49 C.F.R. 1152.29 and Section 8(d) of the National Trails System Act (also known as the “**Rails-to-Trails Act**”), 16 U.S.C. 1247(d) (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the “**Railbanking Legislation**”); and

WHEREAS, the purpose of this Agreement is to delineate the responsibilities of each of the Parties pursuant to the Railbanking Legislation, as such responsibilities may be appropriately allocated during each phase of the development and use of a trail or other facilities by Trail Sponsor; and

WHEREAS, the Parties acknowledge that any railbanking or trail use proposed by Trail Sponsor, including this Agreement, will be subject to the authorization and jurisdiction of the Surface Transportation Board (“**STB**” or the “**Board**”); and

WHEREAS, the Parties acknowledge that Trail Sponsor has applied to obtain STB authorization for interim trail use by means of a properly filed Notice of Interim Trail Use (“**NITU**”) for the Segment in accordance with the Board’s rules and procedures; and

WHEREAS, the Parties acknowledge that Trail Sponsor will apply for, obtain and be the holder of the NITU, and, further, Trail Sponsor acknowledges that, pursuant to the requirements of the Railbanking Legislation, freight service may be reactivated on the Segment and Trail Sponsor must make the Segment available for such reactivation of freight service; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, NSR and Trail Sponsor agree as follows:

AGREEMENT

1. RAIL LINES BEING RAILBANKED

The Segment being railbanked lies between Milepost WD 2.9 and Milepost WD 11.5. A map of the Segment is attached hereto as **Exhibit A**.

2. RAILBANKING OBLIGATIONS

(a) Unless otherwise defined in this Agreement, terms used herein will have the meanings defined in the Railbanking Legislation.

(b) For the purposes of this Agreement, proposed authorization by the STB of Trail Sponsor's trail use will be referred to herein as the "NITU".

(c) Pursuant to 49 C.F.R. 1152.29, Trail Sponsor agrees to assume the following obligations in respect to the railbanked Segment in accordance with the Statement of Willingness to Assume Financial Responsibility, which statement is required as a condition precedent to the issuance of a NITU (the "SWAFR"), as follows:

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, with respect to the right-of-way described in this Agreement as the Segment, Trail Sponsor is willing to assume full responsibility for: (1) managing the right-of-way, (2) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the owner against any potential liability), and (3) the payment of any and all taxes that may be levied or assessed against the right-of-way. The property extends from railroad Milepost WD 2.9 to railroad Milepost WD 11.6, a distance of approximately 8.63 miles between Jersey City, Hudson County, New Jersey and Glen Ridge Borough, Essex County, New Jersey.

Trail Sponsor acknowledges that use of the right-of-way is subject to the trail sponsor's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

(d) To the extent the Trail Sponsor does not assume any legal liability arising out of the transfer of the Segment, Trail Sponsor shall indemnify and hold NSR harmless from any and all liability, cost or expense, including attorneys' fees, arising from the management or use of the Segment after the date of closing or arising out of the transfer of the Segment, including without limitation injuries, death, or property loss or damage. Additionally, to the extent the Trail Sponsor does not assume any legal liability arising out of the use of the Segment, Trail Sponsor shall protect, hold harmless, and indemnify NSR against any claim or liability arising from or based on use of the Segment by Trail Sponsor or its employees, agents or contractors in the violation of any law, ordinance, regulation, injunction, or final order or decree of bodies or tribunals having any jurisdiction or authority.

(e) The Parties agree that this Agreement will constitute prima facie evidence of a valid and continuing purpose on the part of Trail Sponsor to initiate interim trail use along the Segment.

3. ACQUISITION OF NSR'S COMMON CARRIER OBLIGATION

If Trail Sponsor has not already done so, within six (6) months of the effective date of this agreement, Trail Sponsor commits to seeking to acquire any and all of NSR's remaining common carrier interests in the Segment. In particular, Trail Sponsor will acquire what is often referred to as NSR's residual common carrier obligation over the Segment, *i.e.*, the right to terminate trails use and reactivate rail service. Trail Sponsor shall be responsible for and pay all costs related to its acquisition of NSR's remaining common carrier obligation and obtain all regulatory approvals for such acquisition. NSR shall fully cooperate with any regulatory requirements. Upon completion of its acquisition of NSR's residual common carrier obligation, Trail Sponsor will be both the trails sponsor and owner and the holder of the right to reactive rail service. The holder of the residual common carrier obligation (whether NSR or Trail Sponsor) shall be referred to as the "Residual Carrier."

4. SALVAGE OF THE SEGMENT

After Trail Sponsor acquires ownership of the Segment pursuant to the NITU, Trail Sponsor shall have the right to salvage any or all of the Segment subject to compliance with any applicable laws and regulations.

5. TERMINATION OF NITU

If Trail Sponsor desires to terminate interim trail use and request that the Residual Carrier consummate its abandonment of the Segment, Trail Sponsor shall so advise the Residual Carrier in writing. Trail Sponsor and the Residual Carrier shall cooperate to file notice of such termination at the STB pursuant to 49 C.F.R. 1152.29(d)(2), with a request that the NITU be vacated on such date as Trail Sponsor and Residual Carrier shall specify. The Residual Carrier shall file notice of consummation of its abandonment as soon as practicable following the STB's issuance of a decision vacating the NITU.

6. RIGHT TO RESUME RAIL SERVICE

The Residual Carrier reserves the right to request that the STB vacate the NITU, in whole or in part, allowing the Residual Carrier to resume rail service on the Segment or any portion thereof. Trail Sponsor, its successors or assigns, shall not oppose such request made by the Residual Carrier to the STB. Should the Residual Carrier, its successors or assigns seek to resume service, the Residual Carrier, its successors or assigns shall reimburse Trail Sponsor, its successors or assigns for all costs and expenses incurred by Trail Sponsor or its successors or assigns (a) to acquire the Segment from NSR, including without limitation, the purchase price, (b) to develop the Segment for an interim trail, including without limitation costs of obtaining any necessary governmental approvals, salvage costs and construction costs, and (c) to fund the acquisition and development of an interim trail, including any amounts required to be repaid to funding sources as a result of the termination of interim trail use. The Residual Carrier and the Trail Sponsor agree that the foregoing represents fair value for the reacquisition of the Segment. Trail Sponsor, its successors and assigns, shall have no responsibility to maintain or to restore any structures on the Segment in a fashion suitable for rail use. Trail Sponsor further agrees to take all steps necessary to comply with any and all Federal and state requirements relating to termination of interim trail use and reactivation of rail service. Trail Sponsor shall execute a quit claim deed in a form reasonably approved by the Residual Carrier upon notification by the Residual Carrier of the Residual Carrier's intent to reinstitute rail service on all or a part of the Segment, and payment by the Residual Carrier of the reimbursement amount described above. It is expressly understood that the Residual Carrier may exercise its rights to request that the STB vacate the NITU in whole or in part as deemed, in the Residual Carrier's sole discretion, to be necessary, and this right is a continuing right which is exercisable at any time, and as many times, as the Residual Carrier may desire to exercise the right. The Residual Carrier shall not be liable for any penalties or direct, indirect, or consequential damages or costs or expenses incurred by Trail Sponsor as a result of the Residual Carrier's decision to exercise its rights contained in this Section 6, other than for the costs and expenses to be reimbursed as set forth above.

7. NOTICES

Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and shall either be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered via facsimile, with confirmation of receipt with an original deposited postage prepaid in the first class mails of the United States. Such notices shall be addressed to each Party respectively at:

NSR:

Solomon Jackson
Norfolk Southern Railway Company
1200 Peachtree Street NE — 12th Floor
Atlanta, Georgia 30309
Phone: [REDACTED]
Email: [REDACTED]

Trail Sponsor:

[name]
[title]
[address]
Phone:
Email:

With copy to:

Howard D. McFadden, Esq.
Senior General Attorney - Real Estate
Norfolk Southern Corporation
1200 Peachtree St., NE - 12th Floor
Atlanta, GA 30309-3579

or to such person and at such other addresses as either Party may at any time or from time to time designate for itself by notice in accordance herewith. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a Party when received at its address set forth or designated as above provided.

8. GENERAL TERMS

(a) Entire Agreement. This Agreement, together with any amendments or exhibits, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may be modified only by a writing executed by the Parties.

(b) No Third Party Beneficiaries. Except as otherwise provided in this Agreement, nothing contained in this Agreement, in any provision or exhibit to this Agreement, or in any agreement or provision included in this Agreement by reference, will operate or be construed as being for the benefit of any third person.

(c) Parties. Wherever used in this Agreement, the terms "NSR" and "Trail Sponsor" shall be construed in the singular or plural as the context may require or admit, and shall include the permitted successors and assigns of such parties.

(d) Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.

(e) Governing Law; Headings; Rules of Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without reference to the conflicts of laws or choice of law provisions thereof. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa. The Parties agree that this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against the maker thereof.

(f) No Waiver. 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.

(g) Assignability. Trail Sponsor may assign this Agreement in concert with and pursuant to the "Assignment" provision contained in the PSA, subject to regulatory requirements for transfer of the NITUs.

(h) Time is of the Essence. Time is of the essence in the performance of each Party's obligations under this Agreement.

(i) Incorporation of Exhibits. All exhibits attached to this Agreement will be incorporated by this reference and made a part of this Agreement for all purposes.

(j) Multiple Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

(k) Relationship. Nothing in this Agreement shall be deemed or construed by the Parties, nor by any other person, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties.

(l) Authorization. NSR represents and warrants that it has obtained all necessary corporate approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement will not violate the articles of incorporation or bylaws of such corporation, and will not constitute a material breach of any contract by which such corporation is bound. Trail Sponsor represents and warrants that it has obtained all necessary approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement will not violate Trail Sponsor's articles of incorporation or bylaws or other governing documents, and will not constitute a material breach of any contract by which Trail Sponsor is bound.

(m) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized signatory, effective as of the day and year first above written.

NORFOLK SOUTHERN RAILWAY COMPANY

By: 
Name: Solomon Jackson
Title: Real Estate Manager

[TRAIL SPONSOR]

By: _____
Name: _____
Title: _____

Open Space Institute Land Trust, Inc.
1350 Broadway, Suite 201
New York, New York 10018

April 29, 2020

Solomon P. Jackson
Director Real Estate
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

Re: Approximately 138.81 Acres of Unused Rail Corridor Located in the Counties of Essex and Hudson, New Jersey, known as the Old Boonton Line (the "Property")

Dear Solomon:

Pursuant to the terms of that certain Agreement for Purchase and Sale dated January 31, 2020, as amended (the "Agreement") between Norfolk Southern Corporation as Seller ("NSR") and Open Space Institute Land Trust, Inc. as Buyer ("OSI"), NSR has agreed to sell to OSI the Property pursuant to and under a Trail Use Agreement (the "Trail Use Agreement").

Under the Trail Use Agreement, OSI and/or its assignee or designee under the Agreement, will have the right, after closing on the purchase of the Property, to salvage the rail line on the Property that NSR will have received regulatory approval for abandonment.

NSR has agreed to support OSI in its efforts obtaining any necessary historic approvals to salvage the line and develop the Property as a trail after consummation of the Trail Use Agreement. Such support shall include providing OSI with copies of all environmental and historical studies that NSR commissions as part of the abandonment process at the Surface Transportation Board ("STB").

In addition, NSR and OSI have agreed that OSI shall have the option of retaining NSR to manage the salvage of the tracks and ties on the Property (including the tracks and ties on any bridges, but not the bridge structures). NSR's management will include selecting a qualified contractor; overseeing the contractor to ensure adherence to all applicable agency regulatory and permitting requirements; ensuring that the work is done in a proper and timely manner; paying for the costs of obtaining any regulatory permits and approvals required solely for the purpose of salvaging the tracks and ties (and not related to the establishment and development of a trail);

and paying the contractor any net cost of the contractor in excess of the value of the track and ties to be salvaged. Any excess value of the tracks and ties in excess of the cost of removal shall inure to the benefit of NSR.

The person signing this letter agreement on behalf of NSR has full authority to bind NSR to all of the terms and conditions of this letter agreement. The person signing this letter agreement on behalf of OSI has full authority to bind OSI to all of the terms and conditions of this letter agreement. This letter agreement, together with any amendments, modifications or extensions hereof, or notices hereunder, may be executed in one or more counterparts by manual (i.e., original ink) or facsimile signature of the parties hereto, and maybe delivered to the parties by one or more of the following means: personal delivery, U.S. mail, commercial courier, telecopier (a/k/a facsimile machine) or as an electronically transmitted portable document (.pdf) or other image format file. Each of such counterparts, when so executed, shall be deemed an original and, when taken together, shall constitute a single instrument and, when so delivered, shall be deemed the duly executed and delivered agreement of the parties.

If the foregoing fully and accurately represents our understanding as to this matter, please countersign this letter in the space provided and return a fully executed counterpart to the attention of Robert Anderberg in OSI's New York office, at which time it shall become a binding agreement between NSR and OSI.

Very truly yours,

OPEN SPACE INSTITUTE LAND TRUST, INC.

By: 

Terrence Nolan

Senior Vice President – Conservation Transactions

ACCEPTED AND AGREED:

NORFOLK SOUTHERN RAILWAY COMPANY

By: 
Solomon Jackson
Director Real Estate

Dated: 4/30/2020

**AMENDMENT NO. 2 TO
AGREEMENT OF PURCHASE AND SALE**

[Essex Hudson Greenway]

This Amendment No. 2 to Agreement of Purchase and Sale (this "**Amendment**"), dated the 27th day of July, 2020 (the "**Effective Date**"), is by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation with an office at Three Commercial Place, Norfolk, VA 23510 ("**Seller**"), and **OPEN SPACE INSTITUTE LAND TRUST, INC.**, a New York not-for-profit corporation with a principal place of business at 1350 Broadway, Suite 201, New York, New York 10018 ("**Buyer**"). Seller and Buyer are sometimes referred to collectively as the "**Parties**".

RECITALS

- A. Seller and Buyer are parties to that certain Agreement of Purchase and Sale dated January 31, 2020, as amended (the "**Agreement**").
- B. Seller and Buyer desire to further amend the Agreement as set forth herein.

AMENDED TERMS OF SALE

For and in consideration of the mutual covenants described below and in the Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

1. The Agreement is hereby amended by deleting Section 2 in its entirety and inserting in its place the following:

“2. **Purchase Price for the Property.** The purchase price for the Property shall be SIXTY-FIVE MILLION AND NO/100 DOLLARS (\$65,000,000.00) minus (i) the actual amount of money that Seller receives from New Jersey Transit Corporation (“**NJT**”) in exchange for conveyance to NJT of a permanent aerial/bridge easement over the Property designated by NJT as E207, and (ii) the actual amount of money that Seller receives from NJT in exchange for conveyance to NJT of a floating permanent easement across the Property designated by NJT as PAE210 (collectively, the “**Purchase Price**”). The amount that Seller expects to receive from NJT for E207 is FIVE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$550,000.00). The amount payable for PAE210 will be determined pursuant to that certain Memorandum of Agreement dated as of July 29, 2020, by and among Seller, Buyer and NJT (the “**MOA**”), and Buyer acknowledges that NJT may acquire PAE210 from Buyer after Closing as prescribed by and pursuant to the terms of the MOA.”
2. The Agreement is hereby further amended by deleting Section 9(a)(4) in its entirety and inserting in its place the following:

“4) an assignment of (i) that certain License Agreement dated as of August 24, 2017 by and between Seller and NJT, as amended (the “**License**”), and (ii) that certain

Reinstatement of and Amendments to License Agreement dated as of July 29, 2020, by and between Seller and NJT, which reinstates and further amends the License.”

