



Railroad-DOT Mitigation Strategies (R16)

Resurfacing Agreements

Resurfacing projects are among the most common and routine types of projects regularly conducted by highway agencies. When resurfacing projects cross a railway, the construction activities need to be coordinated with the railroad so that a smooth transition results between the roadway surface and the railway. Generally, highway agencies and their contractors are not permitted by railroad labor agreements to conduct work on railroad rights-of-way. Therefore, the work on the crossing itself needs to be coordinated with the railroad's forces. The highway agencies and railroads often share the cost of the crossing improvement, or at least coordinate the efforts to minimize disruption to traffic and to economize on their respective efforts.

These standard agreements address resurfacing projects that are paid for with federal and state funds.

The original agreement signed for a construction or rehabilitation project involving a road that crosses a railway will have within it language that addresses resurfacing of the roadway. The department is required to schedule the resurfacing of the existing roadway with the railroad ahead of time. The communication normally includes providing a work statement and a cost estimate of work to be done.

Often the department will schedule resurfacing work for multiple crossings at the same time. Some of these projects may involve local highway authorities, such as cities and counties. The model agreement makes the agreement processes less complicated, allowing the department to do these multiple projects through a simple agreement. A template for such an agreement is shown under the section Resurfacing Agreement Using Federal Funds.

Resurfacing Agreement Using Federal Funds

FEDERAL AID
GRADE CROSSING SURFACE REPAIR PROJECTS

FORCE ACCOUNT AGREEMENT
INVOLVING
THE DEPARTMENT, RAILROADS, AND LOCAL HIGHWAY AUTHORITIES

For the construction of surface improvements at the railroad crossing located on Railroad's track and for reimbursement under 23 USC 130.

County: _____ Road: _____

Project No.: _____

DIRECT ALL COMMUNICATIONS REGARDING THIS PROJECT TO:

HIGHWAY AUTHORITY [if the local highway authority is involved in the resurfacing of the roadway and grade crossing]

Contact Person: _____

Address: _____

Office Telephone Number: _____ Office e-mail _____

RAILROAD

Contact Person: _____

Address: _____

Office Telephone Number: _____ Office e-mail _____

DEPARTMENT

Contact Person: _____

Address: _____

Office Telephone Number: _____ Office e-mail _____

AGREEMENT SUBMITTAL: Complete and return all three (3) fully executed Agreements to _____ [address] for each crossing project.

Include:

Exhibit A: Work Statement

Exhibit B: Cost Estimate

GRADE CROSSING SURFACE REPAIR PROJECTS
USING FEDERAL FUNDS

AGREEMENT

This AGREEMENT between _____ [Local Highway Authority], hereinafter referred to as the HIGHWAY AUTHORITY, and _____ [Railroad Company], hereinafter referred to as the RAILROAD, and the State of _____, Department of Transportation, hereinafter referred to as the DEPARTMENT, is entered into on this _____ day of _____, 20_____.

The HIGHWAY AUTHORITY and the RAILROAD agree to repair the at-grade crossing located at _____ and further agree as follows:

Section 1: Work Statement and Performance

The RAILROAD and the HIGHWAY AUTHORITY have determined the extent of the repair to be performed at this crossing, including railway, railway approach modifications, and replacement of existing sidewalks and/or recreational trails. This repair shall conform to the RAILROAD'S and the HIGHWAY AUTHORITY'S standards. The agreed work, generally described in the Work Statement identified as Exhibit A attached hereto and made part of this agreement, is to be performed by RAILROAD forces, except that the RAILROAD may subcontract performance of the road approach work or other required incidental work. In the absence of specific RAILROAD standards, BNSF/Union Pacific Railroad common crossing standards shall be used as guidance.

The HIGHWAY AUTHORITY will be responsible for having existing sidewalk(s) and/or trail(s) replaced by a contractor or their own forces, in accordance with the Americans with Disabilities Act requirements. In the absence of specific HIGHWAY AUTHORITY standards that are acceptable to the RAILROAD, the DEPARTMENT'S Standard Road Plan shall be used. The detectable warning is to be installed twelve (12) feet from the edge of the nearest rail. The project will include the cost of an additional two (2) feet of sidewalk and/or recreational trail, or additional sidewalk to the nearest sidewalk and/or additional recreational trail to the nearest recreational trail joint, whichever is less, beyond the detectable warning. Any additional new sidewalk and/or recreational trail beyond that point will be paid by the HIGHWAY AUTHORITY and will not be part of this project.

Truncated domes are the only detectable warnings allowed by ADA Accessibility Guidelines. Grooves, exposed aggregates, and other design intended for use as detectable warning are not considered equivalent facilitation and do not comply with ADA requirements.

Section 2: Cost Estimate

The estimated cost of the project work is itemized in Exhibit B attached hereto and made part of this AGREEMENT.

Section 3: Work Start and Completion

The RAILROAD shall begin the construction of the project as soon as possible after the signing of this AGREEMENT and shall complete the project within eighteen (18) months. Costs incurred prior to the DEPARTMENT signing the AGREEMENT are not reimbursable under this AGREEMENT. Cost incurred more than eighteen (18) months after the DEPARTMENT signs this AGREEMENT will also not be reimbursable under this agreement, unless the RAILROAD has requested in writing, prior to

expiration of the AGREEMENT, and received from the DEPARTMENT a written extension of time for completion. The DEPARTMENT shall have complete discretion and shall be the sole authority to grant or deny extensions. Cost incurred for work after the extension time will not be reimbursed.

Section 4: Traffic Control

The roadway will be closed during repair. Exhibit A describes specific closure conditions. The HIGHWAY AUTHORITY is responsible for the establishment of and payment for traffic control (e.g., barricades, signing, detours, detour damage, and runarounds).

The RAILROAD will advise the HIGHWAY AUTHORITY Contact Person:

1. A minimum of sixty (60) days before the approximate starting date to allow the HIGHWAY AUTHORITY to implement detour.
2. Fourteen (14) days before the actual starting date to allow the HIGHWAY AUTHORITY adequate time to provide and install appropriate signs on the detour.

Section 5: Work Notification

The RAILROAD will notify the HIGHWAY AUTHORITY and the DEPARTMENT'S Contact Person no later than fourteen (14) days prior to the start of its work at the crossing. The DEPARTMENT shall be given ample opportunity to document the materials, equipment, and labor necessary to complete the project. The DEPARTMENT and HIGHWAY AUTHORITY shall have the right to inspect the project work at any time. The HIGHWAY AUTHORITY shall perform on-site inspection of the project work each day.

Section 6: Project Completion

The RAILROAD shall notify the DEPARTMENT and the HIGHWAY AUTHORITY in writing after the RAILROAD has completed the required work. The DEPARTMENT shall arrange an inspection with the RAILROAD and the HIGHWAY AUTHORITY in order for all parties to determine whether the project work has been completed in accordance with the terms of this AGREEMENT or Amendments thereto. Pavement markings and stop lines shall be placed by the HIGHWAY AUTHORITY as required by the Highway Manual on Uniform Traffic Control Devices for Streets and Highways. If the existing traffic control devices at a multiple-track highway-rail grade crossing become improperly placed or inaccurate because of removal of some of the tracks, the existing devices shall be relocated and/or modified at RAILROAD expense pursuant to the Manual on Uniform Traffic Control Devices, Part 8. Relocation of the traffic control devices will be completed prior to removal of the detour. When the work has been completed in accordance with the AGREEMENT, the RAILROAD, HIGHWAY AUTHORITY, and DEPARTMENT shall sign a Certificate of Completion and Acceptance form at the project site following inspection.

