

NORTH CAROLINA
(Insert)COUNTY

DRAFT DATES:
1/18/12, 4/24/12, 8/27/12, 4/17/13,
4/28/13, 4/30/13, 1/29/14

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

<Insert Current Date>

AND

CSX TRANSPORTATION, INC.

CROSSING CLOSURE AGREEMENT

TIP:

WBS: , PE

WBS: , ROW

WBS: , CON

THIS AGREEMENT is made and entered into on the last date executed below, by and among the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department"; and CSX Transportation, Inc. a corporation of Virginia, hereinafter referred to as "CSXT"; and individually, hereinafter referred to as "Party," and collectively, as "Parties."

WITNESSETH:

WHEREAS, the Department plans to eliminate redundant and/or unsafe at-grade highway/railroad crossings on a statewide basis as part of a comprehensive effort to improve and promote safer and more efficient rail and highway operations along active railroad corridors; and,

WHEREAS, the Department and CSXT have identified the crossing at *Insert Road Name & SR No. [If Applicable]* (Crossing No. *XXX XXXX*, Milepost *XX XXXX*) (hereinafter, the "Crossing") for closure, hereinafter referred to as the "Project", in TOWN/CITY OF (*Insert*), in (*Insert*) County, North Carolina; and,

WHEREAS, the Department and CSXT agree that any required communication and signal design work for the Project shall be covered under a separate Agreement; and,

WHEREAS, the Department has programmed funding in the approved State Transportation Improvement Program (STIP) for the Project; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following legislation: General Statute of North Carolina (NCGS) Section 136-18, and Section 136-20, to participate in the planning and construction of the Project approved by the Board of Transportation; and,

WHEREAS, the Parties agree to participate in the cost of the Project as addressed in this Agreement and/or to assume the maintenance responsibilities as

hereinafter set out.

NOW, THEREFORE, this Agreement states the promises and undertakings of each Party as herein provided, and the Parties do hereby covenant and agree, each with the other, as follows:

VARIABLE PROVISIONS:

1. SCOPE OF PROJECT

The Project consists of the permanent closure of the Crossing, which work shall include, but not be limited to, the removal of timbers, approaches, debris, signage, pavement markings and stop bars, signals, warning devices, whistle posts and all necessary materials related to the rail crossings and approaches (hereinafter, the "Crossing Closure").

If mitigation improvements for the Crossing Closure are required, the Project will also include additional improvements to be completed by the Department at no cost to CSXT, as defined by the Project plans and as further described below (hereinafter, the "Improvements"):

***Get Pertinent Information Regarding The Scope and Mitigation Improvements From The Term Sheet Which Is Provided By The Project Engineer.*

2. CONSTRUCTION BY THE DEPARTMENT

The Department, and/or its agents, at no cost to CSXT, shall construct the Project in accordance with the approved Project plans and specifications, and all Federal and State policies and procedures. Specific construction work to be performed by the Department shall include, but not be limited to, the following:

***Get Pertinent Information Regarding The Work To Be Performed By The Department From The Term Sheet Which Is Provided By The Project Engineer.*

3. CONSTRUCTION AUTHORIZATION

Upon receipt of written Construction Authorization from the Department, CSXT may proceed with construction of the portion of the Project within CSXT's right of way.

4. CONSTRUCTION BY CSXT

CSXT, and/or its agent, at no cost to the Department, shall perform the work as described below in accordance with the approved Project plans and specifications, and all Federal and State policies and procedures. Specific work to be performed by CSXT shall include, but not be limited to, the following:

- Coordinate the Crossing Closure with the Department's Division **XX**, District **XX** Engineer, *(Insert) Name (XXX) XXX-XXXX, XXXXXX@ncdot.gov*

***Get Pertinent Information Regarding The Work To Be Performed By CSXT From The Term Sheet Which Is Provided By The Project Engineer.*

5. REIMBURSEMENT BY CSXT [Reimbursement by CSXT may not be applicable in all instances]

CSXT shall reimburse the Department a lump sum amount of **AMOUNT OF DOLLARS SPELLED OUT Dollars (\$0000) NUMERIC AMOUNT** (hereinafter, "Reimbursement Amount"), towards the Department's Crossing Closure costs.

A. SUBMITTAL OF INVOICE

Upon completion and acceptance of the Project by the Department, the Department shall submit an invoice to CSXT for the Reimbursement Amount. Reimbursement by CSXT shall be made in one final payment within sixty (60) days of receipt of an invoice from the Department. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with North Carolina General Statute §147-86.23.

B. FAILURE TO SUBMIT PAYMENT BY CSXT

In the event CSXT fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, CSXT hereby authorizes the Department to withhold so much of CSXT's share of funds allocated to said Railroad as defined under North Carolina General Statute §136-20(h), until such time as the Department has received payment in full.

STANDARD PROVISIONS

6. ENVIRONMENTAL/PLANNING DOCUMENTATION

The Department shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. If required, the Department will design an erosion control plan for the Project.

7. DESIGN

The Department, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package) needed to construct the Project. All work will be done in accordance with applicable Federal and State standards, specifications, policies and procedures. Project plans will be submitted to CSXT for review and comment. All comments must be submitted in writing to the Department within sixty (60) days of receipt of the plans from the Department. If no comments are received from CSXT within sixty (60) days, the Department and CSXT shall conduct a conference call meeting within five (5) business days thereof to discuss the status of the plans review.

8. UTILITIES

A. UTILITY CONFLICTS

. In the event any utility conflicts are discovered within the Project area, said utility work shall be covered under a separate Utility Agreement.

9. RIGHT OF WAY/RIGHT OF ENTRY

A. PROPERTY ACQUISITION

If it is determined by the Department that additional right of way and/or property is needed for the Crossing Closure or the Improvements, the Department shall be responsible for acquiring any additional right of way, at no cost or liability whatsoever to CSXT.

B. RIGHT OF ENTRY FROM CSXT TO DEPARTMENT

CSXT, subject to its right to operate and maintain its railroad over and along its right of way, hereby grants the Department a Right of Entry for access to any necessary CSXT owned property in order to perform the Crossing Closure work and any additional improvements as defined by the Project plans. The Department or its contractor shall provide notice to CSXT of its proposed entry onto CSXT right of way or property, and shall secure CSXT's approval to enter such right of way or property. The Department shall coordinate with CSXT to ensure appropriate protection is in place for any such entry.

C. RIGHT OF ENTRY FROM DEPARTMENT TO CSXT

To the extent any part of the Project is located on State Highway System right of way or property, the Department hereby grants CSXT a Right of Entry for access to any such property in order to perform any Crossing Closure work or Improvements on that right of way or property, as defined by the Project plans.

10. CONSTRUCTION PROCEDURES

A. CONTRACTOR PROCUREMENT

In accordance with Federal-Aid Policy Guide, Title 23 Code of Federal Regulation, Part 646, Subpart B, a railroad is allowed to accomplish construction by the following: (1) railroad force account; (2) contracting with the lowest qualified bidder based on appropriate solicitation; (3) existing continuing contracts at reasonable costs, or (4) contract without competitive bidding, for minor work, at reasonable costs.

i. Force Account: CSXT may use its own forces or an existing continuing contract to perform the construction work. If CSXT elects to use railroad force account or an existing service contract, CSXT shall notify the Department and provide the Department with any requested justification documentation. It is understood that CSXT intends to use railroad force account or an existing continuing contract for any construction work hereunder. It is understood that CSXT intends to use railroad force account or an existing continuing contract for any construction work hereunder.

ii. Advertising for Bids: If CSXT advertises for construction bids, CSXT shall follow applicable Federal procedures according to Title 49 of the Code of Federal Regulations, Part 18.36 and Title 23 of the Code of Federal Regulation, Part 633, Subpart A, and Part 646 Subpart B; and the following provision shall apply:

iii. Construction Subcontractor Requirements: In the event the performance under this Agreement is financed in whole or in part by Federal funds, any contract entered into with another party to perform work associated with the requirements of the Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 Part 26 of the Code of Federal Regulation and the North Carolina Administrative Code.

B. CONTRACTOR COMPLIANCE

CSXT, and/or its agents, will be responsible for ensuring that their contractor complies with all of the terms of the contract and any instructions issued by the Department as a result of any review or inspection made by said representatives.

C. RIGHT TO INSPECT

The Department may inspect any portion of the work being performed by CSXT and/or their contractors to ensure compliance with the provisions of this Agreement. Any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

D. CHANGE ORDERS

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

11. MAINTENANCE

A. Upon completion and acceptance of the Project by the Department and CSXT, the Department shall be responsible for the continued maintenance of all non-railroad signal and roadway improvements located on State Highway System roadways, at no expense to CSXT.

B. CSXT shall be responsible for the maintenance of all improvements done within CSXT's operating right of way, except any highway barricades or signage, or other non-railroad signal and roadway improvements, at no expense to the Department.

12. OTHER PROVISIONS

A. PERMANENT CLOSURE

The Department and CSXT fully recognize that the Crossing Closure covered under this Agreement is intended to be perpetual, and that one Party shall not petition the other Party or any other entity to reopen the subject at-grade crossing. It is also agreed by the Department and CSXT that no new at-grade public or private crossing will be opened in the vicinity of the closed crossing.

B. CONFLICT OF INTEREST

No member, officer or employee of the Department or CSXT shall have any interest, direct or indirect, in this Agreement or the proceeds therefrom.

C. AGREEMENT MODIFICATIONS

Any modification to this Agreement will be agreed upon in writing by the Parties prior to being implemented.

D. TRANSFER OF RESPONSIBILITIES

The Department must approve any assignment or transfer of responsibilities of CSXT set forth in this Agreement to other entities.

E. INDEMNIFICATION

To the extent authorized by State and Federal claims statutes, each Party shall be responsible for its respective actions under the terms of this Agreement, and indemnify and save harmless the other Party for any claims for payment, damages, and/or liabilities arising as a result of such action.

F. DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with another party that has been debarred by any government agency (Federal or State). By execution of this Agreement, CSXT certifies that to its knowledge neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Department or Agency and that it will not knowingly enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

The following provision will only be used when the Department is paying CSXT with Federal Funds. Delete when this scenario is not applicable.

Per OMB Circular A-133, CSXT is prohibited from contracting with or making sub-awards under transactions covered by this Agreement to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients). Contractors receiving individual awards for \$25,000 or more and all sub-recipients must certify that the organization and its principals are not suspended or debarred. CSXT may rely upon the certification unless it knows that the certification is erroneous. CSXT agrees that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by Federal department or agency.

G. AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of departmental funding and fiscal constraints and the Agreement shall automatically terminate if funds cease to be available.

H. TERMINATION OF PROJECT

i. The Department shall have the right to abandon the Project at any time it sees fit prior to the time CSXT has been called upon to perform any part of this Agreement.

ii. If CSXT decides to terminate the Project without the concurrence of the Department, CSXT shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

I. FAILURE TO COMPLY

Failure on the part of CSXT to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of all cost expended by the Department, provided, however, that the Department shall first notify CSXT of such failure and provide CSXT an opportunity to cure same.

J. COMPLIANCE

CSXT, and/or its agent, shall comply with the following Federal policies: (a) Conflict of Interest; (b) Equal Employment Opportunity; and (c) Title VI – Civil Rights Act of 1964, as amended.

K. ETHICS PROVISION

"By Executive Order 24, issued by Governor Perdue, and N.C.G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Cultural Resources, Environment and Natural Resources, Health and Human Services, Public Safety, Revenue, Transportation, and the Office of the Governor).

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 expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of CSXT.

IN WITNESS WHEREOF, this Crossing Closure Agreement has been executed, in duplicate originals, the day and year heretofore set out below, on the part of the Department and CSXT by authority duly given.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Agreement, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

WITNESS

CSX TRANSPORTATION, INC.

BY: _____

BY: _____

NAME: _____

NAME: Dale W. Ophardt

TITLE: _____

TITLE: Assistant Vice President -
Engineering

DATE: _____

DATE: _____

SEAL

Federal Tax Identification Number

CSX Transportation

MAILING ADDRESS

CSX Transportation, Inc.
1610 Forest Ave. Suite 120
Richmond, VA 23229

ATTN: Mr. Ben Biesterveld
Project Manager II, Public Projects

IN WITNESS WHEREOF, this Crossing Closure Agreement has been executed, in duplicate originals, the day and year heretofore set out below, on the part of the Department and CSXT by authority duly given.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Agreement, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

ATTEST

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

BY: _____

BY: _____

NAME: Sarah Mitchell

NAME: Paul C. Worley

TITLE: Secretary to Board of
Transportation

TITLE: Rail Division Director

DATE: _____

DATE: _____

MAILING ADDRESS

North Carolina Department of Transportation
Rail Division, Engineering Coordination and
Safety
1556 Mail Service Center
Raleigh, NC 27699-1556
ATTN: **INCLUDE ENGINEER'S NAME**, PE
Project Engineer

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____
(Date)