

NSSTR OVERHEAD AGREEMENT (NSSTROH.AGR)

NORTH CAROLINA

_____ COUNTY

THIS AGREEMENT, made this ____ day of _____, 20____ by and between Norfolk Southern Railway Company, a corporation of the State of Virginia, herein called "Railroad", and the Department of Transportation, an agency of the State of North Carolina, acting by and through its Chief Engineer, herein called "Department";

WHEREAS Department proposes to _____ beginning at Station _____ running in a _____ direction over the tracks of Norfolk Southern Railway Company to Station _____, identified for preliminary engineering as State Project _____ (____) and Federal Project _____ in _____ County and in connection therewith proposes to construct a crossing at a separated grade, referred to herein as the "overhead" _____ and appurtenant works across Railroad's right-of-way, tracks and other facilities near Railroad Milepost _____ and Highway Survey Station _____ in accordance with plans and specifications prepared by Department and approved by Railroad, all herein collectively called "proposed work"; and

WHEREAS, the "proposed work" as used in this Agreement refers to all construction affecting Railroad in the proposed highway project which includes the construction of the proposed overhead, approaches, and the drainage facilities, all as indicated on the plans and applicable changes in communication, signal and electric lines and appurtenances as shown on Railroad drawing _____ dated _____ and marked Exhibit "B", attached hereto and any and all other work of any kind or character necessary to accomplish the construction of the overhead, approaches, and the drainage facilities; and

WHEREAS, the parties desire to set forth in this Agreement their understanding and agreements relating to the construction, maintenance and allocation of costs of said proposed work and the changes made necessary in connection therewith;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

In consideration of covenants and conditions to be fulfilled by the Department as hereinafter set forth, RAILROAD AGREES:

1. Insofar as it legally may, to give and to grant and hereby does give or grant to the Department, its agents and contractors, easements across Railroad's right-of-way for the proposed work as shown on Railroad drawing _____ dated _____ and marked Exhibit "C", attached hereto and made a part hereof to construct the overhead, approaches, and drainage facilities, to remove _____ and to use and maintain a grade separation structure across the Railroad's right of way, tracks and other facilities.

2. To furnish all labor, materials, tools and equipment and to perform all work required to make changes in its alignment, location or elevation of telephone, pipe and signal lines over and/or under its right of way, property, track and other facilities _____ as may become necessary by reason of the construction of said overhead, and to comply with the provisions of Federal-Aid Policy Guide 23 CFR 140I and 23 CFR 646B except for such deviations as are approved by the Department in writing.

3. To perform all work required to be done by Railroad under this Agreement with Railroad's forces working under Railroad Labor Agreements; and said work shall be done on a

force account basis, or by contract, subject to the provisions of Federal-Aid Policy Guide 23 CFR 140I except for such deviations as are approved by the Department in writing, the cost thereof to be paid to Railroad by Department in the manner hereinafter set forth.

4. To furnish such watchmen and flagmen as Railroad deems necessary for the safety of Railroad property or the movement of its trains during the progress of the work.

5. To furnish a detailed and itemized estimate of the cost of the work to be performed by the Railroad, which shall be incorporated herein and made a part hereof, whether or not attached, and designated as Exhibit "A".

6. To present, insofar as possible, final billing within one hundred twenty (120) days after completion of work performed by Railroad at expense of Department on the basis of detailed and itemized statement of cost for items set forth in the said force account estimate, marked Exhibit "A", and in accordance with and subject to the terms and provisions of the Federal-Aid Policy Guide 23 CFR 140I, Railroad may present monthly progress bills to Department for work as completed, and the final payment will be made in the amount of the difference between the sum of the monthly payments made and the itemized audited statements for the total amount of the work performed by Railroad upon completion of the work. In the event of over-payment, Railroad shall refund to Department such excess.

ARTICLE II

In consideration of the covenants and conditions to be fulfilled by Railroad as herein set forth, DEPARTMENT AGREES:

1. To prepare plans and specifications, including special provisions, for said proposed overhead work, and all work incidental thereto. Said plans, specifications and special provisions

are to be approved by the parties prior to the commencement of construction and are hereby made a part of this Agreement by reference, whether or not attached hereto.

2. To acquire all rights of way necessary for the construction of the proposed work.
3. To make any and all arrangements with Railroad and others that may be necessary for the location of wire lines, pipe lines and other facilities not owned by the Railroad.
4. To furnish or cause to be furnished all labor, materials, tools and equipment and to construct the proposed work, except such work as is to be performed by Railroad, in accordance with the approved plans and specifications.
5. To require Department's contractor, in respect to this work performed upon, over or under Railroad's right of way, to comply with all environmental laws and regulations (including sedimentation and erosion control), and to provide Railroad Protective Liability Insurance in the form set forth in the Special Provisions.
 - A. No work shall be started on Railroad property until:
 1. Certificates of contractor's public liability and property damage insurance have been furnished to Railroad.
 2. Original copy of Railroad Protective Insurance Policy is furnished to Railroad.
 3. Railroad has advised Department that limits, form and substance of insurance policy and certificates of insurance are satisfactory to Railroad.

B. That public liability and property damage policy shall be kept in full force and effect by Department's contractor during the performance of said work upon Railroad's property and thereafter until completion and acceptance of the project.

6. To give, or to require its contractor and agents to give, ten (10) days written notice to Railroad's Chief Engineer – Bridges & Structures before commencing work in connection with said proposed work upon Railroad property; and to require contractor to give not less than 72 hours notice to Railroad prior to conducting blasting operations within these limits.

7. To require all work on said project to be performed in a manner that will not endanger the safety of the Railroad or unduly interfere with the operation thereof. If, in the opinion of Railroad, the operation of Department's contractor is endangering the safety of Railroad's operation, Railroad may, through the Department, order immediate termination of further work on Railroad's premises, without liability on Railroad's part, until the dangerous condition has been corrected.

8. To reimburse Railroad promptly upon receipt of bills for cost of work done by Railroad forces compiled and incurred in accordance with the provisions of this Agreement, subject to the conditions of Article III, Paragraph 2, of this Agreement.

A. PROVIDED, however, that should some unforeseen condition or combination of conditions create additional work to be performed by Railroad causing increased costs exceeding the total cost as set forth in the original estimate, marked Exhibit "A", Railroad shall continue to furnish the Department for payment partial billings for the cost incurred and furnish the Department within 120 days after reaching the total costs set forth in the original estimate, a supplemental estimate reflecting the increased cost incurred and any additional cost anticipated. An all inclusive final force account bill may be submitted within the 120 days period in lieu of a supplemental estimate.

- B. PROVIDED, further that in the event Department shall for any reason cancel or terminate its contract and abandon the construction of said overhead or in the event Department's contractor shall stop work thereon for a period of sixty (60) calendar days, other than seasonal suspensions authorized by Department, for reason over which the Department or contractor has no control, and Department has not prepared to relet or resume work under the contract, Railroad shall have the right after due notice to Department to restore its property to the condition existing prior to commencement of work on said overhead, and Department agrees to reimburse Railroad for all expenses incurred by Railroad for such restoration by Railroad.

ARTICLE III

DEPARTMENT AND RAILROAD mutually agree:

1. That all work contemplated in this Agreement shall be mutually scheduled and coordinated, commenced promptly and completed without undue delay. All work shall be performed in a good and workmanlike manner.
2. It is the intent of this Agreement that Railroad shall be reimbursed for all costs and expenses incurred by Railroad as provided in this Agreement for work performed in accordance with the plans and the force account estimate (Exhibit "A") and any changes therein authorized by the Department, notwithstanding that any item of such cost or expenses may be disallowed by the Federal Highway Administration.
3. That no benefit will accrue to Railroad pursuant to the provisions of Title 23 of the U. S. Code (Highways) as amended and Federal-Aid Policy Guide 23 CFR 646B due to the construction of said overhead, inasmuch as the construction will be a separation structure for a new highway crossing an existing railroad, in view of which there will be no Railroad contribution.

3. There will be a benefit to the Railroad as a result of the construction of the proposed overhead and the elimination of the existing at-grade crossing at the proposed construction site. It has been determined in accordance with the provisions of the Federal-Aid Policy Guide 23 CFR 646B that the amount of benefit to the Railroad as mentioned above will be five (5) percent of the cost for preliminary engineering and construction of the overhead and approaches, and the earthwork involved for a change in grade from Station _____ to Station _____ necessary to provide the required vertical clearance beneath the overhead and that the Railroad will contribute to the cost of the project five (5) percent of the final cost of the work described above, plus (5) percent of the force account estimate marked Exhibit "A".

4. That after completion of the overhead, Department shall, at its own cost and expense, maintain and make all necessary repairs to the superstructure and substructure of the overhead, the handrails therefor, as well as the wearing surface of the highway on said overhead, approaches, and drainage facilities. IT IS EXPRESSLY UNDERSTOOD, that this Agreement is intended to cover ordinary maintenance only and not intended to obligate either party in the event changed conditions or major deteriorations should require a new overhead bridge or major repairs.

5. The Railroad and its contractors are to maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective office at all reasonable times during the contract period and for 3 years from the date of final payment for inspection by the Department, Federal Highway Administration or any authorized representative of the Federal Government and copies thereof shall be furnished if requested.

6. That this Agreement shall be binding upon and inure to the benefit of the Railroad, its successors and assigns, and upon and to the benefit of the Department of Transportation, its successors and assigns.

7. That it is specifically understood and agreed that the rights to the use and control of the area or space above said overhead which exceed reasonable requirements for highway purposes have not been determined and are not affected by execution of this Agreement, and both the Railroad and Department reserve the right to have the use and control of such air rights judicially determined at a future date.

8. Upon the date of acceptance of said project by the Department, any rights granted by temporary construction easement which may be herein granted shall be extinguished.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in duplicate the day and year first above written.

ATTEST:

NORFOLK SOUTHERN RAILWAY COMPANY

By _____
Assistant Secretary

By _____
General Manager

SEAL:

DEPARTMENT OF TRANSPORTATION

By _____
Chief Engineer

SEAL:

APPROVED AS TO FORM AND EXECUTION

By _____
Assistant Attorney General

EXAMINED AND APPROVED:

Date

By _____
Division Administrator-FHWA