Section 7: Reimbursable Costs

The RAILROAD will keep an accurate and detailed account of actual and necessary reimbursable costs incurred under this AGREEMENT. Replacement of existing sidewalk(s) and/or recreational trail(s) and subcontracted work costs shall be included in the RAILROAD billing. The cost of labor, materials, all associated additives, and subcontracted expenses will be cost reimbursable, and shall be billed on a force account common basis in accordance with Title 23, Code of Federal Regulations, Part 140, Subpart I. The cost of railroad equipment, equipment rental, accounting, accounting additives, and bill reproduction are reimbursable, but shall not be included directly in the force account billing. Those costs

shall be billed as an additive amount equal to nine (9) percent off the total force account and billed less audit exceptions. The cost of preliminary project engineering, construction inspection, track inspection, relocation of existing signals, signal wires and switches, or the construction of runarounds will not be eligible as project reimbursable costs.

Section 8: Cost Sharing

The RAILROAD and the HIGHWAY AUTHORITY each shall pay twenty (20) percent of the reimbursable costs defined in Section 7 for work described in Exhibit A. It is understood the DEPARTMENT will use Federal Aid 23 USC 130 funds to reimburse the RAILROAD for sixty (60) percent of the total eligible costs for this project. The DEPARTMENT'S Certificate of Audit shall establish eligible reimbursable project costs.

Section 9: Progressive Payments

The RAILROAD may submit accurate progressive bills to the DEPARTMENT and HIGHWAY AUTHORITY for material, labor, and any subcontracted cost included in Exhibit B for each crossing location. The billing for materials shall be for those materials that have been delivered to the project location or specifically purchased and delivered to the RAILROAD for use on the project. The DEPARTMENT and HIGHWAY AUTHORITY may make progressive payments to the RAILROAD for one hundred (100) percent of each party's billed participation, or the HIGHWAY AUTHORITY may elect to retain a percentage of their billed participation.

Section 10: Final Billing

Upon completion of the project, the RAILROAD shall submit an accurate, final, and complete itemized billing in three (3) counterparts. The final bill shall include a summary of all incurred costs.

Section 11: Final Payment

The DEPARTMENT, upon receipt of the final bill and Certificate of Completion and Acceptance form, shall review and forward the final bill to the DEPARTMENT'S Office of Audits for final audit. The DEPARTMENT shall notify the HIGHWAY AUTHORITY of the reimbursable amount after final audit. The DEPARTMENT and HIGHWAY AUTHORITY shall make payment to the RAILROAD equal to sixty (60) percent and twenty (20) percent, respectively, of the final reimbursable amount, less previous payment. The RAILROAD shall promptly reimburse the DEPARTMENT and the HIGHWAY AUTHORITY the amount of any overpayments.

Section 12: Maintenance and Abandonment

Upon completion of the project, the RAILROAD shall maintain the crossing surface to provide a safe and sufficient crossing for vehicular travel. If the track is removed from both sides of the crossing, the RAILROAD shall remove the surface material, rail, and cross ties from the crossing and shall restore the roadway void to the satisfaction of the HIGHWAY AUTHORITY, all at RAILROAD expense. If the existing traffic control devices at a multiple-track highway-rail grade crossing become improperly placed or inaccurate because of removal of some of the tracks, the existing devices shall be relocated and/or modified at RAILROAD expense pursuant to the Manual on Uniform Traffic Control Devices, Part 8. Future maintenance of the sidewalk(s) and the detectable warning device will not be the responsibility of the RAILROAD.

Section 13: Standard Title VI Assurances

The RAILROAD shall comply with all applicable State and Federal laws, rules, ordinances, regulations, and orders. The RAILROAD and all of its agents that participate in the project, shall comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d–42 USC 2000d-4, and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21—to the end that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the DEPARTMENT.

Section 14: Successors and Assigns

This AGREEMENT shall be binding on all successors and assigns. The RAILROAD shall provide written notice to the HIGHWAY AUTHORITY and the DEPARTMENT of any assignment of this AGREEMENT.

Section 15: Project Contact Person

All notices consents, communications, and approvals required to complete work required by this AGREEMENT shall be made to the Contact Persons and the Departments specified on the cover page of this AGREEMENT.

Section 16: Integration and Amendment

This AGREEMENT and its exhibits constitute the entire Agreement between the DEPARTMENT, the RAILROAD, and the HIGHWAY AUTHORITY concerning this project. If the DEPARTMENT determines that a substantial change is to be made in the project work described in Exhibit A, the DEPARTMENT will furnish the written approval of the change.

Section 17: Termination for Convenience

In the event of nonappropriation of federal funds, the DEPARTMENT may terminate this AGREEMENT in whole or in part when the DEPARTMENT, HIGHWAY AUTHORITY, and the RAILROAD agree that the continuation of the Project would not produce beneficial results commensurate with future disbursement of federal funds. The DEPARTMENT, HIGHWAY AUTHORITY, and the RAILROAD shall agree upon the termination conditions. The RAILROAD shall not incur new obligations after the effective date of the termination and shall cancel as many outstanding obligations as reasonably possible. The DEPARTMENT will allow full credit to the RAILROAD for the DEPARTMENT’S share of the noncancelable obligations allowable under the AGREEMENT and properly incurred by the RAILROAD prior to termination.

Section 18: Merged Documents

This AGREEMENT may be executed and delivered in three (3) or more counterparts, each of which so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

Section 19: Nonseverability

If any section, provision, or part of this AGREEMENT shall be found to be invalid or unconstitutional, such judgment shall not affect the validity of any section, provision, or part thereof not found to be invalid or unconstitutional.

Section 20: Indemnification

Nothing in this AGREEMENT is intended to be construed as a requirement for an indemnification against the sole negligence of the RAILROAD, its officers, employees, or agents. Moreover, for any work performed in the State of _____, the DEPARTMENT will require its contractor to indemnify the RAILROAD and any other railroad company occupying or using the RAILROAD’S right-of-way or line of railroad against all loss, liability, and damages, including environmental damages, hazardous materials damages, penalties, or fines that may be assessed for, caused by, or the result of the contractor’s negligence; provided, however, that if such loss, liability, damage, penalties, or fines are caused by or result from the concurrent negligence of (a) the RAILROAD or the RAILROAD’S officers, employees, or agents and (b) the DEPARTMENT’S contractor or the contractor’s employees, agents, or subcontractors, such indemnity shall be valid and enforceable only to the extent of the negligence of the DEPARTMENT’S contractor or the contractor’s employees, agents, or subcontractors. Likewise, if such loss, liability, damage, penalties, or fines are caused by or result from the concurrent negligence of (a) the RAILROAD or the RAILROAD’S officers, employees, or agents and (b) the DEPARTMENT’S officers, employees, or agents, such indemnity shall be valid and enforceable only to the extent of the negligence of the DEPARTMENT’s officers, employees, or agents.

IN WITNESS WHEREOF the RAILROAD, the HIGHWAY AUTHORITY, and the DEPARTMENT hereto have caused this AGREEMENT to be executed by their duly authorized officers as of the dates indicated below.

Executed by the RAILROAD this
_____ day of _____, 20_____

Name of Railroad
By _____
Name and Title

Executed by the HIGHWAY AUTHORITY this
_____ day of _____, 20_____

Name of Highway Authority
By _____
Name and Title

Executed by the DEPARTMENT this
_____ day of _____, 20_____

Name of Department
By _____
Name and Title

EXHIBIT A

WORK STATEMENT

FEDERAL-AID RAIL/HIGHWAY CROSSING SURFACE REPAIR

County: _____ Meeting Date: _____
Highway Authority: _____ Railroad: _____
State Crossing No.: _____ Location: _____

1. **Crossing(s) Reconstructed**

A. The RAILROAD will reconstruct _____ crossings of _____ total feet that include _____ feet of concrete surface material through the traveled roadway and _____ feet of concrete surface material through the shoulder, sidewalk, and/or trail area. As a minimum, the crossing must extend beyond the edge of the traveled roadway and through the shoulder if not curbed.

B. Existing rail weight through crossing(s): _____ (Number)

2. **Traffic Controls** (mark with an X)

- A highway runaround will be constructed to permit two-lane traffic during repair.
- The highway will be closed for _____ days during repair.

NOTE: The HIGHWAY AUTHORITY is responsible for placement and cost of barricades, signing, detours, detour damage, and runarounds.

A. The RAILROAD shall advise the HIGHWAY AUTHORITY Contact Person:

1. A minimum of sixty (60) days before the approximate starting date to allow the HIGHWAY AUTHORITY to implement the detour.
2. Fourteen (14) days before the actual starting date to allow the HIGHWAY AUTHORITY adequate time to provide and install appropriate signs on the detour.

The RAILROAD shall also advise the State Project Inspector fourteen (14) days before the actual starting date.

3. **Track Elevation Relative to Existing Road Pavements** (mark with an X)

- Tracks will be constructed to meet existing road grade.
- Roadway will be reconstructed to meet a proposed new track grade (roadway work is not covered by this AGREEMENT).
- Tracks will be elevated _____ inches above the adjacent roadway, requiring a taper (complete item 4A and 4B).

In any event, the PARTIES must provide a smooth crossing.

4. **Roadway Work:** Must be sufficient to provide a smooth crossing

A. Taper Length (estimated)

An East foot taper on the _____ side of the crossing and a West foot taper on the _____ side of the crossing, requires _____ of HMA material (estimated). Taper length should not exceed twenty-five (25) feet for each inch of track rise. Approach shall comply with HIGHWAY AUTHORITY specifications.

This work will be completed by (mark with an X)

- Railroad forces Railroad's Contractor
- Highway Authority forces Highway Authority's Contractor

B. Track Opening in the Roadway (mark with an X)

- Existing track opening will be maintained.
- Track opening of _____ feet will be required involving the following described roadway modification. Estimated HMA tonnage: _____.

This work will be completed by (mark with an X)

- Railroad forces Railroad's Contractor
- Highway Authority forces Highway Authority's Contractor

5. Existing Sidewalk(s) and/or Recreational Trail Replacement by Highway Authority

The quadrants requiring upgrades to meet ADA requirements (mark with an X)

Sidewalk (5' width required)

- NE __ (feet) SE __ (feet) NW __ (feet) SW __ (feet)

Recreational Trail (10' width)

- NE __ (feet) SE __ (feet) NW __ (feet) SW __ (feet)

This work will be completed by (mark with an X)

- Railroad forces Railroad's Contractor
- Highway Authority forces Highway Authority's Contractor

6. Crossing(s) Permanently Retired and Removed

A. RAILROAD will retire and remove _____ number of crossing(s).

B. Voids in pavement will be filled with _____ material requiring _____ unit(s).

This work will be completed by (mark with an X)

- Railroad forces Railroad's Contractor
- Highway Authority forces Highway Authority's Contractor

7. Drainage (mark with an X)

A. Present drainage is adequate.

B. Drainage work required. Specify work to include materials and outlet.

C. Clean all four (4) quadrants for good surface drainage.

8. Additional Construction and Traffic Control Conditions (e.g., road closure limitations)

Construction at this crossing included with this project, and not described above. Only ACC or PCC will be placed one (1) foot from the railroad surface material.

9. Signature Block

Signatures indicate agreement on all items on Work Statements.

If the AGREEMENT is not reached at the field meeting, HIGHWAY AUTHORITY should hold the form and set target resolution date.

Name of RAILROAD:

Name of HIGHWAY AUTHORITY:

Name and Title of Representative:

Name and Title of Representative:

Date:

Date:

Signature:

Signature:

Name of State Project Manager:

Office Phone:

Resurfacing Agreement Using State Funds

GRADE CROSSING SURFACE REPAIR PROJECTS

**FORCE ACCOUNT AGREEMENT
INVOLVING**

THE DEPARTMENT, RAILROADS, AND LOCAL HIGHWAY AUTHORITIES

For the construction of surface improvements at the railroad crossing located on Railroad's track.

County: _____
Road: _____ Project No.: _____

**DIRECT ALL COMMUNICATIONS REGARDING THIS PROJECT TO:
HIGHWAY AUTHORITY**

Contact Person: _____
Address: _____
Office Telephone Number: _____ Office e-mail _____

RAILROAD

Contact Person: _____
Address: _____
Office Telephone Number: _____ Office e-mail _____

DEPARTMENT

Contact Person: _____
Address: _____
Office Telephone Number: _____ Office e-mail _____

AGREEMENT SUBMITTAL: Complete and return all three (3) fully executed Agreements to _____ [address] for each crossing project.

Include:

- Exhibit A: Work Statement
- Exhibit B: Cost Estimate

GRADE CROSSING SURFACE REPAIR PROJECTS
USING STATE FUNDS

AGREEMENT

This AGREEMENT between _____ [Local Highway Authority], hereinafter referred to as the HIGHWAY AUTHORITY, and _____ [Railroad Company], hereinafter referred to as the RAILROAD, and the State of _____, Department of Transportation, hereinafter called the DEPARTMENT, is entered into on this _____ day of _____, 20_____.

The HIGHWAY AUTHORITY and the RAILROAD agree to repair the at-grade crossing located at _____ and further agree as follows:

Section 1: Work Statement and Performance

The RAILROAD and the HIGHWAY AUTHORITY have determined the extent of the repair to be performed at this crossing, including railway, railway approach modifications, and replacement of existing sidewalks and/or recreational trails. This repair shall conform to the RAILROAD and the HIGHWAY AUTHORITY standards. The agreed work, generally described in the Work Statement identified as Exhibit A attached hereto and made part of this agreement, is to be performed by RAILROAD forces, except that the RAILROAD may subcontract performance of the road approach work or other required incidental work. In the absence of specific RAILROAD standards, BNSF/Union Pacific Railroad common crossing standards shall be used as guidance.

The HIGHWAY AUTHORITY will be responsible for having existing sidewalk(s) and/or trail(s) replaced by a contractor or their own forces, in accordance with the Americans with Disabilities Act requirements. In the absence of specific DEPARTMENT standards that are acceptable to the railroad, the DEPARTMENT'S Standard Road Plan shall be used. The detectable warning is to be installed twelve (12) feet from the edge of the nearest rail. The project will include the cost of an additional two (2) feet of sidewalk and/or recreational trail, or additional sidewalk to the nearest sidewalk and/or additional recreational trail to the nearest recreational trail joint, whichever is less, beyond the detectable warning. Any additional new sidewalk and/or recreational trail beyond that point will be paid by the HIGHWAY AUTHORITY and will not be part of this project.

Truncated domes are the only detectable warnings allowed by ADA Accessibility Guidelines. Grooves, exposed aggregates, and other design intended for use as detectable warning are not considered equivalent facilitation and do not comply with ADA requirements.

Section 2: Cost Estimate

The estimated cost of the project work is itemized in Exhibit B attached hereto and made part of this AGREEMENT.

Section 3: Work Start and Completion

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expiration of the AGREEMENT, and received from the DEPARTMENT a written extension of time for completion. The DEPARTMENT shall have complete discretion and shall be the sole authority to grant or deny extensions. Cost incurred for work after the extension time will not be reimbursed.

Section 4: Traffic Control

The roadway will be closed during repair. Exhibit A describes specific closure conditions. The HIGHWAY AUTHORITY is responsible for the establishment of and payment for traffic control (e.g., barricades, signing, detours, detour damage, and runarounds).

The RAILROAD will advise the HIGHWAY AUTHORITY Contact Person:

1. A minimum of sixty (60) days before the approximate starting date to allow the HIGHWAY AUTHORITY to implement the detour.
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Section 8: Cost Sharing

The RAILROAD and the HIGHWAY AUTHORITY each shall pay twenty (20) percent of the reimbursable costs defined in SECTION 7 for work described in Exhibit A. It is understood the DEPARTMENT agrees to use state funds to pay the remaining sixty (60) percent of the total eligible costs for this project.

Section 9: Progressive Payments

The RAILROAD may submit accurate progressive bills to the DEPARTMENT and HIGHWAY AUTHORITY for material, labor, and any subcontracted cost included in Exhibit B for each crossing location. The billing for materials shall be for those materials that have been delivered to the project location or specifically purchased and delivered to the RAILROAD for use on the project. The DEPARTMENT and HIGHWAY AUTHORITY may make progressive payments to the RAILROAD for one hundred (100) percent of each party's billed participation, or the HIGHWAY AUTHORITY may elect to retain a percentage of their billed participation.

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Section 11: Final Payment

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Section 12: Maintenance and Abandonment

Upon completion of the project, the RAILROAD shall maintain the crossing surface to provide a safe and sufficient crossing for vehicular travel. If the track is removed from both sides of the crossing, the RAILROAD shall remove the surface material, rail, and cross ties from the crossing and shall restore the roadway void to the satisfaction of the HIGHWAY AUTHORITY, all at RAILROAD expense. If the existing traffic control devices at a multiple-track highway-rail grade crossing become improperly placed or inaccurate because of removal of some of the tracks, the existing devices shall be relocated and/or modified at RAILROAD expense pursuant to the Manual on Uniform Traffic Control Devices, Part 8. Future maintenance of the sidewalk(s) and the detectable warning device will not be the responsibility of the RAILROAD.

Section 13: Standard Title VI Assurances

The RAILROAD shall comply with all applicable State and Federal laws, rules, ordinances, regulations, and orders. The RAILROAD and all of its agents that participate in the project shall comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d–42 USC 2000d-4, and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21—to the end that no person in the United States shall, on the basis of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in the performance of this AGREEMENT.

Section 14: Successors and Assigns

This AGREEMENT shall be binding on all successors and assigns. The RAILROAD shall provide written notice to the HIGHWAY AUTHORITY and the DEPARTMENT of any assignment of this AGREEMENT.

Section 15: Project Contact Person

All notices, consents, communications, and approvals required to complete work required by this AGREEMENT shall be made to the Contact Persons and the Departments specified on the cover page of this AGREEMENT.

Section 16: Integration and Amendment

This AGREEMENT and its exhibits constitute the entire Agreement between the DEPARTMENT, the RAILROAD, and the HIGHWAY AUTHORITY concerning this project. If the DEPARTMENT determines that a substantial change is to be made in the project work described in Exhibit A, the DEPARTMENT will furnish the written approval of the change.

Section 17: Termination for Convenience

In the event of nonappropriation of federal funds, the DEPARTMENT may terminate this AGREEMENT in whole or in part, when the DEPARTMENT, HIGHWAY AUTHORITY, and the RAILROAD agree that the continuation of the Project would not produce beneficial results commensurate with future disbursement of federal funds. The DEPARTMENT, HIGHWAY AUTHORITY, and the RAILROAD shall agree upon the termination conditions. The RAILROAD shall not incur new obligations after the effective date of the termination and shall cancel as many outstanding obligations as reasonably possible. The DEPARTMENT will allow full credit to the RAILROAD for the DEPARTMENT’S share of the noncancelable obligations allowable under the AGREEMENT and properly incurred by the RAILROAD prior to termination.

Section 18: Merged Documents

This AGREEMENT may be executed and delivered in three (3) or more counterparts, each of which so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

Section 19: Nonseverability

If any section, provision, or part of this AGREEMENT shall be found to be invalid or unconstitutional, such judgment shall not affect the validity of any section, provision, or part thereof not found to be invalid or unconstitutional.