3. This Amendment shall be effective as of the Effective Date.
4. Except as amended hereby, the Agreement shall remain in full force and effect.

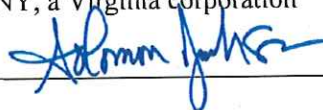
[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties has duly signed and sealed this Agreement as of the Effective Date.

SELLER:

NORFOLK SOUTHERN RAILWAY
COMPANY, a Virginia corporation

By:



Name:

Solomon Jackson

Title:

Director Real Estate

BUYER:

OPEN SPACE INSTITUTE LAND TRUST,
INC., a New York nonprofit corporation

By:



Name:

Terrence Nolan

Title:

SVP – Conservation Transactions

**AMENDMENT NO. 3 TO
AGREEMENT OF PURCHASE AND SALE**

[Essex Hudson Greenway]

This Amendment No. 3 to Agreement of Purchase and Sale (this "**Third Amendment**"), dated the ____ day of December, 2020 (the "**Effective Date**"), is by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation with an office at Three Commercial Place, Norfolk, VA 23510 ("**Seller**"), and **OPEN SPACE INSTITUTE LAND TRUST, INC.**, a New York not-for-profit corporation with a principal place of business at 1350 Broadway, Suite 201, New York, New York 10018 ("**Buyer**"). Seller and Buyer are sometimes referred to collectively as the "**Parties**".

RECITALS

- A. Seller and Buyer are parties to that certain Agreement of Purchase and Sale dated January 31, 2020, as amended (the "**Agreement**").
- B. Seller and Buyer desire to further amend the Agreement as set forth herein.

AMENDED TERMS OF SALE

For and in consideration of the mutual covenants described below and in the Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. The Agreement is hereby amended by deleting the second sentence of Section 4 in its entirety and inserting in its place the following:

By January 31, 2021, Buyer shall furnish Seller with a copy of the Survey for its approval, which approval shall not be unreasonably withheld or delayed.
2. This Amendment shall be effective as of the Effective Date.
3. Except as amended hereby, the Agreement shall remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties has duly signed and sealed this Third Amendment as of the Effective Date.

SELLER:

NORFOLK SOUTHERN RAILWAY
COMPANY, a Virginia corporation

By: 

Name: Solomon Jackson

Title: Director Real Estate

BUYER:

OPEN SPACE INSTITUTE LAND TRUST,
INC., a New York nonprofit corporation

By: 

Name: Dene Lee

Title: Sen. Director, NSE Land

**AMENDMENT NO. 4 TO
AGREEMENT OF PURCHASE AND SALE**

[Essex Hudson Greenway]

This Amendment No. 4 to Agreement of Purchase and Sale (this "**Amendment**"), dated the _____ day of February, 2021 (the "**Effective Date**"), is by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation with an office at Three Commercial Place, Norfolk, VA 23510 ("**Seller**"), and **OPEN SPACE INSTITUTE LAND TRUST, INC.**, a New York not-for-profit corporation with a principal place of business at 1350 Broadway, Suite 201, New York, New York 10018 ("**Buyer**"). Seller and Buyer are sometimes referred to collectively as the "**Parties**".

RECITALS

- A. Seller and Buyer are parties to that certain Agreement of Purchase and Sale dated January 31, 2020, as amended (the "**Agreement**").
- B. Seller and Buyer desire to further amend the Agreement as set forth herein.

AMENDED TERMS OF SALE

For and in consideration of the mutual covenants described below and in the Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

- 1. As described in Section 8 of the Agreement, Buyer has elected to extend the time for Closing an additional twelve (12) months. Seller acknowledges receipt of \$1,000 fee.
- 2. This Amendment shall be effective as of the Effective Date.
- 3. Except as amended hereby, the Agreement shall remain in full force and effect.

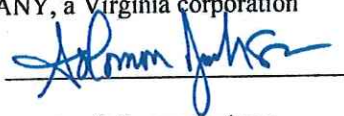
[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties has duly signed and sealed this Agreement as of the Effective Date.

SELLER:

NORFOLK SOUTHERN RAILWAY
COMPANY, a Virginia corporation

By:



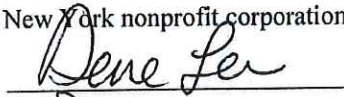
Name: Solomon Jackson

Title: Director Real Estate

BUYER:

OPEN SPACE INSTITUTE LAND TRUST,
INC., a New York nonprofit corporation

By:



Name: Dene Lee

Title: Senior Director, NE Land.

**AMENDMENT NO. 5 TO
AGREEMENT OF PURCHASE AND SALE**

[Essex Hudson Greenway]

This Amendment No. 5 to Agreement of Purchase and Sale (this "**Amendment**"), dated the 31st day of January, 2022 (the "**Effective Date**"), is by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation with a principal place of business at 650 W. Peachtree Street NW, Atlanta, Georgia 30308 ("**Seller**"), and **OPEN SPACE INSTITUTE LAND TRUST, INC.**, a New York not-for-profit corporation with a principal place of business at 1350 Broadway, Suite 201, New York, New York 10018 ("**Buyer**"). Seller and Buyer are sometimes referred to collectively as the "**Parties**".

RECITALS

- A. Seller and Buyer are parties to that certain Agreement of Purchase and Sale dated January 31, 2020, as amended (the "**Agreement**").
- B. Seller and Buyer agreed, pursuant to Amendment No. 4 to Agreement to Sale dated February 1, 2021 ("**Amendment No. 4**"), to extend the time for Closing until January 31, 2022;
- C. Seller and Buyer desire to further amend the Agreement as set forth herein.

AMENDED TERMS OF SALE

For and in consideration of the mutual covenants described below and in the Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

- 1. The time for Closing as set forth in Section 8 of the Agreement, as amended by Amendment No. 4, is extended for one hundred fifty (150) days until June 30th, 2022.
- 2. This Amendment shall be effective as of the Effective Date.
- 3. Except as amended hereby, the Agreement shall remain in full force and effect.

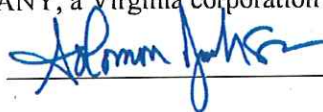
[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties has duly signed and sealed this Agreement as of the Effective Date.

SELLER:

NORFOLK SOUTHERN RAILWAY
COMPANY, a Virginia corporation

By:



Name: Solomon Jackson

Title: Director Real Estate

BUYER:

OPEN SPACE INSTITUTE LAND TRUST,
INC., a New York nonprofit corporation

By:



Name: Robert K. Anderberg

Title: Senior Vice President
and General Counsel

**AMENDMENT NO. 6 TO
AGREEMENT OF PURCHASE AND SALE**

[Essex Hudson Greenway]

This Amendment No. 6 to Agreement of Purchase and Sale (this "**Amendment**"), dated the 30th day of June, 2022 (the "**Effective Date**"), is by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation with a principal place of business at 650 W. Peachtree Street NW, Atlanta, Georgia 30308 ("**Seller**"), and **OPEN SPACE INSTITUTE LAND TRUST, INC.**, a New York not-for-profit corporation with a principal place of business at 1350 Broadway, Suite 201, New York, New York 10018 ("**Buyer**"). Seller and Buyer are sometimes referred to collectively as the "**Parties**".

RECITALS

- A. Seller and Buyer are parties to that certain Agreement of Purchase and Sale dated January 31, 2020, as amended (the "**Agreement**").
- B. Seller and Buyer agreed, pursuant to Amendment No. 5 to Agreement to Sale dated January 31, 2022 ("**Amendment No. 5**"), to extend the time for Closing until June 30, 2022;
- C. Seller and Buyer desire to further amend the Agreement as set forth herein.

AMENDED TERMS OF SALE

For and in consideration of the mutual covenants described below and in the Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

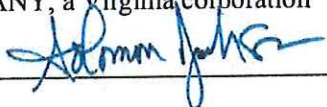
- 1. The time for Closing as set forth in Section 8 of the Agreement, as amended by Amendment No. 5, is extended for fifteen (15) days until July 15, 2022.
- 2. This Amendment shall be effective as of the Effective Date.
- 3. Except as amended hereby, the Agreement shall remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties has duly signed and sealed this Agreement as of the Effective Date.

SELLER:

NORFOLK SOUTHERN RAILWAY
COMPANY, a Virginia corporation

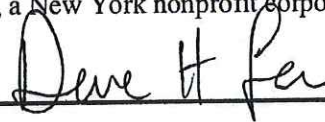
By: 

Name: Solomon Jackson

Title: Director Real Estate

BUYER:

OPEN SPACE INSTITUTE LAND TRUST,
INC., a New York nonprofit corporation

By: 

Name: Dene Hofheinz Lee

Title: Vice President, Northeast Land Program

**AMENDMENT NO. 7 TO
AGREEMENT OF PURCHASE AND SALE**

[Essex Hudson Greenway]

This Amendment No. 7 to Agreement of Purchase and Sale (this “**Amendment**”), dated the 15th day of July, 2022 (the “**Effective Date**”), is by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation with a principal place of business at 650 W. Peachtree Street NW, Atlanta, Georgia 30308 (“**Seller**”), and **OPEN SPACE INSTITUTE LAND TRUST, INC.**, a New York not-for-profit corporation with a principal place of business at 1350 Broadway, Suite 201, New York, New York 10018 (“**Buyer**”). Seller and Buyer are sometimes referred to collectively as the “**Parties**”.

RECITALS

- A. Seller and Buyer are parties to that certain Agreement of Purchase and Sale dated January 31, 2020, as amended (the “**Agreement**”).
- B. Seller and Buyer agreed, pursuant to Amendment No. 6 to Agreement to Sale dated June 30, 2022 (“**Amendment No. 6**”), to extend the time for Closing until July 15, 2022;
- C. Seller and Buyer desire to further amend the Agreement as set forth herein.

AMENDED TERMS OF SALE

For and in consideration of the mutual covenants described below and in the Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

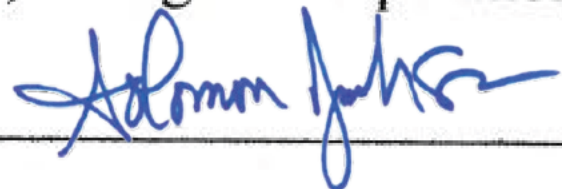
- 1. The time for Closing as set forth in Section 8 of the Agreement, as amended by Amendment No. 7, is extended for fourteen (14) days until July 29th, 2022.
- 2. This Amendment shall be effective as of the Effective Date.
- 3. Except as amended hereby, the Agreement shall remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties has duly signed and sealed this Agreement as of the Effective Date.

SELLER:

NORFOLK SOUTHERN RAILWAY
COMPANY, a Virginia corporation

By: 

Name: Solomon Jackson

Title: Director Real Estate

BUYER:

OPEN SPACE INSTITUTE LAND TRUST,
INC., a New York nonprofit corporation

By: 

Name: Dene Hofheinz Lee

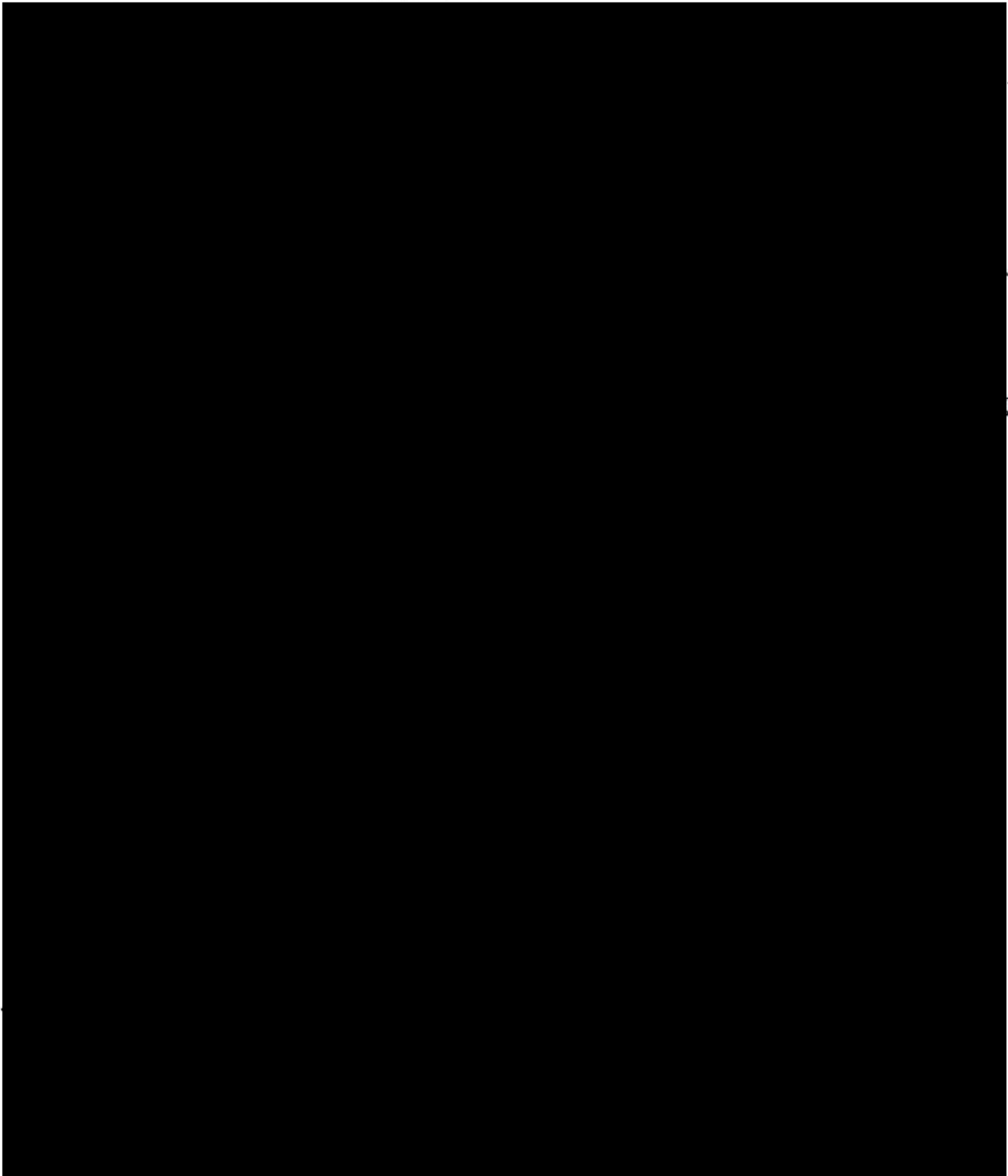
Title: Vice President, Northeast Land Program

