

RECORD OF RESOLUTION

Resolution No. 2025-R-06

Passed March 04, 2025
YEAR

VILLAGE COUNCIL OF GREENWICH, OHIO
RESOLUTION NO.: 2025-R-06

FACILITY ENCROACHMENT AGREEMENT
CSX RAILROAD

A RESOLUTION AUTHORIZING THE VILLAGE ADMINISTRATOR TO ENTER INTO A FACILITY ENCROACHMENT AGREEMENT WITH CSX TRANSPORTATION, INC GRANTING THE VILLAGE A LICENSE FOR ACCESS OVER, UNDER, OR ACROSS RAILROAD PROPERTY FOR THE CONSTRUCTION OF VILLAGE SEWER LINES AND DECLARING AN EMERGENCY

WHEREAS, the Village along with OHM Advisor's are in the process of planning and designing lift station and force main sanitary sewer improvements; and

WHEREAS, to complete the project, sanitary sewer lines will need to be constructed across CSX Railroad property; and

WHEREAS, CSX Transportation, Inc has submitted a proposed Facility Encroachment Agreement which will grant the Village a license for access over under or across railroad property; and

WHEREAS, OHM Advisors report that the Agreement and License is routinely utilized and necessary for the completion of the project.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF GREENWICH, STATE OF OHIO: (RC 731.18)

SECTION 1. AUTHORIZATION. That the Village Administrator be and is hereby authorized and directed to enter a FACILITY ENCROACHMENT AGREEMENT granting the Village a license for access to CSX Railroad property for the construction of Village sewer lines. (SEE AGREEMENT ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE – Revised January 7, 2025 – Agreement No.: CSX1031897)

SECTION 2. VILLAGE ADMINISTRATOR. That any agreements authorized herein shall be executed in the name of the village and signed on its behalf by the village administrator. [Section 731.141 of the Ohio Revised Code; See also Section 232.01 of the Greenwich Codified Municipal Code]

SECTION 3. DISPENSE WITH THREE READINGS. That the legislative authority, upon a vote of at least three-fourths of its members, hereby dispenses with the rule requiring each ordinance or resolution shall be read on three different days. [R.C. 705.15 and 731.17(A)(2)]

SECTION 4. DECLARATION OF EMERGENCY FOR IMMEDIATE EFFECT. That by two-thirds vote of all the members elected to the legislative authority, this legislation is hereby declared to be an emergency measure pursuant to RC 731.30, being necessary for the immediate preservation of the public peace, health, or safety of the municipal corporation and shall go into immediate effect for the following reason(s):

The OHM Advisors report that this agreement is necessary prior to construction.

SECTION 5. PUBLIC MEETING. That it is found and determined that all formal action of this public body concerning or relating to the passage of this Resolution/Ordinance were adopted in a public meeting open to the public at all times, and that all deliberations of the public body and any of its committees that resulted in such formal action, were in public meetings open to the public, in compliance with all legal requirements including all lawful ordinances and any applicable provisions of section 121.22 of the Ohio Revised Code.

RECORD OF RESOLUTION

Resolution No. 2025-R-06

Passed _____

YEAR

WHEREFORE, this legislation shall be in full force and effect from and after the earliest period allowed by law.

PASSED AND ADOPTED on this 04 day of March, 2025.

ATTESTATION

(RC 731.20)

We hereby attest and affirm that the foregoing legislation received the necessary affirmative roll call votes required for passage by R.C. 731.17.

James Swaddle
MAYOR

Karley M. B.
FISCAL OFFICER

LEGISLATION READINGS

ORC 731.17(A)

- (1) Each ordinance and resolution shall be read by title only, provided the legislative authority may require any reading to be in full by a majority vote of its members.
(2) Each ordinance or resolution shall be read on three different days, provided the legislative authority may dispense with this rule by a vote of at least three-fourths of its members.

First Reading: 3/04/25 Second Reading: dispensed Third Reading: dispensed

ROLL CALL VOTE

ORC 731.17(A)(3)

The vote on the passage was taken by yeas and nays and entered upon the journal. Each ordinance or resolution shall be passed, except as otherwise provided by law, by a vote of at least a majority of all the members of the legislative authority. Yeas, nays, abstentions, excused or absent votes were recorded as follows:

Yea
Mike King

Yea
Randy Wilson

Yea
Lynne Phillips

Yea
Jason Hunter

Yea
Regina Lueck

Yea
Dorene Beverly

PREPARED BY AND APPROVED AS TO FORM [See also RC 731.21(B)]:

Steve Palmer
VILLAGE SOLICITOR

CERTIFICATE OF PUBLICATION

ORC 731.21 and 731.22

Pursuant to ORC 731.21(A)(3), I hereby certify that a succinct summary of the above legislation was/will be published using the following method: **ON THE WEBSITE AND SOCIAL MEDIA ACCOUNT OF THE MUNICIPAL CORPORATION**

The succinct summary was reviewed by the village solicitor as required by ORC 731.21(B). Publication was/will be made at least once a week for two consecutive weeks as required by ORC 731.22.

Karley M. B.
FISCAL OFFICER

ATTACHMENT(S) TO FOLLOW

FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and effective as of January 27, 2025, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and GREENWICH VILLAGE OF, a municipal corporation, political subdivision or state agency, under the laws of the State of Ohio, whose mailing address is 45 Main Street, Greenwich, Ohio 44837, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct (unless previously constructed and designated as existing herein), use and maintain the below described facility(ies), hereinafter called "Facilities," over, under or across property owned or controlled by Licensor, at the below described location(s):

1. One (1) fourteen inch (14") diameter sub-grade pipeline crossing, solely for the conveyance of raw/treated sewage, located at or near Greenwich, Huron County, Ohio, Great Lakes Division, Willard Terminal Subdivision, Milepost BG-192.99, Latitude N41:02:05., Longitude W82:31:06.;

hereinafter, called the "Encroachment," as shown on print(s) labeled Exhibit "A," attached hereto and made a part hereof;

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

1. LICENSE:

1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:

(A) Licensor's present and future right to occupy, possess and use its property within the area of the Encroachment for any and all purposes, including Licensor's track(s) structure(s), power lines, communication, signal or other wires, train control system, cellular or data towers, or electrical or electronic apparatus, or any appurtenances thereto ("Licensor's Facilities") and any other facilities as now exist or which may in the future be located in, upon, over, under or across the property;

(B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and

(C) Compliance by Licensee and its employees, agents and contractors ("Licensee's Contractor") with the terms and conditions herein contained;

does hereby grant a non-exclusive license to Licensee for the Encroachment for the sole purpose of permitting Licensee to construct, maintain, repair, renew, operate, use, alter or change the

Facilities at the Encroachment above for the term herein stated, and to remove same upon termination.

1.2 The term Facilities, as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached Exhibit A.

1.3 No additional structures or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Encroachment except upon prior separate written consent of Licensor.

2. ENCROACHMENT FEE; TERM:

2.1 Licensee shall pay Licensor a one-time nonrefundable Encroachment Fee of FIVE THOUSAND ONE HUNDRED AND 00/100 U.S. DOLLARS (\$5,100.00) upon execution of this Agreement. Licensee agrees that the Encroachment Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Facilities or Encroachment.

2.3 This Agreement shall terminate as herein provided, but shall also terminate upon: (a) Licensee's cessation of use of the Facilities or Encroachment for the purpose(s) above; (b) removal of the Facilities; (c) subsequent mutual written consent; and/or (d) failure of Licensee to complete installation within five (5) years from the effective date of this Agreement.

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part. Licensee agrees it shall not assess Licensor any stormwater or drainage fee associated with such Facilities. Furthermore, Licensee shall be responsible for any stormwater or drainage fees assessed by any County or State agency managing such systems.