Section 20: Indemnification

Nothing in this AGREEMENT is intended to be construed as a requirement for an indemnification against the sole negligence of the RAILROAD, its officers, employees, or agents. Moreover, for any work performed in the State of _____, the DEPARTMENT will require its contractor to indemnify the RAILROAD and any other railroad company occupying or using the RAILROAD’S right-of-way or line of railroad against all loss, liability, and damages, including environmental damages, hazardous materials damages, penalties, or fines that may be assessed for, caused by, or the result of the contractor’s negligence; provided, however, that if such loss, liability, damage, penalties, or fines are caused by or result from the concurrent negligence of (a) the RAILROAD or the RAILROAD’S officers, employees, or agents and (b) the DEPARTMENT’S contractor or the contractor’s employees, agents, or subcontractors, such indemnity shall be valid and enforceable only to the extent of the negligence of the DEPARTMENT’S contractor or the contractor’s employees, agents or subcontractors. Likewise, if such loss, liability, damage, penalties, or fines are caused by or result from the concurrent negligence of (a) the RAILROAD or the RAILROAD’S officers, employees, or agents and (b) the DEPARTMENT’S officers, employees, or agents, such indemnity shall be valid and enforceable only to the extent of the negligence of the DEPARTMENT’S officers, employees, or agents.

IN WITNESS WHEREOF the RAILROAD, the HIGHWAY AUTHORITY, and the DEPARTMENT hereto have caused this AGREEMENT to be executed by their duly authorized officers as of the dates indicated below.

Executed by the RAILROAD this
_____ day of _____, 20_____

Name of Railroad
By _____
Name and Title

Executed by the HIGHWAY AUTHORITY this
_____ day of _____, 20_____

Name of Highway Authority
By _____
Name and Title

Executed by the DEPARTMENT this
_____ day of _____, 20_____

Name of Department
By _____

EXHIBIT A

WORK STATEMENT

STATE-FUNDED RAIL/HIGHWAY CROSSING SURFACE REPAIR

County: _____ Meeting Date: _____
Highway Authority: _____ Railroad: _____
State Crossing No.: _____ Location: _____

1. **Crossing(s) Reconstructed**

- A. The RAILROAD will reconstruct _____ crossings of _____ total feet that include _____ feet of concrete surface material through the traveled roadway and _____ feet of concrete surface material through the shoulder, sidewalk, and/or trail area. As a minimum, the crossing must extend beyond the edge of the traveled roadway and through the shoulder if not curbed.
- B. Existing rail weight through crossing(s): _____ (Number)

2. **Traffic Controls** (mark with an X)

- A highway runaround will be constructed to permit two-lane traffic during repair.
- The highway will be closed for _____ days during repair.

NOTE: The HIGHWAY AUTHORITY is responsible for placement and cost of barricades, signing, detours, detour damage, and runarounds.

A. The RAILROAD shall advise the HIGHWAY AUTHORITY Contact Person:

- 1. A minimum of sixty (60) days before the approximate starting date to allow the HIGHWAY AUTHORITY to implement the detour.
- 2. Fourteen (14) days before the actual starting date to allow the HIGHWAY AUTHORITY adequate time to provide and install appropriate signs on the detour.

The RAILROAD shall also advise the State Project Inspector fourteen (14) days before the actual starting date.

3. **Track Elevation Relative to Existing Road Pavements** (mark with an X)

- Tracks will be constructed to meet existing road grade.
- Roadway will be reconstructed to meet a proposed new track grade (roadway work is not covered by this AGREEMENT).
- Tracks will be elevated _____ inches above the adjacent roadway, requiring a taper (complete item 4A and 4B).

In any event, the PARTIES must provide a smooth crossing.

4. **Roadway Work:** Must be sufficient to provide a smooth crossing

A. Taper Length (estimated)

An East foot taper on the _____ side of the crossing and a West foot taper on the _____ side of the crossing, requires _____ of HMA material (estimated). Taper length should not exceed twenty-five (25) feet for each inch of track rise. Approach shall comply with HIGHWAY AUTHORITY specifications.

This work will be completed by (mark with an X)

Name and Title of Representative:

Date:

Signature:

Name of State Project Manager:

Name and Title of Representative:

Date:

Signature:

Office Phone:
