

12/7/01

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

PROJECT AGREEMENT
PROJECT: P-3414

AND

NORFOLK SOUTHERN RAILWAY COMPANY

AND

NORTH CAROLINA RAILROAD COMPANY

THIS AGREEMENT, made and entered into this the _____ day of _____, 200__, between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina ("the Department"), and NORFOLK SOUTHERN RAILWAY COMPANY ("NS"), and NORTH CAROLINA RAILROAD COMPANY ("NCRR");

I. RECITALS

Whereas,

- A. NCRR and NS entered into a "Master Agreement" dated July 27, 1999 ("1999 Contract");
- B. Section 12 of the 1999 Contract contains provisions and obligations with regard to "Rail IMPACT" passenger train-related improvements to the NCRR and other improvements;
- C. The Department and NCRR have requested that NS perform certain capital improvements in order to increase passenger speeds, improve reliability, and reduce passenger train travel time;
- D. NS has agreed to perform said improvements, and the Department and NCRR have agreed to participate in the manner and to the extent as set out herein.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows.

II. RIGHTS AND OBLIGATIONS

A. DEFINITIONS

1. The project (the "Project") shall consist of the improvements generally between Raleigh and Charlotte as set forth in Attachment A, titled as follows ("the Improvements"), but defined in more detail in Attachment A:
 - a. Improvement A - McLeansville Siding, Mileposts H 7.8 to H 9.9;
 - b. Improvement B - Mebane Siding, Mileposts H 31.8 to H 34.1;
 - c. Improvement C - East Durham Interlocking, Mileposts H 56.7 to H 56.9;
 - d. Improvement D - Elm Interlocking, Milepost 284.4, and Track Realignment between Mileposts H 0.0 and H 0.7;
 - e. Improvement E - Track and Curve Superelevation Work, Elm to Fetner, Mileposts H 0.0 to H 73.0;
 - f. Improvement F - Traffic Control and Communications System, Elm to Fetner, Mileposts H 0.0 to H 73.0.

Additional capital improvement projects may be added through supplemental written agreements between the Department, NS and NCR. Unless otherwise noted in Attachment A and except as provided in Section II.C.4, the Improvements will be constructed within existing NCRR property rights of way.

2. The Improvements shall not be deemed improvements requested by either party under the provisions of the 1999 Contract nor are they deemed joint capacity improvements under the provisions of the 1999 Contract. Rather they are the improvements covered by Section 12 of the 1999 Contract. This Agreement shall govern the responsibilities of the parties with respect to the Improvements; and the parties agree that the 1999 Contract remains in full force and effect.

B. OBLIGATIONS OF NS

1. Plans and Specifications for design and construction of the Improvements shall be prepared as follows:
 - a. Within thirty (30) days of execution of this Agreement, NS shall begin preparation of Plans and Specifications (as hereinafter defined) and cost estimates for the Project and shall submit an invoice in the amount of \$250,000 as an advance for engineering services. NS shall submit the requested Plans and Specifications and cost estimates to NCRR and the Department for their review and written approval. NS shall not be required to commence a particular Improvement hereunder until NCRR and Department have given written approval of the Plans and Specifications for such particular Improvement. Plans for the purposes of this paragraph and this Agreement for each Improvement shall consist of (if applicable):
 - i.) Engineering drawings depicting the Improvement prepared by NS and/or its consultant(s);
 - ii.) Annotated track charts showing curve superelevation work, signal and communications work and proposed speed restrictions (which may be prepared by NS and/or its consultant(s)); and