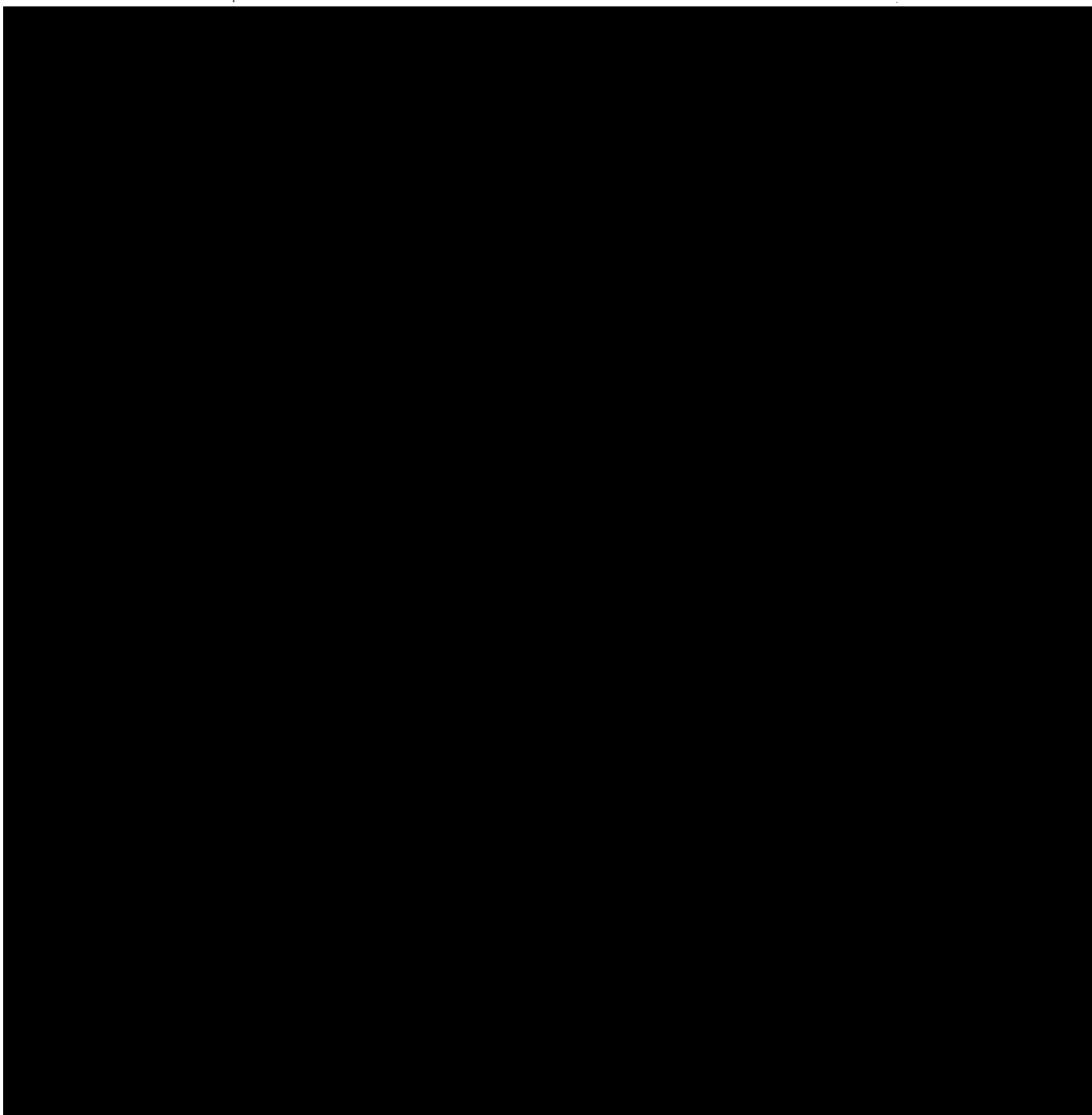
SCHEDULE C

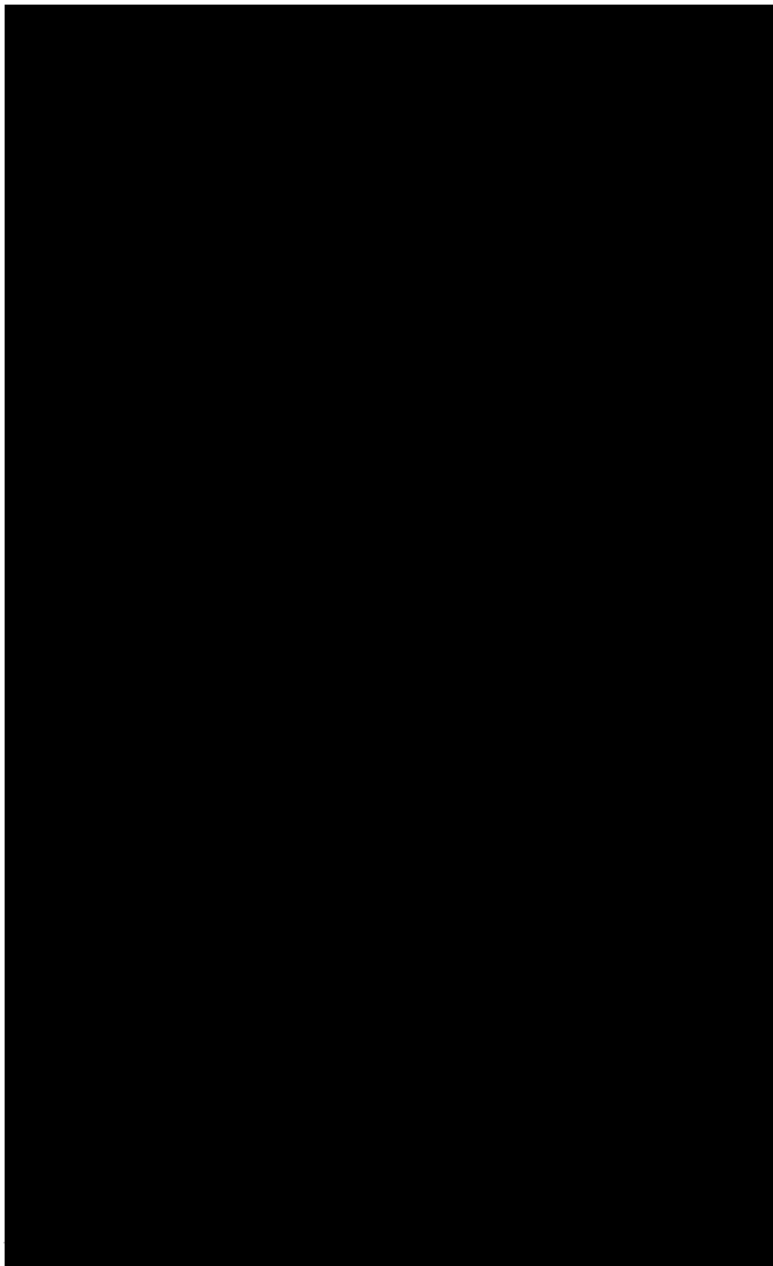
**Two-Year Chapter 51 / Executive Order 117 Vendor Certification
and Disclosure of Political Contributions Form**

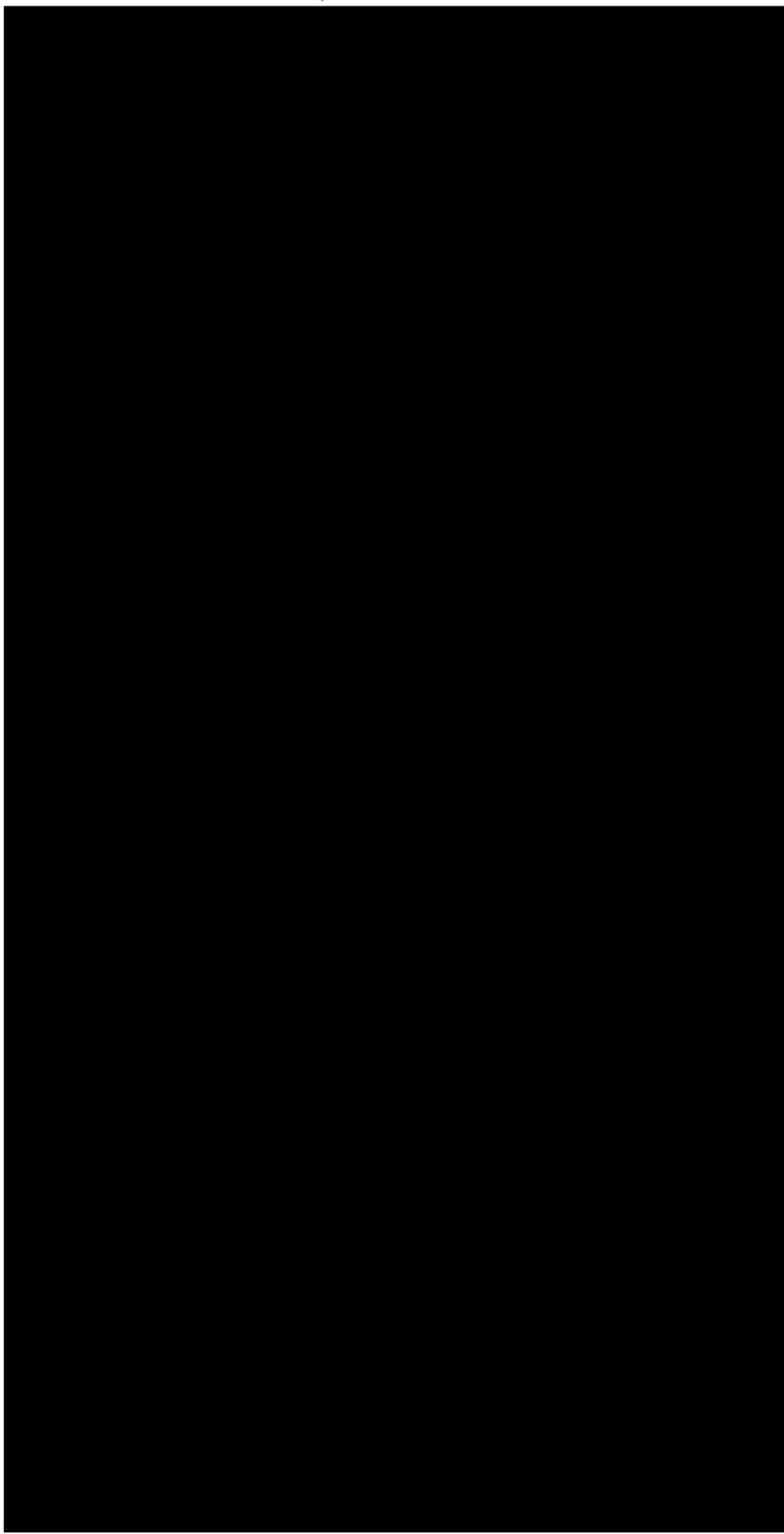


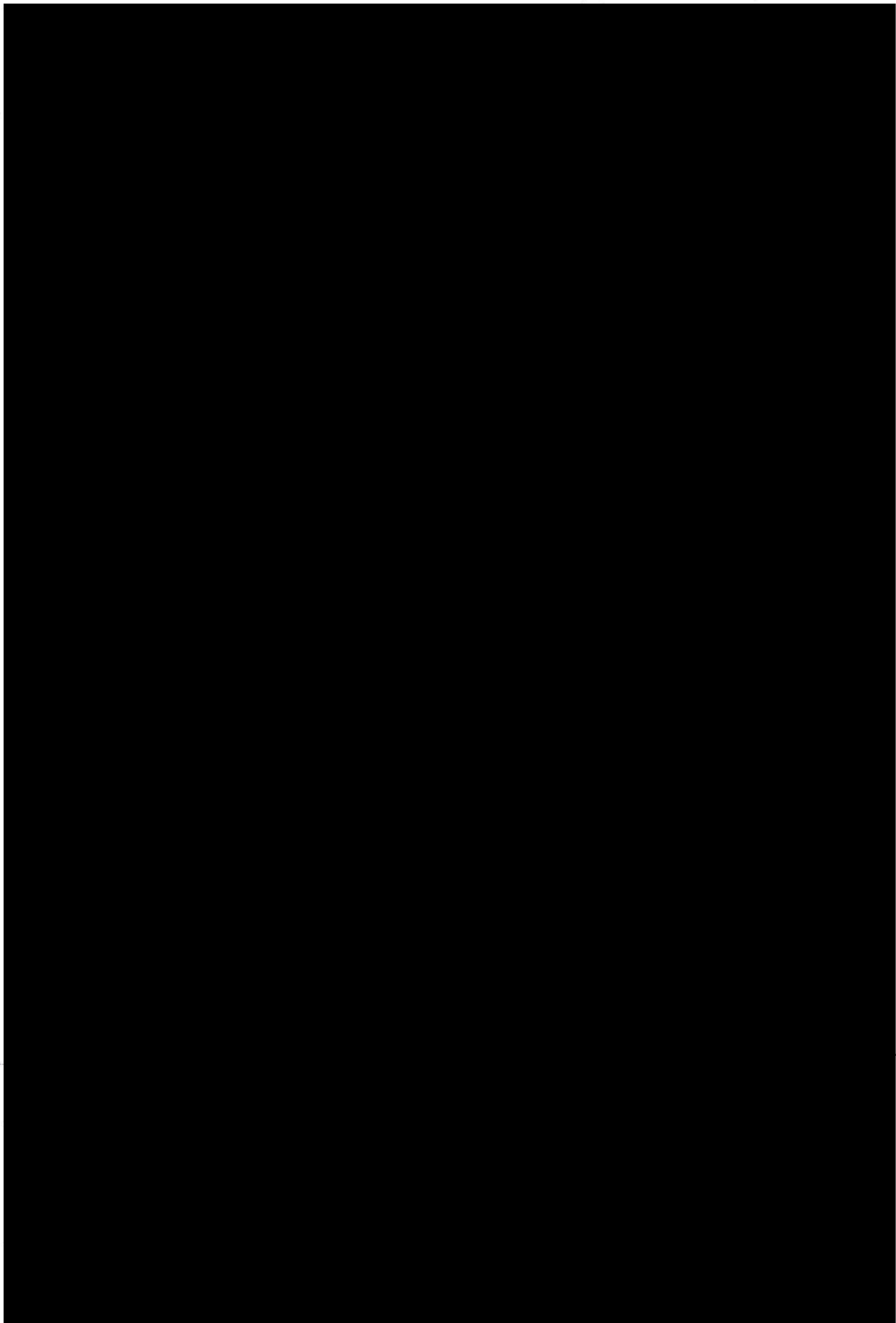
State of New Jersey
Department of the Treasury
Division of Purchase and Property
Two-Year Chapter 51/Executive Order 117 Vendor Certification and
Disclosure of Political Contributions











Part 2: Disclosure of Contributions by the business entity or any person or entity whose contributions are attributable to the business entity.

1. Report below all contributions solicited or made during the 4 years immediately preceding the commencement of negotiations or submission of a proposal to any:

Political organization organized under Section 527 of the Internal Revenue Code and which also meets the definition of a continuing political committee as defined in N.J.S.A. 19:44A-3(n)

2. Report below all contributions solicited or made during the 5 1/2 years immediately preceding the commencement of negotiations or submission of a proposal to any:

Candidate Committee for or Election Fund of any Gubernatorial or Lieutenant Gubernatorial candidate
State Political Party Committee
County Political Party Committee

3. Report below all contributions solicited or made during the 18 months immediately preceding the commencement of negotiations or submission of a proposal to any:

Municipal Political Party Committee
Legislative Leadership Committee

Full Legal Name of Recipient _____

Address of Recipient _____

Date of Contribution _____ Amount of Contribution _____

Type of Contribution (i.e. currency, check, loan, in-kind) _____

Contributor Name _____

Relationship of Contributor to the Vendor _____

If this form is not being completed electronically, please attach additional contributions on separate page.
Click the "Add a Contribution" tab to enter additional contributions.

Remove Contribution

Add a Contribution

I hereby certify as follows:

1. I have read the information and instructions accompanying this form prior to completing the certification on behalf of the business entity.
2. All reportable contributions made by or attributable to the business entity have been listed above.

3. The business entity has not knowingly solicited or made any contribution of money, pledge of contribution, including in-kind contributions, that would bar the award of a contract to the business entity unless otherwise disclosed above:

a) Within the 18 months immediately preceding the commencement of negotiations or submission of a proposal for the contract or agreement to:

- (i) A candidate committee or election fund of any candidate for the public office of Governor or Lieutenant Governor or to a campaign committee or election fund of holder of public office of Governor or Lieutenant Governor; OR
- (ii) Any State, County or Municipal political party committee; OR
- (iii) Any Legislative Leadership committee.

b) During the term of office of the current Governor or Lieutenant Governor to:

- (i) A candidate committee or election fund of a holder of the public office of Governor or Lieutenant Governor; OR
- (ii) Any State or County political party committee of the political party that nominated the sitting Governor or Lieutenant Governor in the last gubernatorial election.

c) Within the 18 months immediately preceding the last day of the sitting Governor or Lieutenant Governor's first term of office to:

- (i) A candidate committee or election fund of the Incumbent Governor or Lieutenant Governor; OR
- (ii) Any State or County political party committee of the political party that nominated the sitting Governor or Lieutenant Governor in the last gubernatorial election.

4. During the term of the contract/agreement the business entity has a continuing responsibility to report, by submitting a new Certification and Disclosure form, any contribution it solicits or makes to:

- (a) Any candidate committee or election fund of any candidate or holder of the public office of Governor or Lieutenant Governor; OR
- (b) Any State, County or Municipal political party committee; OR
- (c) Any Legislative Leadership committee.

The business entity further acknowledges that contributions solicited or made during the term of the contract/agreement may be determined to be a material breach of the contract/agreement.

5. During the two-year certification period the business entity will report any changes in its ownership structure (including the appointment of an officer within a corporation) by submitting a new Certification and Disclosure form indicating the new owner(s) and reporting said owner(s) contributions.

I certify that the foregoing statements in Parts 1, 2 and 3 are true. I am aware that if any of the statements are willfully false, I may be subject to punishment.

Signed Name Frank Voyack Print Name FRANK VOYACK
Title/Position VICE PRESIDENT Date 11-22-21

Procedure for Submitting Form(s)

The contracting State Agency should submit this form to the Chapter 51 Review Unit when it has been required as part of a contracting process. The contracting State Agency should submit a copy of the completed and signed form(s), to the Chapter 51 Unit and retain the original for their records.

The business entity should return this form to the contracting State Agency. The business entity can submit this form directly to the Chapter 51 Review Unit only when it -

- Is approaching its two-year certification expiration date and wishes to renew certification;
- Had a change in its ownership structure; OR
- Made any contributions during the period in which its last two-year certification was in effect, or during the term of a contract with a State Agency.

Forms should be submitted either electronically to cd134@treas.nj.gov, or regular mail at: Chapter 51 Review Unit, P.O. Box 230, 33 West State Street, Trenton, NJ 08625.

SCHEDULE D

Vendor / Bidder Certification and Political Contribution Disclosure Form
Public Law 2005, Chapter 271



STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY

33 WEST STATE STREET, P.O. BOX 0230
TRENTON, NEW JERSEY 08625-0230

VENDOR/BIDDER CERTIFICATION AND POLITICAL CONTRIBUTION DISCLOSURE FORM
PUBLIC LAW 2005, CHAPTER 271

CONTRACT #: _____ VENDOR/BIDDER: Norfolk Southern Railway Company

At least ten (10) days prior to entering into the above-referenced Contract, the Vendor/Bidder must complete this Certification and Political Contribution Disclosure Form in accordance with the directions below and submit it to the State contact for the referenced Contract.

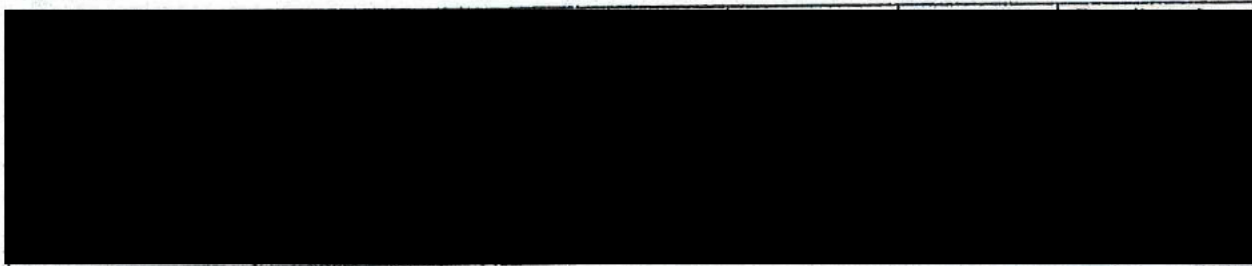
NOTE that the disclosure requirements under Public Law 2005, Chapter 271 are separate and different from the disclosure requirements under Public Law 2005, Chapter 51 (formerly Executive Order 134). Although no Vendor/Bidder will be precluded from entering into a contract by any information submitted on this form, a Vendor's/Bidder's failure to fully, accurately and truthfully complete this form and submit it to the appropriate State agency may result in the imposition of fines by the New Jersey Election Law Enforcement Commission.

DISCLOSURE

The following is the required Vendor/Bidder Disclosure of all Reportable Contributions made in the twelve (12) months prior to and including the date of signing of this Certification and Disclosure to: (i) any State, county, or municipal committee of a political party, legislative leadership committee, candidate committee of a candidate for, or holder of, a State elective office, or (ii) any entity that is also defined as a "continuing political committee" under N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.

The Vendor/Bidder is required to disclose Reportable Contributions by: the Vendor/Bidder itself; all persons or other business entities owning or controlling more than 10% of the profits of the Vendor/Bidder or more than 10% of the stock of the Vendor/Bidder, if the Vendor/Bidder is a corporation for profit; a spouse or child living with a natural person that is a Vendor/Bidder; all of the principals, partners, officers or directors of the Vendor/Contractor and all of their spouses; any subsidiaries directly or indirectly controlled by the Vendor/Bidder; and any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the Vendor/Bidder, other than a candidate committee, election fund, or political party committee.

"Reportable Contributions" are those contributions that are required to be reported by the recipient under the "New Jersey Campaign Contributions and Expenditures Reporting Act," P.L. 1973, c.83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-10.1 et seq. As of January 1, 2005, contributions in excess of \$300 during a reporting period are deemed "reportable."



CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor/Bidder, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor/Bidder is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to criminal prosecution under the law, and it will constitute a material breach of my agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.

Signature

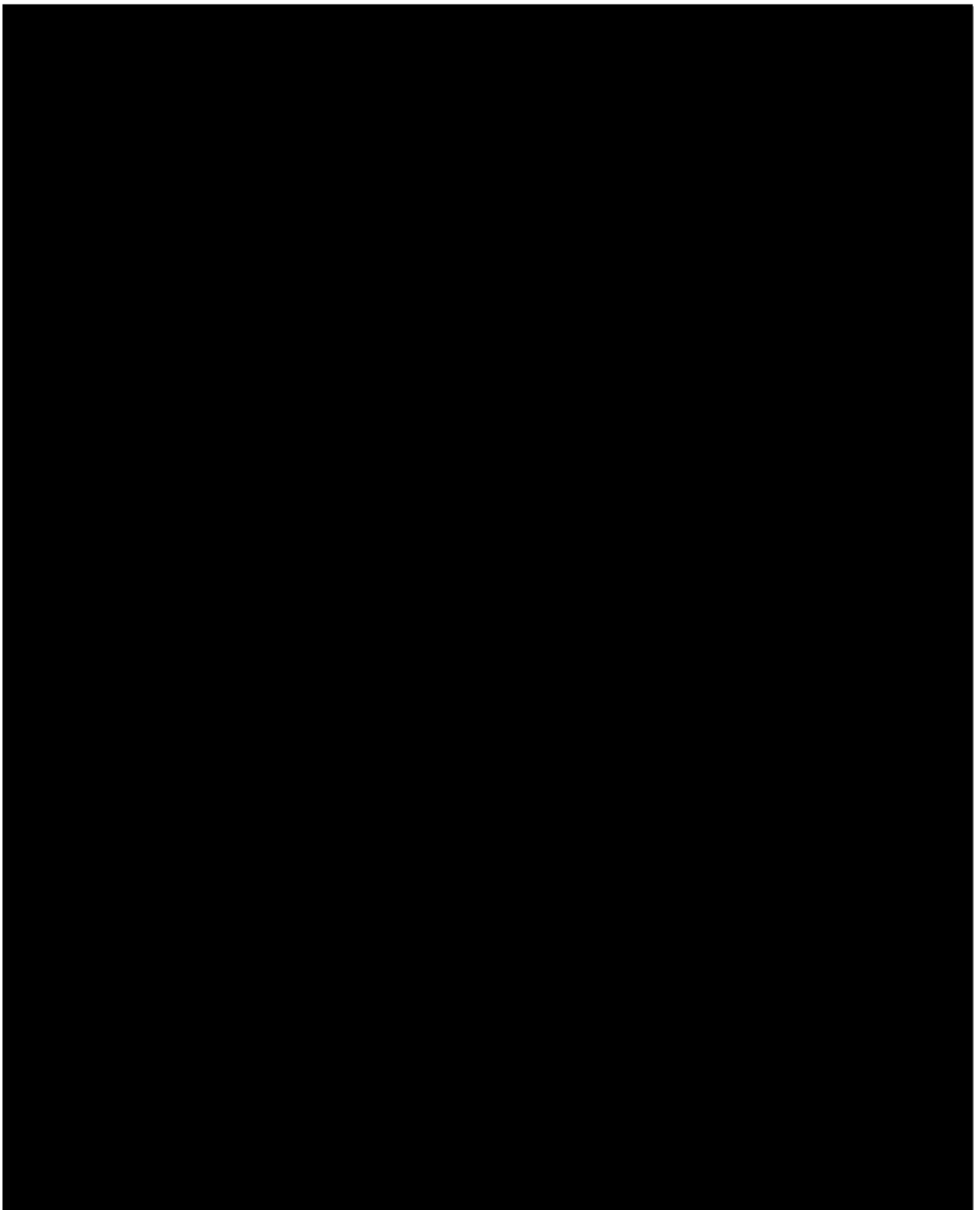
FRANK VOYACK, VICE PRESIDENT
Print Name and Title

