

September 15, 2010

Mr. XYZ.
Chief Engineer
Bridges and Structures
Norfolk Southern Corporation
1200 Peachtree Street, NE
Atlanta, Georgia 30309

Agreement No. 23856

**Subject: Request for Right-of Entry onto NS property
Proposed S.R. 73 minor slope repair soil borings
Village of Otway, Scioto County, OH
Agency Reference: SCI-73-8.50, PID 83654
NS Reference: NS Central Division
Cincinnati-Vera Line MP CT-89.0 +/- (out-of-service)**

Dear Mr. Carter:

The State of Ohio / Ohio Department of Transportation (State) needs to enter Norfolk Southern Right-of-Way at the above-referenced location to perform soil boring activities in support of development of slope repair/remediation needed as this location between S.R. 73 and the adjacent NS track. The soil boring activities will be in the area surrounding the proposed slope repair and will not affect NS rail operations. It is anticipated that 2-3 borings will be needed.

The work will require approximately 2-3 days to complete, and the State wishes to have approval to access Railway's right-of-way as soon as possible, and will expire 30 days after receipt by ODOT of this signed agreement from Norfolk Southern.

All work will be accomplished entirely at the expense of the State, and as a self-insured government agency, has sufficient funds to satisfy any claim, demand, liability or judgement made against Norfolk Southern as a result of any work associated with this work.

This is to request Norfolk Southern approval for the State to enter upon Railway property to accomplish the work as outlined above under the following terms and conditions:

- 1) That the work will be performed by Ohio Department of Transportation (ODOT) personnel at the entire expense of ODOT.

- 2) That State shall, before commencing work on Norfolk Southern property, or work involving NS's facilities, submit for approval of NS's Chief Engineer, the method of performing said work on NS property. It is agreed that by the parties hereto, that approval of said methods by NS, will not in any way relieve the State of the obligations, responsibilities and liabilities imposed upon it by the provisions of this Agreement.
- 3) That NS's representative, _____ (phone): _____ will be notified not less than seventy-two (72) hours prior to the time that work is to take place on NS property and that insofar as the safety of railroad operations is concerned, ODOT personnel will be governed by NS's requests and suggestions regarding the method and manner of performing said work.
- 4) All work shall be performed with such care, diligence and cooperation with NS personnel as to avoid accidents, damage or harm to persons or property and delays to or interference with the operations of any of NS's facilities.
- 5) No drainage condition shall be created or allowed to exist as a result of the work that is or may be adverse to NS property.
- 6) All work shall be performed in such manner as is satisfactory to NS, and after completion of the work, NS property shall be left free of debris and in such condition satisfactory to NS.
- 7) That flagmen services as may be required to protect NS facilities and operations during the prosecution of the work will be arranged for with NS's representative: _____ (phone): _____ and State will reimburse NS in full for such costs.
- 8) That Norfolk Southern Railway shall render its billings for flagmen, insurance and such other work as required in accordance with State and Federal Accounting procedures (i.e. Federal Aid Policy Guide, Part 140, Subpart I of the Federal Highway Administration and revisions and supplements thereto). State shall promptly pay such billing.
- 9) A minimum horizontal clearance of _____ feet from the centerline of track of the nearest track and a minimum horizontal clearance of _____ feet above the highest rail shall be maintained at all times for any equipment, materials or vehicles of the State, and its forces occupying NS's premises, unless specifically arranged for in advance in each instance with NS's Superintendent, _____, (phone) _____.
- 10) All personnel working on NS's right-of-way must comply with NS's safety rules and requirements to include, without exception, the wearing of hard hats, reflectorized safety vests, approved safety shoes and glasses. Anyone not in compliance with these rules and regulations will be asked to leave NS's property and NS may withdraw its flagman and no work will be allowed on or over NS's right-of-way.

If you agree with the terms of this letter, please indicate your concurrence by signing in the space below and return one copy of this letter to Rich Behrendt, State Rail Coordinator.

Thank you for your assistance in this matter. Should you have any other questions or concerns about this project, please contact

Sincerely,

Director

Accepted by Norfolk Southern Corporation:

By: _____

Title: _____

Date: _____