

NORTH CAROLINA  
(Insert) COUNTY

DRAFT DATES

NORTH CAROLINA DEPARTMENT  
OF TRANSPORTATION

Insert Current Date

AND

NORFOLK SOUTHERN RAILWAY COMPANY

CROSSING CLOSURE AGREEMENT

AND

TIP:  
WBS: , PE  
WBS: , ROW  
WBS: , CON

NORTH CAROLINA RAILROAD COMPANY  
*[if applicable]*

AND

TOWN/CITY OF (Insert) *[if applicable]*

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department", Norfolk Southern Railway Company, hereinafter referred to as "NSR", North Carolina Railroad Company, hereinafter referred to as "NCRR", and the Town/City of (Insert), a local government entity, hereinafter referred to as the "Municipality", and individually, hereinafter referred to as "Party", and collectively, as "Parties".

**WITNESSETH:**

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

**Use Provision (1) if the crossing is a State System Street**

(1) WHEREAS, the Department, NSR, and NCRR have identified the crossing at *(Insert) Road Name & SR No. [if applicable]* (Crossing No. *XXX XXXX*, Milepost *XX XXXX*) for closure, hereinafter referred to as the "Project", in *Town/City of (Insert)*, in *(Insert) County*, North Carolina; and,

**Use Provisions 2 & 3 if the crossing is a Municipal Crossing.**

(2) WHEREAS, the Department, NSR, NCRR, and the Municipality have identified the municipal at-grade crossing on *(Insert) Road Name* (Crossing No. \_\_\_\_\_, Milepost (MP) \_\_\_\_\_) for closure, which is within the municipal corporate limits and is hereinafter referred to as the "Project", in *Town/City of (Insert)*, in *(Insert) County*, North Carolina; and,

(3) WHEREAS, the governing board of the Town/City of (Insert) in (Insert) County executed a Resolution on the \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ (attached as Exhibit A) that ordered the permanent closure of the (municipal) at-grade crossing (Crossing No. XXX XXXX ); and, said Resolution has been properly recorded with the Office of the Register of Deeds in (Insert) County, in accordance with North Carolina General Statute (NCGS §) Section 160A – 299; 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, NCRR shall be a consenting party to the provisions of this Agreement only as the owner of the railroad right of way; 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:**

**\*\*Get Pertinent Information Regarding the Scope and Additional Work (Mitigation) from the Term Sheet which is provided by the Project Engineer**

**1. SCOPE OF PROJECT**

The Project shall consist of the permanent closure of the (Insert) *municipal* [if applicable] at-grade crossing at (Insert) *Road Name & SR No. [if applicable]* (Crossing No. XXX XXXX, Milepost XX XXXX) to include, but not be limited to, the removal of timbers, approaches, debris, signage, warning/protective devices, whistle posts, pavement markings, stop bars, signals and all necessary materials related to the rail crossing and approaches.

As *mitigation* for the closure of (Insert) *Road Name & SR No. [if applicable]* (Crossing No. XXX XXXX, Milepost XX XXXX), the Project shall also include the following:

**2. CONSTRUCTION AUTHORIZATION**

Upon receipt of written Construction Authorization from the Department, NSR/NCRR (Insert) *and the Municipality* [if applicable] may proceed with construction of the portion of the Project within their rights of way.

**\*\*Get Pertinent Information Regarding the Railroad's Responsibilities from the Term Sheet which is provided by the Project Engineer**

**3. CONSTRUCTION BY NSR**

NSR, and/or its agents, at no cost to the Department, shall construct the portion of the Project within their right of way in accordance with the approved Project plans and specifications, and all Federal and State policies and procedures. Specific construction work to be performed by NSR shall include, but was not limited to, the following:

***The following provision will be included if the Crossing is on a State System Street:***

- NSR will coordinate the removal and closure of the at-grade crossing at *(Insert) Road Name & SR No. [if applicable]* Crossing (Crossing No. *XXX XXXX*, Milepost *XX XXXX*) in *(Insert)* County with the Department's Division *XX*, District *XX* Engineer, *(Insert) Name (XXX) XXX-XXXX, XXXXXX@ncdot.gov* or the Department's Rail Division Project Engineer *(Insert) Name, (XXX) XXX-XXXX, XXXXXX@ncdot.gov*.