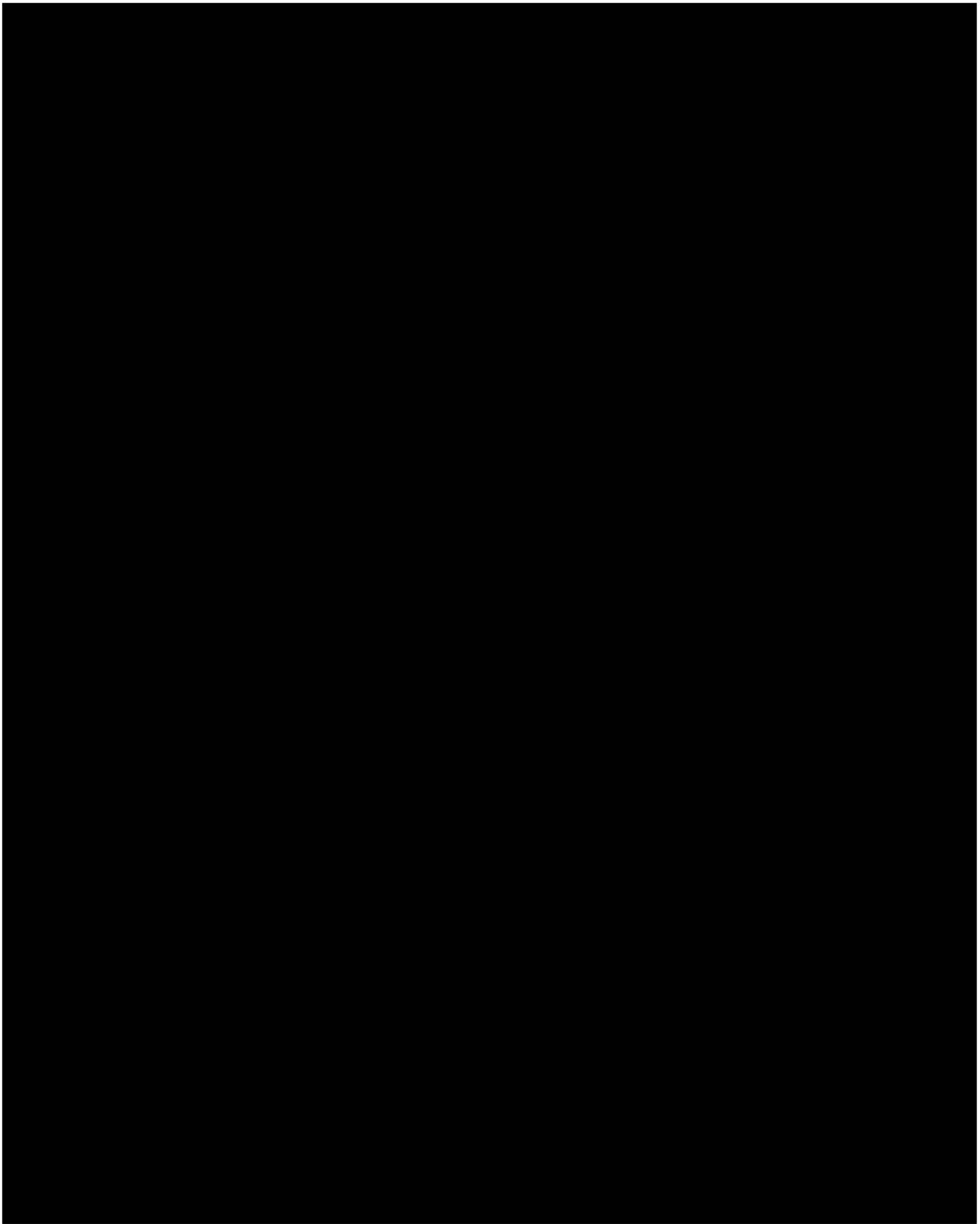
Date

11-22-21

SCHEDULE E

NSR Certificate(s) of Incumbency





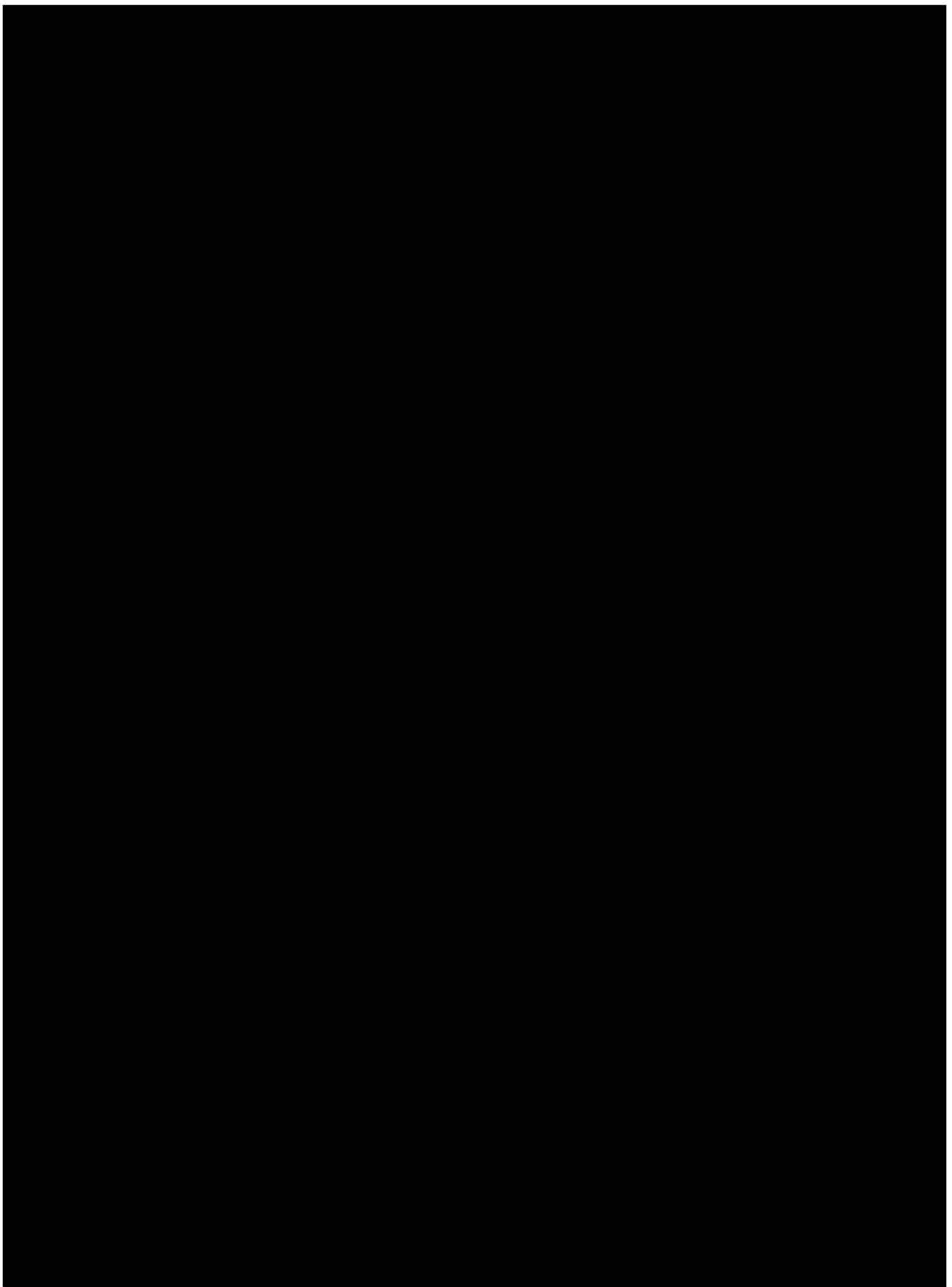
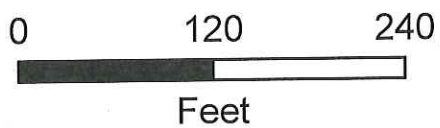
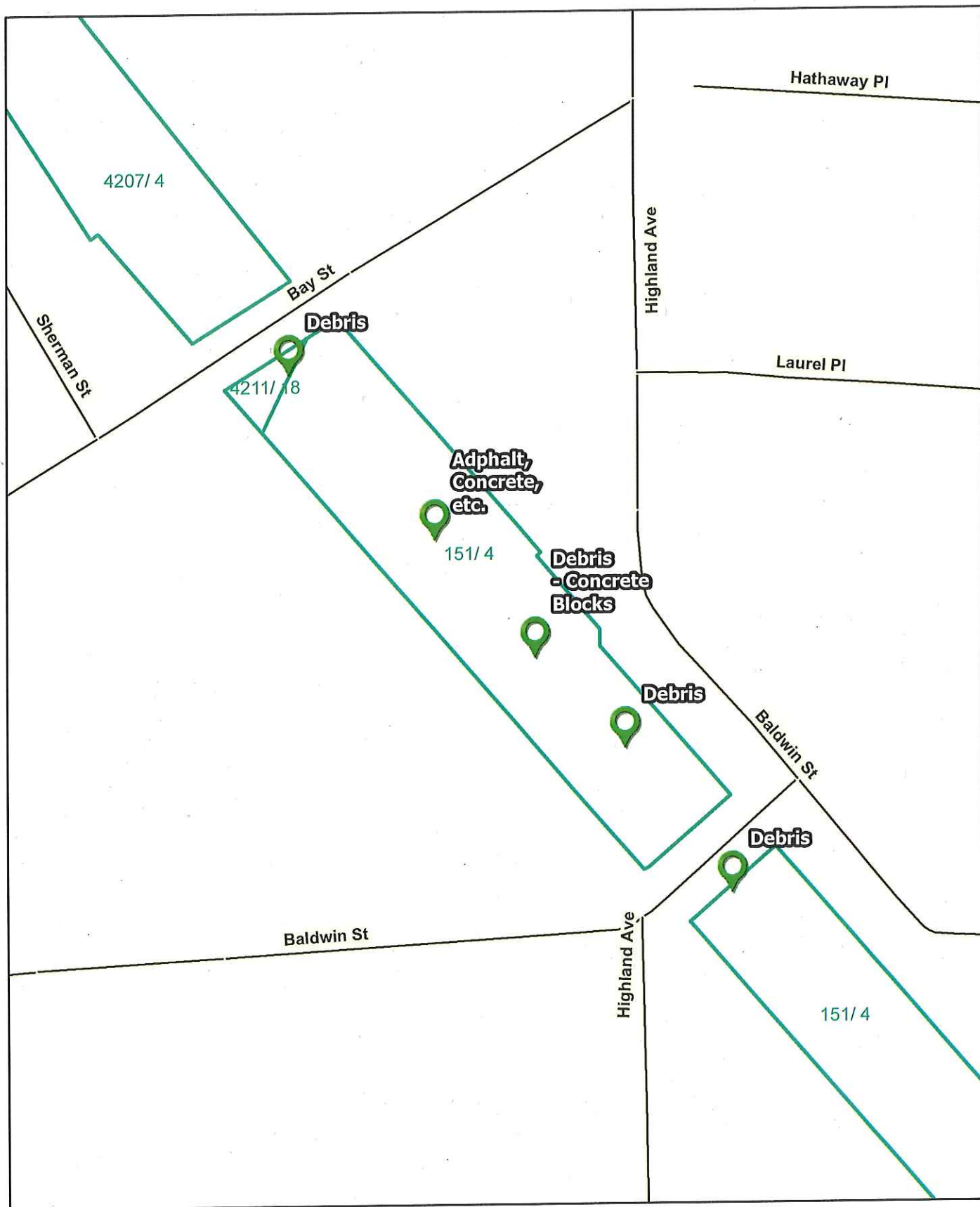
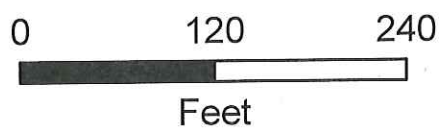
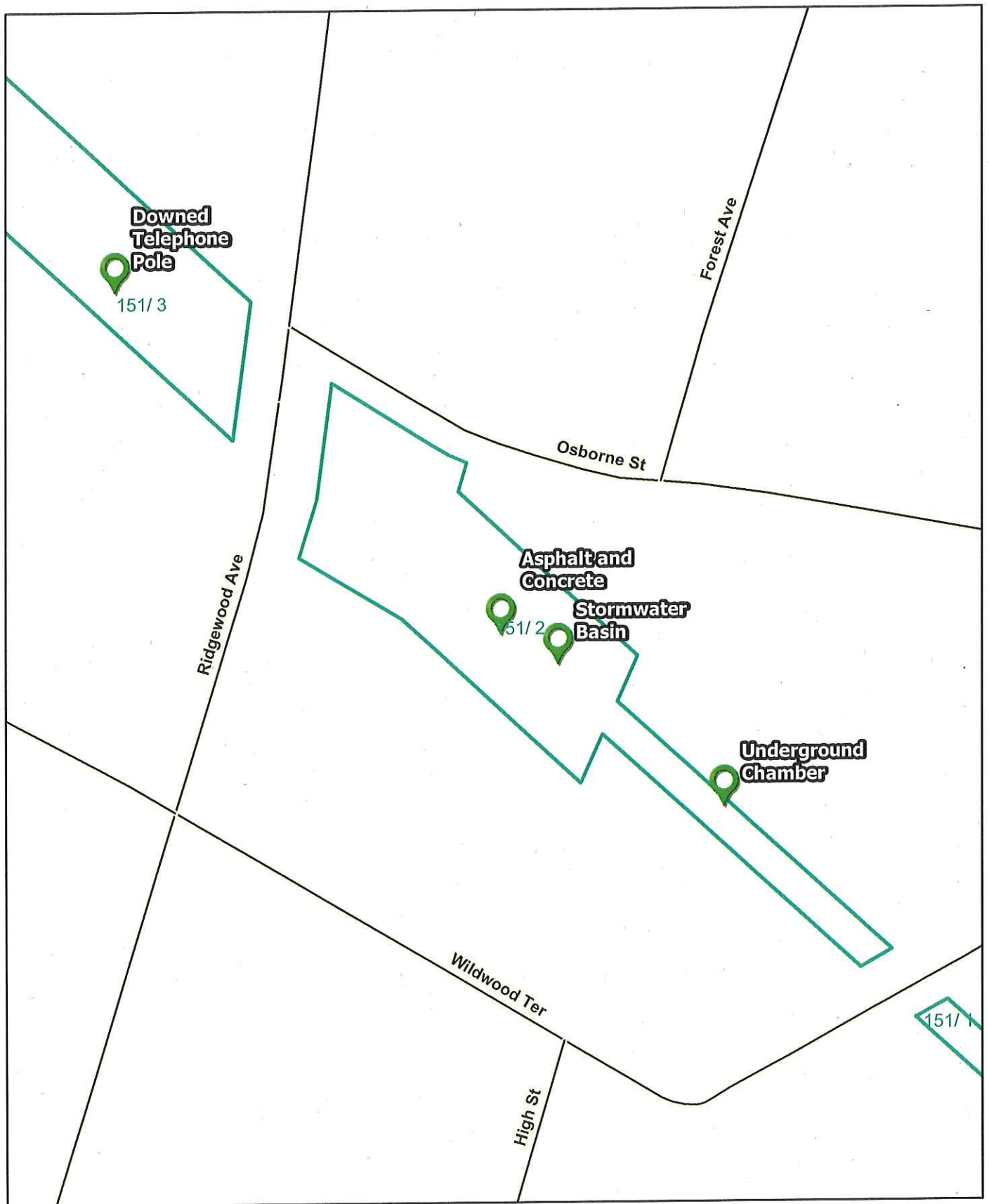


EXHIBIT 1

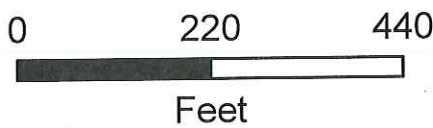
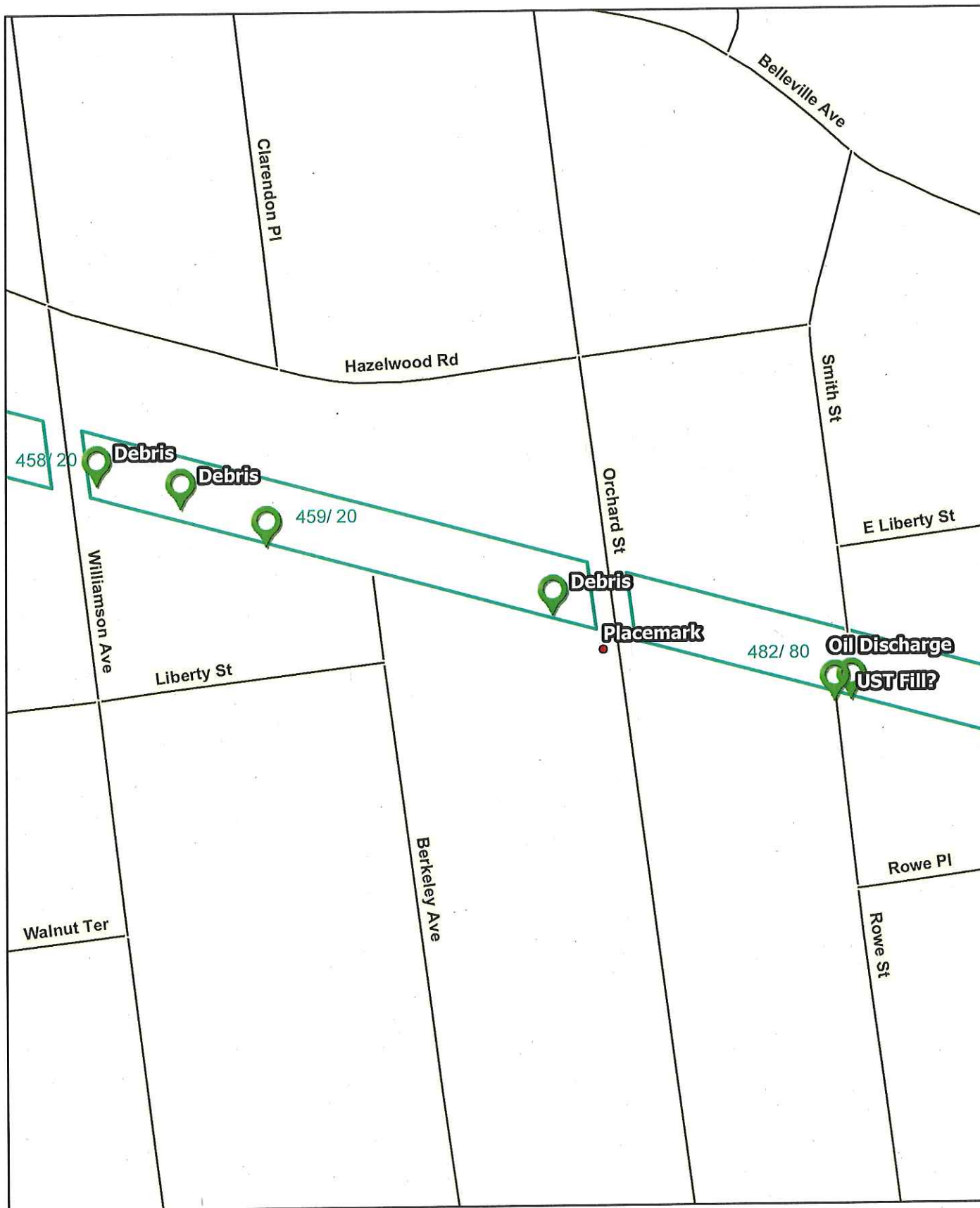
Solid Waste Location Mapping



