

NORTH CAROLINA
STATEWIDE

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

May 11, 2012

AND

CSX TRANSPORTATION, INC.

MASTER RIGHT-OF-ENTRY AGREEMENT

THIS MASTER RIGHT-OF-ENTRY AGREEMENT ("Agreement") is made and entered into on the last date executed below, by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION ("Licensee"), an agency of the State of North Carolina, hereinafter referred to as the "Department," and CSX TRANSPORTATION, INC., ("Licensor"), a Virginia corporation, hereinafter referred to as "CSXT." Each shall be hereinafter referred to individually as "Party," and collectively, as "Parties."

WITNESSETH

WHEREAS, the Department and CSXT are Parties to a Master Engineering Agreement (MEA), executed on November 11, 2011, which provides for the terms and conditions upon which CSXT may undertake certain necessary engineering and/or design services which provide and define responsibilities for the preliminary study, assessment, planning, design, and cost estimates for projects to facilitate consideration of proposed projects by the Parties; and

WHEREAS, the Department and CSXT contemplate that, pursuant to the MEA and the Authorization Notice(s), Modification(s), and/or Notice(s) to Proceed associated therewith, the Department, its agents and/or contractors, may need to conduct certain planning, inspection, and preliminary engineering work, including property and track geometry surveys; field inspections; geotechnical engineering analyses; hydraulics, utilities, crossing surfaces, and signals investigations; and other non-invasive investigation or testing, including environmental surveys and screenings primarily for NEPA and SEPA purposes, hereinafter referred to as the "Work," on property owned or controlled by CSXT in North Carolina; and

WHEREAS, the Department and CSXT wish to enter into a master agreement pursuant to which CSXT will grant the Department a license and right-of-entry onto such property to conduct the Work; and

WHEREAS, subject to the provisions herein, CSXT agrees to permit the Department, its agents and/or contractors, to enter upon rail property owned or controlled by CSXT located in North Carolina.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated in this Agreement, and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties do hereby mutually agree to be bound by the following terms and conditions:

1. Subject to the provisions herein, CSXT shall grant the Department, its agents and/or contractors, a license and right-of-entry onto property owned or controlled by CSXT in North Carolina which is the subject of a Project under the MEA for the sole purpose of performing the Work and for the period of time as set forth in the Right of Entry (ROE), as hereinafter defined.

2. CSXT, and/or its authorized representative(s), shall be given at least ten (10) business days advance written notice by letter or by electronic transmission delivered by the Department ["Request for Right-of-Entry (ROE)"] before each entry upon any property of CSXT.

3. The Request for ROE from the Department shall contain or be accompanied by the following:

- a. an identification of the Project subject to the MEA, as more specifically described in the Authorization Notice(s) and/or Modification(s);
- b. an identification of the location of the Work, including CSXT subdivision and milepost (and crossing number, if applicable);
- c. a GIS map or aerial photograph of the location; and
- d. a description of the scope of Work, along with the date of entry and time required to perform the Work.

Within ten (10) days after receipt of the Request for ROE, CSXT, and/or its authorized representative(s), shall by letter or by electronic transmission to the Department approve entry or deny access to the Department onto any portion of the property of CSXT ["Right-of-Entry (ROE)"]; provided, however, that failure of CSXT and/or its authorized representative(s) to respond before the proposed date of entry shall not be deemed an approval of the Request for ROE. The forms, Request for ROE and ROE, are attached hereto as Exhibit A.

For CSXT, notices shall be given in the prescribed manner to:

The CSXT Designated Representative for the Project, as identified pursuant to Section 10 of the MEA;

with a copy to:

CSX Transportation, Inc.
Director Project Management – Public Projects
500 Water Street, J-301
Jacksonville, Florida 32202

For the Department, notices shall be given in the prescribed manner to:

Director—Engineering & Safety
1556 MSC
Raleigh, NC 27699-1556

with a copy to:

State Railroad Agent
1556 MSC
Raleigh, NC 27699-1556

If the Request for ROE is approved, the ROE will provide any special terms or conditions for, or limitations upon, the Department's commencement and performance of the Work. CSXT will coordinate the performance of the Work, and if CSXT deems it necessary to place personnel for protection purposes during the performance of the Work, the Department will pay CSXT in accordance with the payment terms and schedule described in the above-referenced MEA, or as more specifically described in the Authorization Notice(s) and/or Modification(s).

4. All reasonable care shall be exercised and such precautions taken as the CSXT authorized representative(s) may deem necessary to protect CSXT facilities and operations. CSXT reserves the right to place watchmen, flagmen, inspectors, and supervisors for protection purposes during any of the operations, and the expense for such, including the expense of any material furnished, shall be promptly paid by the Department upon receipt of an invoice from CSXT. In addition to direct wage and material costs, such expense shall include, but not be limited to, cost of supervision, traveling expenses, Federal Railroad Retirement and Unemployment Taxes, and vacation allowances, together with CSXT overhead percentages established by CSXT pursuant to applicable law.

5. To the extent allowed by North Carolina law, the Department hereby agrees to indemnify and save harmless CSXT from and against any and all liability, losses, damages, claims, actions, causes of action, costs, and expenses, including attorneys' fees for personal injury, including death, and/or property damage to whomsoever or whatsoever occurring, arising from or growing out of, directly or indirectly, the presence of the Department, its agents, servants, or employees upon or about the property of CSXT in connection with the privileges herein granted, whether or not such liability, losses, damages, claims, actions, causes of action, costs, and expenses shall have been caused or contributed by the negligence of CSXT.

6. At the termination of any ROE requested and granted pursuant to the foregoing provisions, CSXT property shall be restored by the Department to its original condition, or to a condition satisfactory to the CSXT Assistant Vice President, Engineering or authorized representative(s).

7. No drainage conditions shall be created by the Department, its agents and/or contractors, or allowed to exist that would affect CSXT-owned or CSXT-controlled property adversely.

8. A minimum clearance of fifteen (15) feet from the centerline of the nearest track shall be maintained at all times for any material, equipment, or vehicles of the Department, its agents and/or contractors, occupying CSXT-owned or CSXT-controlled property unless authorized by CSXT or authorized representative(s).

9. The license and permission hereby granted is for the sole benefit of the Department, its agents and/or contractors. The Department shall not receive any benefit or any consideration except the covenants, promises, and agreements set forth in this Agreement and any ROEs granted pursuant thereto.

10. The Department, its agents and/or contractors, shall not use explosives of any kind on CSXT-owned or CSXT-controlled property.

11. The Department, its agents and/or contractors, shall not bury or burn any debris upon CSXT-owned or CSXT-controlled property.

12. This Agreement shall be for a period of three (3) years and may be extended every three (3) years upon written communication between the Parties. This Agreement (a) shall not be assigned or transferred by the Department, (b) may be terminated at will by either CSXT or the Department with a thirty (30)-day written notice to the other Party, and (c) shall automatically terminate every three (3) years from the date of execution of this Agreement. This termination shall not relieve the Department of any obligation or liability incurred prior to such termination.

13. This Agreement may not be amended, changed, supplemented, waived, or modified in any manner whatsoever except by an instrument in writing, signed and executed by duly authorized representatives of both Parties.

14. This Agreement and all documents relating thereto, including Right(s) of Entry, Authorization Notice(s), Modification(s), Notice(s) to Proceed, or any other information previously or hereafter furnished pursuant hereto, may be reproduced by the Parties hereto by any photographic, photostatic, electronic, or other similar process. The Parties hereto agree to accept delivery of all of the foregoing documents in electronic format and/or original closing transcripts.

The Parties further agree and stipulate that, to the extent permitted by applicable law, any such reproduction, in electronic format or otherwise, shall be admissible in evidence as the original itself in any judicial or administrative proceeding, whether or not the original is in existence, and whether or not such reproduction was made in the regular course of business, and any enlargement, facsimile, or further reproduction of such reproduction shall likewise be admissible in evidence. This section shall not prohibit the Parties hereto from contesting any such reproduction to the same extent that it could contest the original transcript, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

15. Where appropriate, the terms when used in this Agreement shall be understood to indicate the masculine, feminine or neuter, and the singular or plural, as the case may be. CSXT shall include any other company or companies whose property at locations that may be leased or operated by CSXT. In addition, this includes any parent company or companies, subsidiary or subsidiaries of CSXT, and the servants, agents, or employees of CSXT, and shall also include the servants, agents, or

employees of said parent company or companies of CSXT, and shall also include tenants, lessees, or licensees of CSXT, other than CSXT.

16. This Agreement shall be governed by the laws of the State of North Carolina exclusive of its choice of law rules. The Parties further agree that the venue of all legal and equitable proceedings related to disputes under this Agreement shall be situated in the applicable work county in North Carolina, and the Parties agree to submit to the personal jurisdiction of any State or Federal court situated in the applicable work county within North Carolina.

17. 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, Cultural Resources, Environment and Natural Resources, Health and Human Services, Public Safety, 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 N.C.G.S. § 133-32.

[Signatures on following page]

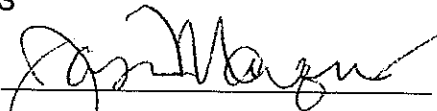
IN WITNESS WHEREOF, this Master Right-of-Entry Agreement has been executed, in duplicate originals, the day and year set out below, on the part of the Department and CSXT by authority duly given.

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.

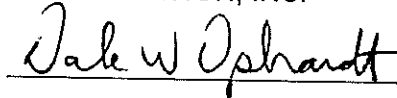
WITNESS

CSX TRANSPORTATION, INC.

BY:



BY:



NAME:

Jason Marguez

NAME:

Dale W. Ophardt

TITLE:

Counsel

TITLE:

Assistant Vice President,
Engineering

DATE:

5/11/12

DATE:

5/11/12

MAILING ADDRESS

Mr. Dale W. Ophardt
Assistant Vice President, Engineering
CSX Transportation, Inc.
500 Water Street
Jacksonville, Florida 32202
ATTN: Mr. Sean Craig

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

ATTEST

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

BY: Sarah Mitchell

BY: Paul F. Morris

NAME: Sarah Mitchell

NAME: Paul F. Morris, FASLA

TITLE: Secretary to Board of
Transportation

TITLE: Deputy Secretary
For Transit

DATE: 5-25-12

DATE: 05/24/12

MAILING ADDRESS

North Carolina Department of Transportation
Rail Division, Engineering & Safety
1556 MSC
Raleigh, North Carolina 27699-1556
ATTN: Paul C. Worley – Director
Rail Division, Engineering & Safety

APPROVED BY BOARD OF TRANSPORTATION ITEM O: April 5, 2012
(Date)



Exhibit A

REQUEST FOR RIGHT-OF-ENTRY (ROE)

(To be completed by NCDOT for submission to CSXT)

CSX Transportation, Inc.
Director Project Management – Public Projects
500 Water Street, J-301
Jacksonville, Florida 32202

ATTN:
Email:
Fax:

This Request for Right-of-Entry (ROE) is made pursuant to the terms of the Master Right-of-Entry Agreement, dated _____, 2012, by and between the North Carolina Department of Transportation and CSX Transportation, Inc.

Identify the Project (as described in Authorization Notice and/or Modification).

State the location of Project and Work including CSXT Subdivision and Milepost (and Crossing Number, if applicable).

Yes, the GIS map or aerial photograph is attached.

State Purpose of Request including detailed description of the Work.

Provide requested Date of Entry onto CSXT property and Time Frame needed to complete the Work.

Date(s) of Entry:
Time Frame: (hours) (hours)

Identify person(s) entering CSXT property.

Provide contact information for individual requesting ROE.

Name: Title:
Address:
Email: Phone:

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

Authorized By:
Name:
Title: Director – Engineering & Safety
Date:

