

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: November 20, 2013

SUBJECT: Construction Contract
Artificial Turf Field
Henderson County Athletic and Activity Center

PRESENTER: Marcus A. Jones, PE

ATTACHMENTS: Yes

1. Recommendation Letter from William G Lapsley
2. Change Order from Medallion Athletic Products
3. Civic Lease with Norfolk Southern Railroad

SUMMARY OF REQUEST:

Construction Contract: As directed by the Board as a phase of the Henderson County Athletic and Activity Center (HCAAC), Engineering Department staff working with the Recreation Department and Tom Jones of William G. Lapsley & Associates (WGLA) released a RFP to install an artificial turf field. Bids were opened on October 24, 2013 with the results and recommendation detailed on the attached letter from WGLA. The low bid for the referenced construction contract is provided for Board approval. The proposed contract is for \$321,200.00 with Medallion Athletic Products.

Secondly, the attached letter from Medallion Athletic Products was requested by staff to add several items to the Contract referenced above. These items are as follows: Field Lighting (\$89,530), Turf Upgrade (\$13,500) and Perimeter Netting (\$26,560). As listed in Medallion's letter, two quotes for lighting were generated with Torrence Sports Lighting being the low quote: \$25,090 less. Therefore, Torrence is the recommended subcontractor for lighting. Staff, WGLA and Medallion are in the process of determining if a larger field is possible and in turn propose an additional change to the contract. Initial reviews are not favorable that a larger field is possible without a disproportional expense. However, we will be able to confirm after Medallion's mobilization on site. The field size in the bid is 175' x 310'. References have been checked to satisfaction for both Medallion and Torrence.

Finally, a "Civic Lease" agreement is attached from Norfolk Southern Railroad to obtain access to the portion of the existing field owned by the railroad. This is a special agreement NSRR offers to governments. It is for \$300 per year on a month to month basis. Longer term leases are substantially more expensive. While there is a risk that NSRR may need the area in the future, it is minimal; not only would the single, existing track need to be put back in service but an additional line added to impact the field. An aerial photo of the leased area is attached to the proposed lease.

The allocated budget for the field and lighting portion of the HCAAC project is \$635,000 and is currently allocated in the FY13 budget. Staff recommends establishing the following allocation of the \$635,000:

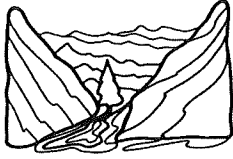
Medallion Turf Contract	\$321,200	
Medallion Change Order for Lighting	\$89,530	
Medallion Change Order for Turf Upgrade	\$13,500	
Medallion Change Order for Netting	\$26,560	
Project Contingency (10%)	\$63,350	
Available Funding for Larger Field	\$120,710	
Total Project Budget		\$635,000.00

BOARD ACTION REQUESTED:

Award the construction contract and three change orders for the HCAAC Artificial Turf Field with the low bidder Medallion Athletic Products for \$450,790, approve the proposed lease with Norfolk Southern Railroad, approve the proposed project budget and authorize the County Engineer to execute the required documents.

Suggested Motions:

I move that the Board of Commissioners award the construction contract and three change orders for the HCAAC Artificial Turf Field with the low bidder Medallion Athletic Products for \$450,790, approve the proposed lease with Norfolk Southern Railroad, approve the proposed project budget and authorize the County Engineer to execute the required documents.



William G. Lapsley & Associates, P.A.

Consulting Civil Engineers and Land Planners

William G. Lapsley, P.E.
William R. Buie, P.E.
G. Thomas Jones III, P.E.

November 11, 2013

Mr. Marcus Jones, PE
Henderson County Engineering
1 Historic Courthouse Square Suite 6
Hendersonville, NC 28792

Re: Henderson County Athletic and Activities Center
(HCAAC) Artificial Turf Field

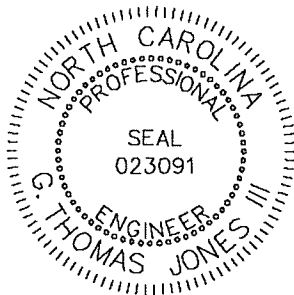
Dear Mr. Jones:

As you know, bids were received on 10/24/13 for the HCAAC Artificial Turf Field. The bids received were as follows:

Medallion Athletic Products	\$321,200.00
Pro Grass LLC	\$357,657.00
Hellas Construction, Inc.	\$369,900.00
FieldTurf USA, Inc.	\$427,395.00

The bid from Medallion Athletic Products appears to be responsive and included the required minority forms and bid bond. Therefore, we recommend award of the artificial turf field to Medallion Athletic Products.

Please let me know if you have any questions or need any additional information regarding the bids.



Sincerely,

G. Thomas Jones III, PE

11/11/13



QUOTE 1311-269

Customer: Henderson County
Date: 11-08-13
Project: Henderson County Athletic and Activities Center
Re: Optional Adders

The following is a proposal by Medallion to provide sports lighting, upgraded turf and a perimeter netting system on the upcoming artificial turf field at the HCAAC facility. Upon acceptance of this proposal, Medallion will provide all materials, equipment and/or labor as outlined below. The scope of this proposal shall include the following:

Sports Lighting Base Bid:

- GE Sports Lighting Integral Ballast made in East Flat Rock, NC
- 4) 60' Mounting Height; 70' Overall Length Concrete Encased Direct Embedded/Burial Steel Pole with (6) GE Sports Lighting Powerspot Integral Ballast Fixtures Including 1500 watt metal halide lamps, Fixture Light Spill Visors.
- All Sports Lighting Poles Will Include Pole Steps, Pole Safety Cable, and Maintenance Platforms to eliminate the need for bucket trucks to access the fixtures/ballasts, which would dramatically increase the chance of damaging the poles and potentially damaging the new synthetic turf.
- All Fixtures include the Glare Control/Light Spill visors.
- Wireless Remote Control System Included.
- Excavation of holes for Four poles
- Unload poles and lights at jobsite
- Install all underground conduit and copper wire to each pole
- Compact all trenches and seed and straw disturbed areas
- Provide service panel and lighting contactor cabinet for lighting
- Permits and North Carolina Stamped Electrical Drawings included.
- Local Power Company will be responsible for providing 480 Volt/3Phase power to the field within 25 feet of our panel.
- We will provide Stamped Pole Foundation Designs.
- All lights will be aimed per GE Applications Engineer Autocad Aiming Diagrams.
- Light Levels to be 30 foot-candles
- Material Warranty is One Year on the lamps and 5 years on the Ballast. Labor is Included for One year.
- NC Sales Tax On Materials Included In Price

SUPPLY AND INSTALL TOTAL (Torrence Sports Lighting)	\$ 89,530 .00
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Optional Adder: (Musco Lighting)	\$ 25,090.00
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Optional Adder (Turf Upgrade to Legion 46) \$ 13,500.00

Optional Adder (perimeter netting) \$ 26,560.00

- 16'ag by assumed 400' of 4" mesh soccer netting
- Poles to be 4"od set 20'oc with corner (load bearing) poles being 6"od with guy wires.
- Netting will be attached to ¼" steel cables for optimal profile

Notes:

- Weather can impact schedule.
- Price includes access to the job site 24 hours a day, 7 days a week.
- Bonding is not included
- Excludes prevailing wages, union wages, or certified payroll
- Pricing is good for 45 days.
- Freight pricing is FOB jobsite.
- Taxes included per applicable North Carolina state and county requirements.
- Terms: Net 30 from date of Invoice

Thank you for allowing Medallion the opportunity to provide you with a proposal for the above referenced project. Medallion specializes in solutions for athletic facilities and surfacing while delivering extensive expertise, comprehensive project management and excellence in service to our customers. If you have any questions please don't hesitate to contact me.

Respectfully Submitted,

Todd Penley
Regional Sales
(704) 200-8770



Norfolk Southern Corporation
Real Estate and Contract Services
1200 Peachtree Street, NE, 12th Floor
Atlanta, Georgia 30309-3579

Suzanne L. Congdon
Property Agent
My Direct Line Is:
Phone: (404) 962-5808
Fax: (404) 653-3436
E-Mail: suzanne.congdon@nscorp.com

October 25, 2013
Activity 1185672

UPS GROUND

Mr. Marcus Jones
County of Henderson
Historic Courthouse Square Suite #6
Hendersonville, NC 28792

RE: Hendersonville, Henderson County, North Carolina – Proposed Lease Agreement between Norfolk Southern Railway Company and County of Henderson, concerning real property having an area of 9,350 square feet, more or less, located at Milepost 21.00; \$300.00 annual rent;

Dear Mr. Jones:

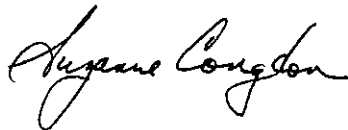
Enclosed are duplicate originals of the referenced Lease for your handling for execution and witnessing. Thereafter, return both originals to me for execution on behalf of Landlord, after which a fully-executed original will be returned to you for your file. DO NOT DATE the Lease, as we will do so at the time of Landlord's execution. Below are the items required by Landlord in order to complete the file:

- Both originals of the Lease, signed and witnessed on behalf of County of Henderson.
- A check in the amount of \$300.00, payable to Norfolk Southern Railway Company, for the first rental payment.
- Fax a copy of the Certificate of Insurance, as required by Paragraph 21 of the Lease, to my attention at 404-653-3436, and forward the original directly to: Risk Manager, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191. Instruct your insurance company to name Norfolk Southern Railway Company as an additional insured and certificate holder. For answers to questions concerning the insurance requirements, please contact Mr. Scott Dickerson at (757) 629-2364 or email NSRISK1@nscorp.com. (Sample Certificate of Insurance enclosed) The Certificate of Insurance must be approved and the Lease fully-executed before occupation of the property can be permitted.

The terms and conditions of this Lease shall be valid for thirty (30) calendar days from the date of this letter. If you are unable to execute the Lease within the thirty (30) calendar day time frame, please advise this office in writing of your intent or risk cancellation of your file.

Your cooperation is appreciated. If you have any questions regarding this matter, please contact me referring to the activity number above.

Sincerely,



Suzanne L. Congdon

Enclosure
1088240v1/IDL

THIS LEASE is made as of _____, _____ by and between
NORFOLK SOUTHERN RAILWAY, a North Carolina Corporation (the "Landlord") and
COUNTY OF HENDERSON, a North Carolina Corporation (the "Tenant").

1. Premises; Use. For and in consideration of the agreements set forth herein, to be paid, kept and performed by Tenant, Landlord hereby leases and rents to Tenant, insofar as its right, title and interest in the Premises enables it to do so, that certain real property located at Milepost **21.00** in **Hendersonville, Henderson County, North Carolina**, having an area of **9,350** square feet, more or less, the location and dimensions of which are substantially shown on **print dated August 26, 2013, hereunto annexed as Exhibit "A"** attached hereto (the "Land"), together with all improvements thereon (the "Improvements"). The Land and the Improvements are collectively referred to herein as the "Premises". This Lease is subject to all encumbrances, easements, conditions, covenants and restrictions, whether or not of record.

The Premises shall be used for **to construct a portion of a multi-purpose athletic field with artificial turf and fence** and no other purpose. The Premises shall not be used for any illegal purposes, for the storage of unlicensed vehicles, nor in any manner to create any nuisance or trespass. No smoking is permitted in or about the Premises. Landlord reserves unto itself and its permittees, the permanent right to construct, maintain or replace upon, under, or over the Premises, any pipe, electrical, telecommunications, and signal lines, or any other facilities of like character now installed or hereinafter to be installed. Landlord further reserves unto itself and its permittees the right to enter upon the Premises at any and all times for the purposes of operating, maintaining, constructing or relocating any trackage or railroad facilities located on, or in the vicinity of, the Premises.

The terms and conditions of the Rider, if any, attached hereto as **Exhibit "B"** are incorporated herein by this reference. In the event of an inconsistency between the terms hereof and the terms of the Rider, the terms of the Rider shall prevail.

2. Term. To have and to hold for a term beginning on **September 1, 2013**, and continuing thereafter on a periodic basis. In addition to any termination rights that the parties may have hereunder, either party may terminate this Lease for any reason by giving the other party not less than thirty (30) days' notice of such termination. Any such termination pursuant to the preceding sentence shall not relieve Tenant from satisfying and performing all of its obligations hereunder (including, but not limited to, the payment of rental) through the date of such termination and shall not relieve either party from performing any obligation that, pursuant to the terms of the Lease, survives the termination of the Lease.

3. Base Rental. Commencing on **September 1, 2013** (the "**Rental Commencement Date**") and thereafter on each anniversary thereof during the term of this Lease, Tenant shall pay to Landlord, without offset, abatement or demand, initial base rental of **THREE HUNDRED AND NO/100 DOLLARS (\$300.00)**. The amount of the base rental shall be increased (and not decreased) on an annual basis by the percentage of increase, if any, in the United States, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U)(1982-1984 = 100) U.S. City Average, All Items (the "**Index**") as set forth below. If the Index has changed so that the base year differs from that used in this Paragraph, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics, to the 1982-84 base. If the Index is discontinued or revised during the term of this Lease, such other government index or computation with which it is

replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

The "**Adjustment Date**" shall mean the first anniversary of the Rental Commencement Date and each anniversary thereof during the term of this Lease. The Index published nearest to the Rental Commencement Date shall be the "**Base Index**". The Index published nearest to the date three (3) months prior to the then current Adjustment Date shall be the "**Adjustment Index**". On each Adjustment Date, the base rental shall be adjusted by multiplying the base rental payable under this Lease at the Rental Commencement Date by a fraction, the numerator of which fraction is the applicable Adjustment Index and the denominator of which fraction is the Base Index. The amount so determined shall be the base rental payable under the Lease beginning on the applicable Adjustment Date and until the next Adjustment Date (if any).

Base rental shall be due in advance. Except in the event of default, base rental for any partial rental periods shall be prorated. The acceptance by Landlord of base rental shall not constitute a waiver of any of Landlord's rights or remedies under this Lease. All payments of base rental, and any additional rental payable hereunder, shall be sent to the Treasurer of Landlord at P.O. Box 116944, Atlanta, Georgia 30368-6944, or such other address as Landlord may designate in any invoice delivered to Tenant. Prior to or simultaneously with Tenant's execution of this Lease, Tenant has paid to Landlord (a) a non-refundable, application fee in the amount of \$500.00, and (b) the first installment of base rental due hereunder. In the event Tenant fails to pay base rental or any other payment called for under this Lease on or before the due date, Tenant shall pay a late charge equal to five percent (5%) of the unpaid amount. In addition, any sum not paid within thirty (30) days of its due date shall accrue interest thereafter until paid at the rate per annum equal to the lesser of (a) the highest interest rate permitted by applicable law; or (b) eighteen percent (18%).

4. Utilities. Landlord shall have no obligation to provide light, water, heat, air conditioning or any other utilities or services to the Premises. Tenant shall place any and all utility and service related bills in its name and shall timely pay the same, along with all assessments or other governmental fees or charges pertaining to the Premises. If Tenant does not pay same, Landlord may (but shall not be obligated to) pay the same, including any and all late fees and penalties, and such payment shall be added to and treated as additional rental of the Premises.

5. Maintenance and Repairs. Tenant, at its sole cost, shall keep and maintain all of the Premises (including, but not limited to, all structural and non-structural components thereof and all systems) in good order and repair (including replacements) and shall keep the Premises free of pests and rodents. Tenant hereby waives (a) any rights at law or in equity to require Landlord to perform any repair, replacement or maintenance to the Premises, and (b) any right to abate rental or terminate this Lease due to the failure by Landlord to perform any repairs, replacements or maintenance. Tenant shall not create any lien, charge or encumbrance upon the Premises, and Tenant shall promptly remove or bond over any such lien, charge or encumbrance.

6. Modifications and Alterations to the Premises. Tenant shall make no modifications, alterations or improvements to the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. Any modifications or alterations consented to by Landlord shall be completed in a good, workmanlike and lien-free manner, in accordance with all applicable laws, codes, regulations and ordinances and by contractors approved by Landlord. Unless otherwise agreed by the parties hereto, any alterations or improvements to the Premises made by Tenant shall become the property of Landlord; provided, however, Landlord, at its option, may require Tenant to remove any improvements or repair any alterations in order to restore the Premises to the condition

existing at the time Tenant took possession. Notwithstanding the foregoing, Tenant may remove any moveable equipment or trade fixtures owned by Tenant during the term of this Lease, provided that any damage caused by such removal shall be repaired by Tenant in a manner acceptable to Landlord.

7. Return of Premises. Tenant agrees to return the Premises to Landlord at the expiration or prior termination of this Lease in the same condition and repair as when first received, normal wear and tear excepted. Tenant agrees to remove its moveable equipment and trade fixtures from the Premises at the expiration or prior termination of this Lease. Tenant shall immediately repair any damage arising out of any such removal in a manner acceptable to Landlord. Failure to comply with this Paragraph 7 will constitute holding over by Tenant.

8. Destruction of or Damage to Premises. If all or substantially all of the Premises are destroyed by storm, fire, lightning, earthquake or other casualty, this Lease shall terminate as of the date of such destruction, and rental shall be accounted for as between Landlord and Tenant as of that date. In the event of such termination, rental shall be prorated and paid up to the date of such casualty. In no event shall Tenant have any right to terminate this Lease if the casualty in question was caused or contributed to by Tenant, its agents, employees, contractors or invitees.

9. Indemnity. Except for damage caused solely by Landlord's negligence, Tenant agrees to indemnify, defend and save harmless Landlord, Landlord's parent companies, subsidiaries, affiliates, lessors, licensors, and subsidiaries of parent companies (collectively the "**Landlord Related Entities**") and Landlord's and Landlord's Related Entities' officers, directors, members, shareholders, lenders, agents and employees (collectively the "**Landlord Entities**") against all claims (including but not limited to claims for bodily injury, death or property damage), economic losses, liabilities, costs, injuries, damages, actions, mechanic's liens, losses and expenses (including but not limited to reasonable attorney's fees and costs) to whomsoever, including, but not limited to, Tenant's agents, workmen, servants or employees, or whatsoever occurring (collectively, "**Claims**") arising out of or relating to Tenant's use or occupancy of the Premises. To the fullest extent permitted by applicable laws, Tenant hereby waives and releases the Landlord Entities from any Claims (including but not limited to Claims relating to interruptions in services) arising out of or relating in any way to the Tenant's use or occupancy of the Premises.

10. Governmental Orders. Tenant agrees, at its own expense, to comply with all laws, orders, regulations, ordinances or restrictions applicable by reason of Tenant's use or occupancy of the Premises or operation of its business.

11. Condemnation. If the Premises or such portion thereof as will make the Premises unusable for the purpose herein leased shall be condemned by any legally constituted authority for any public use or purpose, or sold under threat of condemnation, then this Lease shall terminate as of the date of such condemnation or sale, and rental shall be accounted for between Landlord and Tenant as of such date. All condemnation awards shall belong to Landlord; provided, however, and to the extent permitted under applicable law, Tenant shall be entitled to file a separate claim against the condemning authority for loss of its personal property and moving expenses so long as the filing of such claim does not affect or reduce Landlord's claim as to such awards or proceeds.

12. Assignment. Tenant may not assign this Lease or any interest thereunder or sublet the Premises in whole or in part or allow all or a portion of the Premises to be used by a third party without the prior written consent of Landlord. If Tenant is a corporation, partnership, limited liability company or other entity, the transfer of more than fifty percent (50%) of the ownership interests of Tenant or the transfer of a lesser percentage which results in a transfer of control of Tenant (WHICH INCLUDES, WITHOUT LIMITATION, TRANSACTIONS IN WHICH TENANT SELLS ITS BUSINESS, SELLS

ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF ITS BUSINESS OR MERGES OR CONSOLIDATES WITH ANOTHER ENTITY), whether in one transaction or a series of related transactions, shall constitute an assignment for purposes of this Lease. All requests for an assignment or sublease shall be accompanied by a copy of the proposed assignment or sublease agreement and an administrative fee in the amount of \$750.00. Any assignee shall become liable directly to Landlord for all obligations of Tenant hereunder. No such assignment or sublease nor any subsequent amendment of the Lease shall release Tenant or any guarantor of Tenant's obligations hereunder. If any such subtenant or assignee pays rental in excess of the rental due hereunder or if Tenant receives any other consideration on account of any such assignment or sublease, Tenant shall pay to Landlord, as additional rent, one-half of such excess rental or other consideration upon the receipt thereof. Any assignment or sublease made in violation of this Paragraph 12 shall be void and shall constitute a default hereunder.

13. Environmental. Tenant covenants that neither Tenant, nor any of its agents, employees, contractors or invitees shall cause or permit any aboveground or underground storage tanks or associated piping (collectively "**Tanks**") to be located on or under the Premises or any Hazardous Materials (as hereinafter defined) to be stored, handled, treated, released or brought upon or disposed of on the Premises. Tenant shall comply, at its own expense, with any and all applicable laws, ordinances, rules, regulations and requirements respecting solid waste, hazardous waste, air, water, pollution or otherwise relating to the environment or health and safety (collectively "**Environmental Laws**"). Tenant shall not under any circumstance dispose of trash, debris or wastes on the Premises and will not conduct any activities on the Premises which require a hazardous waste treatment, storage or disposal permit. As used herein, the term "**Hazardous Materials**" means asbestos, polychlorinated biphenyls, oil, gasoline or other petroleum based liquids, and any and all other materials or substances deemed hazardous or toxic or regulated by applicable laws, including but not limited to substances defined as hazardous under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq., Resource Conservation and Recovery Act 42 U.S.C. 6901 et seq. (or any state counterpart to the foregoing statutes) or determined to present the unreasonable risk of injury to health or the environment under the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq. Tenant shall indemnify, defend and hold the Landlord Entities harmless from and against any and all claims, judgments, damages, penalties, fines, costs (including without limitation, consultant's fees, experts' fees, attorney's fees, investigation and cleanup costs and courts costs), liabilities or losses resulting from (1) the storage, handling, treatment, release, disposal, presence or use of Hazardous Materials in, on or about the Premises from and after the date of this Lease or (2) the violation by Tenant of any provision of any Environmental Laws. Without limiting the generality of the foregoing indemnity, in the event Landlord has reason to believe that the covenants set forth in this Paragraph 13 have been violated by Tenant, Landlord shall be entitled, at Tenant's sole expense, to take such actions as Landlord deems necessary in order to assess, contain, delineate and/or remediate any condition created by such violation. Any sums expended by Landlord shall be reimbursed by Tenant, as additional rental, within thirty (30) days after demand therefor by Landlord. Landlord has the right to enter the Premises at all reasonable times for purposes of inspecting the Premises in order to evaluate Tenant's compliance with the covenants of this Paragraph 13. In the event Tenant delivers or receives any notices or materials from any governmental or quasi-governmental entity and such notices or materials relate to Tanks or Hazardous Materials in, on or about the Premises, Tenant shall immediately send to Landlord a copy of such notices or materials. Tenant shall also provide Landlord with a detailed report relating to any release of a Hazardous Material in, on or about the Premises whenever such release is required to be reported to governmental authorities pursuant to the Environmental Laws. Upon the expiration or earlier termination of this Lease, Landlord shall have the right to cause to be performed such environmental studies of the Premises by an environmental consultant as are necessary to determine whether any Hazardous Materials have been stored, handled, treated, released, brought upon or disposed of on the Premises during the term of this Lease in violation of the terms hereof. If any such study reveals any violation of this Lease, Tenant shall

promptly reimburse Landlord for the costs of such studies and Tenant shall immediately undertake a further investigation, if necessary, and remediation of such contamination. Landlord may undertake such investigation and remediation if Tenant fails to do so within a reasonable time frame, in which case Tenant shall promptly reimburse Landlord for the cost of same within thirty (30) days after demand therefore by Landlord. The obligations of this Paragraph 13 shall survive the expiration or earlier termination of this Lease.

14. Default; Remedies. In the event (i) any payment of rental or other sum due hereunder is not paid within ten (10) days after the due date thereof; (ii) the Premises shall be deserted or vacated; (iii) Tenant shall fail to comply with any term, provision, condition or covenant of this Lease, other than an obligation requiring the payment of rental or other sums hereunder, and shall not cure such failure within twenty (20) days after notice to the Tenant of such failure to comply; (iv) Tenant shall attempt to violate or violate Paragraph 12 above; or (v) Tenant or any guarantor shall file a petition under any applicable federal or state bankruptcy or insolvency law or have any involuntary petition filed thereunder against it, then Landlord, in addition to any remedy available at law or in equity, shall have the option to do any one or more of the following:

(a) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord. Tenant agrees to indemnify the Landlord Entities for all loss, damage and expense which Landlord may suffer by reason of such termination.

(b) Without terminating this Lease, terminate Tenant's right of possession, whereupon rental shall continue to accrue and be owed by Tenant hereunder. Thereafter, at Landlord's option, Landlord may enter upon and relet all or a portion of the Premises (or relet the Premises together with any additional space) for a term longer or shorter than the remaining term hereunder and otherwise on terms satisfactory to Landlord. Tenant shall be liable to Landlord for the deficiency, if any, between Tenant's rental hereunder and all net sums received by Landlord on account of such reletting (after deducting all costs incurred by Landlord in connection with any such reletting, including without limitation, tenant improvement costs, brokerage commissions and attorney's fees).

(c) Pursue a dispossessory, eviction or other similar action against Tenant, in which event Tenant shall remain liable for all amounts owed hereunder, including amounts accruing hereunder from and after the date that a writ of possession is issued.

(d) Perform any unperformed obligation of Tenant, including, but not limited to, cleaning up any trash, debris or property remaining in or about the Premises upon the expiration or earlier termination of this Lease. Any sums expended by Landlord shall be repaid by Tenant, as additional rent, within ten (10) days after demand therefor by Landlord.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedies available at law or in equity. Tenant agrees to pay all costs and expenses, including, but not limited to, reasonable attorney's fees and consultant's fees, incurred by Landlord in connection with enforcing the performance of any of the provisions of this Lease, whether suit is actually filed or not. Acceptance of rental or any other sums paid by Tenant shall not constitute the waiver by Landlord of any of the terms of this Lease or any default by Tenant hereunder. Landlord shall not be required to mitigate damages, and the parties intend to waive any burden that applicable law may impose on Landlord to mitigate damages; provided, however, if applicable law nevertheless requires Landlord to mitigate damages then (i) Landlord shall have no obligation to treat preferentially the Premises compared to other premises Landlord has available for leasing; (ii) Landlord shall not be obligated to expend any efforts or any

monies beyond those Landlord would expend in the ordinary course of leasing space; and (iii) in evaluating a prospective reletting of the Premises, the term, rental, use and the reputation, experience and financial standing of prospective tenants are factors which Landlord may properly consider.

15. Signs; Entry by Landlord. Landlord may place "For Lease" signs upon the Premises one hundred twenty (120) days before the termination of this Lease and may place "For Sale" signs upon the Premises at any time. Landlord may enter the Premises with prior notice to Tenant at reasonable hours during the term of this Lease (a) to show the same to prospective purchasers or tenants, (b) to make repairs to Landlord's adjoining property, if any, (c) to inspect the Premises in order to evaluate Tenant's compliance with the covenants set forth in this Lease, or (d) to perform activities otherwise permitted or contemplated hereby.

16. No Estate in Land. This Lease shall create the relationship of landlord and tenant between Landlord and Tenant; Tenant's interest is not assignable by Tenant except as provided in Paragraph 12, above.

17. Holding Over. If Tenant remains in possession of the Premises after expiration of the term hereof with Landlord's written consent, Tenant shall be a month-to-month tenant upon all the same terms and conditions as contained in this Lease, except that the base rental shall become two times the then current base rental, and there shall be no renewal of this Lease by operation of law. Such month-to-month tenancy shall be terminable upon thirty (30) days written notice by either party to the other. Tenant waives any right that it may have to additional notice pursuant to applicable law. If Tenant remains in possession of the Premises after the expiration of the term hereof without Landlord's written consent, Tenant shall be a tenant at sufferance subject to immediate eviction. In such event, in addition to paying Landlord any damages resulting from such holdover, Tenant shall pay base rental at the rate of three times the then current base rental. In such circumstance, acceptance of base rental by Landlord shall not constitute consent or agreement by Landlord to Tenant's holding over and shall not waive Landlord's right to evict Tenant immediately.

18. Notices. Any notice given pursuant to this Lease shall be in writing and sent by certified mail, return receipt requested, by hand delivery or by reputable overnight courier to:

(a) Landlord: c/o Director Real Estate, Norfolk Southern Corporation, 1200 Peachtree Street, NE - 12th Floor, Atlanta, Georgia 30309-3579, or at such other address as Landlord may designate in writing to Tenant.

(b) Tenant: County of Henderson, 100 North King Street, Hendersonville, North Carolina 28739, or at such other address as Tenant may designate in writing to Landlord.

Any notice sent in the manner set forth above shall be deemed delivered three (3) days after said notice is deposited in the mail if sent by certified mail (return receipt requested), or upon receipt if sent by hand delivery or reputable overnight courier. Any change of notice address by either party shall be delivered to the other party by the manner of notice required hereby.

19. Track Clearance. Notwithstanding anything contained in this Lease, and irrespective of the sole, joint, or concurring negligence of Landlord, Tenant shall assume sole responsibility for and shall indemnify, save harmless and defend the Landlord Entities from and against all claims, actions or legal proceedings arising, in whole or in part, from the conduct of Tenant's operations, or the placement of Tenant's fixtures, equipment or other property, within twenty-five feet (25') of Landlord's tracks, if any, located on or adjacent to the Premises. In this connection it is specifically understood that knowledge on

the part of Landlord of a violation of the foregoing clearance requirement, whether such knowledge is actual or implied, shall not constitute a waiver and shall not relieve Tenant of its obligations to indemnify the Landlord Entities for losses and claims resulting from any such violation.

20. Brokerage. Landlord and Tenant hereby covenant and agree to indemnify and hold the other harmless from and against any and all loss, liability, damage, claim, judgment, cost and expense (including without limitation attorney's fees and litigation costs) that may be incurred or suffered by the other because of any claim for any fee, commission or similar compensation with respect to this Lease, made by any broker, agent or finder claiming by, through or under the indemnifying party, whether or not such claim is valid.

21. Tenant's Insurance. Tenant shall procure and maintain, at all times and at its expense, in a form and with an insurance company acceptable to Landlord, Commercial General Liability Insurance for the Premises. Such coverage shall (a) have a single limit of not less than \$2,000,000.00 for each occurrence (or such greater amount over time so as to be commercially reasonable) and shall provide for a deductible of not more than \$5,000.00, (b) cover Tenant's contractual liability hereunder, (c) cover Tenant and Landlord for liability arising out of work performed by any third parties for Tenant in or about the Premises, (d) name the Landlord Entities as additional insureds, and (e) be considered primary and noncontributory, regardless of any insurance carried by Landlord. Any property insurance maintained by Tenant on its furniture, fixtures, equipment and personal property shall include a waiver of subrogation in favor of Landlord. Tenant shall deliver certificates of insurance evidencing the insurance required hereinabove to Landlord simultaneously with the execution of this Lease by Tenant, which certificates shall reflect that the policies shall not be canceled without at least thirty (30) days prior notice to Landlord. If Tenant fails to obtain the necessary coverages, Landlord may do so at Tenant's expense and the same shall constitute additional rental. All insurance certificates should be delivered to Landlord's Risk Management Department, Three Commercial Place, Norfolk, Virginia 23510, simultaneously with the execution of this Lease by Tenant. The minimum limits of insurance provided for hereunder are not intended to be a limitation on the liability of Tenant hereunder and shall not waive Landlord's right to seek a full recovery from Tenant.

22. Taxes. Tenant agrees to reimburse Landlord, as additional rental, for all real estate taxes and assessments (regular or special) pertaining to the Premises ("**Taxes**") paid by Landlord with respect to the Premises. Landlord may, but shall not be obligated to, invoice Tenant for the estimated Taxes for each calendar year (but no more frequently than monthly), which amount shall be adjusted each year based upon anticipated Taxes. If the Premises are part of a larger tract, the Taxes for which Tenant is responsible for reimbursing Landlord pursuant to the terms hereof shall be the share of such total Taxes that Landlord reasonably determines are applicable to the Premises, giving due consideration to the relative value of the Premises and the value of the land and improvements reflected in the applicable tax valuation. Upon request from Tenant, Landlord shall provide Tenant with copies of tax bills for the Taxes. If Landlord has been invoicing Tenant for Taxes and the tax bills indicate that the total of the payments made by Tenant exceeds the amount of Taxes applicable to the Premises, Landlord shall credit any such amount against the Tax reimbursement payment next coming due. In the event the accounting shows that the total of the Tax payments made by Tenant is less than the amount of Tax payment due from Tenant under this Paragraph, the accounting shall be accompanied by an invoice for the additional payment. During the year in which the Lease terminates, Landlord shall have the option to invoice Tenant for Taxes based upon the previous year's Taxes. If this Lease commences on a day other than the first day of a tax year or ends on a day other than the last day of a tax year, the amount of any Taxes payable by Tenant applicable to the year in which the term commences or ends shall be prorated. Tenant agrees to pay any sum due under this Paragraph within ten (10) days following receipt of the invoice showing the amount due.

23. Rent Increase Notice. In addition to the rights set forth in Article 14 above, but no sooner than one (1) year after the date of this Lease, Landlord shall have the right, from time to time, to send Tenant a rent increase notice in a form substantially similar to that attached hereto as Exhibit "C" and made a part hereof. If Tenant either agrees to such rent increase or elects to remain on the Premises beyond the stated termination date in the rent increase notice, then such increase shall take effect in the manner prescribed in Tenant's rent increase notice without the need for any further documentation.

24. Joint and Several. If Tenant comprises more than one person, corporation, partnership or other entity, the liability hereunder of all such persons, corporations, partnerships or other entities shall be joint and several.

25. No Warranties; Entire Agreement. TENANT ACCEPTS THE PREMISES "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF QUIET ENJOYMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER IMPLIED WARRANTIES. LANDLORD SHALL NOT BE LIABLE FOR, AND TENANT HEREBY RELEASES LANDLORD FROM ALL CLAIMS FOR ECONOMIC LOSSES AND ALL OTHER DAMAGE OF ANY NATURE WHATSOEVER ACCRUING TO TENANT, INCLUDING, BUT NOT LIMITED TO THE VALUE OF ANY BUILDINGS, STRUCTURES OR IMPROVEMENTS OF TENANT UPON THE PREMISES, RESULTING FROM OR ARISING BY REASON OF ANY DEFICIENCY, INSUFFICIENCY OR FAILURE OF TITLE OF LANDLORD. THIS LEASE CONTAINS THE ENTIRE AGREEMENT OF THE PARTIES HERETO AS TO THE PREMISES, AND NO REPRESENTATIONS, INDUCEMENTS, PROMISES OR AGREEMENTS, ORAL OR OTHERWISE, BETWEEN THE PARTIES, NOT EMBODIED HEREIN, SHALL BE OF ANY FORCE OR EFFECT.

26. Survival. The provisions of Paragraphs 6, 7, 9, 13, 17, 20 and 22 shall survive the expiration or earlier termination of this Lease.

27. Miscellaneous. Knowledge on the part of Landlord or any employee, agent or representative of Landlord of any violation of any of the terms of this Lease by Tenant shall constitute neither negligence nor consent on the part of Landlord, and shall in no event relieve Tenant of any of the responsibilities and obligations assumed by Tenant in this Lease. All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative but not restrictive to those given by law. No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon strict compliance by Tenant with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof. Subject to the terms of Paragraph 12 above, this Lease shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of Landlord and Tenant. If any term, covenant or condition of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons, entities or circumstances other than those which or to which used may be held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law. Time is of the essence in this Lease. Neither party shall be bound hereunder until such time as both parties have signed this Lease. This Lease shall be governed by the laws of the State or Commonwealth in which the Premises are located.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, effective the day and year first above written.

Witness:

Signature
Name: _____

Witness:

Signature
Name: _____

Witness:

Signature
Name: _____

Witness:

Signature
Name: _____

JNL:slc/ October 25, 2013/ 1185672/ 1088051v1

LANDLORD:

NORFOLK SOUTHERN RAILWAY COMPANY
a **Virginia corporation**

By: _____
Name: _____
Title: _____

Date of Landlord Signature: _____

[SEAL]

TENANT:

COUNTY OF HENDERSON
a **North Carolina government entity**

By: _____
Name: _____
Title: _____

Date of Tenant Signature: _____

[SEAL]





Fence located 75'
from centerline

**NORFOLK SOUTHERN RAILWAY COMPANY
Real Estate Department**

Landlord:	NORFOLK SOUTHERN RAILWAY COMPANY LAT: 35.309364 LONG: -82.448979	
Location:	Hendersonville, North Carolina	
Tenant:	COUNTY OF HENDERSON	
Area:	9,350 square feet, more or less	
Maps:	Val 48 - Map 6 - Par 1	Milepost: W-21
Activity No:	1185672	Exhibit A
Date:	August 26, 2013	Not To Scale



Handwritten signature or mark.

EXHIBIT B

RIDER TO LEASE AGREEMENT BY AND BETWEEN THE NORFOLK SOUTHERN RAILWAY COMPANY, AS LANDLORD, AND COUNTY OF HENDERSON, AS TENANT

This rider is attached to and made a part of the referenced Lease Agreement. In the event of an inconsistency between the terms of this Rider and the terms of the Lease agreement, the terms of this Rider shall control.

Tenant-Owned Improvements. Tenant shall have the right to use and maintain the existing Tenant-Owned artificial turf and fence (the "Tenant-Owned Improvements") located upon the Premises. Said Tenant-Owned Improvements shall not become fixtures upon the realty, but shall remain the property of Tenant and shall be removed from the Premises upon termination or expiration of the Lease.

EXHIBIT C

SAMPLE LETTER

Date
Activity Number

UPS GROUND

Mr. John Q. Tenant
XYZ Company
12345 Main Street
Anytown, State USA

RE: Anytown, County, State – Lease dated _____ between Norfolk Southern Railway Company (“Landlord”) and XYZ Company (“Tenant”) covering real property.

Dear Mr. Tenant:

Norfolk Southern Corporation is currently conducting a review of property value and rent structure for all real estate leases for its subsidiaries (including Landlord). Review of the captioned Lease indicates the current rent is below market value. While we endeavor to keep the rent reasonable, it has become necessary to make some adjustments. Therefore, we find it necessary to amend the Lease as follows:

1. The current rent will be increased from \$_____ to \$_____, effective “date in the future” (“the Commencement Date”), payable in advance, as provided in the Lease.
2. Hereafter, on each anniversary of the Commencement Date, the rent will be changed by the same percentage change as reflected in the “Consumer Price Index for All Urban Consumers (CPI_U) (1982-1984=100) U. S. City Average, All Items: compiled by the Bureau of Labor Statistics of the United States Department of Labor (the “Index”). In no event, however, will the adjusted rent be less than the rent of the immediately preceding year.

All other terms and conditions of the Lease will remain unchanged and in full force and effect.

Landlord will regard your remaining on the property after the above Commencement Date as your acknowledgment and acceptance of the rental increase and agreement that the Lease is amended.

If you have any questions or no longer wish to lease this property, please provide written notice to this office within thirty (30) days from the date of this letter. If termination is necessary, Tenant will be required to vacate, remove any Tenant-owned improvements from the property, and otherwise act in accordance with the Lease.

We appreciate having you as a Tenant and hope you will continue to lease this property.

Sincerely,

/s/
John Q. Agent