- iii.) NS's normal schematic diagrams depicting signal and communication work (which may be prepared by NS and/or its consultant(s)).
Specifications for the purposes of this paragraph and this Agreement for each Improvement are NS's "Standard Specifications for Materials and Construction, August 1997" and supplemented NS specifications detailing an exact statement of particulars prescribing materials, dimensions and workmanship to be used in constructing the Improvements (which may be prepared by NS and/or its consultant(s)).
 - b. NS shall ensure that the Plans and Specifications are prepared in accordance with the Federal-Aid Policy Guide and all applicable laws, regulations, policies, procedures, standards and specifications.
 - c. If NS elects to procure third party consultant services, and if the Department is participating in these costs, NS shall adhere to the Federal-Aid Policy Guide. Prior to entering into any third party consultant agreement(s), NS shall submit said agreement(s) to the Department for review and approval.
 - d. During construction of a particular Improvement, if any changes in the Plans and Specifications for that particular Improvement are necessary, NS shall provide cost estimates for such changes and shall secure written approval from the NCRR and the Department prior to the work being performed.
2. At Project expense, NS shall obtain permits necessary to perform the work under this Agreement, excluding environmental permits that are the responsibility of Department as provided in Section II.C.2.
3. Construction procedures shall be as follows:
- a. NS shall commence construction of an Improvement hereunder after NCRR and the Department have given their written authorization for construction and all permits required for construction are obtained by NS and the Department for that Improvement.
 - b. Within sixty (60) days after execution of this Agreement, NS will deliver to NCRR and the Department a proposed schedule for the Improvements and the expected commencement and completion dates associated with each of the Improvements that constitute the Project. NS will consult with NCRR and the Department about prioritization of the scheduling of construction of the Improvements, including any revisions thereto, so as to implement use of the Improvements in a timely and efficient manner.
 - c. NS, NCRR and the Department will hold project coordination meetings every thirty (30) days, or more frequently, if deemed necessary.
 - d. All work in the construction of the Improvements shall be performed (1) in accordance with NS standards and specifications, applicable to such work on its own railroad system, (2) in accordance with the approved Plans and Specifications, (3) in accordance with all applicable Federal and State regulations, and (4) generally consistent with American Railway Engineering and Maintenance-of-Way Association recommended practices.

- e. NS, by itself or through consultant(s) and contractor(s), shall provide all labor, purchased services, construction engineering, supervision and all equipment and materials necessary for the completion of the Project, and all will be an eligible Project expense. All equipment and materials shall be as specified in the approved Plans and Specifications.
 - f. NS will coordinate the paving of at-grade crossing surfaces with the Department, with paving work of state-maintained crossings being performed by Department at Department's expense (and not as a Project expense) and paving of all other crossings being performed by NS as part of a particular Improvement under the terms of this Agreement. All paving work to be performed in accordance with Departmental and Federal policies and procedures, but in no event shall the work required exceed that which is set forth in the Plans and Specifications approved by the Department.
 - g. The Department and NCRR shall have the right to inspect, sample or test, and approve or reject any materials or construction methods to be used during the construction of the Project provided that any rejection can only occur if the materials or construction methods are found not to meet the Plans and Specifications approved by the Department and NCRR under Section II.B.1 of this Agreement.
 - h. Provided there has been reasonable advance notice to NS and execution by NS and the Department of the separate agreement described in the next sentence, the Department may require NS to use upgraded materials acceptable to NS for the crossing surfaces on State-system roads. However, before the Department may require the use of such upgraded materials, there must first be execution of a separate agreement between the Department and NS that is fully acceptable to both NS and the Department and that will cover a particular upgrade or upgrades. While such separate agreement may be a supplemental agreement executed pursuant to Section II.A.1 of this Agreement, that is not a requirement of this Agreement. If the parties are unable to agree about the terms of any such separate agreement or agreements, then NS's standard timber and asphalt surface will be installed in accordance with Section II.B.3. of this Agreement.
4. Within three (3) months of completion of a particular Improvement by NS and prior to final acceptance and payment by the Department of the Improvement, NS shall furnish to the Department and NCRR, each (A) one set of "As-Built" construction drawings for Improvements A through D and (B) one set of annotated track charts showing sidings extended, revised timber and surface information, turnouts removed, revised curve (superelevation) data and grade crossings where circuits have been modified and signal and communication improvements.
5. Maintenance
- a. The Department shall be obligated to NS for any and all maintenance costs of the Improvements. In the event the 1999 Contract expires or is terminated for any reason prior to its expiration, the Department shall

continue to be responsible to any successor operator or other party responsible for maintenance, including NCRR, for such maintenance costs consistent with the provisions and intent of this Agreement. After and as the speed increases discussed in Section II.B.6.b and as set forth in Attachment B are implemented, NS shall maintain the Improvements which are the result of the work performed by NS under this Agreement to the standards established by that Improvement work for the maintenance term beginning on the various dates of the authorizations of the increased track speed for passenger trains and ending on December 31, 2014 (“Maintenance Term”). NS has determined the annual increased maintenance costs for the track segment, Milepost H 0.0 to Milepost H 73.0, to be \$322,700 for track maintenance and \$265,500 for communications and signals maintenance (“Base Year Cost”), or a total annual increased maintenance cost of \$588,200. The Department shall reimburse NS for the annual increased maintenance costs beginning as of the various dates that the increases in track speed for passenger trains is authorized following the completion of such Improvement work as is needed to permit such track speed increases. For the first partial year for each particular track speed increase, NS shall render an invoice to the Department within thirty (30) days of a particular track speed increase for the prorated portion of increased maintenance cost, with such invoice to be based on the following formula:

$$\frac{(\text{Number of miles complete} \times \$588,200, \text{ or as adjusted}) \times \text{days in year left}}{73 \text{ miles} \times \text{days in year}}$$

- b. Until the track speeds for the entire 73 miles have been adjusted as described in Attachment B, after the initial part year billing for a particular track speed increase, NS shall render an invoice annually to the Department for the aforesaid increased maintenance costs based on the following formula:

$$\frac{\text{Number of miles complete} \times \$588,200, \text{ or as adjusted}}{73 \text{ miles}}$$

- c. Once the track speeds for the entire 73 miles have been adjusted as described in Attachment B, NS shall render an invoice annually to the Department for the aforesaid adjusted maintenance costs. Payment shall be made within thirty (30) days of receipt of an invoice from NS; it is expected that normally NS will bill for a particular year in March of that year. Said invoice shall be approved by the Department’s Rail Division and Fiscal Section prior to being paid. During the Maintenance Term, any replacement of facilities and components associated with the work performed under this Agreement shall be considered a part of maintenance.
- d. Each year, the current year’s adjusted maintenance cost bill will be calculated by adjusting the Base Year Cost using the March issue of the Association of American Railroads’ “AAR Railroad Cost Indexes, Table A,

- Annual Indexes of Chargeout Prices and Wage Rates” (excluding fuel), Railroad Cost Recovery Indexes for the East District (“Index”). The cost adjustment will be calculated by multiplying the Base Year Cost by the “Factor” obtained by dividing the prior year’s Index value by the index value for 2001, which represents the base year. If the prior year’s Index is not available in the March issue, the bill will be issued the next month the Index does appear. If during the term of this Agreement, including any renewal period, the Index is no longer published, the parties will attempt in good faith to agree upon a replacement index, using the Policy Planning Committee and dispute resolution process set forth in the 1999 Contract if the dispute is between NS and NCRP or, if the dispute is between NS and the Department, NS and the Department will negotiate in good faith to resolve the dispute prior to the Department or NS making any claim.
- e. The adjusted costs to the Department will also reflect (1) any cost associated with the speed increases that arise which could not be reasonably foreseen at the execution of this Agreement or a subsequent maintenance agreement for a renewal Maintenance Term; (2) any costs associated with any governmental agency’s promulgation of rules which result in increased maintenance standards above those currently in force at the execution of this Agreement or a subsequent maintenance agreement for a renewal Maintenance Term; (3) any costs associated with any governmental agency’s promulgation of rules which result in decreased maintenance standards below those currently in force at the execution of this Agreement or a subsequent maintenance agreement for a renewal Maintenance Term; and (4) any costs associated with the operation of any passenger trains above the number permitted by Sections 11(c) and 12(e) of the 1999 Contract, if such costs are not the responsibility of NS under the 1999 Contract, or, if otherwise approved by the parties hereto, an increase in speeds above those set forth in the 1999 Contract as those speeds are modified hereby. If the parties are unable to agree on increased costs based on the situations described in this paragraph, the parties will attempt in good faith to agree on such changes, using the Policy Planning Committee and dispute resolution process set forth in the 1999 Contract if the dispute is between NS and NCRP or, if the dispute is between NS and the Department, NS and the Department will negotiate in good faith to resolve the dispute prior to the Department or NS making any claim.
 - f. If at the end of the Maintenance Term a maintenance agreement covering a renewal Maintenance term is not entered into between the Department and NS, NS may discontinue maintenance at the increased level and the track speeds may revert to the track speeds shown on Exhibit A of the 1999 Contract. NS shall give notice to the Department and NCRP of any such decreased maintenance level at least thirty (30) days prior to any such change, unless such change is required by Federal regulations.
 - g. Any (1) failure by NS to maintain the Improvements which resulted from the work performed by NS under this Agreement to the standards

established by the work; (2) failure of the parties hereto to agree on additional unforeseen costs that arise; or (3) failure of the parties hereto to agree on adjustments to the annual increased maintenance costs; shall be addressed by the Policy Planning Committee and dispute resolution process set forth in the 1999 Contract. NCCR, the Department and NS will negotiate in good faith to resolve any dispute prior to any of the parties hereto making claim. However, If the Department fails to make any increased maintenance costs payment to NS within thirty (30) days of billing therefor, NS shall send the Department written notice of such failure, and shall have the right to charge the Department a ½ of 1 percent late charge for the period of the late payment. If Department shall thereafter fail to make such increased maintenance costs payment within another thirty (30) days of such second notice, NS shall thereafter have the right to discontinue maintenance at the increased level and the track speeds may revert to the track speeds shown on Exhibit A of the 1999 Contract. If after the end of such second notice time period, NS discontinuance of the increased maintenance and reduction of track speeds by NS, the Department does then make the payment of the increased maintenance costs (including without limitation all that are overdue), the track speeds shall again be increased to the levels set forth in Attachment B of this Agreement without additional cost to the Department but only after NS and the Department have reasonably determined that no other maintenance work is required before the said Attachment B track speeds are again put in place; if NS and the Department reasonably determine that additional maintenance work is required before there can be reinstatement of the Attachment B track speeds, then before the Attachment B track speeds are reinstated, first NS and the Department shall be required to agree upon a reasonable estimate for such work, then second NS shall perform such work and then third the cost of this additional maintenance work shall be added to the maintenance cost under this section and the Department shall pay NS for the actual additional cost within thirty (30) days of bill rendered therefore.

6. Passenger Train Schedule Improvements

a. As per the July 20, 2001 technical summary provided to NS, the Department has performed an operating simulation or train performance calculation for the passenger train operations between passenger stations at Charlotte and Raleigh. This simulation has been reviewed by NCCR and NS and validated by Amtrak based on their methodologies for constructing train schedules.

b. NS will authorize and increase passenger speeds as portions of the Improvements are completed under this Agreement between Greensboro and Raleigh passenger stations when made possible by the construction of the applicable Improvements or portions thereof. Upon completion of the Project, NS will increase the maximum authorized passenger speed up to 79 MPH

between Milepost H 0.0 and Milepost H 73.0, as set out in more detail in Attachment B.

c. A timing test run in each direction on the line between Milepost H 0.0 and Milepost H 73.0 will be made to evaluate actual train performance and the related timesaving when the Project is complete before finalizing the schedule times between stations. Prior to said timing test run, the Department, NCRR and NS will agree upon methodology, based on usual and customary methods utilized by Amtrak and NS.

d. In the event NCRR and NS dispute the passenger train schedule improvements, the Policy Planning Committee process as outlined in Section 29 of the 1999 Contract shall address the dispute. In the event the Department and NS dispute the passenger train schedule improvements, the Department and NS will negotiate in good faith to resolve the dispute prior to the Department or NS making any claim.

7. NS shall commence work on a particular Improvement or the entire Project, within thirty (30) days after execution of the Agreement and NS shall complete each Improvement within twenty-four (24) months after all governmental permits required for the construction of that particular Improvement are obtained and after NCRR and the Department furnishes NS written approval of the Plans and Specifications for that particular Improvement. In the event the construction of an Improvement is delayed as a result of delay in obtaining a necessary permit, the arising of an unforeseen condition, or the failure of NCRR or the Department to timely review and approve Plans and Specifications or revised estimates of cost, the construction schedule will be revised and all parties hereto will reasonably agree on the revised schedule. Any failure by the parties hereto to agree on the revised schedule shall be addressed by the Policy Planning Committee and dispute resolution process set forth in the 1999 Contract. NCRR, the Department and NS will negotiate in good faith to resolve any dispute prior to any of the parties hereto making claim. NS will exercise its best reasonable efforts to achieve completion of the Project within eighteen (18) months from the last such authorization for all of or the last of all the Improvements.

C. OBLIGATIONS OF THE DEPARTMENT AND/OR NCRR

1. The Department shall prepare functional designs for all track work for the improvements and shall submit said plans to NCRR and NS for their review and approval.
2. The Department shall be responsible for obtaining all required environmental and/or planning documents, including any environmental permits, needed to

construct the Project. Environmental and/or planning documents shall be prepared in accordance with Departmental procedures and guidelines.

3. NCR and the Department shall promptly review and approve and/or provide reasonable comments on any Plans and Specifications submitted to them under Section II.B.1 of this Agreement.
4. If any additional real property interests are needed in order to construct any of the Improvements, it will be the sole responsibility of parties other than NS to acquire such real property interests at such party's sole expense and the acquisition of a sufficient interest to such real property as may be needed for a particular Improvement will be a precondition to NS's responsibility to commence NS's work on that Improvement.

III. REIMBURSEMENT

A. The Department shall reimburse NS for the actual cost of the Project regardless of whether the cost is more or less than the preliminary estimates of the cost for the Improvements as set forth in Attachment A. The preliminary estimates of cost are based upon estimated quantities furnished NS by the Department. Upon completion of the engineering drawings by NS, NS shall revise the estimate of cost for each Improvement to reflect the estimated quantities and current prices determined by NS. NS shall furnish the revised estimates to NCR and the Department for their review and written approval. NS, upon receipt of written approval from both NCR and the Department, shall request bid proposals for work to be contracted. Prior to the awarding of work to a contractor, NS shall revise the estimates of costs and shall furnish the revised estimates of cost to NCR and the Department for their review and written approval. Upon receipt of written approval from both NCR and the Department, NS shall award the construction contract(s). If, during the course of the work on a particular Improvement, unanticipated conditions arise which affect the cost of an Improvement, NS shall notify NCR and the Department of the condition and the estimated cost to remedy the condition. Both NCR and the Department shall furnish written approval prior to the commencement of work to remedy the condition. If either NCR or the Department (or both) fail to approve the revised estimate, or fail to approve the cost to remedy a condition, work on a particular Improvement shall cease until agreement is reached. NS reserves the right to revise the estimates of costs to reflect any increase in material and labor, and such increase in costs shall constitute an unanticipated condition under the preceding paragraphs.

NS shall be reimbursed for the costs of complying with any required environmental permits or other permits obtained by the Department as outlined in Section II.C.2.

NS shall credit Department for the engineering services advance payable in accordance with Section II.B.1.a above in the final invoice submitted by NS to Department for the Project.

B. Concurrent with the execution of this Agreement, the Department shall advance NS \$6,100,000 for the purpose of purchasing vendor-supplied, NS-compliant communications and signal equipment. NS shall requisition said equipment within one-hundred and ten (110) days of the execution of this Agreement by all parties. NS shall submit to the Department progress reports for purchases of said equipment up to the maximum credit of \$6,100,000. NS shall credit the Department in the final Project invoice for any unexpended communications and signal equipment funds remaining from the initial lump-sum payment. If NS's communications and signal equipment purchases for the Project exceed \$6,100,000, any such purchases whose cost exceeds that amount shall be reimbursed as invoiced, as outlined in Section III.C.

C. Reimbursement shall be made pursuant to the following procedures:

1. A separate invoice shall be submitted for each Improvement.
2. NS shall submit invoices for progress payments for each Improvement and a final payment at intervals no more frequently than thirty (30) days with the reimbursement amount requested based on actual costs for work completed.
3. Reimbursement to NS will be made after the Department's approval and acceptance of the work and approval of the invoice by the Department's Rail Division and Fiscal Section.
4. NS must submit all invoices for a particular Improvement within one (1) year of completion and acceptance by the Department.
5. NS shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. NS shall make such materials available at its office at all reasonable times during the Agreement period, and for three (3) years from the date of final payment for all of the Project under this Agreement, for inspection and audit by the Department's Fiscal Section.
6. NS shall adhere to applicable cost reimbursement policies found in 23 CFR 140 I and 23 CFR 646 B.

D. NS shall salvage scrap and relay materials including, but not limited to, rail, turnouts signal and communications equipment and other track material generated as a result of the Project, except that signal and communications equipment shall first be offered at a mutually acceptable location near the site of the salvage for relay by NCR and/or the Department before being used for relay by NS. The net proceeds resulting from the sale or reallocation of scrap and reusable materials in a particular Improvement shall be deducted when received from the current payment invoice for that Improvement submitted by NS to the Department.

E. NS agrees that it shall bear all Project costs for which it is unable to substantiate actual costs. Any costs incurred by NS prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement and shall be borne by NS. The Department shall not reimburse NS for the costs of any work outside the scope of the Project unless NCRR, NS, and the Department have a written agreement for such work prior to commencement of the work.

F. The Improvements funded by Department shall be deemed a contribution to the capital of the NCRR to the extent provided by State or Federal Law.

IV. INSPECTIONS. NCRR, the Department, and NS shall arrange for inspections of work on the project to occur at least every sixty (60) days. NS shall provide written progress reports not less than every thirty (30) days. NCRR and the Department shall each designate not more than two (2) representatives each to attend site inspections.

V. FINAL INSPECTION. Prior to final acceptance and payment by the Department for a particular Improvement of the Project, NCRR and the Department shall have the right to make a final inspection of the completed work of that Improvement to assure that the work has been done in accordance with the Plans and Specifications approved by the Department and NCRR. Said inspection shall occur within thirty (30) days of notification by NS to NCRR and the Department that the work for that Improvement has been completed. Should the inspection not be completed within sixty (60) days following notification of completion of that Improvement by NS to NCRR and the Department, the work shall be deemed complete.

VI. INDEMNIFICATION. NS shall indemnify, and hold harmless the Department from liability and damages and any and all claims for damages arising out of the construction and maintenance of the Project, unless caused by the negligence of the Department or NCRR. NS shall indemnify and hold harmless NCRR from liability and damages and any and all claims for damages arising out of construction of the Project, unless caused by the negligence of the Department or NCRR.

VII. MERGER. Except for the 1999 Contract, this Agreement and Attachments A and B attached hereto constitute a final expression of all the terms agreed upon and are a complete and exclusive statement of those terms, superseding all other prior understandings and agreements, both written and oral, between the parties with respect to the subject matter of this Agreement and the Attachments. This Agreement and the Attachments may be supplemented, amended or modified at any time and in any and all respects only by an instrument in writing executed by NS, the Department and NCRR. However, nothing in this section shall prohibit the Department and NS from making crossing or related

improvements pursuant to pre-existing standard contracts or agreements between the Department and NS for such types of improvements.

VIII. ASSIGNMENT. This Agreement may not be assigned by any of the parties without the written consent of the remaining two parties, which consent shall not be unreasonably withheld.

IX. TERMINATION. The Department shall have the right to abandon any particular Improvement at any time prior to the time NS has been authorized to begin construction on that Improvement. Furthermore, failure on the part of NS to comply substantially with any of the material provisions of this Agreement as related to an Improvement will be grounds for the Department to withdraw participation in any or all of the items of work involved with that Improvement. However, should the Department withdraw its participation, it shall reimburse NS, within ninety (90) days of receipt of an invoice, the actual cost of the work performed by NS on the Improvement prior to issuance of written notification of withdrawal of participation, provided such costs are in accordance with 23 CFR 646 B and 23 CFR 140 I.

X. *FORCE MAJEURE*. NS agrees to pursue the completion of the work for each Improvement covered by this Agreement as expeditiously as possible and to complete said work in accordance with the requirements of the Agreement. If NS is unable to complete work for an Improvement within the time specified in this Agreement due to a condition of *force majeure*, a failure by the Department to timely pay NS for previous work billed and performed by NS under this Agreement, or other conditions beyond the reasonable control of NS, then NS will diligently pursue completion of the Improvement that is delayed once said condition or conditions are no longer in effect.

XI. TAXES. The Department shall reimburse NS and/or NCRR for any increases in ad valorem taxes, property taxes or assessments or payments in lieu therefor due to the improvements. Under no circumstances shall NS or NCRR have any obligation or liability for any such increases in ad valorem, property taxes or assessments, or payments in lieu therefor. If assessments for such taxes are made and the Department determines to seek exemption for any such assessment, the Department shall continue to make payments for such taxes, or make reimbursements therefor, unless and until a final judicial or administrative order is issued granting exemption from any such assessment.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement and that no expenditure of funds concerning an Improvement on behalf of the Department will be made until the terms of this Agreement with respect to that Improvement have been complied with.

IN WITNESS WHEREOF, this Agreement has been executed, in triplicate, the day and year heretofore set out, on the part of the Department, NCRR and NS by authority duly given.

L.S.

ATTEST:

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____

By: _____

Title: _____

Title: _____

Corporate Seal

Federal Tax Identification Number: 56-6002016
Norfolk Southern Railway Company

Remittance Address:
Norfolk Southern Railway Company
c/o Norfolk Southern Corporation
Manager Collections
110 Franklin Road, SE - Box 44
Roanoke, Virginia 24042-0044

L.S. ATTEST

NORTH CAROLINA RAILROAD COMPANY

By: _____
Secretary

By: _____
President

Corporate Seal

Federal Tax Identification Number 56-6003280
North Carolina Railroad Company

Remittance Address:
North Carolina Railroad Company
2809 Highwoods Blvd., Suite 100
Raleigh, NC 27604-1640
Attn: Dan Halloran, Controller

WITNESSED

By: _____
Title: Secretary to the Board of
Transportation

DEPARTMENT OF TRANSPORTATION

By: _____
Deputy Secretary for Transit

Remittance Address:
North Carolina Department of Transportation
Rail Division Engineering & Safety Branch
1556 MSC
Raleigh, NC 27699-1556
Attn: Paul C. Worley, Asst. Director for E&S