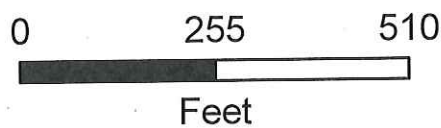
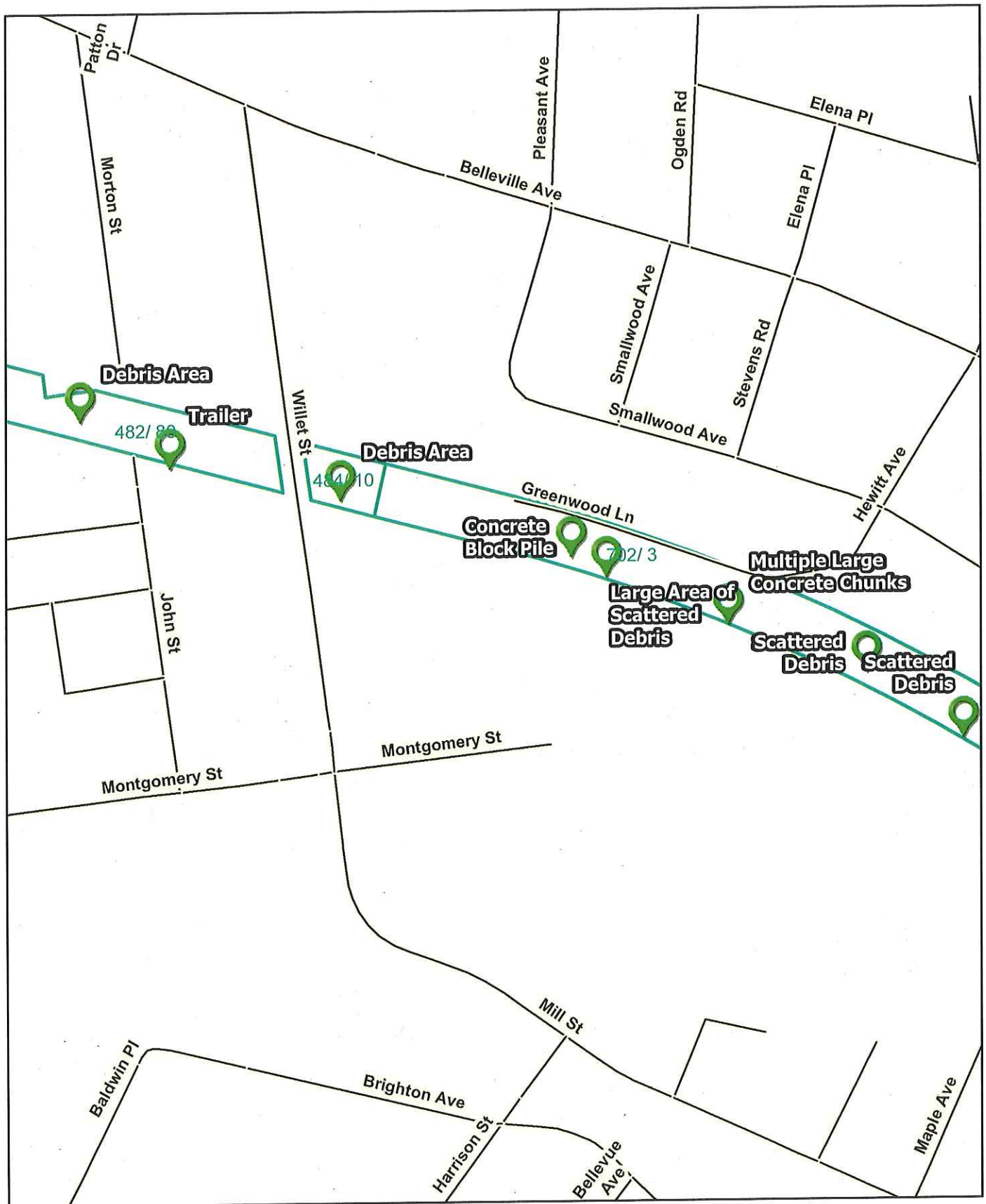
Solid Waste Locations
Offer Number: 9874
Owner: Norfolk Southern RR
Map 1



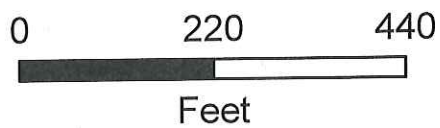
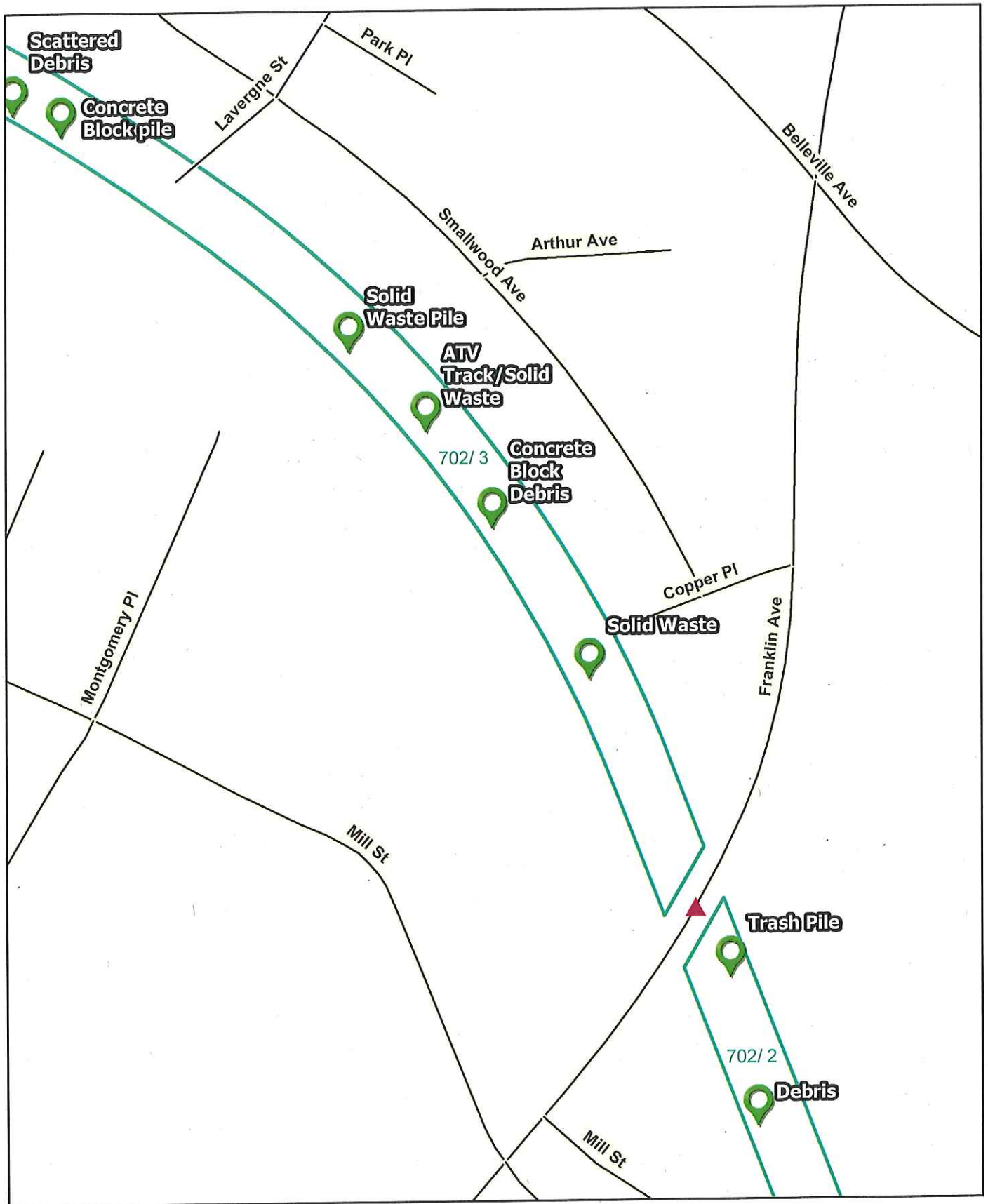
Solid Waste Locations
Offer Number: 9874
Owner: Norfolk Southern RR
Map 2



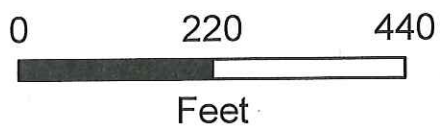
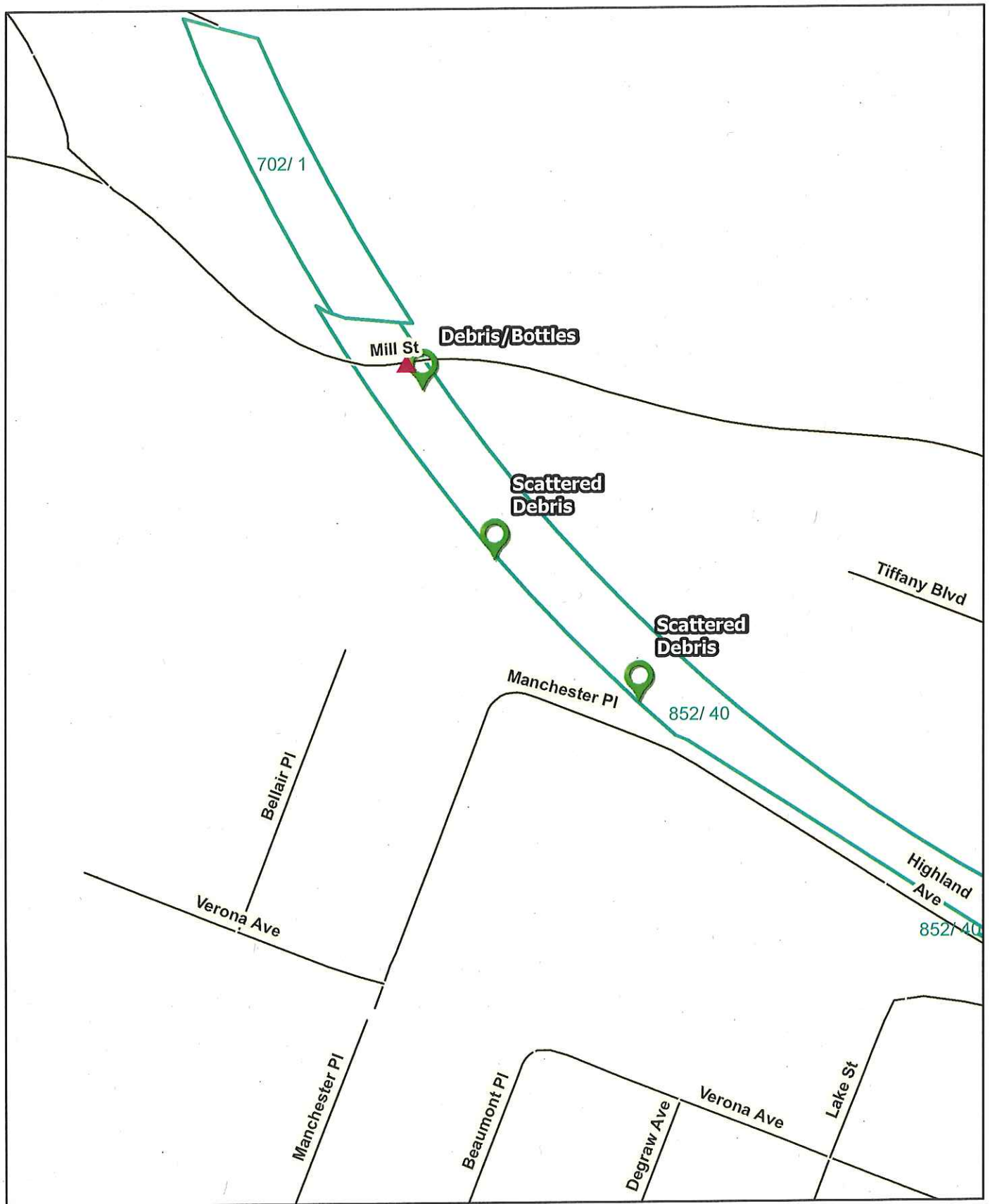
Solid Waste Locations
Offer Number: 9874
Owner: Norfolk Southern RR
Map 3