3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities, in a prudent, workmanlike manner, using quality materials and complying with any applicable standard(s) or regulation(s) of Licensor (CSXT Specifications), or Licensee's particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Encroachment.

3.2 Location and construction of Facilities shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.

3.3 All of Licensee's work, and exercise of rights hereunder, shall be undertaken at time(s) satisfactory to Licensor, and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto.

3.4 In the installation, maintenance, repair and/or removal of said Facilities, Licensee shall not use explosives on or adjacent to Licensor's property of any type or perform or cause any blasting on or adjacent to Licensor's property without the separate express prior written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to the Facilities, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.

3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Facilities, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

3.7 All work on the Encroachment shall be conducted in accordance with Licensor's safety rules and regulations.

3.8 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to the Facilities or Encroachment.

3.9 In the event it becomes necessary for the Licensee to deviate from the approved Exhibit A, Licensee shall seek prior approval from Licensor, or when applicable, an official field representative of Licensor permitted to approve changes, authorizing the necessary field changes and Licensee shall provide Licensor with complete As-Built Drawings of the completed work. As-Built Drawings shall be submitted to Licensor in either electronic or hard copy form upon the substantial completion of the project and upon Licensor's request.

3.10 In the event of large scale maintenance/construction work to railroad bridges Licensee is required to protect power lines with insulated covers or comparable safety devices at their costs during construction/maintenance for safety of railroad employees.

4. PERMITS, LICENSES:

4.1 Before any work hereunder is performed, or before use of the Encroachment for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (State, Federal or Local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b)), et al., and State "One Call" - "Call Before You Dig" requirements.

4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, and for costs or expenses of compliance or remedy.

5. MARKING AND SUPPORT:

5.1 With respect to any subsurface installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:

- (A) support track(s) and roadbed in a manner satisfactory to Licensor;
- (B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor in a manner satisfactory to Licensor; and
- (C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.

5.2 After construction or maintenance of the Facilities, Licensee shall:

- (A) Restore any track(s), roadbed and other disturbed property in a manner satisfactory to Licensor; and
- (B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of any underground Facilities or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Encroachment area for a period of three (3) years after completion of installation.

6. TRACK CHANGES:

6.1 In the event that rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of track(s) or other facilities, or in the event

future use of Licensor's rail corridor ("Rail Corridor") or property necessitate any change of location, height or depth in the Facilities or Encroachment, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in the Facilities or Encroachment to accommodate such track(s) or operations.

6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's sole risk, cost and expense.

7. FACILITY CHANGES:

7.1 Licensee shall periodically monitor and verify the depth or height of the Facilities or Encroachment in relation to the existing tracks and facilities, and shall relocate the Facilities or change the Encroachment, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of Licensor.

7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facilities (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before such change. After approval, the terms and conditions of this Agreement shall apply thereto.

8. INTERFERENCE WITH RAIL FACILITIES:

8.1 Although the Facilities/Encroachment herein permitted may not presently interfere with Licensor's Facilities, in the event that the operation, existence or maintenance of said Facilities, in the sole judgment of Licensor, causes: (a) interference (including physical or interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner, with the operation, maintenance or use of Licensor's Facilities; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly make such changes in its Facilities or installation, as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so at Licensee's sole risk, cost and expense.

8.2 Without assuming any duty hereunder to inspect the Facilities, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to the Facilities, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

9. RISK, LIABILITY, INDEMNITY:

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

9.1 To the fullest extent permitted by State law (constitutional or statutory, as amended), Licensee hereby agrees to, defend, indemnify, and hold Licenser harmless from and against any and all liability, loss, claim, suit, damage, charge, cost or expense (including attorneys' fees) (collectively, "Claims and Losses") which Licenser may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licenser), and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licenser to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licenser. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad Rail Corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licenser.

9.2 Licensee's Contractor shall hereby agree to, defend, indemnify, and hold Licenser harmless from and against any and all Claims and Losses which Licenser may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licenser), and for damage to or loss of or destruction of any property whatsoever, arising out of resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licenser to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licenser. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad Rail Corridor, Licensee's Contractor's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licenser.

9.3 Use of Licenser's Rail Corridor involves certain risks of loss or damage as a result of the rail operations. Notwithstanding Section 9.1, Licensee expressly assumes all risk of loss and damage to Licensee's Property or the Facilities in, on, over or under the Encroachment, including loss of or any interference with use or service thereof, regardless of cause, including electrical field creation, fire or derailment resulting from rail operations. For this Section, the term "Licensee's Property" shall include property of third parties situated or placed upon Licenser's Rail Corridor by Licensee or by such third parties at request of or for benefit of Licensee.

9.4 To the fullest extent permitted by State law, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licenser harmless from any and all Claims and Losses arising from, under or in connection with or as a consequence of: (a) (i) any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of the Encroachment or (ii) any leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities;

(b) any federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facilities leakage; and (d) any drainage or runoff on or off the Encroachment area as a result of the Facilities/Encroachment herein permitted.

9.5 Notwithstanding Section 9.1, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities, whether or not such loss(es) result(s) in whole or part from Licensor's contributory negligence or joint fault.

9.6 Obligations of Licensee hereunder to release, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensor, as well as any railroad that operates over the Rail Corridor on which the Encroachment is located, and the officers, employees and agents of each.

9.7 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee may be responsible hereunder, in whole or in part, Licensee shall be notified to assume the handling or defense of such claim or action; but Licensor may participate in such handling or defense.

9.8 Notwithstanding anything contained in this Agreement, the limitation of liability contained in the state statutes, as amended from time to time, shall not limit Licensor's ability to collect under the insurance policies required to be maintained under this Agreement.

10. INSURANCE:

10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of

- (i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00).
- (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence (limit may be satisfied through a combination of both primary and umbrella/excess liability policies) for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement and naming Licensor, and/or its designee, as additional insured. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code

J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to RenewalCOI@csx.com.

- (iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence naming Licensor, and/or its designee, as additional insured.
- (iv) The insurance policies must contain a waiver of subrogation against CSXT and its parent, subsidiaries and affiliates, except where prohibited by law. All insurance companies must be A. M. Best rated A- and Class VII or better.
- (v) Such other insurance as Licensor may reasonably require.
- (vi) Licensee shall require its contractors to meet minimum insurance requirements above when performing work in relation to this Agreement. Licensee will procure and review contractor's insurance certificates to confirm requirements are met. Licensor may request a copy of the insurance certificate.
- (vii) Licensor's acceptance of any certificate of insurance does not constitute a waiver, release or modification of any of the insurance coverages or endorsements required under this Article 10.

10.2 If Licensee's Contractor's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee's Contractor. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Licensor, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensor's request shall be considered a default by Licensee.

10.4 To the extent permitted by law and notwithstanding anything to the contrary in this Agreement, the insurance required and provided by Licensee shall not be subject to the limitations of sovereign immunity.

10.5 (A) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensor; and (b) require Licensee's Contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor, Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 04 13) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury

and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition. Licensor reserves the right to demand higher limits.

(B) At Licensor's option, in lieu of purchasing RPL insurance or the 50 foot endorsements from an insurance company (but not CGL insurance), Licensee may pay Licensor, at Licensor's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Licensor's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Licensor's sole discretion and may not be available under all circumstances.

10.6 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

11. GRADE CROSSINGS; PROTECTION SERVICES:

11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's Contractor to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensor.

11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facilities, to place watchmen, flagmen, or field construction managers for protection of operations of Licensor or others on Licensor's Rail Corridor at the Encroachment, and to keep persons, equipment or materials away from the track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

11.3 Subject to consent of Licensor, in its sole discretion, and subject to Licensor's operating rules and labor agreements, Licensee may provide flagmen, in place of Licensor's provision, at Licensee's sole risk, cost and expense, and in such event, Licensor shall not be liable for the failure or neglect of such flagmen. Such flagmen shall be approved by Licensor and shall meet all Licensor's requirement for performing such work.

12. LICENSOR'S COSTS:

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or changes to Licensor's Facilities shall also be paid by Licensee.

12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.

12.3 Such expense shall include cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

13. DEFAULT, BREACH, WAIVER:

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Article 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.

13.3 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

14. TERMINATION, REMOVAL:

14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the Facility from the Encroachment. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk, cost and expense, shall (a) remove the Facilities from the Rail Corridor of Licensor, unless the parties hereto agree otherwise, (b) restore the Rail Corridor of Licensor in a manner satisfactory to Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

14.3 Notwithstanding the termination, revocation or expiration of this Agreement, and except as otherwise stated in this Agreement, those obligations contained herein that by their

terms or nature are intended to survive such termination, revocation or expiration shall do so including the indemnification, Facilities removal, restoration and reimbursement provisions herein.

15. NOTICE:

15.1 Licensee shall give Licenser at least thirty (30) days' written notice before doing any work on Licenser's Rail Corridor, except that in cases of emergency shorter notice may be given. Licensee shall provide proper notification as follows:

a. For non-emergencies, Licensee shall submit online via the CSX Property Portal from Licenser's web site, via web link:
https://propertyportal.csx.com/pub_ps_res/ps_res/jsf/public/index.faces

b. For emergencies, Licensee shall complete all of the steps outlined in Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee shall also call and report details of the emergency to Licenser's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Licenser needs to contact Licensee concerning an emergency involving Licensee's Facility(ies), the emergency phone number for Licensee is: 419-606-4708.

15.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licenser at the address shown on Page 1, c/o CSXT Contract Management, J180; or at such other address as either party may designate in writing to the other.

15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

16. ASSIGNMENT:

16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licenser's prior written consent to any assignment of Licensee's interest herein (by operation of law or otherwise); said consent shall not be unreasonably withheld. Any assignment of this Agreement by Licensee, by operation or law or otherwise, or any interest herein, without the prior written consent of Licenser, shall be void.

16.2 Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Licensee shall give Licenser written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.4 Licensors expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensors underlying property interests in the Encroachment, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensors, at its option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensors for any loss, cost or expense Licensors may incur as a result of Licensee's failure to obtain said consent.

17. TITLE:

17.1 Licensee understands that Licensors occupies, uses and possesses lands, rights-of-way and Rail Corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensors title for any particular Encroachment or segment of Rail Corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensors does not warrant title to any Rail Corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to others therein.

17.2 The term "license," as used herein, shall mean with regard to any portion of the Rail Corridor which is owned by Licensors in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensors to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensors, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensors under any other facts or rights, Licensors merely waives its exclusive right to occupy the Rail Corridor and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensors continues its own occupation, use or control. Licensors does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor held by Licensors in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Rail Corridor that would impair Licensors existing rights therein.

17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensors for damages on account of any deficiencies in title to the Rail Corridor in the event of failure or insufficiency of Licensors title to any portion thereof arising from Licensee's use or occupancy thereof.

17.4 Licensee agrees to fully and completely indemnify and defend Licensors from and against any and all Claims and Losses arising out of or in connection with claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based

upon the Facilities placement, or the presence of the Facilities in, on or along any Encroachment(s), including claims for punitive or special damages; provided that Licensor shall have the right to participate in the defense of any such claim.

17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.

17.6 Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Facilities.

17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Facilities in or on any portion of the Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof or any other Licensor property.

17.8 In the event that any property of Licensor becomes subject to such Liens or Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

18. APPROVALS:

18.1 Whenever this Agreement requires the prior approval or consent of Licensor, Licensee shall make a timely written request to Licensor therefor; and such approval or consent shall be obtained in writing. Except where this Agreement expressly obligates Licensor not to unreasonably withhold its approval or consent to any of Licensee's actions or requests, Licensor has the absolute right, in its sole and arbitrary discretion, to refuse any request Licensee makes or to withhold its approval of any of Licensee's proposed or effected actions that require Licensor's approval.

18.2 Licensor makes no warranties or guarantees upon which Licensee may rely, and assumes no liability or obligation to Licensee, by providing any waiver, approval, consent, or suggestion to Licensee in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

19. GENERAL PROVISIONS:

19.1 This Agreement, and the attachments hereto, contains the entire understanding between the parties hereto, and supersedes all other oral or written agreements and understandings between them, with respect to the subject matter hereof.

19.2 Except as otherwise expressly provided in this Agreement, neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

19.3 Except as otherwise provided herein, or in any Exhibit, Schedule or other attachment hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

19.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

19.5 This Agreement shall be construed and governed by the laws of the state in which the Facilities and Encroachment are located. In interpreting this Agreement, the singular shall be read as the plural in each instance as sense shall require. The words "include," "includes" and "including" when used in this Agreement will be interpreted as if they were followed by the words "without limitation."

19.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

19.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.

19.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement.

19.9 Within thirty (30) days of an overpayment in a cumulative total amount of One Hundred Dollars (\$100.00) or more by Licensee to Licensor, Licensee shall notify Licensor in writing with documentation evidencing such overpayment. Licensor shall refund the actual amount of Licensee's overpayment within one hundred twenty (120) days of Licensor's verification of such overpayment.

19.10 This Agreement may be executed in any number of counterparts, and such counterparts may be exchanged by electronic transmission. Upon execution by the parties hereto,

each counterpart shall be deemed an original and together shall constitute one and the same instrument. A fully executed copy of this Agreement by electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

19.11 Notwithstanding any other provision in this Agreement to the contrary, Licensor expressly reserves and does not waive any rights it may have under the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10101, *et seq.*, the Federal Railroad Safety Act, 49 U.S.C. § 20101, *et seq.*, and/or any other federal law governing rail transportation and related operations.

20. CONTRACTOR'S ACCEPTANCE:

20.1 Licensee shall observe and abide by, and shall require Licensee's Contractors to observe and abide by the terms, conditions and provisions set forth in this Agreement. Prior to any commencement of work under this Agreement by Licensee's Contractor, Licensee shall require Licensee's Contractor to execute and deliver to Licensor the Contractor Acceptance form attached hereto as Schedule A to acknowledge Licensee's Contractor's agreement to observe and abide by terms and conditions of the Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

Witness for Licensor:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: _____

Witness for Licensee:

GREENWICH VILLAGE OF

By: _____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.

Print/Type Name: _____

Print/Type Title: _____

Tax ID No.: _____

Schedule "A"

CONTRACTOR'S ACCEPTANCE

This Amendment is and shall be a part of Agreement No. CSX1031897, and is incorporated therein.

To and for the benefit of CSX TRANSPORTATION, INC. ("Licensor") and to induce Licensor to permit the undersigned Licensee's Contractor on or about Licensor's property for the purposed of performing work in accordance with the Facility Encroachment Agreement dated January 27, 2025, between Licensee and Licensor, Licensee's Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to Sections 3, 9, 10 of the Agreement.

Witness for Licensor:

CSX TRANSPORTATION INC.

By: _____

Print/Type Name: _____

Print/Type Title: _____

Witness for Licensee's Contractor

LICENSEE'S CONTRACTOR

By: _____
Who, by the execution hereof, affirms that
he/she has the authority to do so and to bind
the Licensee's Contractor has the authority
to do so and to bind the Licensee's
Contractor to the terms and conditions of
this Agreement

NAME: _____

TITLE: _____

DATE: _____