**\*\*Get Pertinent Information Regarding the Department's Responsibilities from the Term Sheet which is provided by the Project Engineer**

**4. CONSTRUCTION BY THE DEPARTMENT**

The Department, and/or its agents, 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 Municipality's Responsibilities from the Term Sheet which is provided by the Project Engineer**

**5. CONSTRUCTION BY THE MUNICIPALITY [if applicable]**

The Municipality, and/or its agents, at no cost to the Department or NSR 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 Municipality shall include, but not be limited to, the following:

**\*\*Get Pertinent Information Regarding the Funding Participation from the Term Sheet which is provided by the Project Engineer**

**6. FUNDING**

**(A) PROJECT COST REIMBURSEMENT BY NSR**

NSR shall reimburse the Department a lump sum payment of a total of *(Insert) Amount of Dollars Spelled Out (\$0000) Numeric Amount* as denoted below *[as applicable]*:

- *(Insert) Amount of Dollars Spelled Out (\$0000) Numeric Amount* for the cost of installing barricades, signage, grading, and landscaping at the closed crossing; and,

**(i) SUBMITTAL OF PAYMENT**

Upon completion and acceptance of the Project by the Department, the Department shall submit an invoice to NSR for the cost of work performed by the Department and associated with the crossing closure. Payment by NSR shall be made in one final payment within sixty (60) days of invoicing by 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.

**(ii) FAILURE TO SUBMIT PAYMENT**

In the event NSR fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, NSR hereby authorizes the Department to withhold so much of NSR' 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.

**Add the Following Provisions if Applicable, and re-number provisions accordingly.**

**(B) INCENTIVE PAYMENTS TO THE MUNICIPALITY FOR CROSSING CLOSURE**

**(i) NSR PARTICIPATION**

NSR will pay the Municipality a lump sum payment of \_\_\_\_\_ (Insert) *Amount of Dollars Spelled Out (\$0000) Numeric Amount* as an incentive to permanently close the (Insert) *Road Name* [If Applicable] (Crossing No. *XXX XXXX*, Milepost *XX XXXX*) municipal at-grade railroad crossing. The Municipality shall use these funds at their discretion.

**(ii) INCENTIVE PAYMENT BY NSR**

Within sixty (60) day of completion and acceptance of the permanent closure of the (Insert) *Road Name* (Crossing No. *XXX XXXX*, Milepost *XX XXXX*) municipal at-grade crossing by the Department, the Municipality shall submit an invoice to NSR for an incentive payment of \$*XXXXX*.

**(iii) DEPARTMENT PARTICIPATION**

The Department will pay the Municipality a lump sum payment of \_\_\_\_\_ (Insert) *Amount of Dollars Spelled Out (\$0000) Numeric Amount* as a matching incentive to permanently close the (Insert) *Road Name* (Crossing No. *XXX XXXX*, Milepost *XX XXXX*) municipal at-grade railroad crossing. The Municipality shall use these funds only for highway transportation safety improvements (example: turn lanes, pavement markings, officer safety equipment, etc.).

**(iv) INCENTIVE PAYMENT BY THE DEPARTMENT**

Within sixty (60) day of the permanent closure of the (Insert) *Road Name* (Crossing No. *XXX XXXX*, Milepost *XX XXXX*) municipal at-grade crossing, the Department, in accordance with 23 U.S.C. 130, will submit to the Municipality an incentive payment of \$*XXXX*.

**(C) PROJECT COST REIMBURSEMENT BY THE DEPARTMENT (If Applicable)**

The Department shall reimburse NSR and/or the Municipality, one hundred percent (100%) of the actual (project/construction) cost/ or a lump sum payment of \$ \_\_\_\_\_ (Insert) *Amount of Dollars* for all work performed by NSR and/or the Municipality and associated with the removal of the crossing, mitigation improvements, or betterment work.

**(i) SUBMITTAL OF INVOICE**

Upon completion and acceptance of the Project, NSR and/or the Municipality shall submit an itemized invoice and any required supporting documentation to the Department's Rail Division for actual costs associated with the work performed by NSR and/or the Municipality and associated with the removal of the crossing, mitigation improvements, or betterment work. By submittal of the invoice to the Department, NSR and/or the Municipality certifies that it has adhered to all applicable State and Federal laws and regulations as set forth in this Agreement. Payment to NSR and/or the Municipality shall be made upon approval of the invoice by the Department's Rail Division, Office of the Inspector General, and Financial Management Division.

**(ii) UNSUBSTANTIATED COSTS**

NS and/or the Municipality agrees that it shall bear all Project costs for which it is unable to substantiate actual costs or any costs that is deemed unallowable by the Department's Rail Division, Office of the Inspector General, and the Financial Management Division.

**(iii) REIMBURSEMENT FOR FORCE ACCOUNT WORK**

Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs. Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by NSR/Municipality or its Project partners. Reimbursement rates for equipment owned by NS/Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

**(iv) REIMBURSEMENT GUIDANCE**

The Municipality shall adhere to applicable administrative requirements of Title 49 Code of Federal Regulations, Part 18 and Office of Management and Budget (OMB) Circulars A-102 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, and by Office of Management and Budget (OMB) Circular A-87 "Cost Principles for State, Local, and Indian Tribal Governments", which are being incorporated into this Agreement by reference. Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable Federal policy and procedures.

NSR shall adhere to applicable administrative requirements of Title 49 Code of Federal Regulations 18. Reimbursement to NSR shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140, Subpart I (Reimbursement for Railroad Work), and Part 646, Subpart B (Railroad-Highway Projects), and by the Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 "Contract Cost Principles and Procedures", which are being incorporated into this Agreement by reference. Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by NSR with all applicable federal policy and procedural rules and regulations.

**(v) INELIGIBLE COSTS**

Any work performed by NSR and/or the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

**(D) PROJECT COST REIMBURSEMENT BY THE MUNICIPALITY**

The Municipality shall reimburse the Department and/or NSR one hundred percent of the actual cost, or betterment cost, of all work performed by the Department and/or NSR and associated with the removal of the crossing, mitigation improvements, or betterment work.

**(i) SUBMITTAL OF INVOICE**

Upon completion and acceptance of the Project by the Department and/or NSR, the Department and/or NSR shall submit an invoice to the Municipality for one hundred percent (100%) the actual cost of all work performed by the Department or NSR and associated with the removal of the crossing, mitigation improvement, or betterment work. Payment to the Department or NSR shall be made 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.

**(ii) FAILURE TO SUBMIT PAYMENT BY MUNICIPALITY**

In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment herein above provided, North Carolina General Statute 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by the General Statutes of North Carolina, Section 136-41.1 until such time as the Department has received payment in full under the reimbursement terms set forth in this Agreement. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23.

**\*\*FFATA will only apply when NCDOT is paying the Municipality with Federal Funds. Delete this provision when this scenario does not apply.**

**7. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT REQUIREMENTS**

**(A) REPORTING**

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding and Transparency Act (FFATA) for this Project.

**(B) REIMBURSEMENT**

Reimbursement to all Parties to this Agreement shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). FFATA Recipient Information Forms shall be submitted with each invoice.

## **STANDARD PROVISIONS**

**\*\*Get Pertinent Information Regarding the Environmental/Planning Documentation from the Term Sheet which is provided by the Project Engineer**

### **9. 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.

**\*\*Get Pertinent Information Regarding the Design Work from the Term Sheet which is provided by the Project Engineer**

### **10. 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 NSR *(Insert) NCR and/or the Municipality [if applicable]* 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 NSR *(Insert) NCR and/or the Municipality [if applicable]* within sixty (60) days, the Department will presume approval of the plans by NSR *(Insert) NCR and/or the Municipality [if applicable]*.

**\*\*Get Pertinent Information Regarding the Utilities from the Term Sheet which is provided by the Project Engineer**

### **11. UTILITIES**

It is understood by all Parties that there are no utilities in conflict with the Project.

#### **(A) UTILITY CONFLICTS**

In the event utility conflicts are discovered within the Project area, the owners of the conflicting utilities shall, at their expense and liability, be solely responsible for the relocation and adjustment of their utilities, including all necessary adjustments to house or lot connections or services lying within the right of way or construction limits, whichever is greater.