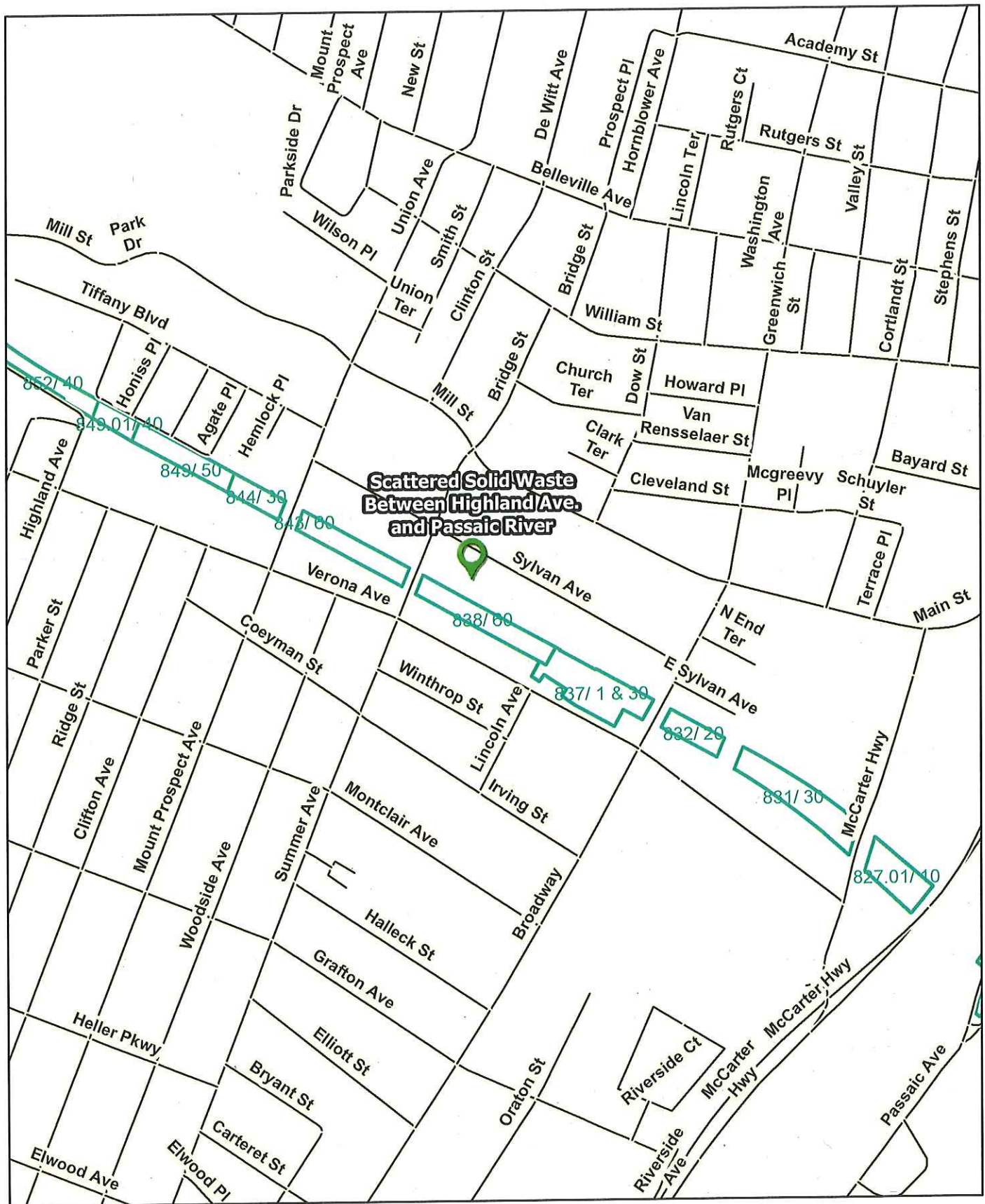
Solid Waste Locations
Offer Number: 9874
Owner: Norfolk Southern RR
Map 4



Solid Waste Locations
Offer Number: 9874
Owner: Norfolk Southern RR
Map 5



Solid Waste Locations
Offer Number: 9874
Owner: Norfolk Southern RR
Map 6



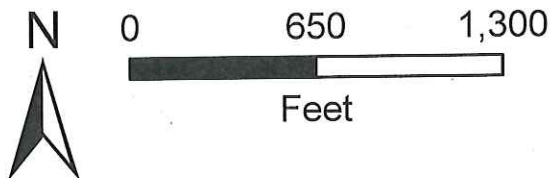
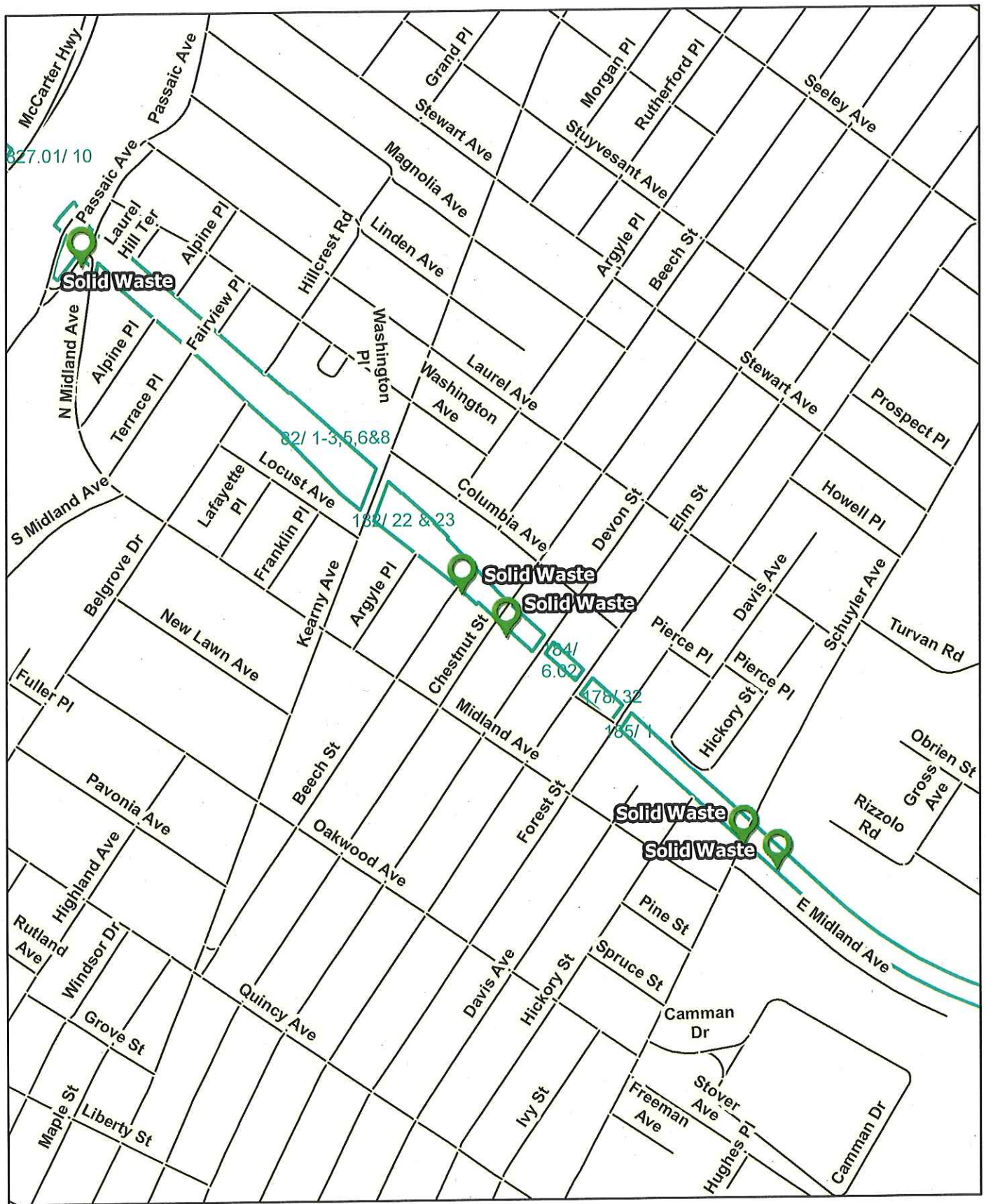
0 650 1,300
Feet

Solid Waste Locations

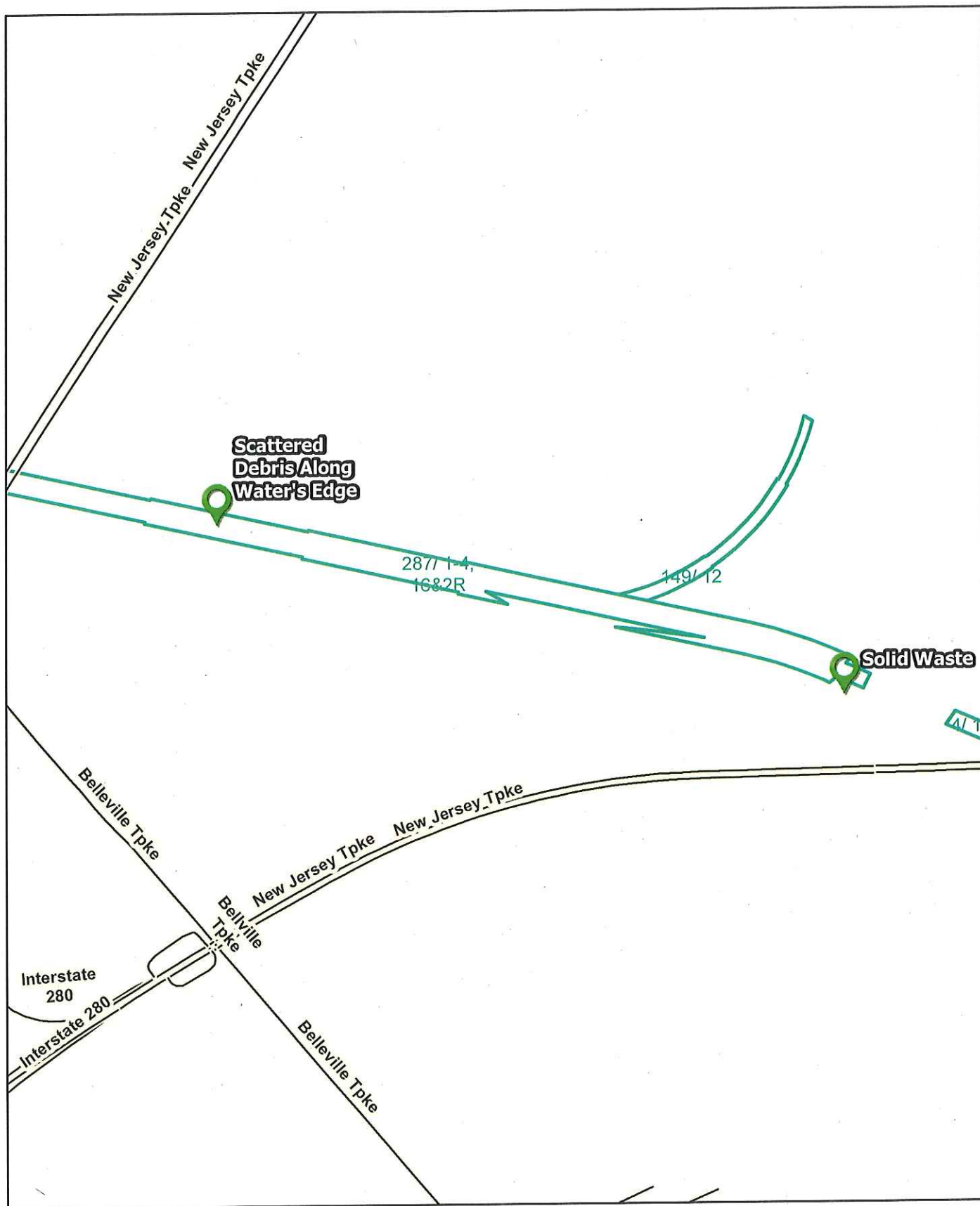
Offer Number: 9874

Owner: Norfolk Southern RR

Map 7 (Scattered Solid Waste between Highland Avenue and Passaic River)

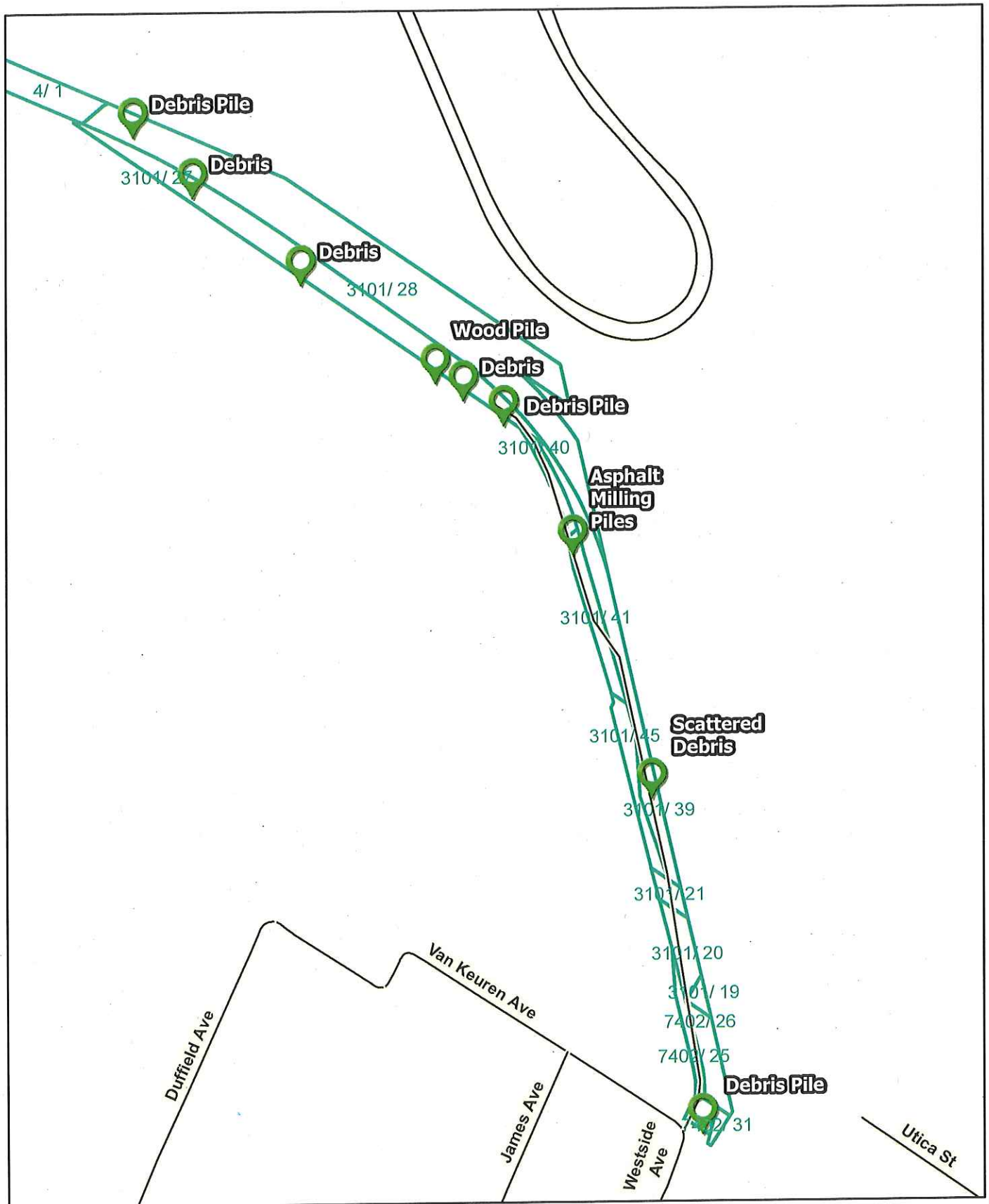


Solid Waste Locations
 Offer Number: 9874
 Owner: Norfolk Southern RR
 Map 8 (Kearney)



0 800 1,600
Feet

Solid Waste Locations
Offer Number: 9874
Owner: Norfolk Southern RR
Map 9



0 485 970
Feet

Solid Waste Locations
Offer Number: 9874
Owner: Norfolk Southern RR
Map 10

EXHIBIT 2

Aerial of Well Location



Barczewski St

Block 185
/Lot 1

Location of 2 Wells

O'Brien St

Sellers St

McWhirter Rd

Gross Ave

Rizzolo Rd

E Midland Ave

Camman Dr

EXHIBIT 3

Aerial of AST Location

Block 149
// Lot 12

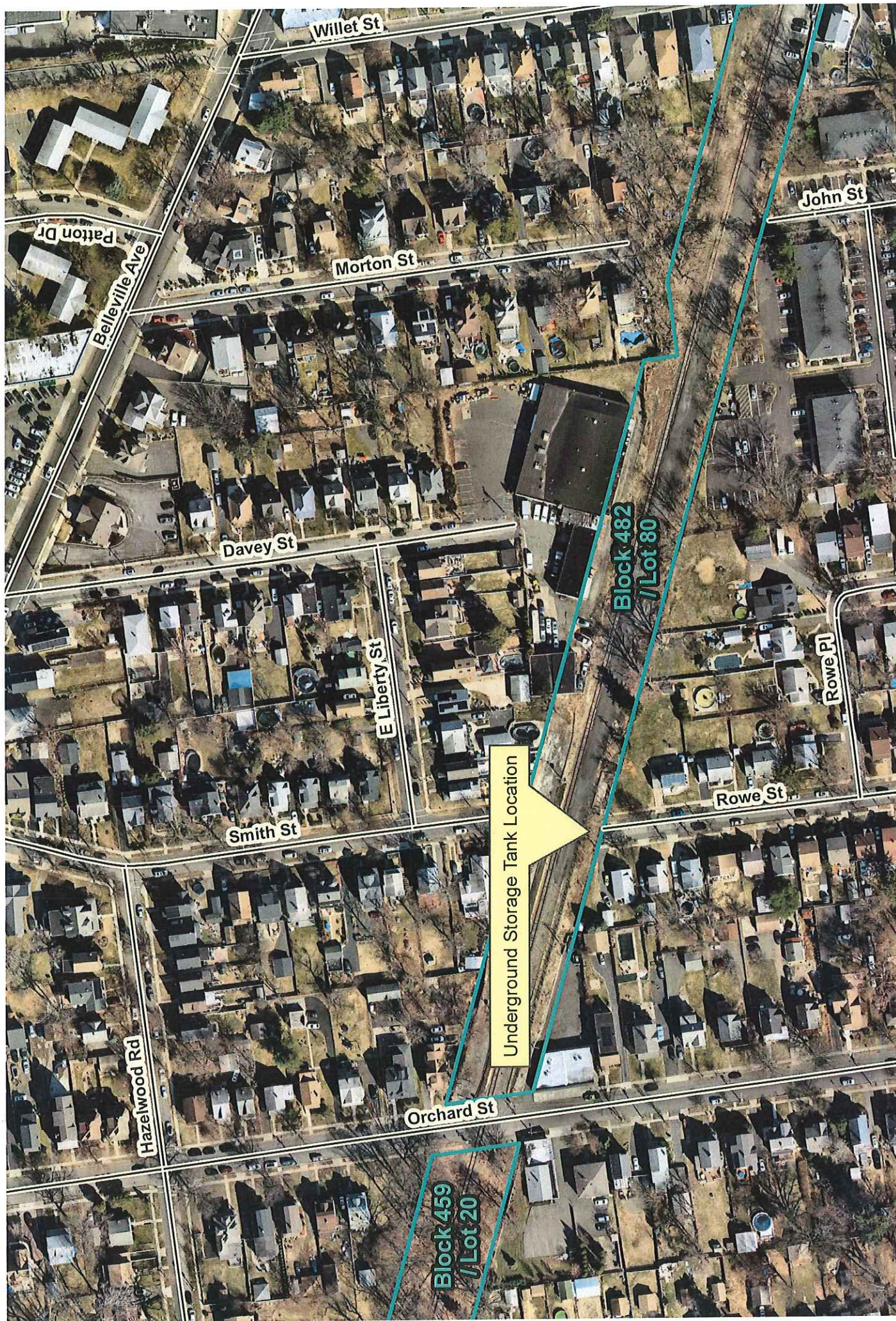
Block 287 //
Lot 1-4, 16 & 2R

Propane Storage Tank (Above Ground)



EXHIBIT 4

Aerial of Unregulated UST Location



Willet St

John St

Morton St

Patton Dr

Belleville Ave

Davey St

Block 482
/ Lot 80

E Liberty St

Rowe Pl

Smith St

Rowe St

Underground Storage Tank Location

Orchard St

Hazelwood Rd

Block 459
/ Lot 20

SCHEDULE F

General Terms and Conditions for Non-Federal Entity Contracts under Federal Awards (2 C.F.R. Part 200, Appendix II)

GENERAL TERMS AND CONDITIONS

PREAMBLE:

The Parties agree to comply with the provisions listed below, as applicable, to this Assignment Agreement of Agreement of Purchase and Sale ("agreement" or "contract"). Pursuant to 2 CFR Part 200, Appendix II, and Exhibit E "Schedule of Assurances" to the Memorandum of Understanding dated December 20, 2021, between the New Jersey Department of Community Affairs and the New Jersey Department of Environmental Protection, the following provisions must be included in this agreement as a contract made under a Federal Award (the "American Rescue Plan Act of 2021," P.L. 117-2, the "Coronavirus State Fiscal Recovery Fund," subtitle M of the ARP Act, and amended Title VI of the Social Security Act, 42 USC 801 et seq., Sections 602 and 603).

Compliance with Existing Laws and Policies

Seller NSR and Contract Purchaser OSI, in order to induce the Assigned Purchaser NJDEP to enter into this agreement, agree and warrant, on their own behalf and any subcontractors retained pursuant to this agreement, that they shall comply with all applicable Federal, State, and municipal laws, rules, regulations, and written policies in the performance of this agreement, as applicable. Failure to comply with such laws, rules, regulations, and policies shall constitute a material breach of this agreement and be grounds for its termination. Such laws, rules, regulations, and policies include, but are not limited to, the following, where applicable:

- I. The parties agree that this agreement may be terminated for cause and for convenience by the State of New Jersey.
- II. GENERAL FUNDING REQUIREMENTS
 - A. Contracting with Small and Minority Businesses, Women's Business Enterprises, Veteran-owned Businesses, and Labor Surplus Area Firms.
 1. NSR and OSI shall take all necessary affirmative steps to ensure contracting opportunities are provided to small, minority-owned, woman-owned, and veteran-owned businesses, and labor surplus area firms. As used in this contract, the terms "minority-owned business," "women-owned business," and "veteran-owned business" means a business that is at least fifty-one percent (51%) owned and controlled by minority group members, women or veterans. For purposes of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and Native Americans. NSR and OSI may rely on written representations by businesses regarding their status as minority, women and veteran businesses in lieu of an independent investigation.

2. Affirmative steps shall include:

- a. Include qualified small and minority businesses, women's business enterprises, veteran-owned businesses on solicitation lists;
- b. Assure that small and minority businesses, women's business enterprises, and veteran-owned businesses are solicited whenever they are potential sources for goods and/or services required in furtherance of the Agreement;
- c. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, women's business enterprises, and veteran-owned businesses;
- d. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, women's business enterprises, and veteran-owned businesses;
- e. Use the services and assistance, as appropriate, of such organizations as the Small Businesses Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and
- f. Require the prime contractor, if subcontractors are to be let, to take affirmative steps listed in subparagraphs (a) through (e) of this section.

B. Domestic Preference for Procurements.

Where applicable and as appropriate, in the performance of this contract, pursuant to 2 CFR 200.322, NSR and OSI shall include a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

C. Procurement of Recovered Materials.

Where applicable, in the performance of the contract, pursuant to 2 CFR 200.323, NSR and OSI agree to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962).

D. Equal Employment Opportunity.

During the performance of this contract, and as applicable, NSR and OSI agree as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance:

Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

III. FEDERAL LABOR STANDARDS

To the extent applicable, NSR and OSI shall comply with Federal Labor Standards, including:

- A. The Davis-Bacon Act, as amended (40 USC 3141-3144, and 3146-3148), as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Finances and Assisted Construction"). NSR and OSI agree to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, NSR and OSI are required to pay wages not less than once a week. If the prevailing wage rate prescribed for any craft by the United States Secretary of Labor is not the same as the prevailing wage rate prescribed for that craft by the New Jersey Department of Labor, NSR and OSI shall pay the higher rate.

General wage determinations issued under Davis-Bacon and related acts, published by the US Department of Labor, may be obtained from the Wage Determinations online website at <https://www.wdol.gov.dba.aspx>. The Federal wage determinations in effect at the time of this award are part of this agreement. NSR and OSI accept these wage determinations.

- B. The Copeland Anti-Kickback Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Finances in Whole or in Part by Loans or Grants from the United States"). The Act provides that each NSR and OSI where applicable, must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
- C. The Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). NSR and OSI agree to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor Regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Grantee and its subcontractors must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

D. The Federal Fair Labor Standards Act (29 USC 201 et seq.), requiring that covered nonexempt employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work week.

IV. Rights to Inventions Made Under a Contract or Agreement.

NSR and OSI agree to comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

V. Generally Applicable Federal Environmental Laws and Regulations.

NSR and OSI agree to comply with applicable federal environmental laws and regulations, including the Clean Air Act, 42 U.S.C. 7401-7671q, and the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387, as amended. NSR and OSI agree to report violations to the Region II Regional Office of the Environmental Protection Agency (EPA) and the New Jersey Department of Environmental Protection, who in turn will report to the U.S. Department of the Treasury.

VI. Debarment and Suspension (Executive Orders 12549 and 12689).

NSR and OSI agree to comply with Subpart C of 2 CFR Part 180 – Responsibilities of Participants Regarding Transactions Doing Business with Other Persons and, further, pass the requirement to comply to each person with whom they enter into a covered transaction at the next lowest tier. NSR and OSI agree to comply with Treasury's implementing regulation at 31 C.F.R. Part 19.

NSR and OSI acknowledge that failing to disclose information as required at 2 CFR 180.355 may result in the delay or negation of this agreement, or pursuit of legal remedies, including suspension and debarment.

VII. The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352.

NSR and OSI must file the required certification, which is attached hereto as Exhibit A. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

- VIII. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.
NSR and OSI agree to comply with the prohibition on certain telecommunications and video surveillance services or equipment as outlined in 2 CFR 200.216.

IX. LAWS AGAINST DISCRIMINATION

As applicable, NSR and OSI agree to comply with the following non-discrimination and fair housing laws. Any act of unlawful discrimination committed by NSR or OSI or failure to comply with applicable laws shall be grounds for termination of the Agreement.

- a. Title VI of the Civil Rights Act of 1964 (42 USC 2000(d) et seq.) and 31 CFR Part 22: The sub-grantee, contractor, subcontractor, successor, transferee, and assignees shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the U.S. Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the U.S. Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.
- b. The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 USC 3601-3619), which prohibits discrimination against any person in the sale or rental of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status.
- c. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794, which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.
- d. The Age Discrimination Act of 1975, as amended (42 USC 6101 et seq.) and implementing regulations at 31 CFR Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.
- e. Title II of the Americans with Disabilities Act of 1990, as amended (42 USC 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

X. ACCESS TO RECORDS

- a. NSR and OSI agree to make available to the Department, Office of State Comptroller, any other State auditor, and any of their duly authorized representatives, such pertinent records, books, documents, and papers as may be necessary to monitor and audit NSR and OSI's operations under this agreement.
- b. Whenever reasonable and practical, the State shall give reasonable notice to the Grantee prior to any visitation, inspection, or audit, including any visitation or request for documentation in discharge of the State's responsibilities. However, the State retains the right to make unannounced visitations, inspections, and audits as deemed necessary during normal business hours.
- c. The State reserves the right to have access to records of any subcontractor and requires the Grantee to provide the State access to such records in any contract with the subcontractor.
- d. The State reserves the right to have access to all work papers produced in connection with audits made by the Grantee or by independent certified public accountants or municipal accountants hired by the Grantee to perform such audits.
- e. The provisions of this Section shall continue in full force and effect after the termination, expiration, or suspension of this agreement."

XI. RECORDS RETENTION

- a. The Grantee shall retain records relevant to this agreement, including but not limited to, financial and programmatic records, supporting documents, and statistical records, for a period of seven (7) years from the date of last payment under this agreement, or such longer period as any applicable State or Federal statute may require, except:
 - i. If any litigation, claim, or audit is started before the end of the seven-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
 - ii. Records for nonexpendable property acquired with Federal or Department funds shall be retained for seven (7) years after final disposition.
 - iii. When the Grantee is notified in writing by the Department to extend the retention period.
- b. The State may request transfer of certain records to its custody from the Grantee when it determines that the records possess long-term retention value and will make arrangements with the Grantee to retain any records that are continuously needed for joint use.
- c. The provisions of this Section XI shall continue in full force and effect after the termination, expiration, or suspension of this agreement."

LPA/Contractor/Sub-Contractor Letterhead

BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned, [Company] Open Space Institute Land Trust, Inc. certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, [Company] Open Space Institute Land Trust, Inc. certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Please check the appropriate box:

☒ No non-federal funds have been used or are planned to be used for lobbying in connection with this application/award/contract.

or

☐ Attached is Standard Form LLL, "Disclosure of Lobbying Activities," which describes the use (past or planned) of non-federal funds for lobbying in connection with this application/award/contract.
Executed this _____ day of _____, 20____

By: Dene Hofheinz Lee, Vice President

(Type or Print Name) (Title of Executing Official)

Dene Hofheinz Lee, Open Space Institute Land Trust, Inc.
(Signature of Executing Official) (Name of Organization/Applicant)

LPA/Contractor/Sub-Contractor Letterhead

BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned, [Company] Solomon Jackson, Real Estate Manager for Norfolk Southern Railway Company certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, [Company] Solomon Jackson, Real Estate Manager for Norfolk Southern Railway Co., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Please check the appropriate box:

X No non-federal funds have been used or are planned to be used for lobbying in connection with this application/award/contract.

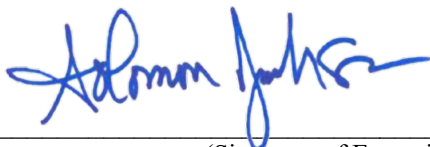
or

 Attached is Standard Form LLL, "Disclosure of Lobbying Activities," which describes the use (past or planned) of non-federal funds for lobbying in connection with this application/award/contract.

Executed this 18th day of July, 2022

By: Solomon Jackson

(Type or Print Name) (Title of Executing Official)



(Signature of Executing Official) (Name of Organization/Applicant)