#### **(B) UTILITY RELOCATION POLICY**

All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations. Utilities shall be relocated and adjusted in accordance with the Right of Way Acquisition Policy contained in the Federal-Aid Policy Guide, Title 23 of the Code of Federal Regulations, Part 710, Subpart B, incorporated into this Agreement by reference.

#### **(C) MUNICIPALLY-OWNED UTILITY CONFLICT**

The Municipality, at no expense to the Department or NSR/NCR, shall relocate and adjust any municipally-owned utilities in conflict with the Project and exercise any rights which it

may have under any franchise to effect all necessary changes, adjustments, and relocation of telephone, telegraph, and electric power lines, underground cables, gas lines, and other pipelines or conduits; or any privately or publicly owned utilities.

**(D) PROMPT ADJUSTMENT**

Utilities are to be promptly adjusted so that Project construction by the Department and NSR is not delayed.

**\*\*Get Pertinent Information Regarding the Right of Way from the Term Sheet which is provided by the Project Engineer**

**12. RIGHT OF WAY (ROW)/RIGHT OF ENTRY**

It is understood that all work shall be performed and contained within the existing right of way.

**(A) RIGHT OF WAY FOR CROSSING CLOSURE**

It is understood that all work for the crossing closure shall be contained within the existing right of way of NSR/NCRR.

**Use either (b)1 or (b)2, based on who will be responsible for R/W for Additional Improvements.**

**(B)1 RIGHT OF WAY ACQUISITION BY THE DEPARTMENT FOR OTHER IMPROVEMENTS/MITIGATION**

If it is determined that right of way and/or property is needed for the (insert description of the additional improvements), the Department shall be responsible for acquiring any additional right of way, at no cost or liability whatsoever to the NSR (Insert) NCRR and/or the Municipality [if applicable]. Acquisition of any right of way or property will be accomplished in accordance with State and Federal policies and procedures.

**(B)2 RIGHT OF WAY ACQUISITION BY THE MUNICIPALITY FOR OTHER IMPROVEMENTS/MITIGATION**

The Municipality shall be responsible for acquiring any additional right of way and/or property, including relocation assistance, needed for the (insert description of the additional improvements), at no cost or liability whatsoever to the Department (Insert) NSR/NCRR [if applicable].

**(C) CLEARANCE OF PROJECT LIMITS**

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said right of way, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain or are) to be installed within the right of way. The Municipality shall indemnify and save harmless the Department (Insert) NSR/NCRR [if applicable], and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department (Insert) NSR/NCRR [if applicable] harmless from any legal actions arising as a result of this contaminated and/ or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

**(D) ACQUISITION PROCEDURE**

All right of way (ROW) activities, including acquisition of any addition property/easement and relocation shall be accomplished by the Municipality or NSR [if applicable] in accordance with Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act]; (Insert) *Title 23 of the Code of Federal Regulations, Part 646, Subpart B [Railroads]* [if applicable]; Title 23 of the Code of Federal Regulations, Part 710, Subpart B; and NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, [Relocation Assistance], and the North Carolina Department of Transportation Right of Way Manual incorporated into this Agreement by reference.

**(E) RIGHT OF ENTRY BY NSR**

NSR shall grant the Department (Insert) and *Municipality* [if applicable] a Right of Entry for access to any necessary NSR owned property in order to perform the crossing closure work, and any additional agreed upon improvements as defined by the Project plans.

**(F) RIGHT OF ENTRY BY THE MUNICIPALITY**

The Municipality shall grant the Department (Insert) and *NSR/NCRR* [if applicable] a Right of Entry for access to any necessary municipally owned property in order to perform the crossing closure work, and any additional agreed upon improvements as defined by the Project plans.

**(G) RIGHT OF ENTRY BY THE DEPARTMENT**

The Department shall grant the Municipality and NSR [if applicable] a Right of Entry for access to any necessary state owned property in order to perform work associated with the crossing closure and any additional agreed upon improvement(s) as defined by the Project plans.

**13. CONSTRUCTION PROCEDURES**

**(A) CONTRACTOR PROCUREMENT**

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) Advertising for bids**

NSR/NCRR (Insert) and *the Municipality* [if applicable] 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, Part 635, and Part 646 Subpart B, incorporated into this Agreement by reference.

**(ii) Construction Subcontractor Requirement**

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulation, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference.

**(iii) Force Account Requirements**

NSR may use its own forces or an existing continuing contract to perform the construction work. If NSR elects to use railroad force account or an existing service contract,

NSR shall notify the Department and provide the Department with any reasonable justification documentation upon request.

**(iv) Delay in Procurement**

If in the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, NSR *(Insert) or the Municipality [if applicable]* shall be responsible for documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved project plans and specifications, and the current codes.

**(B) CONTRACTOR COMPLIANCE**

NSR, *(Insert) the Municipality, [if applicable]* 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 NSR *(Insert) the Municipality [if applicable]* 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) PROJECT RECORDS**

NSR and/or the Municipality, and/or its agents, shall maintain all books, documents, papers, accounting records, project records and such other evidence either in hard copy or electronic form as may be appropriate to substantiate costs incurred under this Agreement. Further, NSR and/or the Municipality shall make such materials available at its office at all reasonable times during the contract period, and for three (3) and/or five (5) years respectively from the date of payment of the final voucher for inspection and audit by the Department's Financial Management Section and/or any authorized representative of the Federal Government.

**(E) CHANGE ORDERS**

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

**\*\*Get Pertinent Information Regarding the Maintenance Responsibilities from the Term Sheet which is provided by the Project Engineer**

**14. MAINTENANCE**

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

**(B)** NSR shall be responsible for the maintenance of all improvements done within NSR' operating right of way, at no expense to the Department or *(Insert) the Municipality [if applicable]*.

(C) The Municipality shall be responsible for the maintenance of all improvements made to or located on the municipal street system, at no expense to the Department or NSR.

## 15. OTHER PROVISIONS

### (A) PERMANENT CLOSURE

The Department, (Insert) *the Municipality*, [if applicable] and NSR fully recognize that the crossing closure covered under this Agreement is intended to be perpetual, and that one Party shall not petition any other Party or entity to re-open the subject at-grade crossing. It is also agreed by the Department (Insert) *the Municipality*, [if applicable] and NSR that no new at-grade public or private crossing will be opened in the proximity of the closed crossing.

### (B) CONFLICT OF INTEREST

No member, officer, or employee of the Department, (Insert) *the Municipality*, [if applicable] or NSR shall have any interest, direct or indirect, in this Agreement or the proceeds there from.

### (C) AGREEMENT MODIFICATIONS

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

### (D) TRANSFER OF RESPONSIBILITIES

The Department must approve any assignment or transfer of responsibilities of NSR (Insert) *and the Municipality* [if applicable] set forth in this Agreement to other entities not to be unreasonably withheld, delayed or conditioned. The Department's consent shall not be required for an assignment by NSR to a company controlling, controlled or under common control with NSR.

### (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(s) for any claims for payment, damages, and/or liabilities arising as a result of such action.

### (F) DEBARMENT POLICY

(i) It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this Agreement, NSR, (Insert) *and the Municipality* [if applicable] certifies that 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 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 either NSR or the Municipality with Federal funds. Delete when this scenario is not applicable.**

(ii) Per OMB Circular A-133, NSR (Insert) *and the Municipality* [if applicable] 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. NSR (Insert) and the Municipality [if applicable] may rely upon the certification unless it knows that the certification is erroneous. NSR (Insert) and the Municipality [if applicable] 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 this Agreement shall automatically terminate if funds cease to be available.

**(H) AUDITS**

In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" dated June 27, 2003 and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

**(I) TERMINATION OF PROJECT**

(i) The Department shall have the right to abandon the Project at any time it sees fit prior to the time NSR (Insert) and the Municipality [if applicable] has (have) been called upon to perform any part of its (their) Agreement.

(ii) If NSR or the Municipality (if applicable) decides to terminate the Project without the concurrence of the Department, the terminating party shall, NSR shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

**(J) COMPLIANCE**

NSR, (Insert) and the Municipality [if applicable] 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) FAILURE TO COMPLY**

Failure on the part of the NSR and/or the Municipality 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 any reimbursed funds.

**16. ETHICS PROVISION**

The parties acknowledge the requirements of N.C.G.S. § 133-32. In addition, the Department and its employees are bound by the provisions of Executive Order 24 (issued by Governor Perdue on October 1, 2009), which bans State employees from accepting or receiving gifts. 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, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (i) have a contract with a governmental agency; or,
- (ii) have performed under such a contract within the past year; or,
- (iii) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

**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 NSR, *(Insert) and the Municipality* [if applicable].

IN WITNESS WHEREOF, this Crossing Closure Agreement has been executed, in quadruplicate or triplicate originals, the last day and year heretofore set out below, on the part of the Department, NSR, NCRR, and Municipality [if applicable] 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      | NORFOLK SOUTHERN RAILWAY COMPANY |
| BY: _____    | BY: _____                        |
| NAME: _____  | NAME: _____                      |
| TITLE: _____ | TITLE: _____                     |
| DATE: _____  | DATE: _____                      |

FEDERAL TAX IDENTIFICATION NUMBER

53-6002016  
Norfolk Southern Railway Company

MAILING ADDRESS

Norfolk Southern Railway Company  
1200 Peachtree Street, NE  
Box 36  
Atlanta, Georgia 30309  
ATTN:

IN WITNESS WHEREOF, this Crossing Closure Agreement has been executed, in quadruplicate or triplicate originals, the last day and year heretofore set out below, on the part of the Department, NSR, NCRR, and Municipality [if applicable] 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      | NORTH CAROLINA RAILROAD COMPANY |
| BY: _____    | BY: _____                       |
| NAME: _____  | NAME: _____                     |
| TITLE: _____ | TITLE: _____                    |
| DATE: _____  | DATE: _____                     |

|                |  |
|----------------|--|
| CORPORATE SEAL | Federal Tax Identification Number<br>56-6003280<br>_____ |
|                | North Carolina Railroad Company                          |

MAILING ADDRESS  
North Carolina Railroad Company  
2809 Highwoods Blvd., Suite 100  
Raleigh, North Carolina 27604-1640  
ATTN: Justin Madigan, Assistant  
Corridor Manager

North Carolina Railroad Company hereby consents to this Agreement as owner of the right of way between Milepost \_\_\_\_\_ and \_\_\_\_\_.

IN WITNESS WHEREOF, this Crossing Closure Agreement has been executed, in quadruplicate or triplicate originals, the last day and year heretofore set out below, on the part of the Department, NSR, NCRR, and Municipality [if applicable] 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      | TOWN/CITY OF |
| BY: _____    | BY: _____    |
| NAME: _____  | NAME: _____  |
| TITLE: _____ | TITLE: _____ |
| DATE: _____  | DATE: _____  |

SEAL

Approved by the Town/City of \_\_\_\_\_ governing board as attested to by the signature of \_\_\_\_\_

\_\_\_\_\_  
Clerk of Governing Board, \_\_\_\_\_  
(Date)

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Town/City Finance Officer  
FEDERAL IDENTIFICATION NUMBER

\_\_\_\_\_  
Town/City of  
MAILING ADDRESS  
Town/City of

ATTN: \_\_\_\_\_

IN WITNESS WHEREOF, this Crossing Closure Agreement has been executed, in quadruplicate or triplicate originals, the last day and year heretofore set out below, on the part of the Department, NSR, NCRR, and Municipality [if applicable] 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 Project 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 |   | DEPARTMENT OF TRANSPORTATION |                                |
| BY:    | _____   | BY:                          | _____                          |
| NAME:  | <u>Sarah Mitchell</u>                           | NAME:                        | <u>Paul C. Worley, CPM</u>     |
| TITLE: | <u>Secretary to the Board of Transportation</u> | TITLE:                       | <u>Director, Rail Division</u> |
| DATE:  | _____   | DATE:                        | _____                          |

Comment [PM1]: Is this the appropriate person to sign these types of agreements?

MAILING ADDRESS  
North Carolina Department of Transportation  
Rail Division, Engineering and Safety Branch  
1556 Mail Service Center  
Raleigh, North Carolina 27699-1556  
ATTN: \_\_\_\_\_

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_  
(Date)