

NORTH CAROLINA  
STATEWIDE

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

September 12, 2012

AND

NORFOLK SOUTHERN RAILWAY  
COMPANY

MASTER PROJECT CONSTRUCTION  
AND MAINTENANCE AGREEMENT  
CFDA: 20.319 (ARRA)

AND

NORTH CAROLINA RAILROAD  
COMPANY

THIS MASTER PROJECT CONSTRUCTION AND MAINTENANCE AGREEMENT (MPCMA) is made and entered into on the last date executed below ("**Effective Date**"), by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, agency of the State of North Carolina, hereinafter referred to as "NCDOT"; NORFOLK SOUTHERN RAILWAY COMPANY, a corporation of Virginia, hereinafter referred to as "NSR"; and NORTH CAROLINA RAILROAD COMPANY, a North Carolina Corporation, hereinafter referred to as "NCRR." Each of NCDOT, NSR, and NCRR shall be hereinafter referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) established competitive Federal grant programs for funding high speed intercity passenger rail (HSIPR) capital improvements; and

WHEREAS, the American Recovery and Reinvestment Act of 2009 (ARRA) provides funding for the HSIPR programs established in PRIIA; and

WHEREAS, on October 4, 2009, NCDOT submitted HSIPR applications pursuant to the High Speed Rail Corridor Development program under 49 U.S.C. § 26106 for improvements within the Southeast High Speed Rail Corridor (SEHSR), which connects Charlotte, Raleigh, Richmond, and Washington, D.C.; and

WHEREAS, among these applications were separate applications for funding certain capital improvements including those within and along property and rights-of-way owned by NCRR ("**NCRR Corridor**") to provide additional intercity passenger service between Raleigh and Charlotte beyond the existing service between these cities, which passenger service is operated by the National Railroad Passenger Corporation (Amtrak); and

WHEREAS, on March 21, 2011, NCDOT and the Federal Railroad Administration (FRA) executed a Cooperative Agreement in the amount of \$520,000,000.00 (“ARRA Award”) for improvements in North Carolina, including improvements within and along the NCRR Corridor and the improvements that are necessary to implement the additional passenger service; and

WHEREAS, pursuant to an agreement dated July 27, 1999, between NCRR and NSR (“NCRR-NSR Master Agreement”) as well as **trackage rights agreements between NCRR and NSR (“NCRR-NSR Trackage Rights Agreement”)**, NSR has exclusive freight trackage rights over the lines and properties of NCRR, as well as such operating rights necessary to host existing or additional passenger trains operated by Amtrak; and

WHEREAS, the Parties executed an Agreement on Principles Regarding Federal 2009 ARRA HSIPR Funds dated December 15, 2010 (AOP), regarding the funding, implementation, and maintenance of these improvements, and provided for subsequent Definitive Agreements, as defined therein; and

WHEREAS, on March 21, 2011, the Parties executed a Definitive Service Outcomes Agreement (DSOA), and on May 14, 2012, executed a First Amendment to the DSOA, **that further clarified the individual Parties’ roles and responsibilities under the AOP;** and

WHEREAS, on December 21, 2011, the Parties entered into an additional Definitive Agreement, the Preliminary Engineering Reimbursement Agreement (PERA) providing for the reimbursement by NCDOT to NSR for certain costs incurred in connection with reviewing plans and estimates for the Projects; and

WHEREAS, on March 21, 2012, NCDOT and NCRR entered into the Railroad Corridor Property Acquisition Agreement (RCPA), an additional Definitive Agreement, that provides for the acquisition of additional railroad corridor and removal of third-party encroachments within the existing NCRR Corridor that conflict with the Projects; and

WHEREAS, these projects were listed as **Component Program “(4) Track and Structures,” in the DSOA and described therein as “Service Outcomes Projects.”** The same projects are further described on the attached Exhibit A, and each one listed thereon is designated as a “Project” and collectively as “Projects”; and

WHEREAS, pursuant to the PERA, individual Contract Estimates will be developed detailing the Project Work, as defined in Section I.A, and costs of each individual Track and Structure Project, all of which make up the entirety of the Project Work subject to this MPCMA.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, and in accordance with defined terms appended hereto as Appendix A, it is agreed and bound among the Parties hereto as follows:

## **SECTION I. PROJECT SCOPE, ALLOCATION OF WORK, AND OWNERSHIP OF IMPROVEMENTS**

### **A. Project Scope**

The project scope shall include the acquisition of right-of-way, permitting, construction, and construction-related activities including, but not limited to, inspection, flagging, and superintendence, within and along the NCRR Corridor necessary to implement the Projects ("Project Work"). The Project Work shall include the following elements:

1. Construction of track and signal improvements and related activities, as further described on the attached Exhibit B, which is incorporated herein by reference ("Track and Signal Improvements");
2. Construction of rail-highway overpasses and underpasses, closure of at-grade crossings, and related activities as further described on the attached Exhibit C, which is incorporated herein by reference ("Grade Separations"); and
3. Implementation and construction of a variety of safety-related improvements, including signalization of crossings, proposed closure of several private at-grade crossings, and related activities, as further described on the attached Exhibit D, which is incorporated herein by reference ("Private Crossing Safety Improvements").

### **B. Allocation of Work**

The Parties shall have the following responsibilities in connection with the Project Work:

1. NCDOT shall be responsible for the following ("NCDOT Responsibilities"):
  - a. The Project Work, except where specifically assigned to another Party herein;
  - b. All necessary permitting;
  - c. Those NCDOT responsibilities related to the corridor needed for the track projects as set forth in the RCPA;
  - d. Right-of-way acquisition for rail-highway overpasses, underpasses, roadways, and related activities;
  - e. Except construction described in Section I.B.3, design and construction of structures, overpasses, underpasses, roadways, railroad roadbed including grading and drainage, and related activities, all of which design and construction shall be in conformance with NCDOT, NCRR, and NSR standards as applicable.

2. NCRR shall be responsible for the following (“NCRR Responsibilities”):
  - a. Those NCRR responsibilities set forth in the RCPA; and
  - b. Review, inspection, and approval of the Project Work, including any changes to the plans, all done in accordance with terms of this MPCMA.
3. NSR shall be responsible for the performance of the following (“NSR Responsibilities”):
  - a. Construction of any railroad track as part of the Track and Signal Improvements;
  - b. Construction of any railroad signals as part of the Track and Signal Improvements;
  - c. Construction of rail-highway at-grade crossing signals as specified by the plans;
  - d. Incidental grading and project-related construction activities;
  - e. Review and approval of any Project Work;
  - f. Construction inspection of any Project Work to ensure compliance with NSR standards; and
  - g. Railroad flagging and other railroad safety services to protect railroad operations in connection with the Project Work.
4. The NCRR Responsibilities and NSR Responsibilities shall include, for locations that are affected by the Project Work and agreed to by the Parties, notification, modification, or termination of industrial sidetrack agreements and private grade crossings as required or permitted by those agreements. As between NCRR and NSR, the responsibility for performing such notifications, modifications, or terminations shall be as set forth in the NCRR-NSR Master Agreement.
5. NSR shall perform the capital improvements described in Section I.B.3. NSR shall have the right to use its own forces in performing the NSR Responsibilities or to hire subcontractors at its discretion. Anything to the contrary in this MPCMA notwithstanding, any Project Work legitimately claimed by NSR’s agreement workforce through collective bargaining agreements shall be NSR Responsibilities.

### C. Ownership

Subject to the NCRR and NSR rights under the NCRR-NSR Master Agreement and the NCRR-NSR Trackage Rights Agreement, NCRR shall own any and all improvements (“NCRR-Owned Improvements”) constructed as part of the Project Work, except for the following:

1. Any and all grade separation structures carrying highways or other roadways over railroad tracks as part of the Grade Separations, which structures including, but not limited to, sub-structures, foundations, abutments, wing walls, and piers shall be owned by NCDOT or the appropriate highway or roadway authority, subject to any NCRR underlying or other property rights; and
2. Any and all relocated highways or roadways as part of the Grade Crossing Safety Improvements, which highways and roadways shall continue to be owned by NCDOT or the appropriate highway or roadway authority, subject to any NCRR underlying or other property rights; and
3. Any industry-owned track improvements beyond the clearance points or details of the facility leads from turnouts on NCRR-owned tracks.

## **SECTION II. PROJECT FUNDING**

### A. Project Work Cost Estimates

NCDOT has developed an overall program-level estimate of the Project Work (“Program Estimate”). This amount is a good faith estimate based on the technical scope of the Project Work and on the Service Outcomes defined in the DSOA. The development of the Program Estimate does not prevent the reallocation of funds among Projects and/or components thereto with FRA approval.

### B. ARRA Award Allocation

Two hundred ninety million, eight hundred twenty-eight thousand, eight hundred and thirty-six dollars (\$290,828,836.00) from the ARRA Award granted to NCDOT is available to reimburse the costs of the Project Work. The Federal funding period for the ARRA Award expires on September 30, 2017, unless otherwise extended. Under no circumstances shall NCDOT be reimbursed by the FRA with ARRA funds after the expiration of the ARRA Award.

### C. NCDOT Contribution

NCDOT shall contribute up to thirty million, one hundred sixty thousand dollars (\$30,160,000.00) towards the Project Work. The NCDOT contribution may consist of State and/or other Federal funds.

#### D. NCRR Contribution

1. NCRR shall contribute up to twenty-one million dollars (\$21,000,000.00) toward the construction of improvements in connection with the Track and Signal Improvements ("NCRR Contribution"). The NCRR Contribution shall take the form of unreimbursed costs borne by NCRR in undertaking the NCRR Responsibilities, NCRR's review and inspection of the Project Work, in-kind contributions in the form of real property owned by NCRR to be used for the Project Work or acquired by NCRR to facilitate the Project Work, the eligible costs incurred by NCRR pursuant to the RCPA, or any combination thereof.
2. Additionally NCRR shall provide three million dollars (\$3,000,000.00) in funds described in Section (ii) of the "Letter Agreement, NCRR/NCDOT Bridge Project Investments," dated July 27, 2009. Subsequently NCRR and NCDOT have agreed that these funds will be used to support P13, "Curve Realignment at CP Duke," a Project governed by this MPCMA, and that this amount is due and payable within thirty (30) days after execution of this MPCMA and upon receipt by NCRR of an invoice from NCDOT, including a detailed cost estimate for the Curve Realignment at CP Duke Project. If NCDOT fails to build the Curve Realignment at CP Duke Project, it shall refund these funds to NCRR.
3. NCRR agrees to provide a semi-annual listing of its costs and expenses attributable to the NCRR Contribution upon request from NCDOT. NCRR agrees to provide such information by Project and Project Number as set out in Exhibit A.

#### E. Allocation of Costs Beyond Program Funding

Anything to the contrary in this MPCMA notwithstanding, (a) NSR shall have no obligation to contribute to the cost of the Project Work; and (b) NCRR shall have no obligation to contribute to the cost of the Project Work beyond that described in Section II.D.

### **SECTION III. PROJECT PERMITTING, UTILITIES, RIGHT-OF-WAY, DESIGN, AND CONSTRUCTION**

#### A. Permitting

NCDOT shall obtain, at no cost to NCRR or NSR, all Federal, State, and local regulatory approvals, permits, licenses, and inspections as are necessary for the performance of the Project Work, as modified by any Change Orders, including, but not limited to, those required by PRIIA, ARRA, the National Environmental Policy Act, the National Historic Preservation Act, and the Uniform Relocation Assistance and Real Property Acquisition Act. NSR and NCRR shall reasonably cooperate with NCDOT in obtaining such approvals.

NSR shall be responsible for obtaining all applicable minor permits that were not part of the NCDOT design but result from NSR's selection of the means and methods for the construction of the NSR Responsibilities. These permits may include, but are not limited to, oversize load hauling permits, temporary haul road permits, and utility connection permits.

NCDOT shall prepare any environmental and/or planning documents needed to construct the Project Work in accordance with the National Environmental Policy Act, 42 U.S.C. § 43323 (NEPA), National Historic Preservation Act, 16 U.S.C. § 470(f) (NHPA), and all other related laws and regulations. All work shall be performed in accordance with applicable Federal policies and procedures.

#### B. Utilities

In the event utility conflicts with the Project Work are discovered, NCDOT shall be solely responsible for the cost of the relocation and adjustment of the utility, irrespective of any agreements that NSR or NCRR may have with the utility owners. The owner of any utility installation to be removed that is not the subject of an existing occupancy agreement with NCRR will be required to apply for and receive a temporary right-of-entry from NCRR and NSR to perform the removal. The owner of any utility that is not the subject of an occupancy agreement with NCRR that is to be adjusted or relocated will be required to make application and enter into an occupancy agreement with NCRR for the utility and to comply with NCRR rules, policies, and standards including utility engineering review.

It is anticipated that most utility work shall be performed by NCDOT. In the event it is necessary for NSR to perform utility work, NCDOT and NSR shall consult with respect to applicable legal requirements. Utilities shall be relocated and adjusted in accordance with the Right of Way Acquisition Policy contained in the 23 C.F.R. § 710(B), incorporated into this MPCMA by reference.

#### C. Right-of-Way

Acquisition of property and issues pertaining thereto are provided for in the RCPA.

#### D. Right-of-Entry

NCRR and NSR, insofar as their rights and title enable them to do so and subject to their respective rights to operate and maintain the railroad and railroad appurtenances along and over the NCRR Corridor, grant NCDOT, its agents and/or contractors, the right to enter upon lands owned or operated by them, for the purpose of construction, construction-related engineering, and post-construction inspection of the improvements for all Projects for the term of this MPCMA, provided that, prior to entry upon lands of NCRR or NSR, any contractor of NCDOT must execute and deliver to NCRR and NSR a standard construction right-of-entry agreement in a form approved by NCRR and NSR, together with any certificates of insurance required therein. Furthermore, any

crossing of railroad tracks by NCDOT or any of its contractors will be addressed by a standard temporary crossing agreement in a form approved by NCR and NSR.

Any NCDOT grading contractor or subcontractor shall secure background investigations through e-VERIFILE.com of each employee who will (a) be present on the NCR Corridor over a period of 30 days or more, **even where the employee's presence is intermittent and (b) will spend a preponderance of the employee's workday on the NCR Corridor.** Nothing in this background investigation requirement is to be construed as preventing a contractor from hiring any particular individual or requiring the contractor to terminate such individual if already hired; however, NCDOT understands and acknowledges that a successful background investigation of **its contractors'** employees is a mandatory requirement to enable the individual contractor employee to enter upon the NCR Corridor. Contractor employees successfully undergoing the background investigation will be issued a picture identification card which will be required for that **contractor's employees to enter and work on** railroad right-of-way or property. Contractor employees without the identification card will not be allowed to work on the NCR Corridor. Employees leaving the employment of a contractor must surrender the identification card to either the contractor or to NSR. Although NSR has negotiated on the behalf of contractor standard volume rates with e-VERIFILE.com for the investigations, identification cards, and other products, all charges incurred in the use of e-VERIFILE services and products are the sole responsibility of NCDOT or the contractor. The contractor shall execute e-VERIFILE.com's **standard** subscriber agreement. Failure to do so will prevent the contractor or its employees from entering the NCR Corridor. NCDOT shall require its contractors to comply with all applicable Federal and State laws, rules, and regulations applicable to background investigations of employees including, but not limited to, appeal rights and the protection of employee personal information.

In the event that NSR ceases the use of e-VERIFILE.com for background investigations or switches to another similar service, NCDOT will be notified by NSR of the termination and/or transfer. In the event that NSR switches to another vendor for similar services, the requirements of Section III.D shall apply to NCDOT and its contractors with regard **to the use of the alternative vendor's services.**

NSR does not warrant or guarantee either the accuracy or completeness of the services performed by e-VERIFILE.com, and NSR shall have no responsibility to NCDOT or its contractors for the services performed by e-VERIFILE.com. The contractors shall use such services solely at the risk of contractor. NSR leaves it to the sole discretion of NCDOT and its contractors to perform any other background investigations of employees **of NCDOT's contractors.**

Any NCDOT contractor entering the NCR Corridor shall fully comply with applicable roadway worker protection regulations.



## E. Procurement

NSR agrees to comply with any applicable requirements set forth at 49 C.F.R. Part 18.36, 23 C.F.R. §§ 633(A), 635(B), and 646(B), and with any applicable supplementary United States Department of Transportation (USDOT) or FRA directives or regulations with regard to performance of the NSR Responsibilities. If determined necessary for proper administration of the Project Work, NCDOT reserves the right to review NSR technical specifications and requirements.

Pursuant to Section 1554 of ARRA, to the maximum extent possible, contracts funded under ARRA shall be awarded as fixed-price contracts through the use of competitive procedures. A summary of any contract awarded with such funds that is not fixed-price and not awarded using competitive procedures shall be posted by NCDOT in a special section of the **Recovery Accountability and Transparency Board's website established in Section 1526 of ARRA**. To that end, NSR shall inform NCDOT of any contract that is not awarded as a fixed-price contract through the use of competitive procedures and shall provide a summary of the same.

### 1. Contractor Procurement

In accordance with 49 C.F.R. Part 18.36 and 23 C.F.R. § 646(B), a railroad is allowed to accomplish construction by the following: (i) railroad force account; (ii) existing continuing contracts at reasonable costs; (iii) contracting with the lowest responsible bidder based on appropriate solicitation; or (iv) contract without competitive bidding, for minor work at reasonable costs.

#### a. Force Account and Existing Continuing Contracts

Without limiting NSR's ability to hire third-party contractors, NSR may use its own forces or an existing continuing contract to perform the NSR Responsibilities. If NSR elects to use railroad force account or an existing continuing contract, NSR shall notify NCDOT and provide NCDOT with documentation justifying the decision to use force account, existing continuing contracts, or contracts without competitive bidding, for minor work at reasonable costs. The foregoing sentence notwithstanding, NCDOT shall allow force account work when NSR collective bargaining agreements require such work to be performed by its forces.

#### b. Third-Party Contractors

If NSR collective bargaining agreements allow for work to be performed by third-party contractors, NSR will so notify NCDOT. Where NSR contracts with the lowest responsible bidder based on appropriate solicitation, NSR will advertise and obtain bids from qualified contractors and shall comply with requests for information from NCDOT determined necessary for proper administration of the NSR Responsibilities including, but not limited to, bid

tabulation sheets. NCDOT reserves the right to review NSR technical specifications and requirements.

NCDOT will cooperate with NSR to ensure compliance with Federal and State procedure for letting of public contracts including, but not limited to, requirements for advertising in a newspaper having general circulation in the State of North Carolina when required and/or advertising by electronic means when approved. The advertisement will set out statutorily prescribed information and reserve rejection rights.

NSR, and/or its contractors, when it first starts any of the work hereunder, shall post with the local Employment Security Commission Offices (i.e., the ones whose territory covers where the impacted position is open) all positions for which it intends at that time to hire employees as a result of being awarded this funding and/or contract, except NSR shall not be required to take this action for any work that will be performed by employees covered under any collective bargaining agreement. Nothing in this MPCMA shall preclude NSR from submitting invoices for all costs incurred by NSR employees under any collective bargaining agreement.

NSR agrees to notify NCDOT, with a copy to NCRR, of any current or prospective major dispute, breach, or litigation pertaining to any third-party contract.

c. Debarment

Per Office of Management and Budget (OMB) Circular A-133, NSR is prohibited from contracting with or making sub-awards under transactions covered by this MPCMA 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 \$25,000.00 and all non-procurement transactions (e.g., sub-awards to sub-recipients). Contractors receiving individual awards for \$25,000.00 or more and all sub-recipients must certify that the organization and its principals are not suspended or debarred. NSR may rely upon the certification unless it knows that the certification is erroneous.

d. DBE Compliance

NSR, and/or its agent, including all contractors, subcontractors, and sub-recipients shall adhere to the Disadvantaged Business Enterprises (DBE) policy, which requires goals to be set and participation to be reported. Compliance shall be in accordance as required and defined in 49 C.F.R. Part 26. It is the policy of the NCDOT that DBEs have the opportunity to participate in the performance of contracts financed in whole or in part by Federal funds. NSR, and/or its agents, including all contractors,

subcontractors, and sub-recipients shall comply with the provisions of attached Exhibit E.

## 2. Materials Procurement

NSR will purchase or provide the necessary materials for the NSR Responsibilities in connection with said installation of improvements. NSR may use existing contracts for material purchase without separately obtaining bids for individual Projects, provided that upon request from NCDOT, NSR shall make available all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate material costs incurred under this MPCMA.

## F. Construction

### 1. Contract Documents

#### a. Addendum

For each individual Project and/or component thereof, as the engineering and design work for each Project is sufficiently completed pursuant to the PERA, **NSR shall revise the cost estimate ("Revised Engineer's Estimate") to reflect the final estimated quantities and current prices of the Project and/or component.** The Parties shall develop, execute, and deliver a completed **addendum to this MPCMA, hereinafter referred to as "Addendum,"** for each such Project and/or component. The Addendum shall more specifically **describe the Scope of Work, Project Schedule, Revised Engineer's Estimate, Maintenance Quantities, and associated maintenance costs for the individual Project and/or component.** The terms of the completed Addendum should detail the contents of the final design and the Revised Engineer's Estimate.

#### b. Notice to Proceed

When the Addendum for any Project and/or component thereof is executed, NCDOT shall issue a Notice to Proceed to NSR. After a Notice to Proceed has been issued, NSR shall be permitted to provide flagging services, construction services, and material and contractor procurement for that Project and/or component. Upon completion of the contractor procurement process, **NSR shall adjust the Revised Engineer's Estimate using final bid costs to develop the Contract Estimate.**

#### c. Authorization for Construction

Upon completion and approval of the Contract Estimate, NCDOT shall issue a written Authorization for Construction to NSR, with a copy provided to NCR. Except as otherwise provided in Section III.F.1.b, NSR shall not proceed with

any Project or component thereof until after NCDOT has issued a written Authorization for Construction. In no event shall NSR be required to begin performing the NSR Responsibilities on an affected Project and/or component until after NCDOT has obtained the required Federal, State, and local regulatory approvals, licenses, and inspections for that Project and/or component. Except as otherwise provided in Section III.F.1.b, work performed prior to NSR receiving a written Authorization for Construction from NCDOT shall not be eligible for reimbursement.

## 2. Flagging

In connection with the performance of NCDOT Responsibilities, it is agreed that **the safety of people and the safety and continuity of NSR's rail operations** shall be of first importance. If, in NSR's reasonable opinion, conditions or anticipated NCDOT activities at any time so warrant, NSR will provide railroad flagging service and protection. NCDOT shall require its employees, agents, contractors, and invitees to utilize and comply with NSR's directives in this regard and to comply with NSR's Special Provisions, attached as Exhibit F.

## 3. Safety of Operations

If NSR becomes aware of any safety violations committed by NCDOT, its agents and/or contractors, NSR shall so notify NCDOT, and NCDOT shall promptly correct such violation. In the event of an emergency threatening immediate danger to persons or property, NSR may take corrective actions and shall notify NCDOT promptly thereafter. NCDOT shall reimburse NSR for actual costs incurred in connection with the Project Work in taking such emergency measures. NSR assumes no additional responsibility for site safety for NCDOT, its agents and/or contractors, by taking these actions, and NCDOT contractors shall retain full responsibility for site safety.

## 4. Time Frame for Completion of Project Work

NCDOT and NSR shall develop a Project Schedule agreeable to all Parties for each Project and/or component through the preliminary engineering process described in the PERA. NCDOT, NSR, and NCRR agree that compliance with the Project Schedules is critical to the successful completion of the Project Work. As a result, the Parties shall work together to adhere to the Project Schedules.

Unless otherwise specified by the relevant Addendum, NSR shall make commercially reasonable efforts to commence construction activities on a given Project and/or component thereof as soon as reasonably possible after the date of availability for NSR to commence its construction activities. However, NCDOT shall not deliver such Authorization for Construction unless and until the Parties have executed and delivered an Addendum and completed the procurement for the relevant Project and/or component.

Participation by the Parties in Progress Meetings, as provided in Section III.F.6, will facilitate the coordination of all construction activities. All Project Work for all Projects and/or components must be completed and accepted no later than December 31, 2016, in order that final invoices be completed and submitted by NSR to NCDOT in a timely manner pursuant Section IV of this MPCMA. However, as long as NSR exercises commercially reasonable efforts to perform the NSR Responsibilities in a timely way, the failure to adhere to the Project Schedules shall in no way impair the right of NSR to be reimbursed under this MPCMA.

#### 5. NSR Project Manager

NSR has assigned a project manager ("NSPM") to function as a single point-of-contact for NSR. The NSPM shall be responsible for overall project management which consists of duties including, but not limited to, the following:

- a. Work with NCDOT through its Assistant Director for Engineering & Safety or his designee to progress all Project Work;
- b. Identify available NSR resources to implement the Project Work ensuring delivery of the projects on budget and schedule;
- c. Obtain NSR input to resolve issues among the Parties about the performance of Project Work, including engineering, planning, and operations;
- d. Coordinate work efforts among all Parties (i.e., review and comment on plans, approve plans as requested, etc.);
- e. Set up a process that manages tracking and monitoring of tasks, adherence to schedule, expenditures, and utilization of funds against the Contract Estimate;
- f. Ensure general accuracy and timely submission of NSR invoices to NCDOT for timely reimbursement to NSR;
- g. Work with NCDOT to meet ARRA reporting requirements;
- h. Coordinate between NCDOT contractors and NSR contractors and force account personnel;
- i. Participate in project schedule and management meetings as requested by NCDOT or NCRR; and
- j. Present monthly report at Progress Meetings to keep the Parties informed of progress and issues to date about Projects.

The NSPM shall submit a monthly activity report to NCDOT's Assistant Director for Engineering & Safety, with a copy to NCRR, outlining work accomplished within that thirty (30)-day period, and submit records that show the time spent on progressing the work of each Project.

#### 6. Project Coordination and Progress Meetings

NCDOT, NCRR, and NSR shall each assign a representative ("Project Manager") who will manage the Projects on behalf of each Party. The NSPM shall serve as the NSR representative, and Assistant Director for Engineering and Safety, Rail Division, shall serve as the NCDOT representative. All Parties shall designate an alternative representative in the event that the Project Manager for any Party is not available. Said Project Managers shall hold Project Coordination and Progress Meetings every thirty (30) days during the construction of the Project Work governed by this MPCMA. Meetings shall be held at a mutually acceptable location. NCDOT, through its engineering consultants, will develop and maintain project evaluation reports in accordance with NCDOT guidelines that detail specific progress achieved. NCDOT shall provide copies of all project evaluation reports to NSR and NCRR. NSR shall provide information and updates for said reports in a timely manner. Project evaluation reports shall be completed for the identified funded Project and/or component and in accordance with FRA funding requirements.

#### 7. Interim Acceptance of Railroad Roadbed Grading

The Parties anticipate that NCDOT's grading contractor will perform grading work in segments and release completed grading segments to NSR so that NSR may commence track construction. To facilitate this arrangement, NCDOT shall notify NSR and NCRR in writing or by electronic transmission when a grading segment has been completed and NCDOT has certified all work meets the contract requirements. Within fourteen (14) days of receipt of said notice, NSR and NCRR shall arrange for inspection of the completed segment. If NSR or NCRR does not object to the completed segment or if NSR commences track work in the segment, NCDOT's work shall be deemed completed and accepted by NSR and NCRR.

#### 8. Final Inspection

Prior to final acceptance of a Project and/or component, NCDOT, NSR, and NCRR shall have the right to make a final inspection of the completed Project and/or component to assure that the work has been done in accordance with the plans and specifications approved by NCDOT, NSR, and NCRR. Such acceptance shall be reflected in writing and exchanged by the Parties. Said inspection shall occur within thirty (30) calendar days of notification in writing or by electronic transmission to NCDOT, NSR, and NCRR by the Party responsible for the Project Work that has been completed.

## 9. Change Orders and Post-Construction Drawings

If changes in the Project Work within the NCRR Corridor and/or any change to the cost of any Project and/or component within the NCRR Corridor are necessary, the Parties shall agree to the following:

### a. Change Orders

In the event of deviations from the Scope of Work and/or approved design plans, previously approved revisions, special provisions, and standard specifications for which the remedy results in change to such documents, a proposed Change Order shall be issued by the responsible Party, either NCDOT or NSR. The proposed Change Order shall include a complete description of the proposed change in Scope of Work and estimated cost.

### b. NSR Change Order Scope Review and Approval

NSR may proceed with all Change Orders without approval by the Parties except for those Change Orders (1) which result in an additional cost of twenty-five thousand dollars (\$25,000.00) or greater to a Project and/or component; or (2) which in the exercise of NSR's reasonable discretion will result in a material change to the approved final plans for a Project and/or component.

Change Orders that are not submitted to other Parties for their approval pursuant to the previous paragraph shall nonetheless be distributed to all Parties as information within ten (10) business days.

For work related to the NSR Responsibilities, those Change Orders resulting in either (1) an additional cost of twenty-five thousand dollars (\$25,000.00) or greater to a Project and/or component, or (2) a material change to the approved final plans for a Project and/or component as determined by NSR in its reasonable discretion, shall be approved in accordance with the general Change Order procedures set forth in Section III.F.9.c.

### c. General Change Order Procedures

The proposed Change Order shall be provided to NCDOT, NSR, and NCRR for review and approval. Except as provided in Section III.F.9, each Party shall have five (5) business days to review the proposed Change Order and provide comments and/or approval. This review period may be extended for proposed Change Orders resulting in a significant change to the documents upon the agreement of all Parties involved with the origination and review of the proposed Change Order. A proposed material change to the approved design plans must be unanimously approved by the Parties before being implemented.

The originator of the proposed Change Order may request an expedited review of a proposed Change Order if, in the originator's judgment, such is required to maintain the progress of the work, safety, and continuation of railroad operations, and/or to respond to unforeseen conditions. Upon receiving a request for an expedited review, the reviewing Parties shall endeavor to review and/or approve the proposed Change Order within the requested expedited time frame. If review comments and/or approval are not received within the requested expedited time frame, the originator may proceed with the proposed change, unless the proposed change would modify the final approved plans for a Project and/or component in a material manner. The originator will make a good faith effort to communicate with the remaining Parties but may elect to proceed with the Change Order without prior review and approval, with the understanding that further revisions to the Change Order may be required by the reviewing Party. As soon as practicable, the originator of the proposed Change Order shall provide the scope of such change to the other Parties for review and approval.

All Change Orders will be included in monthly reports prepared by the Project Managers to ensure that aggregate cost increases are monitored to determine when Contract Estimates may be reached.

NCRP will not have any responsibilities for the review and approval of Change Order costs.

d. Revised Authorization for Construction

Each Addendum will include a Contract Estimate for a corresponding Project and/or component. When a Change Order or an aggregate of Change Orders causes the cost of the Project and/or component to exceed the Contract Estimate, involves a change in Scope or Work, and/or causes a change in Project Schedule, a revised Authorization for Construction for the Project and/or component among NCDOT, NSR, and NCRP is required to permit a reimbursement for costs in excess of the Contract Estimate.

e. Post-Construction Drawings

Deviations from the approved final design plans will be documented to reflect the constructed field conditions. The Party responsible for construction of a Project and/or component will be responsible for preparing post-construction drawings. The post-construction drawings are to be delivered to all Parties after final inspection. All post-construction drawings shall be submitted by March 31, 2017.



## **SECTION IV. REIMBURSEMENT**

### **A. Reimbursement Guidance**

NSR shall furnish, or cause to be furnished, at the expense of the NCDOT, and in accordance with the stipulations as contained in 23 C.F.R. § 140 I (Reimbursement for Railroad Work) and supplements with regard to Federal Highway Administration (FHWA) funding and 49 C.F.R. Part 18 with regard to FRA funding, all the labor costs, overhead and indirect construction costs, materials and supplies, contracted services, transportation, equipment, and other related costs and items required to perform and complete the NSR Responsibilities. In addition, NSR shall furnish, at the expense of NCDOT, the protection of railroad traffic occasioned by or made necessary by the operations of its contractors or any subcontractors performing the NCDOT Responsibilities near the track area.

Reimbursement for labor additives will be for the most current NSR rates and surcharges approved by the FHWA and authorized by the Commonwealth of Virginia Audit Division for entry into the NSR billing system and accepted by the NCDOT as validated through cognizant approval by the Commonwealth of Virginia Audit Division. Payments hereunder will be made pursuant to and in accordance with 49 C.F.R. Part 18, to the extent that a non-governmental grantee receives grant funding from FRA, and the provisions of such other regulations and procedures as may be prescribed by the Federal government. Determination of any payments hereunder will be based on the requirements of this MPCMA and adjustments will be made to the same in accordance with applicable Federal government-wide principles under 2 C.F.R Part 225 (State and Local Governments). If there are any conflicts between the requirements of 49 C.F.R. Part 18 and Title 23 of the United States Code and the Code of Federal Regulations with regard to any FHWA funding, the Parties intend that the Title 23 requirements will take precedence.

NSR shall adhere to applicable Federal statutory and regulatory requirements regarding reimbursements for rail projects. When there is any question as to compliance therewith, NCDOT and NSR agree to collaborate to determine what statute, regulation, or rule applies and to seek guidance from FRA or the relevant authority. NSR understands that the NCDOT's continued reimbursement for Projects hereunder shall also be subject to the NCDOT being reimbursed by the FRA and subject to compliance by NSR. NCDOT understands that if NSR is not fully reimbursed for its performance of any portion of the Project Work for which an Authorization for Construction has been issued, NSR may suspend its obligations with respect to the Service Outcomes until NSR is properly reimbursed.

### **B. Estimate, Control of Contingency, Notification, Approval, and Changes**

#### **1. Estimate**

The Parties understand that a Contract Estimate is subject to change pursuant to Section III.F.9. Notwithstanding the Contract Estimate and except as provided to the contrary elsewhere in this MPCMA, NCDOT shall reimburse NSR for one hundred percent (100%) of the actual Approved Project Cost of the NSR Responsibilities, regardless of whether the cost is more or less than the Contract Estimate. The Scope of Work may be amended by Change Orders as provided in Section III.F.9.

## 2. Cost Estimate Adjustments for Projects and/or Components

Upon completion of the final engineering plans by NCDOT for any individual Project and/or component, NSR shall through the preliminary engineering process, as provided in the PERA, revise the estimate of cost to reflect the final estimated quantities and current prices determined by NSR to create the **Revised Engineer's Estimate**. NSR shall provide the **Revised Engineer's Estimate** to NCDOT, with a copy provided to NCR, for NCDOT's review. Upon NCDOT approval and the execution of an Addendum, NCDOT will issue a Notice to Proceed. Upon completion of the procurement process, within ten (10) business days, NSR shall create the Contract Estimate. Within ten (10) business days following NSR's delivery of the Contract Estimate, NCDOT shall notify NSR, with a copy provided to NCR, as to whether the Contract Estimate is acceptable and whether the funds necessary to cover excess costs have been authorized and issue an Authorization for Construction. Any further adjustments shall be done in accordance with Section III.F.9.

## 3. Cost Overruns

If, at any time, NSR determines that any work hereunder will cause its total cost to exceed any Contract Estimate, NSR shall provide NCDOT, with a copy provided to NCR, a written estimate of the anticipated overrun and a description of the outstanding work for NCDOT review and approval.

## 4. Review of All Project Costs and Supplemental Agreements

NSR and NCDOT agree that periodically they will review the total costs expended under this MPCMA and compare the same with the Contract Estimates for all Projects and/or components that are in progress, or such revised Contract Estimates as may from time-to-time be agreed to hereunder and modified with a revised Authorization for Construction and/or a Supplemental Agreement. In the event that a funding increase in the overall Program Estimate appears to be indicated, the Parties will timely consider modifying the MPCMA.

In the event there is disagreement on a revised amount for one or more of the Contract Estimates, and NSR and NCDOT cannot agree in a timely manner on a revised Contract Estimate amount, NSR, with the mutual agreement of NCDOT, may cease all NSR work on the Project and/or component in question pursuant

to Section VIII. P and may adjust the Project Schedule for completion of NSR work on the Project and/or component.

#### 5. Unanticipated Conditions Affecting Cost

If, during the course of the Project Work, unanticipated conditions arise which might affect the cost or scheduled duration of any component of the NSR Responsibilities, NSR shall notify NCDOT, with a copy provided to NCRR, of the condition and the estimated cost, if any, to remedy the condition and the effect of that remedy on the Project Schedule, if any. NCDOT shall furnish written approvals to NSR, with a copy provided to NCRR, prior to the commencement of work to remedy the condition. If said remedy involves an increase in Contract Estimate, the Parties will proceed as described in Section III.F.9. Work on the relevant component of the NSR Responsibilities shall cease until agreement is reached among NCDOT and NSR, and NCDOT approves the remedy, revised cost, and revised Project Schedule. Any increase in costs due to cessation of work due to the unanticipated condition shall in itself constitute an unanticipated condition under this paragraph, whose costs are to be included in the estimates for the initial unanticipated conditions; however, NSR shall make commercially reasonable efforts to use the affected force account personnel or contractors productively on other components of the Project to minimize such costs.

NCDOT and NSR may jointly agree to continue the work pending resolution of the issue, with notice of same provided to NCRR. Should NCDOT direct NSR to continue the work pending agreement on the remedy, revised cost, and revised Project Schedule, NCDOT shall be responsible for reimbursing the actual Approved Project Cost incurred by NSR for the continuance of the work to remedy the condition until either the remedy is completed or NCDOT directs NSR to stop the work. NSR shall maintain detailed records of the labor, materials, and equipment directly employed in the continuance of the work and shall provide them to NCDOT.

### C. Reimbursement Procedures

#### 1. Invoicing

NSR shall submit itemized invoices for progress payments to NCDOT every thirty (30) days, and shall make commercially reasonable efforts to submit a final itemized invoice for payment to NCDOT not later than three (3) months after the completion and acceptance of the NSR Responsibilities for any Project and/or component thereof. Under no circumstances shall NSR submit any invoice later than March 31, 2017. The reimbursement amounts shall be based on the actual Approved Project Cost of work completed and accepted plus additives. The invoices shall be sent with such supporting documentation as will fully substantiate the invoiced amounts. If costs are billed after the three (3)-month period that would have otherwise been allowable, NCDOT would review in the

same manner as if the invoices were submitted during the three (3)-month period. Costs submitted later than three (3) months often take longer to process for payment.

## 2. Timely Submittal of Invoices

### a. Progress Payments

In the event invoices for on-going work are not received for any six (6)-month time frame, FRA may rescind funding. NSR shall invoice NCDOT at least once every six (6) months to keep the Project funds active and available. If NSR is unable to invoice NCDOT because no work has been done, it must provide an explanation by letter or by electronic transmission. Failure to submit invoices or explanation may result in NCDOT's inability to provide timely reimbursement of invoices, as outlined in this Section IV of this MPCMA. If in the event FRA rescinds previously obligated funding, NSR agrees that while NSR will be paid as outlined in Section IV of this MPCMA, payments by NCDOT may not be timely.

### b. Final Payments for Completion of Projects and/or Components

NSR will make commercially reasonable efforts to submit final invoices for receipt by the NCDOT within three (3) months of completion and final acceptance by NCDOT of the NSR Responsibilities for any Project and/or component. Supporting documentation for invoices shall be in the form agreed to between NSR and NCDOT. Under no circumstances shall NSR submit any final invoice for completion of all Projects and/or components later than March 31, 2017. If costs are billed after the three (3)-month period that would have otherwise been allowable, NCDOT would review in the same manner as if the invoices were submitted during the three (3)-month period. Costs submitted later than three (3) months often take longer to process for payment. NCDOT understands that if NSR is not fully reimbursed for its performance of any portion of the Project Work for which an Authorization for Construction has been issued, NSR may suspend its obligations with respect to the Service Outcomes until NSR is properly reimbursed.

## 3. Reimbursement Terms

NCDOT, within thirty (30) calendar days of approval of an itemized invoice for a component of the Project Work by NCDOT Office of Inspector General and NCDOT Fiscal Management Division, shall reimburse NSR for actual Approved Project Cost based upon the Scope of Work as may be amended by Change Orders. However, with regard to any final invoice submitted after completion of all Project Work, NCDOT shall have one hundred twenty (120) days to reconcile charges and reimburse NSR. The scope of the review of invoices by the NCDOT Office of Inspector General and NCDOT Fiscal Management Division shall be

limited to verifying that the invoice is related to the Project Work and is consistent with Section IV.B.1.

Failure to submit invoices or explanation or submission past the effective dates of the ARRA funds, as set out in Section IV.C.2.a, may result in de-obligation of funds and NCDOT denying payments. If NCDOT does so, NCDOT shall be required to give NSR thirty (30) days written notice, with a copy provided to NCR, to that effect. In such an event, NSR shall not be required to repay any sums already paid to NSR by NCDOT, and NCDOT shall pay in the manner outlined in this MPCMA for any NSR work performed by NSR or its contractors before the effective date of termination including, without limitation, any extra costs NSR may incur due to the early termination of an agreement with a contractor or under a collective bargaining agreement. NCDOT understands that if NSR is not fully reimbursed for its performance of any portion of the Project Work for which an Authorization for Construction has been issued, NSR may suspend its obligations with respect to the Service Outcomes until NSR is properly reimbursed.

#### 4. Incurred Costs

The reimbursement amounts for all costs billed under this MPCMA shall be subject to the applicable policies and procedures contained in 49 C.F.R. Part 18 with regard to FRA funding, and 23 C.F.R. § 140 I, and 23 C.F.R. § 646(B) with regard to FHWA funding, and based on the full actual Approved Project Cost plus additives of work completed. Any costs incurred by NSR prior to written notification by NCDOT to proceed with the work shall not be eligible for reimbursement and shall be borne by NSR.

#### 5. Unsubstantiated Costs

NSR agrees that the NSR itemized invoices shall reasonably substantiate the project costs incurred for each individual component of Project Work. If any item of an invoice is rejected, which rejection must occur within sixty (60) days of receipt of an invoice, NCDOT shall immediately provide NSR with notice and opportunity to correct any deficiency or error. If NSR acts in good faith to correct an error and the invoice is deemed unallowable by the FRA, and if NSR is not fully reimbursed for its performance of any portion of the Project Work for which an Authorization for Construction has been issued, NSR may suspend its obligations with respect to the Service Outcomes until NSR is properly reimbursed.

#### 6. Costs Outside Scope

NCDOT shall not reimburse NSR for the costs of any work outside the Scope of Work unless the Parties have a revised Authorization for Construction for such work prior to the commencement of the work.

## 7. Notification of Completed Work

NSR shall provide NCDOT with written notification that a Project is complete and in service prior to requesting final reimbursement in order that NCDOT receive reimbursement from FRA.

## 8. Reconciliation at Final Invoice and Program Close Out

In addition to all invoices submitted pursuant to Section IV.C.2.b, within three (3) months of the completion and acceptance of all Project Work, NCDOT and NSR shall work together to ensure that all invoices associated with the NSR Responsibilities not previously submitted, reconciled, or paid, are submitted. NSR will provide such supporting documentation as will substantiate the invoiced amounts. After reconciliation of all project costs, NCDOT shall pay NSR the amount by which actual Approved Project Cost exceeds total payments within one hundred and twenty (120) days following delivery of such final invoice to NCDOT. Conversely, if, after reconciliation, it is found that total payments made by NCDOT exceed the total expenses incurred by NSR in performing the Project Work, NSR shall pay such excess to NCDOT within thirty (30) days of written notification by NCDOT of such excess. Any invoices submitted after the date of March 31, 2017, will not be eligible for reimbursement. NCDOT understands that if NSR is not fully reimbursed for its performance of any portion of the Project Work for which an Authorization for Construction has been issued, NSR may suspend its obligations with respect to the Service Outcomes until NSR is properly reimbursed.

## D. Records Retention for Audit

1. All cost records and accounts for each Project and/or component shall be subject to audit by the Office of the State Auditor and the NCDOT Office of Inspector General for a period of three (3) years following NSR's receipt of final payment for such Project and/or component. During the contract period and also for the said three (3)-year period, NSR, upon reasonable notice, shall make all books, documents, papers, accounting records, electronic records, and such other evidence, either in hard copy or electronic form as may be appropriate, to substantiate costs incurred under this MPCMA available for audit by NCDOT at **NSR's offices during NSR's normal business hours**. Representatives of NCDOT shall have such access to the books and accounts of NSR in order to audit said bill. After the bill has been audited by NCDOT, NCDOT will pay to NSR any amount remaining due to NSR, in addition to the amount previously paid; or NCDOT will advise NSR by letter of overpayment. Promptly after being advised of overpayment, NSR will forward to NCDOT the reimbursement for said overpayment.
2. During the term of any Project and/or component completed under this MPCMA and for three (3) years after the last expenditure report is submitted to FRA for

reimbursement for that Project and/or component, NCDOT agrees to retain intact **and to provide to NCRR at NCRR's request any books, cost records, accounting records, data, documents, reports, records, contracts, and supporting materials** related to the Project Work as may be appropriate or necessary in order for NCRR to substantiate any capital contribution in the NCRR by the State of North Carolina from this Project Work or as may be required by NCRR to otherwise account for the improvements made to the NCRR corridor as part of the Project Work.

3. During the term of any Project and/or component completed under this MPCMA and for three (3) years after the last expenditure report is submitted to FRA for reimbursement for that Project and/or component, NCRR agrees to retain intact and to provide to NCDOT at NCDOT's request any books, cost records, accounting records, data, documents, reports, records, contracts, and supporting materials related to the Project Work as may be appropriate or necessary in order for NCDOT to substantiate any capital contribution in the Project from NCRR **as may be required by NCDOT to otherwise account for NCRR's contribution to the Project Work.**

#### E. Long Lead Time Materials Procurement Reimbursement

To meet project timelines, NSR shall identify and procure certain long lead time materials (LLTM), therefore obligating project funds, prior to final Project approval by NCDOT. These items normally are not off the shelf items and therefore require **additional lead time to manufacture according to the supplier's scheduling.** This early ordering allows for material delivery when required by the Project.

NSR shall determine the materials and purchase quantities, based upon a projection of total need for respective materials for all Project Work, and provide a list of all LLTM materials and quantities, allocating costs for LLTM among the individual Projects. NSR shall also indicate if any of the materials cannot be used at multiple locations within the NSR Responsibilities as anticipated in Section IV.E.1. NCDOT will approve the ordering of the LLTM and will reimburse NSR based upon the approved purchase and on NSR's providing vendor invoices and appropriate supporting documentation. Invoicing shall be in accordance with Section IV.C.3 set out herein. Once an Authorization for Construction is issued for a Project, the allocated LLTM costs for that Project shall be allocated against the budget for the Project.

LLTM allocation and use shall be in accordance with the following:

1. If any Project for which LLTM has been purchased is, for any reason, not approved, the allocated LLTM for that Project shall be utilized among other approved Projects subject to this MPCMA. The estimates for Projects shall be adjusted accordingly and analyzed in accordance with Section IV.B.2 and 3 of this MPCMA and the various remedies imposed.

2. If any Project and/or component is not approved and the LLTM allocated to that Project is not needed for any other Project subject to this MPCMA, or for any other reason, NSR determines that the LLTM purchased in accordance with this provision is not needed, the LLTM paid for by NCDOT and not applied to an NCDOT Project and/or component or returned to NSR stores shall be delivered to NCDOT at a mutually agreed upon location at NCDOT's expense. NSR may, alternatively, and solely at NSR's discretion, use the LLTM on other NSR projects outside the Projects, and if so, NSR shall reimburse NCDOT for the invoiced cost of the LLTM.

#### F. Released Materials

The Parties may relay or scrap Released Materials generated as a result of the Projects and/or components. The Parties may use these Released Materials in industrial sidings and maintenance-of-way tracks within the Projects and/or components where feasible, in place of new materials. If Released Materials are not reused within the Projects and/or components, such material shall be properly disposed of or sold in accordance with agreement of the Parties. The costs of removing and/or disposing of the Released Materials are reimbursable as costs to the Project. The proceeds of any sale of Released Materials will be credited to the Project and/or component.

### **SECTION V. MAINTENANCE OF PROJECT IMPROVEMENTS**

#### A. Performance of Maintenance

1. For twenty (20) years following the completion and acceptance of the NSR Responsibilities but for no longer than the term of the NCRR-NSR Master Agreement and any extension or renewal thereof, NSR shall perform the maintenance and renewal work on the NCRR-Owned Improvements constructed as part of the Project Work and subject to the terms of the NCRR-NSR Master Agreement. Except as provided to the contrary in this MPCMA, the AOP, or the DSOA, the terms of the NCRR-NSR Master Agreement shall govern the performance of any maintenance performed by NSR. NCDOT will reimburse NSR for certain maintenance and renewal costs as set out in Sections V.C.2 and V.D.1 and described in attached Exhibit G.
2. NCDOT shall be responsible for maintaining all other improvements constructed as part of the Project Work, including drainage facilities related to those improvements, except for those certain maintenance responsibilities for which local highway authorities are responsible, as in the case of overhead highway bridges carrying roads, streets, or highways maintained by those local roadway authorities. In no case are NCRR, NSR, or any of their successors responsible for performing maintenance of such improvements or drainage facilities.
3. The maintenance unit costs set forth in Exhibit G have been calculated based upon the existing signal system and do not address any costs that may be



related to a potential future Positive Train Control (PTC) signal system. The Parties intend that any cost of additional PTC maintenance caused or contributed to by the Project Work will be allocated to NCDOT and will be addressed in the future either by amendment to this Section V or by execution of a separate agreement.

4. NCRB agrees that if it enters into a trackage rights agreement or other operating agreement with a freight carrier other than NSR, it will use its best efforts to require such freight carrier to become a party to and be bound as the successor to NSR ("NSR Successor") by the terms and conditions of the DSOA, AOP, and MPCMA, including to all maintenance performance obligations which will be funded at NCDOT expense as described in this MPCMA. In the event that the NCRB-NSR Master Agreement expires or is terminated for any reason or NSR no longer maintains the NCRB-Owned Improvements for rail service pursuant to this MPCMA, NCDOT shall collaborate with NCRB to develop a continuing maintenance and funding approach that considers the freight operators, NCDOT-sponsored trains, Amtrak system trains, and any commuter operations over the NCRB Corridor generally between Raleigh MP H 81 and Charlotte MP 376, and NCDOT and NCRB agree that any such maintenance and funding approach shall follow the principles set forth in Section 6(a) of the AOP and Section V.C.1 and V.C.2 of the MPCMA. Collaboration between NCDOT and NCRB under this Section V shall occur within one (1) year prior to the expiration or termination of this MPCMA or one (1) year of the advance notification given by NSR to NCRB of non-renewal of the NCRB-NSR Master Agreement or any segment thereof. Nothing in this Section V shall prevent NCRB, in its sole discretion, from entering into a lease, trackage rights, operating, or other agreement with a freight carrier to continue to secure reliable, uninterrupted freight service on the NCRB line or to fulfill NCRB's freight common carrier duties, to ensure all railroad safety considerations are met, and to meet any operator labor protection or other regulatory requirements.

#### B. Maintenance Standards

1. Maintenance of the NCRB-Owned Improvements shall be performed in accordance with standards generally allowing 79 mile per hour maximum passenger train speeds where conditions permit. Such maintenance shall also be performed in accordance with the following:
  - a. Applicable NSR standards and specifications, applicable to such work on the NSR railroad system;
  - b. Approved plans and specifications; and
  - c. All applicable FRA regulations.

2. In accordance with Sections 3(c), 6(a), 7, 8, and 9 of the AOP, and Sections 5, 6, and 9 of the DSOA, all Project Work will be performed to meet the standards established in Section B.1 herein. The maintenance of the NCRR-Owned Improvements shall be compatible with the delivery of the Service Outcomes pursuant to the terms of the DSOA.
3. The Parties acknowledge that, pursuant to the modeling used to determine some of the Service Outcomes as reflected in an amendment to the DSOA, a seventy-five (75)-minute window and a one-hundred-fifty (150)-minute window will be required daily at all locations on the H-Line between Greensboro (MP H-0.0) and Cary (MP H-73.0) to perform routine maintenance. The Parties agree that the passenger train schedules prepared for and utilized in the operation of the modeling activity provide for these windows, and that any future passenger schedules or modifications thereto will take these maintenance windows into account.

C. Funding and Allocation of Maintenance and Renewal Costs

1. Pursuant to the AOP, DSOA, and any renewal or extension thereof, the Parties intend that NCDOT shall reimburse NSR on an annual basis for the following:
  - a. The maintenance and renewal of new infrastructure installed as part of the Project Work; and
  - b. The incremental cost of additional maintenance and renewal to existing infrastructure on the NCRR Corridor required by the Project Work.
2. For any NCRR-Owned Improvement, NCDOT's annual maintenance reimbursement to NSR shall be calculated by multiplying the applicable unit cost set forth in Exhibit G by the number of units set forth in the Addendum applicable to that NCRR-Owned Improvement. NCDOT shall begin making annual maintenance reimbursement payments to NSR upon completion and acceptance by NCDOT of the NCRR-Owned Improvement. For the first partial year in which an NCRR-Owned Improvement is in service, NSR shall render a prorated invoice to NCDOT within thirty (30) days of completion and acceptance of the NCRR-Owned Improvement, with the amount of such invoice to be calculated according to the following formula:

$$\text{Annual maintenance reimbursement amount} \times \frac{\text{days left in year}}{365}$$

3. In the event that the NCRR-NSR Master Agreement expires or is terminated for any reason and NSR no longer maintains the NCRR-Owned Improvements for rail service, the provisions and principles set forth in Section V.A.4 shall apply.
4. The performance and costs of maintenance and renewal of the Grade Separations shall be allocated in accordance with N.C.G.S. § 136-20(h),

irrespective of whether N.C.G.S. § 136-20(h) actually applies to the Grade Separations. In the event that the NCRR-NSR Master Agreement expires or is terminated for any reason and there is no NSR Successor to the MPCMA, the provisions and principles set forth in Section V.A.4 shall apply.

5. The costs of maintenance and renewal of safety devices shall be allocated in accordance with N.C.G.S. § 136-20(h), irrespective of whether N.C.G.S. § 136-20(h) actually applies to the grade crossings. In the event that the NCRR-NSR Master Agreement expires or is terminated for any reason and there is no NSR Successor to the MPCMA, the provisions and principles set forth in Section V.A.4 shall apply.
6. The Parties intend that NCDOT shall be entitled to maintenance offset credits for retirement of assets including, but not limited to, bridge retirements, interlocking retirements, grade crossing eliminations, curve speed reductions, and other upgraded infrastructure. These offset credits are reflected in the unit costs set forth in attached Exhibit G.
7. The Parties acknowledge that as Contract Estimates are being developed, Scopes of Work are adjusted, and Project Schedules are created for the Projects and/or component, there may be instances when the Parties determine that all Projects may not be completed as projected. In the event that Projects, or components thereof for which NSR is responsible for maintenance and renewal under this Section V are revised, then at the time of completion and acceptance of said Projects and/or components, the Parties will adjust projected maintenance and renewal work to be performed and revise reimbursement costs according to Post-Construction Drawings.

#### D. Procedures for Obtaining Reimbursement of Maintenance Costs

1. NSR shall submit invoices to NCDOT for the agreed-upon cost of maintenance of improvements performed by NSR, including material, labor, and overhead charges, and for which NCDOT is responsible under this Section V. The total agreed-upon cost shall be determined by multiplying the applicable unit costs set forth in Exhibit G by the number of units set forth in the applicable Addendum. NCDOT shall reimburse said cost to NSR within thirty (30) days of approval of invoices by NCDOT Office of Inspector General and NCDOT Fiscal Management Division. The scope of the review of invoices by the NCDOT Office of Inspector General and NCDOT Fiscal Management Division shall be limited to verifying that the invoice is related to maintenance of the Project Work. Should NCDOT fail to reimburse said costs, Section 6(c) of the DSOA shall apply to NSR.
2. In the event that the NCRR-NSR Master Agreement expires or is terminated for any reason and there is no NSR Successor to the MPCMA, the provisions and principles set forth in Section V.A.4 shall apply.

## E. Remedies

Remedies related to the maintenance and renewal obligations undertaken by the Parties pursuant to this MPCMA are set forth in the AOP and the DSOA. Those remedies also apply and are available to NCRR or NSR Successor.

## **SECTION VI. PASSENGER OPERATING COMMITTEE AND PROCEDURES FOR USE OF CAPITAL RESERVE FUND**

### A. General

Requirements to perform certain service outcomes arising out of the Project Work undertaken pursuant to this MPCMA, and remedial measures to be undertaken if those service outcomes are not achieved are set forth in the DSOA.

### B. Passenger Operating Committee

Pursuant to the AOP, the Parties created a Passenger Operating Committee (POC) for the purpose of implementing the Service Outcomes, monitor passenger train performance and make service adjustments. Among other powers, the POC has the power to recommend any operational, maintenance, or capital improvements that may improve freight or passenger train performance (Section 7(e)(ii) of the AOP), and the power to recommend expenditures from a Capital Reserve Fund, said expenditures to be unanimously approved by the management of all of the Parties (Section 7(e)(viii) of the AOP).

### C. Capital Reserve Fund

Pursuant to Section 7(f) of the AOP, NCRR funded a dedicated Capital Reserve Fund (CRF), restricted for use in accordance with the AOP and the Definitive Agreements in the amount of up to ten million dollars (\$10,000,000.00). The CRF is designated by NCRR only for the purpose of making capital improvements to the NCRR line that improve passenger train reliability for the Additional Frequencies created under the Projects by resolving identified unacceptable passenger train issues, including any future commuter use, freight train delays, or any other capacity-related issues identified and mutually agreed to by NCRR, NCDOT, and NSR. The CRF, together with any other available funds, may be used to resolve train performance or other capacity-related issues that impact the Additional Frequencies or freight service performance arising out of the Projects. The POC, in making its recommendation for capital expenditures from the CRF, shall follow guidance set out in Section 7(f)(iii)(a) of the AOP. This MPCMA, pursuant to Section 7(f)(i) of the AOP provides for this procedure to be provided as to the use of the Capital Reserve Fund, as defined in the AOP.

1. The voting members of the POC shall jointly make a recommendation, in writing, to the management of NCDOT, NSR, and NCRR for a capital expenditure from

the CRF. A recommendation submitted by the POC to management of the Parties under Section VI.C shall include the following information:

- a. Detailed identification of passenger or freight train performance or other capacity related issues;
  - b. Identification of any reasonable operational adjustments that have been reviewed and considered by the POC pursuant to Section 7(f)(iii)(b) of the AOP;
  - c. Detailed identification of proposed capital improvements to the NCR line recommended by the POC that will improve the reliability of passenger or freight train performance or the other capacity-related issues mutually identified and agreed to by the Parties;
  - d. How the recommended improvements will resolve the identified train performance or capacity-related issues or otherwise improve passenger and freight train reliability, including submitting any modeling, proposed design, or engineering analysis or other data supporting the recommendation;
  - e. The cost of the capital improvements recommended by the POC and any proposed cost sharing; and
  - f. The sources of public funding available as described in Section 7(f)(iii)(c) of the AOP and the efforts made or to be made by the POC to obtain additional public funding and **whether CRF funds can be used as a private "match" in order to leverage additional public funds for the recommended capital investment.**
2. Upon receiving a recommendation as described in this Section VI.C, the management of NCDOT, NSR, and NCR shall meet to discuss the recommendation and expenditure request. If the management of NCDOT, NSR, and NCR requires any additional modeling, data, or other analysis or information to consider the recommendation and expenditure request, NSR shall conduct the necessary additional modeling or analysis or obtain the additional data or information. Before any such study is conducted, NCDOT, NSR, and NCR shall agree on the scope, cost allocation, and criteria for any such study.
  3. The POC recommendation must be approved unanimously by the management of NCDOT, NSR, and NCR, and subject to any required Board approvals of the Parties, before any capital expenditure from the CRF may be made.
  4. Once any recommendation for a capital expenditure from the CFR is approved unanimously by the management of NCDOT, NSR, and NCR, then the voting members of the POC shall determine a procedure for making the recommended improvements to the NCR line. The Parties shall execute and deliver a

separate CRF Agreement which shall more specifically describe the capital investment project to be funded by the CRF and the construction of the CRF-approved project. The maintenance of the capital improvements funded by the CRF shall be governed by Section V of this MPCMA or equivalent provision.

5. The separate CRF Agreement shall specify the procedure for reimbursement from the CRF.

## **SECTION VII. SPECIAL FUNDING PROVISIONS**

### **A. Provisions Required by PRIIA**

#### **1. Buy America**

NSR shall comply with applicable provisions of the Buy America provisions set forth in 49 U.S.C. § 24405(a), with respect to the use of steel, iron, and manufactured goods produced in the United States, subject to the conditions therein set forth.

#### **2. Rail Carrier Designation**

NSR recognizes that 49 U.S.C. § 24405(b) provides that persons conducting rail operations over rail infrastructure constructed or improved with funds provided in whole or in part by a grant made under 49 U.S.C. § 244 shall be considered a "rail carrier," as defined by 49 U.S.C. § 10102(5), for the purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.), the Railway Labor Act (43 U.S.C. § 151 et seq.), and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

#### **3. Protective Arrangement**

Consistent with 49 U.S.C. § 24405(c), NCDOT has committed to the FRA through the Cooperative Agreement that with respect to a project that uses rights-of-way owned by a railroad, NCDOT will comply with the protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), 45 U.S.C. § 836 in connection with employees affected by actions taken in connection with the projects undertaken with funding provided by FRA through the Cooperative Agreement, including those carried out through this Master Program Construction and Maintenance Agreement (MPCMA). NCDOT and NSR have determined that the projects carried out with FRA funding in this MPCMA will not adversely affect any NSR employees and, therefore, implementing agreements for such protective arrangements are not required under Section 504 of the 4R Act. NSR will promptly notify NCDOT should NSR determine in the future that any NSR employees would be adversely affected so that appropriate protective arrangements could be implemented.

#### 4. Davis Bacon Act

For projects using or proposing to use rights-of-way owned by a railroad, NSR shall comply with the provisions of 49 U.S.C. § 24405(c)(2), with respect to the payment of prevailing wages consistent with the provisions of 49 U.S.C. § 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements. For projects not using or proposing to use rights-of-way owned by a railroad, NCDOT will comply with the provisions of 40 U.S.C. § 3141 et seq.

### B. Provisions Required by the ARRA

#### 1. Fraud Claims/Criminal Violations

NSR shall promptly refer to the USDOT Inspector General any credible evidence that a principal, employee, agency, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

#### 2. Prohibited Use of Funds

Pursuant to Section 1604 of ARRA, none of the funds provided through this MPCMA may be used towards the development of any casino or other gaming establishment, aquarium, zoo, golf course, swimming pool, or any other activity specifically prohibited by ARRA.

#### 3. Reporting

NSR shall submit periodic reports to NCDOT in sufficient time for NCDOT to submit periodic reports to the FRA as required by Section 1201(c) of ARRA, and as described in this section. The periodic reports shall include information describing: (1) the amount of Federal funds appropriated, allocated, obligated, and outlayed to perform the NSR Responsibilities; (2) the number of projects that have been put out to bid to perform the NSR Responsibilities and the amount of Federal funds associated with such projects; (3) the number of projects for which contracts have been awarded to perform the NSR Responsibilities and the amount of Federal funds associated with such contracts; (4) the number of projects to perform the NSR Responsibilities for which work has begun under such contracts and the amount of Federal funds associated with such contracts; (5) the number of projects to perform the NSR Responsibilities for which work has been completed under such contracts and the amount of Federal funds associated with such contracts; and (6) the number of direct, on-project jobs created or sustained by the Federal funds provided for projects to perform the NSR Responsibilities and, to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number

of jobs created and the total increase in employment since February 17, 2009; and (7) information tracking the actual aggregate expenditures.

Section 1512 of ARRA imposes quarterly reporting obligations on the entity that receives funds directly from the Federal government. In order to submit these quarterly reports within the required time frame to the Federal funding agency, the NCDOT must collect relevant information to complete these reports on a monthly basis. Accordingly, NSR, and/or its agents and subcontractors, agree to provide the NCDOT with such information required by USDOT, FRA, and OMB, in a timely manner so to assist the NCDOT in filing these reports as specified in attached Exhibit H of this MPCMA.

NSR, including contractors and subcontractors, shall provide monthly labor information as described in attached Exhibit H of this MPCMA to NCDOT to review and approve for submission to the USDOT, FRA, and OMB to obtain reimbursement.

#### 4. Whistleblower Provisions

NCDOT and NSR, their agents and/or contractors, shall comply with applicable State, Federal, and contractor whistleblower protections of Section of 1553 of ARRA, 126 N.C.G.S. §§ 126-84 through 126-88, and 95 N.C.G.S. §§ 95-240 through 95-245.

#### 5. General Audit Provisions

- a. NSR shall provide NCDOT with such information as NCDOT may need to comply with audit requirements set forth in OMB Circular A-133.
- b. During the course of performing the NSR Responsibilities and for three (3) years thereafter, or until three (3) years after any litigation concerning the same is resolved, NSR agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the NSR Responsibilities as NCDOT may require and to cooperate with all audit activities.
- c. Pursuant to Section 902 of ARRA, NSR agrees to permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Project Work related to the NSR Responsibilities, materials, payrolls, and other data, and to audit the books, records, and accounts of NSR and NSR's contractors pertaining to the NSR Responsibilities. Such audits shall be upon reasonable notice, during normal business hours and at the places or locations where the records are maintained. NSR agrees to require each third-party contractor whose contract award is not based on competitive bidding procedures as defined by the Secretary to permit the Secretary of Transportation and the Comptroller



General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the NSR Responsibilities.

- d. Pursuant to Section 902 of ARRA, NSR agrees to provide NCDOT, FRA, and Secretary of Transportation and Comptroller General of the United States, or **their authorized representatives access to NSR's facilities and to contract work and/or deliverables in progress, opportunity to interview NSR's** employees concerning any matter relating to the contract, and adequate and appropriate workspace.
- e. Pursuant to Section 1515(a) of ARRA, NSR agrees to provide for authority for any representatives of the Inspector General of the United States to examine any records or interview any employee or officers working on any contract for Project Work governed by this MPCMA. Further, NSR agrees to give notice to all contractors that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of any contractors, its subcontractors or other firms working on any contract for Project Work governed by this MPCMA. Nothing in this Section shall be interpreted to limit or restrict in any way any existing authority of the Inspector General.
- f. NSR shall include the provisions of Section VIII.B.5 in every subcontract or purchase order exceeding one hundred thousand dollars (\$100,000.00), as well as a provision requiring all subcontractors to include these provisions in any lower tier subcontracts or purchase orders.

#### 6. Buy American Provision

NSR, its agents and/or contractors, shall comply with Section 1605 of ARRA requiring that iron, steel, and manufactured goods used in public buildings or public works projects be manufactured in the United States. NSR, its agents and/or contractors, shall maintain records of such purchases for inspection by authorized agents of the State and Federal agencies.

#### 7. Cargo Preference for Materials Shipment

To the extent required by 46 C.F.R. Part 381, NSR agrees to the following:

- a. To utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this MPCMA to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels;

- b. To furnish within twenty (20) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in Section VII.B.7.a to the recipient (through the prime contractor in the case of subcontractor bills-of lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, D.C. 20590, marked with appropriate identification of the Project; and
- c. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

#### 8. Certification for Debarment

NSR agrees to obtain certifications on debarment and suspension from its subcontractors and otherwise comply with USDOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200. NSR agrees that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

#### 9. Patent Rights

- a. If any invention, improvement, or discovery of NSR or any of its third party contractors is conceived or first actually reduced to practice in the course of or under the NSR Responsibilities, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, NSR agrees to notify NCDOT and NCRR immediately and provide a detailed report. The rights and responsibilities of NSR, third party contractors, NCDOT and FRA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.
- b. If NSR secures a patent with respect to any invention, improvement, or discovery of NSR or any of its third party contractors conceived or first actually reduced to practice in the course of or under the NSR Responsibilities, NSR agrees to grant to NCDOT and/or FRA a royalty-free, nonexclusive, and irrevocable license to use and to authorize others to use the patented device or process for Federal Government purposes.
- c. NSR agrees to include the requirements of Section VIII.B.9 of this MPCMA in its third-party contracts for planning, research, development, or demonstration under the NSR Responsibilities.

## 10. Data and Copyrights

Subject data, for the purpose of this MPCMA is defined as, recorded information, whether or not copyrighted, that is developed, delivered, or specified to be delivered under this MPCMA and funded with the ARRA Award, including graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. Not included are financial reports, cost analyses, and similar information incidental to Project administration. FRA reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use any work developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained, and any rights of copyright to which a grantee, sub-grantee, or third-party contractor purchases ownership with Federal assistance. FRA may make available to any FRA grantee, sub-grantee, third-party contractor, either FRA's license in the copyright to the "subject data" derived under this MPCMA or a copy of the "subject data" first produced under this MPCMA.

## 11. Site Visits

FRA, through its authorized representatives, has the right, at all reasonable times, but subject to the reasonable instructions and safety requirements of NCR and NSR, to make site visits to review Project Work accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by FRA on the premises of the NCR, then NCR or NSR, as the case may be, shall provide and shall require its subgrantees or subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by NCR, NSR, or any contractor or subcontractor.

## 12. Civil Rights

NSR agrees to comply with all civil rights laws and regulations, as applicable, in accordance with applicable Federal directives, except to the extent that the FRA determines otherwise in writing. These include, but are not limited to, the following: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) (as implemented by 49 C.F.R. Part 21), which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of

1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 1601-1607), which prohibits discrimination on the basis of age; (e) Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (i) 49 U.S.C. § 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and (k) the requirements of any other nondiscrimination statute(s) which may apply to NSR in its performance under this MPCMA.

### 13. Americans With Disabilities Act

NSR agrees to utilize funds provided under this MPCMA in compliance with any applicable requirements of the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., as amended.

### 14. Environmental Protection

- a. All facilities that will be used to perform work under this MPCMA shall not be so used unless the facilities are designed and equipped to limit water and air pollution in accordance with all applicable local, State, and Federal standards.
- b. NSR will conduct the NSR Responsibilities, in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference to the extent applicable to the Project Work: Section 114 of the Clean Air Act, 42 U.S.C. § 7414, and Section 308 of the Federal Water Pollution Control Act, 33 U.S.C. § 1318, and all regulations issued thereunder. NCDOT certifies that no facilities that will be used to perform the NSR Responsibilities are listed on the List of Violating Facilities maintained by the Environmental Protection Agency (EPA). NSR will notify NCDOT and NCRR as soon as it or any contractor or subcontractor receives any communication from the EPA indicating that any facility which will be used to perform the NSR Responsibilities is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that NSR's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware. NSR will include or cause to be included in each contract or subcontract entered into, which contract or subcontract exceeds fifty

thousand dollars (\$50,000.00) in connection with work performed pursuant to the NSR Responsibilities, the criteria and requirements of this section and an affirmative covenant requiring such contractor or subcontractor to immediately inform the NCDOT and NCRR upon the receipt of a communication from the EPA concerning any alleged violation of Section 114 of the Clean Air Act, Section 308 of the Clean Water Act, or any regulations thereunder, or any facility to be listed on the EPA's List of Violating Facilities.

- c. NCDOT may not expend any of the funds provided in this MPCMA on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332, the National Historic Preservation Act (NHPA), 16 U.S.C. § 470(f), and related laws and regulations have been completed by NCDOT and NCDOT has provided NSR, with a copy to NCRR, with a written notice authorizing NSR to proceed.
- d. NCDOT is required to assist the FRA in its compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA, 40 C.F.R. § 1500 et seq., FRA's "Procedures for Considering Environmental Impacts," 45 F.R. § 40854, June 16, 1980, as revised May 26, 1999, 64 F.R. § 28545, Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance from FRA, NCDOT may be required to conduct certain environmental analyses and to prepare and submit to the FRA draft documents required under NEPA, NHPA, and related statutes and regulations, including draft environmental assessments and proposed draft and final environmental impact statements.
- e. No publicly-owned land from a park, recreational area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, state, or local significance as so determined by such officials shall be used to perform the NSR Responsibilities without the prior written concurrence of FRA and without NCDOT obtaining all the Federal, State, and local regulatory approvals, permits, licenses, inspections, and approvals as are necessary for the performance of the Project Work described in Section III.A.

## SECTION VIII. GENERAL PROVISIONS

### A. Performance of Work

NSR agrees to carry out the NSR Responsibilities in a sound, economical, and efficient manner, and in accordance with the provisions of this MPCMA, the Project Plans, and all applicable Federal and State laws, regulations, and published policies. When there is any question as to compliance, NCDOT and NSR agree to collaborate to determine what statute, regulation, or rule applies and to seek guidance from FRA or the relevant authority. NSR shall include a provision in all of its contracts and its subcontracts requiring compliance with all applicable Federal and State laws, regulations, and published policies.

With respect to the railroad roadbed work conducted as part of the NCDOT Responsibilities, NCDOT warrants against latent and patent defects arising from faulty materials, faulty workmanship, or negligence of NCDOT contractors for a period of twelve (12) months following the date of final completion by NCDOT of any segment of the railroad roadbed work and acceptance by NSR of that segment. NCDOT will not be responsible for damage due to normal wear and tear and/or for use in excess of the design.

### B. Applicable Law

The Parties understand that applicable Federal and State laws and regulations, hereinafter referred to as “Applicable Law,” and guiding applicable Federal and State policies and related administrative practices, hereinafter referred to as “Applicable Guidance,” on the date this MPCMA was executed may be modified from time-to-time. Each of the Parties enters into this MPCMA relying upon the Applicable Law and the Applicable Guidance at the time of execution of this MPCMA. Should any provision of this MPCMA become prohibited or invalid under then-effective Applicable Law or Applicable Guidance, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this MPCMA. Should such prohibition or invalidity modify materially the obligations or responsibilities of the Parties, the Parties to this MPCMA shall negotiate in good faith modifications to this MPCMA, if any, that would effectuate the original intent of the Parties hereto. All limits or standards set forth in this MPCMA to be observed in the performance of the NSR Responsibilities are minimum requirements.

If any future Applicable Law or Applicable Guidance or any changes to existing Applicable Law or Applicable Guidance require NCR or NSR to make modifications or improvements to their facilities or incur additional expenses that would not otherwise have been incurred but for the operation of the Additional Frequencies, as defined in the DSOA, then NCR and NSR shall have the right to terminate this MPCMA and the DSOA upon ninety (90) days written notice to the other Parties unless NCDOT agrees to reimburse the additional capital improvement costs and expenses incurred by NCR or NSR, as the case may be. In the event NCDOT does not reimburse the additional

capital improvement costs and expenses, NCDOT understands that if NSR is not fully reimbursed for its performance of any portion of the Project Work for which an Authorization for Construction has been issued, NSR may suspend its obligations with respect to the Service Outcomes until NSR is properly reimbursed.

#### C. Conflict with State Law

Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in this MPCMA shall require NSR or NCRB to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of this MPCMA violate any applicable State or territorial law, or if compliance with the provisions of this MPCMA would require NSR or NCRB to violate any applicable State or territorial law, NSR and NCRB agree to notify NCDOT immediately in writing in order that FRA and NCDOT may make appropriate arrangements to proceed with the Project as soon as possible.

#### D. Proper Forum

This MPCMA is made under and shall be governed and construed in accordance with, the laws of the State of North Carolina.

#### E. Conflict of Interest

No member, officer, or employee of NCDOT, NSR, and NCRB shall have any interest, direct or indirect, in this MPCMA or the proceeds therefrom.

#### F. Conflict Between Agreements

The AOP, DSOA, PERA, and RCPA remain in effect except to the extent that their terms are expressly and specifically modified or superseded by the terms of this MPCMA.

#### G. Agreement Modifications

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

#### H. Term

Unless sooner terminated in accordance with its terms, and also subject to the provisions of Section VIII.I, the term of this MPCMA shall be for twenty (20) years following the completion and acceptance of all NSR Responsibilities.

#### I. Severability

The Parties agree that, if any part, term, or provision of this MPCMA is held to be illegal, unenforceable, or in conflict with any applicable Federal, State, or local law or regulation, such part, term, or provision shall be severable, with the remainder of the MPCMA remaining valid and enforceable, subject to Section VIII.B.

#### J. Waiver

If any Party fails to enforce its respective rights under this MPCMA, or fails to insist **upon the performance of any of the other Parties' obligations hereunder, such failure** shall not be construed as a permanent waiver of any rights or obligations in this MPCMA.

#### K. Independent Contractors

The Parties agree that neither NCDOT nor its agents and/or contractors, shall be deemed either agents or independent contractors of NSR and NCRR. Except as otherwise provided by this MPCMA, NSR and NCRR shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by NCDOT or its contractors. Notwithstanding the foregoing, this paragraph shall in no way affect the absolute authority of NSR and NCRR to prohibit NCDOT, its agents and/or contractors, or persons not associated with NCDOT from **entering NCRR's** property, or to require the removal of any person from the NCRR property, if NSR and/or NCRR determines, in its or their sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on, or about the Project Work exist.

#### L. Taxes

NCDOT shall reimburse NSR and/or NCRR for any increases in Federal or State income, ad valorem taxes, property taxes, franchise taxes, or assessments or payments in lieu therefore due to the Project Work. Under no circumstances shall NSR or NCRR have any obligation or liability for any such increases in Federal or State ad valorem, property taxes, franchise taxes, or assessments, or payments in lieu therefore. If assessments for such taxes are made and NCDOT determines to seek exemption for any such assessment, NCDOT shall continue to make payments for such taxes, or make reimbursements therefore, unless and until a final judicial or administrative order is issued granting exemption from any such assessment.

It is the intent of the Parties that neither this MPCMA nor the construction of the Projects addressed therein will create any Federal or State income, franchise, or property tax liability to NCRR or NSR. Any Party may seek guidance and administrative determination from the NC Department of Revenue regarding state tax liability and, if necessary, all Parties will support a legislative remedy to resolve any tax liability issues.



#### M. Force Majeure

The Parties agree to pursue the completion of the Project Work as expeditiously as possible and to complete said work in accordance with the requirements of this MPCMA. No Party shall be held responsible to the other for delays caused by *Force Majeure* events, and such delays shall not be deemed a breach or default under this MPCMA. In no event shall *Force Majeure* events excuse NCDOT from its obligation to make payment to NSR in accordance with this MPCMA. Further the Parties agree that the resolution or settlement of strikes or other labor disputes shall not be deemed to be within the control or reasonable control of the affected Party. If any Party is unable to complete work assigned to it within the time specified in the Project Schedule due to a condition of *Force Majeure* or other conditions beyond the reasonable control of said Party, then said Party will diligently pursue completion of the item of Project Work that is delayed once said condition or conditions are no longer in effect. For purposes of this MPCMA, *Force Majeure* events are defined as circumstances beyond a Party's control or reasonable control that delay performance and may include, but are not limited to, acts of God, acts of the public enemy, labor disputes, fires, insurrections, and floods.

#### N. Pass-Through Provisions

The Parties acknowledge that several provisions set out herein are required to be placed in solicitations for labor contractors, contractors engaging labor, and other documentation required by this MPCMA. NSR and NCDOT agree to collaborate to ensure that any and all pass-through requirements are met.

#### O. Cessation of Work

NSR shall have the right to cease all Project work, and NSR shall cease all work if so directed by the NCDOT until, under Section IV.B.5 hereof, NCDOT shall have approved, if applicable, a revised Authorization for Construction, and the same shall have been documented in a writing signed by all Parties to this MPCMA. If there shall be a period of NSR cessation of work due for the reasons cited in the previous sentence, and then the NSR work is again commenced upon the execution of the noted writing, then all time frames for completion of any and all work hereunder shall be extended for a period coextensive with the period of cessation. If NSR shall cease work in accordance with the foregoing, then in addition to reimbursing NSR for the cost of work performed, NCDOT shall reimburse NSR for its actual documented and auditable demobilization and mobilization costs.

#### P. Termination

##### 1. Termination Due to Abandonment of Project and/or Component

NCDOT shall have the right, upon reasonable written notice to NSR and NCR, to abandon any Project and/or component at any time. However, should NCDOT withdraw its participation, it shall reimburse NSR, within thirty (30) days of approval of an invoice by the NCDOT Office of Inspector General and NCDOT

Fiscal Management Division, of the actual Approved Project Cost of the work performed by NSR on that component prior to issuance of written notification of withdrawal of participation. The scope of the review of invoices by the NCDOT Office of Inspector General and NCDOT Fiscal Management Division shall be limited to verifying that the invoice is related to the Project Work and is consistent with Section IV.B.1.

## 2. Termination Due to Failure of ARRA Funding

All terms and conditions of this MPCMA are dependent upon, and, subject to the allocation of FRA funds for the purpose set forth in the MPCMA; and the MPCMA shall automatically terminate if funds cease to be available. NCDOT shall immediately notify NSR and NCRR if FRA funds cease to be available. If Federal funds under the MPCMA cease to be available, all obligations of the Parties under the MPCMA shall terminate. NCDOT shall be required to reimburse NSR, within ninety (90) days of receipt of an invoice, of the actual Approved Project Cost of any Project Work performed by NSR prior to termination of this MPCMA.

## 3. Funds Already Paid

In either of the foregoing events, NSR shall not be required to repay any sums already paid to NSR by NCDOT; and NCDOT shall pay in the manner outlined in this MPCMA for any NSR work performed by NSR or its contractors before the effective date of termination, including without limitation, any extra costs NSR may incur due to the early termination of an agreement with a contractor or under a collective bargaining agreement.

## 4. Effect of Termination

In the event that this MPCMA is terminated, NSR, subject to whatever rights it may have in Section 6 of the DSOA, shall have the right to suspend its obligations with respect to the Delay Standard, Service Outcomes, and Additional Frequencies.

## Q. Assignment

Except as hereafter provided, this MPCMA may not be assigned by any of the Parties without the written consent of the remaining two Parties, which consent shall not be unreasonably withheld. NSR or NCRR may assign this MPCMA and all rights and obligations herein to a successor in interest, parent company, subsidiary, or future subsidiary, or, subject to the NCRR-NSR Master Agreement, and only as a partial assignment, to a qualified third-party operator if NSR shall cease service on the NCRR segment between Charlotte and Greensboro, or, pursuant to the terms of the Master Agreement, and only as a partial assignment, to a qualified third-party operator if NSR shall cease service on the NCRR segment between Raleigh and Greensboro. Upon

assignment of this MPCMA by NSR or NCRR and the assumption of NSR's or NCRR's assignee of NSR's or NCRR's obligations under this MPCMA, NSR or NCRR shall have no further obligation under this MPCMA.

#### R. Merger

This MPCMA, together with each exhibit and appendix, constitutes a final expression of all the terms agreed upon; and these are a complete and exclusive statement of those terms, superseding all other prior understandings and agreements, both written and oral, between the Parties with respect to the subject matter of this MPCMA, except for the terms of the AOP, DSOA, PERA, and RCPA, all of which shall survive the execution of this MPCMA. This MPCMA may be supplemented, amended, or modified at any time and in any and all respects only by an instrument in writing executed by NCDOT, NSR, and NCRR.

#### S. Insurance

NSR shall procure and maintain insurance, in form and substance acceptable to NCRR, NSR, and NCDOT, prior to and during the performance of the Project Work as more particularly described in the Addendums for each Project and/or component. The Parties agree all such insurance will include coverage for liabilities or claims arising out of construction activities occurring in or within close proximity (within fifty feet) of the NCRR Corridor and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass, or crossing. The Parties acknowledge that NSR self-insures. NSR shall provide a certificate of self-insurance in the form of the attached Exhibit I.

#### T. Notices

Any notice, request, or other communication to any Party by any other Party as provided herein shall be given in writing, sent by first class mail, return receipt requested, or by overnight courier, and shall be deemed given upon actual receipt by the addressee. Notice shall be addressed as follows:

If to NSR, use:

Charles E. Stine  
Director Engineering  
Norfolk Southern Corporation  
1200 Peachtree Street, N.E.  
Atlanta, GA 30309

With a copy to:

Randal S. Noe  
General Counsel – Operations  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510

If to NCRR, use:

North Carolina Railroad Company  
2809 Highwoods Boulevard, Suite 100  
Raleigh, North Carolina 27604-1640  
ATTN: Scott Saylor, President

If to NCDOT, use:

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

#### U. Ethics Provision

The Parties acknowledge the requirements of N.C.G.S. § 133-32. In addition, NCDOT 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:

- a. have a contract with a governmental agency; or
- b. have performed under such a contract within the past year; or
- c. 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.

IN WITNESS WHEREOF, this Master Project Construction and Maintenance Agreement has been executed, in triplicate originals, the last day and year set out below, on the part of NCDOT, NCRR, and NSR 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: <u>Charles E. Stine</u>	BY: <u>T. J. Drake</u>
NAME: <u>Charles E. Stine</u>	NAME: <u>T. J. Drake</u>
TITLE: <u>Director of Engineering</u>	TITLE: <u>Vice President - Engineering</u>
DATE: <u>9/17/12</u>	DATE: <u>9/17/12</u>

FEDERAL TAX IDENTIFICATION NUMBER  
53-6002016  
Norfolk Southern Railway Company

MAILING ADDRESS  
Norfolk Southern Railway Company  
1200 Peachtree Street, NE  
Atlanta, Georgia 30309  
ATTN: Mr. Charles Stine  
Director of Engineering

IN WITNESS WHEREOF, this Master Project Construction and Maintenance Agreement has been executed, in triplicate originals, the last day and year set out below, on the part of NCDOT, NCRR, and NSR 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 Master 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: *Cathie Campbell*

BY: *Scott M. Saylor*

NAME: Catherine Campbell

NAME: Scott M. Saylor

TITLE: Planning Director

TITLE: President

DATE: Sept. 14, 2012

DATE: 9/14/12

FEDERAL TAX IDENTIFICATION NUMBER

56-6003280  
North Carolina Railroad Company



MAILING ADDRESS

Mr. Scott M. Saylor, President  
North Carolina Railroad Company  
2809 Highwoods Boulevard, Suite 100  
Raleigh, North Carolina 27604

IN WITNESS WHEREOF, this Master Project Construction and Maintenance Agreement has been executed, in triplicate originals, the last day and year set out below, on the part of NCDOT, NCRR, and NSR 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: 9-21-12

DATE: 09.21.12

SEAL

MAILING ADDRESS

North Carolina Department of Transportation  
Rail Division, Engineering & Safety  
1556 Mail Service Center  
Raleigh, North Carolina 27699-1556  
ATTN: Paul C. Worley – Assistant Director  
for Engineering & Safety

APPROVED BY BOARD OF TRANSPORTATION ITEM O: March 8, 2012  
(Date)

## EXHIBIT A

### PIEDMONT IMPROVEMENT PROGRAM PROGRAM ESTIMATE FOR SERVICE OUTCOME PROJECTS

Component Program for Track and Structures		STIP Number	Total Cost (\$ millions)
P1	Graham (CP Merrill) to CP Haw River passing siding and curve realignment	P-5205	\$14.89
P10a	Double Track CP Haydock to CP Junker	P-5208	\$94.77
P10b	Double Track CP Reid to CP North Kannapolis	P-5206	\$92.59
P10c	Double Track CO Bowers to CP Lake	C-4901	\$46.71
P12	Klumac Road grade separation	U-3459	\$7.84
P13	Curve realignment at CP Duke	I-2304AE	\$4.44
P15	McLeansville Road grade separation (formerly Carmon Road crossing closure and road realignment)	P-5204	\$5.62
P17	CP Nelson to CP Clegg passing siding	U-4716A	\$8.82
P18	Hopson Road grade separation	U-4716C	\$13.75
P19	Morrisville Parkway grade separation	P-5201	\$16.00
P21	Private Crossing Safety Initiative (PCSI)	P-4405	\$15.55
Total Project Cost			\$320.98
Non-Federal Share (NCDOT)			\$30.16
Federal Share (ARRA)			\$290.82

(1) The Project costs listed in this Exhibit A are based on NCDOT preliminary estimates and referred to as Program Estimate in the MPCMA. The actual project costs will be determined upon development and execution of Addenda to perform the activities within the Projects and verified upon close-out of the Projects.

(2) The Total Cost includes a Non-Federal Share to be provided by NCDOT. It represents the amount of grantee funding assistance defined in the Cooperative Agreement between NCDOT and FRA and is subject to change.



## EXHIBIT B

### PIEDMONT IMPROVEMENT PROGRAM TRACK AND SIGNAL IMPROVEMENTS

Project		Location	
		From Milepost	To Milepost
P1:	Graham (CP Merrill) to CP Haw River passing siding and curve realignment	H-23.4	H-25.5
P10a:	Double Track CP Haydock to CP Junker	360.0	372.2
P10b:	Double Track CP Reid to CP North Kannapolis	337.1	347.7
P10c:	Double Track CP Bowers to CP Lake	309.7	314.1
P13:	Curve realignment at CP Duke	327.3	327.9
P17:	CP Nelson to CP Clegg passing siding	H-63.2	H-67.0

## EXHIBIT C

### PIEDMONT IMPROVEMENT PROGRAM GRADE SEPARATIONS

Project		Location (Milepost)
P10a-2:	Pharr Mill Road grade separation Double Track CP Haydock to CP Junker	361.7
P10a-4:	Roberta Road grade separation Double Track CP Haydock to CP Junker	363.8
P10a-5:	Mallard Creek Church Road grade separation Double Track CP Haydock to CP Junker	368.0
P10a-6:	Grier Road grade separation Double Track CP Haydock to CP Junker	371.1
P10b-1:	Peeler Road grade separation Double Track CP Reid to CP North Kannapolis	338.3
P10b-3:	Kimball Road grade separation Double Track CP Reid to CP North Kannapolis	344.5
P10b-5:	24 <sup>th</sup> Street grade separation Double Track CP Reid to CP North Kannapolis	347.1
P10c-2:	Upper Lake Road grade separation Double Track CP Bowers to CP Lake	311.1
P10c-3:	Turner Road grade separation Double Track CP Bowers to CP Lake	313.0
P12:	Klumac Road grade separation	335.3
P15a:	McLeansville Road grade separation (formerly Carmon Road crossing closure and road realignment)	H8.0
P18:	Hopson Road grade separation	H64.6
P19:	Morrisville Parkway grade separation	H69.6
P21-a(2):	Caldwell Road grade separation Private Crossing Safety Initiative (PCSI)	365.2

## EXHIBIT D

### PIEDMONT IMPROVEMENT PROGRAM PRIVATE CROSSING SAFETY INITIATIVE (PCSI) IMPROVEMENTS

Project		Location (Milepost)
P21a-1:	Caldwell Road access road	365.6 to 367.0
P21b:	Gladys Doster	363.28
P21c:	Ethel Lane and Juke Box Road Closures	341.39/341.54
P21d:	Reid Farm Road	337.52
P21e:	Noble Acres	337.1
P21f:	W. Pat Sloop/Jeremy Upright	336.54
P21g:	Thomas and Howard	H4.25
P21h:	Long and Patterson	H7.40
P21i:	Carl C. Barber	H9.50
P21j:	James D. Norris	H28.58
P21k:	Logan E. Crutchfield	H28.21
P21l:	Andrew B. Lloyd	H38.23
P21m:	Frank E. Freeman	H38.85
P21n:	Partin's Trailer Park	H41.82
P21o:	Byrdsville Road	H43.89
P21p-1:	Greenbriar Drive	H47.62
P21p-2:	Gordon Thomas Drive	H48.49
P21q:	Progress Energy	H-71.11
P21r:	PSNC	H74.1
P21s:	Recreational Ventures	H75.7

## **EXHIBIT E**

(REVISED 8/6/07)

### **DISADVANTAGED BUSINESS ENTERPRISE POLICY FOR AGREEMENTS BETWEEN NORFOLK SOUTHERN RAILWAY COMPANY AND NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**

#### **DISADVANTAGED BUSINESS ENTERPRISE POLICY**

It is the policy of the North Carolina Department of Transportation ("Department") that Disadvantaged Business Enterprises (DBEs) shall have the opportunity to participate in the performance of contracts financed in whole or in part by Federal Funds.

#### **OBLIGATION**

- A. Norfolk Southern Railway Company ("NSR"), its contractor(s) and the contractor's subcontractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of the project covered by the Agreement to which this Exhibit is attached. To the extent NSR hires any contractors to perform work related to the Department-funded project covered by the Agreement to which this Exhibit is attached, NSR shall carry out the goals described below when and if NSR awards federally assisted contracts to contractors. In such a case, NSR shall seek in good faith to carry out the goals so set, and a failure for NSR to seek to carry out these goals in good faith is a material breach of the Agreement to which this Exhibit is attached, which may result in the termination of that Agreement, but in such an event Department shall reimburse NSR for all costs of such covered project that are not related to the DBE goal portion of the Agreement to which this Exhibit is attached.

#### **GOALS**

- A. After consulting with NSR, the Department shall establish reasonable goals for participation by NSR-retained DBEs on the Agreement to which this Exhibit is attached, and said goals must first be approved by the Department's Contractual Services Unit prior to NSR's advertising for bids for contract work to be financed in whole or in part by Federal funds.
- B. NSR's contractors, if any, must seek to attain the above-referenced goals or, in the alternative, show to the reasonable satisfaction of the Department that they made good faith efforts to seek to attain said goals. If the funds to be paid to DBEs do not equal or exceed the goals set by the Department for the project, the Department shall not refuse to concur in the award of the contract as long as the Department has determined that a good faith effort to meet the goals has been made.
- C. It is understood by all parties that there may be instances where there are no DBEs qualified to perform certain work. Should this occur, the Department will set a zero percent DBE goal for that work if the same is covered by the Agreement to which this Exhibit is attached.
- D. Nothing in this Exhibit or by the setting of goals by the Department shall serve to require NSR to contract with or permit the engagement as a subcontractor of any contractor,

subcontractor or company which NSR in its reasonable judgment deems to be either (i) unqualified or inexperienced to perform the work, (ii) not competitive in price or (iii) otherwise unsuitable to NSR in light of past practices or performance by the contractor, subcontractor or company or the officers of the contractor, subcontractor or company.

#### LISTING OF DBE SUBCONTRACTORS

- A. For any Agreements covered by the Agreement to which this Exhibit is attached and where there will be Federal Funds used for the covered project, the following requirements are included: All contractors, at the time their project proposal is submitted, must also submit a listing of DBE participation on the appropriate form (or facsimile thereof) provided in the NSR's Request for Proposal in order for the contractor's proposal to be considered responsive. Contractors must indicate the total dollar value of DBE participation for the contract. In the event the contractor has no DBE participation, it is still required to indicate this on the form by entering the word or number zero. Blank forms will not be deemed to represent zero participation. **PROJECT PROPOSALS SUBMITTED WHICH DO NOT HAVE DBE PARTICIPATION INDICATED ON THE APPROPRIATE FORM WHEN REQUIRED WILL NOT BE CONSIDERED RESPONSIVE AND MAY BE REJECTED.**

Only those contractors with current DBE certification by the Department will be considered a DBE. Contractors can access a list of DBEs which have been certified as such by the North Carolina Department of Transportation by clicking on the following <http://apps.dot.state.nc.us/vendor/directory/>. The listing of an individual DBE in the Department's directory shall not be construed as an endorsement of the contractor's capability to perform certain work.

- B. For any Agreements covered by the Agreement to which this Exhibit is attached and where there will be Federal Funds used for the covered project, the following requirements are included: The following information is required on the appropriate form provided in the contractor's Request for Proposal:
- (1) The names and federal tax ID of DBEs committed to participate in the contract;
  - (2) The Contract Item Numbers and Contract Item Descriptions and agreed upon unit prices of work to be performed by each DBE; and
  - (3) The total dollar amount to be paid to each DBE based on agreed upon unit prices.

The contractor is required to submit written documentation of the contractor's commitment to use a DBE subcontractor and written confirmation from each DBE, listed in the proposal form, indicating their participation in the project contract.

The Department will not allow any substitutions, deletions, or other alterations to the listing of contractors committed for DBE participation and/or the respective listed contract item numbers after the opening of the contractor's proposal unless requested in writing by NSR. In turn, NSR shall submit the contractor's requested substitutions, deletions, or other alterations in writing to the Department for the Department's written approval, comment and/or rejection.

## REPORTING DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

For any Agreements covered by the Agreement to which this Exhibit is attached and where there will be Federal Funds used for the covered project, the following requirements are included: When payments are made to DBEs, including material suppliers, NSR shall provide the Department with an accounting of said payments, if any. This accounting shall be furnished the Department as part of the NSR's progress invoices and final invoice for the project. Failure to submit this information accordingly may result in (1) temporary withholding of money due in the next progress payment; or (2) removal of an approved contractor from the prequalified bidders list or the removal of other entities from the approved subcontractors list. The accounting shall list for each payment made to a DBE the following:

DOT Project Number

Payer Firm Name and Federal Taxpayer ID

Receiving Subcontractor or Material Supplier and Federal Taxpayer ID

Amount of Payment

Date of Payment

### DEFINITIONS

For purposes of this provision the following definitions will apply:

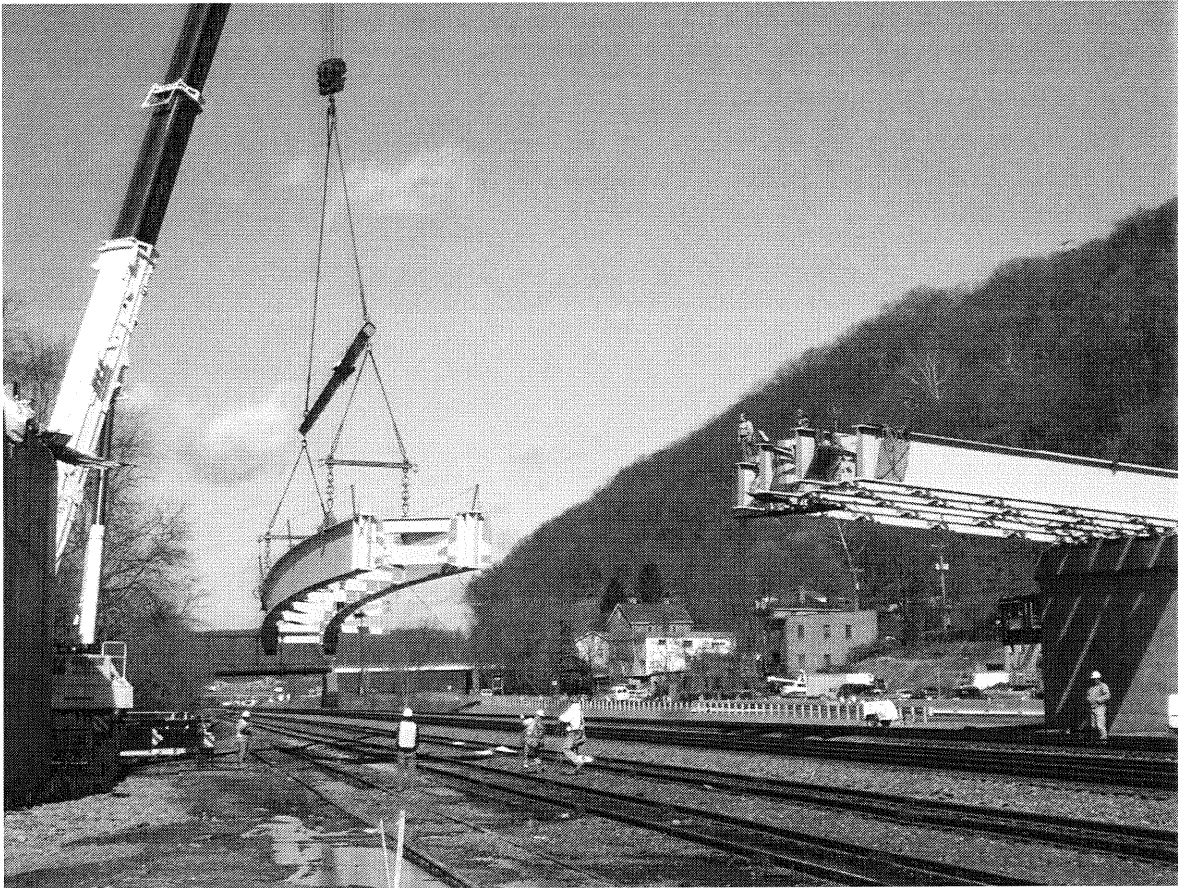
- A. Socially and economically disadvantaged individuals means a person who has a net worth of \$1,325,000.00 or less and is a citizen or lawful permanent resident of the United States and who is:
1. A Black American
  2. A Hispanic American
  3. A Subcontinent Asian American
  4. A Native American
  5. An Asian-Pacific American
  6. A Woman
  7. Members of other groups, or other individuals found to be economically and socially disadvantaged by the Small Business Administration under Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)).
  8. Members of other groups, or other individuals found to be economically and socially disadvantaged by the Department under the Criteria for Disadvantaged Business Enterprises as published by the Department.
- B. Disadvantaged Business Enterprise (DBE) means a for-profit small business concern.
1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation in which 51 percent of the stock is owned by one or more such individuals; and

2. Whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.

## **EXHIBIT F**

### **SPECIAL PROVISIONS FOR PROTECTION OF RAILWAY INTERESTS**

**“SAFETY OF OPERATIONS IS NO. 1 PRIORITY FOR NS”**



**NORFOLK SOUTHERN RAILWAY COMPANY**



1. **AUTHORITY OF RAILROAD ENGINEER AND DEPARTMENT ENGINEER:**

The authorized representative of the Railroad Company, hereinafter referred to as Railroad Engineer, shall have final authority in all matters affecting the safe maintenance of Railroad traffic of his Company including the adequacy of the foundations and structures supporting the Railroad tracks.

The authorized representative of the Department, hereinafter referred to as the Department Engineer, shall have authority over all other matters as prescribed herein and in the Project Specifications.

2. **NOTICE OF STARTING WORK:**

A. **The Department's Prime contractor shall not commence any work on railroad rights-of-way until he has complied with the following conditions:**

1. Given the Railroad written notice, with copy to the Department Engineer who has been designated to be in charge of the work, at least ten days in advance of the date he proposes to begin work on Railroad rights-of-way.

Office of Chief Engineer  
Bridges & Structures  
Norfolk Southern Corporation  
1200 Peachtree Street NE  
Internal Box #142  
Atlanta, Georgia 30309

2. Obtained written approval from the Railroad of Railroad Protective Liability Insurance coverage as required by paragraph 14 herein. It should be noted that Railroad Company does not accept notation of Railroad Protective insurance on a certificate of liability insurance form or Binders as Railroad Company must have the full original countersigned policy. Further, please note that mere receipt of the policy is not the only issue but review for compliance. Due to the number of projects system-wide, it typically takes a minimum of 30-45 days for Railroad Company to review.
3. Obtained Railroad's Flagging Services as required by paragraph 7 herein.
4. Obtained written authorization from the Railroad to begin work on Railroad rights-of-way, such authorization to include an outline of specific conditions with which he must comply.

5. **Furnished a schedule for all work within the Railroad rights-of-way as required by paragraph 7,B,1.**

**B. The Railroad's written authorization to proceed with the work shall include the names, addresses, and telephone numbers of the Railroad's representatives who are to be notified as hereinafter required. Where more than one representative is designated, the area of responsibility of each representative shall be specified.**

**3. INTERFERENCE WITH RAILROAD OPERATIONS:**

**A. The Contractor shall so arrange and conduct his work that there will be no interference with Railroad operations, including train, signal, telephone and telegraphic services, or damage to the property of the Railroad Company or to poles, wires, and other facilities of tenants on the rights-of-way of the Railroad Company. Whenever work is liable to affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad Engineer for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor which requires flagging service or inspection service shall be deferred by the Contractor until the flagging service or inspection service required by the Railroad is available at the job site.**

**B. Whenever work within Railroad rights-of-way is of such a nature that impediment to Railroad operations such as use of runaround tracks or necessity for reduced speed is unavoidable, the Contractor shall schedule and conduct his operations so that such impediment is reduced to the absolute minimum.**

**C. Should conditions arising from, or in connection with the work, require that immediate and unusual provisions be made to protect operations and property of the Railroad, the Contractor shall make such provisions. If in the judgment of the Railroad Engineer, or in his absence, the Railroad's Division Engineer, such provisions is insufficient, either may require or provide such provisions as he deems necessary. In any event, such unusual provisions shall be at the Contractor's expense and without cost to the Railroad or the Department.**

**4. TRACK CLEARANCES:**

**A. The minimum track clearances to be maintained by the Contractor during construction are shown on the Project Plans. However, before undertaking any work within Railroad right-of-way, or before placing any obstruction over any track, the Contractor shall:**

1. **Notify the Railroad's representative at least 72 hours in advance of the work.**
2. **Receive assurance from the Railroad's representative that arrangements have been made for flagging service as may be necessary.**
3. **Receive permission from the Railroad's representative to proceed with the work.**
4. **Ascertain that the Department Engineer has received copies of notice to the Railroad and of the Railroad's response thereto.**

5. **CONSTRUCTION PROCEDURES:**

A. **General:**

Construction work and operations by the Contractor on Railroad property shall be:

1. **Subject to the inspection and approval of the Railroad.**
2. **In accord with the Railroad's written outline of specific conditions.**
3. **In accord with the Railroad's general rules, regulations and requirements including those relating to safety, fall protection and personal protective equipment.**
4. **In accord with these Special Provisions.**

B. **Excavation:**

The subgrade of an operated track shall be maintained with edge of berm at least 10'-0" from centerline of track and not more than 24- inches below top of rail. Contractor will not be required to make existing section meet this specification if substandard, in which case existing section will be maintained.

Additionally, the Railroad Engineer may require installation of orange construction safety fencing for protection of the work area.

C. **Excavation for Structures:**

The Contractor will be required to take special precaution and care in connection with excavating and shoring pits, and in driving piles or sheeting for footings adjacent to tracks to provide adequate lateral support for the tracks and the loads which they carry, without disturbance of track alignment and surface, and to avoid obstructing track clearances with working equipment, tools or other material. All plans and calculations for shoring shall be prepared and signed by a Registered Professional Engineer. The Registered Professional Engineer will be responsible for the accuracy for all controlling dimensions as well as the selection of soil design values which will accurately reflect the actual field conditions. The procedure for doing such work, including need of and plans and calculations for shoring, shall first be approved by the Department Engineer and the Railroad Engineer, but such approval shall not relieve the Contractor from liability.

Additionally, walkway with handrail protection may be required as noted in paragraph 11 herein. .

**D. Demolition, Erection, Hoisting**

1. Railroad tracks and other railroad property must be protected from damage during the procedure.
2. The Contractor is required to submit a plan showing the location of cranes, horizontally and vertically, operating radii, with delivery or disposal locations shown. The location of all tracks and other railroad facilities as well as all obstructions such as wire lines, poles, adjacent structures, etc. must also be shown.
3. Crane rating sheets showing cranes to be adequate for 150% of the actual weight of the pick. A complete set of crane charts, including crane, counterweight, and boom nomenclature is to be submitted.
4. Plans and computations showing the weight of the pick must be submitted. Calculations shall be made from plans of the existing and/or proposed structure showing complete and sufficient details with supporting data for the demolition or erection of the structure. If plans do not exist, lifting weights must be calculated from field measurements. The field measurements are to be made under the supervision of the Registered Professional Engineer submitting the procedure and calculations.
5. A data sheet must be submitted listing the types, size, and arrangements of all rigging and connection equipment.

6. A complete procedure is to be submitted, including the order of lifts, time required for each lift, and any repositioning or re-hitching of the crane or cranes.
7. All erection or demolition plans, procedures, data sheets, etc. submitted must be prepared, signed and sealed by a Registered Professional Engineer.
8. The Railroad Engineer or his designated representative must be present at the site during the entire demolition and erection procedure period.
9. All procedures, plans and calculations shall first be approved by the Department Engineer and the Railroad Engineer, but such approval does not relieve the Contractor from liability.

**E. Blasting:**

1. The Contractor shall obtain advance approval of the Railroad Engineer and the Department Engineer for use of explosives on or adjacent to Railroad property. The request for permission to use explosives shall include a detailed blasting plan. If permission for use of explosives is granted, the Contractor will be required to comply with the following:
  - (a) Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of the Contractor and a licensed blaster.
  - (b) Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way radios.
  - (c) No blasting shall be done without the presence of the Railroad Engineer or his authorized representative. At least 72 hours advance notice to the person designated in the Railroad's notice of authorization to proceed (see paragraph 2B) will be required to arrange for the presence of an authorized Railroad representative and such flagging as the Railroad may require.
  - (d) Have at the job site adequate equipment, labor and materials and allow sufficient time to clean up debris resulting from the blasting without delay to trains, as well as correcting at his

expense any track misalignment or other damage to Railroad property resulting from the blasting as directed by the Railway's authorized representative. If his actions result in delay of trains, the Contractor shall bear the entire cost thereof.

2. The Railroad representative will:

- (a) Determine approximate location of trains and advise the Contractor the appropriate amount of time available for the blasting operation and clean up.
- (b) Have the authority to order discontinuance of blasting if, in his opinion, blasting is too hazardous or is not in accord with these special provisions.

**F. Maintenance of Railroad Facilities:**

- 1. The Contractor will be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from his operations and provide and maintain any erosion control measures as required. The Contractor will promptly repair eroded areas within Railroad rights-of-way and repair any other damage to the property of the Railroad or its tenants.
- 2. All such maintenance and repair of damages due to the Contractor's operations shall be done at the Contractor's expense.

**G. Storage of Materials and Equipment:**

Materials and equipment shall not be stored where they will interfere with Railroad operations, nor on the rights-of-way of the Railroad Company without first having obtained permission from the Railroad Engineer, and such permission will be with the understanding that the Railroad Company will not be liable for damage to such material and equipment from any cause and that the Railroad Engineer may move or require the Contractor to move, at the Contractor's expense, such material and equipment.

All grading or construction machinery that is left parked near the track unattended by a watchman shall be effectively immobilized so that it cannot be moved by unauthorized persons. The Contractor shall protect, defend, indemnify and save Railroad, and any associated, controlled or affiliated corporation, harmless from and against all losses, costs, expenses, claim or liability for loss or damage to property or the loss of life or personal injury, arising out of or incident to the Contractor's failure to immobilize grading or construction machinery.

H. Cleanup:

Upon completion of the work, the Contractor shall remove from within the limits of the Railroad rights-of-way, all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of the Contractor, and leave said rights-of-way in a neat condition satisfactory to the Chief Engineer of the Railroad or his authorized representative.

6. DAMAGES:

- A. The Contractor shall assume all liability for any and all damages to his work, employees, servants, equipment and materials caused by Railroad traffic.
- B. Any cost incurred by the Railroad for repairing damages to its property or to property of its tenants, caused by or resulting from the operations of the Contractor, shall be paid directly to the Railroad by the Contractor.

7. FLAGGING SERVICES:

A. Requirements:

Flagging services will not be provided until the contractor's insurance has been reviewed & approved by the Railroad.

Under the terms of the agreement between the Department and the Railroad, the Railroad has sole authority to determine the need for flagging required to protect its operations. In general, the requirements of such services will be whenever the Contractor's personnel or equipment are or are likely to be, working on the Railroad's right-of-way, or across, over, adjacent to, or under a track, or when such work has disturbed or is likely to disturb a railroad structure or the railroad roadbed or surface and alignment of any track to such extent that the movement of trains must be controlled by flagging.

Normally, the Railroad will assign one flagman to a project; but in some cases, more than one may be necessary, such as yard limits where three (3) flagmen may be required. However, if the Contractor works within distances that violate instructions given by the Railroad's authorized representative or performs work that has not been scheduled with the Railroad's authorized representative, a flagman or flagmen may be required full time until the project has been completed.

B. Scheduling and Notification:

- 1. The Contractor's work requiring railroad flagging should be scheduled to limit the presence of a flagman at the site to a maximum of 50 hours per week. The Contractor shall receive Railroad approval of work schedules requiring a flagman's presence in excess of 40 hours per week.**
- 2. Not later than the time that approval is initially requested to begin work on Railroad right-of-way, Contractor shall furnish to the Railroad and the Department a schedule for all work required to complete the portion of the project within Railroad right-of-way and arrange for a job site meeting between the Contractor, the Department, and the Railroad's authorized representative. Flagman or Flagmen may not be provided until the job site meeting has been conducted and the Contractor's work scheduled.**
- 3. The Contractor will be required to give the Railroad representative at least 10 working days of advance written notice of intent to begin work within Railroad right-of-way in accordance with this special provision. Once begun, when such work is then suspended at any time, or for any reason, the Contractor will be required to give the Railroad representative at least 3 working days of advance notice before resuming work on Railroad right-of-way. Such notices shall include sufficient details of the proposed work to enable the Railroad representative to determine if flagging will be required. If such notice is in writing, the Contractor shall furnish the Engineer a copy; if notice is given verbally, it shall be confirmed in writing with copy to the Engineer. If flagging is required, no work shall be undertaken until the flagman, or flagmen are present at the job site. It may take up to 30 days to obtain flagging initially from the Railroad. When flagging begins, the flagman is usually assigned by the Railroad to work at the project site on a continual basis until no longer needed and cannot be called for on a spot basis. If flagging becomes unnecessary and is suspended, it may take up to 30 days to again obtain from the Railroad. Due to Railroad labor agreements, it is necessary to give 5 working days notice before flagging service may be discontinued and responsibility for payment stopped.**
- 4. If, after the flagman is assigned to the project site, an emergency arises that requires the flagman's presence elsewhere, then the Contractor shall delay work on Railroad right-of-way until such time as the flagman is again available. Any additional costs resulting from such delay shall be borne by the Contractor and not the Department or Railroad.**



**C. Payment:**

- 1. The Department will be responsible for paying the Railroad directly for any and all costs of flagging which may be required to accomplish the construction.**
- 2. The estimated cost of flagging is current rate per day based on a 12-hour work day. This cost includes the base pay for the flagman, overhead, and includes a per diem charge for travel expenses, meals and lodging. The charge to the Department by the Railroad will be the actual cost based on the rate of pay for the Railroad's employees who are available for flagging service at the time the service is required.**
- 3. Work by a flagman in excess of 8 hours per day or 40 hours per week, but not more than 12 hours a day will result in overtime pay at 1 and 1/2 times the appropriate rate. Work by a flagman in excess of 12 hours per day will result in overtime at 2 times the appropriate rate. If work is performed on a holiday, the flagging rate is 2 and 1/2 times the normal rate.**
- 4. Railroad work involved in preparing and handling bills will also be charged to the Department. Charges to the Department by the Railroad shall be in accordance with applicable provisions of Subchapter B, Part 140, Subpart I and Subchapter G, Part 646, Subpart B of the Federal-Aid Policy Guide issued by the Federal Highway Administration on December 9, 1991, including all current amendments. Flagging costs are subject to change. *The above estimates of flagging costs are provided for information only and are not binding in any way.***

**D. Verification:**

- 1. Railroad's flagman will electronically enter flagging time via Railroad's electronic billing system. Any complaints concerning flagging must be resolved in a timely manner. If need for flagging is questioned, please contact Railroad's System Engineer Public Improvements (404) 529-1641. All verbal complaints will be confirmed in writing by the Contractor within 5 working days with a copy to the Highway Engineer. Address all written correspondence to:**

Office of Chief Engineer  
Bridges & Structures  
Norfolk Southern Corporation  
1200 Peachtree Street NE,  
Internal Box 142  
Atlanta, Georgia 30309

Attn:  
System Engineer  
Public Improvements

2. The Railroad flagman assigned to the project will be responsible for notifying the Department Engineer upon arrival at the job site on the first day (or as soon thereafter as possible) that flagging services begin and on the last day that he performs such services for each separate period that services are provided. The Department Engineer will document such notification in the project records. When requested, the Department Engineer will also sign the flagman's diary showing daily time spent and activity at the project site.

8. **HAUL ACROSS RAILROAD:**

- A. Where the plans show or imply that materials of any nature must be hauled across a Railroad, unless the plans clearly show that the Department has included arrangements for such haul in its agreement with the Railroad, the Contractor will be required to make all necessary arrangements with the Railroad regarding means of transporting such materials across the Railroad. The Contractor will be required to bear all costs incidental to such crossings whether services are performed by his own forces or by Railroad personnel.
- B. No crossing may be established for use of the Contractor for transporting materials or equipment across the tracks of the Railroad Company unless specific authority for its installation, maintenance, necessary watching and flagging thereof and removal, until a temporary private crossing agreement has been executed between the Contractor and Railroad. The approval process for an agreement normally takes 90-days.

9. **WORK FOR THE BENEFIT OF THE CONTRACTOR:**

- A. All temporary or permanent changes in wire lines or other facilities which are considered necessary to the project are shown on the plans; included in the force account agreement between the Department and the Railroad or will be covered by appropriate revisions to same which will be initiated and approved by the Department and/or the Railroad.

- B. Should the Contractor desire any changes in addition to the above, then he shall make separate arrangements with the Railroad for same to be accomplished at the Contractor's expense.

10. COOPERATION AND DELAYS:

- A. It shall be the Contractor's responsibility to arrange a schedule with the Railroad for accomplishing stage construction involving work by the Railroad or tenants of the Railroad. In arranging his schedule he shall ascertain, from the Railroad, the lead time required for assembling crews and materials and shall make due allowance therefore.
- B. No charge or claim of the Contractor against either the Department or the Railroad Company will be allowed for hindrance or delay on account of railway traffic; any work done by the Railway Company or other delay incident to or necessary for safe maintenance of railway traffic or for any delays due to compliance with these special provisions.

11. TRAINMAN'S WALKWAYS:

Along the outer side of each exterior track of multiple operated track, and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending to a line not less than 10 feet from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during work hours while Railway's protective service is provided shall be removed before the close of each work day. If there is any excavation near the walkway, a handrail, with 10'-0" minimum clearance from centerline of track, shall be placed and must conform to AREMA and/or FRA standards.

12. GUIDELINES FOR PERSONNEL ON RAILROAD RIGHT-OF-WAY:

- A. All persons shall wear hard hats. Appropriate eye and hearing protection must be used. Working in shorts is prohibited. Shirts must cover shoulders, back and abdomen. Working in tennis or jogging shoes, sandals, boots with high heels, cowboy and other slip-on type boots is prohibited. Hard-sole, lace-up footwear, zippered boots or boots cinched up with straps which fit snugly about the ankle are adequate. Wearing of safety boots is strongly recommended. In the vicinity of at-grade crossings, it is strongly recommended that reflective vests be worn.
- B. No one is allowed within 25' of the centerline of track without specific authorization from the flagman.

- C. All persons working near track while train is passing are to lookout for dragging bands, chains and protruding or shifted cargo.
- D. No one is allowed to cross tracks without specific authorization from the flagman.
- E. All welders and cutting torches working within 25' of track must stop when train is passing.
- F. No steel tape or chain will be allowed to cross or touch rails without permission.

13. **GUIDELINES EQUIPMENT ON RAILROAD RIGHT-OF-WAY:**

- A. No crane or boom equipment will be allowed to set up to work or park within boom distance plus 15' of centerline of track without specific permission from railroad official and flagman.
- B. No crane or boom equipment will be allowed to foul track or lift a load over the track without flag protection and track time.
- C. All employees will stay with their machines when crane or boom equipment is pointed toward track.
- D. All cranes and boom equipment under load will stop work while train is passing (including pile driving).
- E. Swinging loads must be secured to prevent movement while train is passing.
- F. No loads will be suspended above a moving train.
- G. No equipment will be allowed within 25' of centerline of track without specific authorization of the flagman.
- H. Trucks, tractors or any equipment will not touch ballast line without specific permission from railroad official and flagman.
- I. No equipment or load movement within 25' or above a standing train or railroad equipment without specific authorization of the flagman.
- J. All operating equipment within 25' of track must halt operations when a train is passing. All other operating equipment may be halted by the flagman if the flagman views the operation to be dangerous to the passing train.
- K. All equipment, loads and cables are prohibited from touching rails.

- L. While clearing and grubbing, no vegetation will be removed from railroad embankment with heavy equipment without specific permission from the Railroad Engineer and flagman.
- M. No equipment or materials will be parked or stored on Railroad's property unless specific authorization is granted from the Railroad Engineer.
- N. All unattended equipment that is left parked on Railroad property shall be effectively immobilized so that it cannot be moved by unauthorized persons.
- O. All cranes and boom equipment will be turned away from track after each work day or whenever unattended by an operator.

14. **INSURANCE:**

- A. In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, the Prime Contractor will be required to carry insurance of the following kinds and amounts:
  - 1. Commercial General Liability Insurance having a combined single limit of not less than \$2,000,000 per occurrence for all loss, damage, cost and expense, including attorneys' fees, arising out of bodily injury liability and property damage liability during the policy period. Said policy shall include explosion, collapse, and underground hazard (XCU) coverage, shall be endorsed to name Railroad specified in item A.2.c. below both as the certificate holder and as an additional insured, and shall include a severability of interests provision.
  - 2. Railroad Protective Liability Insurance having a combined single limit of not less than \$2,000,000 each occurrence and \$6,000,000 in the aggregate applying separately to each annual period. If the project involves track over which passenger trains operate, the insurance limits required are not less than a combined single limit of \$5,000,000 each occurrence and \$10,000,000 in the aggregate applying separately to each annual period. Said policy shall provide coverage for all loss, damage or expense arising from bodily injury and property damage liability, and physical damage to property attributed to acts or omissions at the job site.

The standards for the Railroad Protective Liability Insurance are as follows:

- a. The insurer must be rated A- or better by A.M. Best Company, Inc.

- b. The policy must be written using one of the following combinations of Insurance Services Office (“ISO”) Railroad Protective Liability Insurance Form Numbers:
- c.
- (1) CG 00 35 01 96 and CG 28 31 10 93; or
  - (2) CG 00 35 07 98 and CG 28 31 07 98; or
  - (3) CG 00 35 10 01; or
  - (4) CG 00 35 12 04.
- d. The named insured shall read:
- Norfolk Southern Railway Company  
 Three Commercial Place  
 Norfolk, Virginia 23510-2191  
 Attn: Risk Management
- e. The description of operations must appear on the Declarations, must match the project description in this agreement, and must include the appropriate Department project and contract identification numbers.
- f. The job location must appear on the Declarations and must include the city, state, and appropriate highway name/number. NOTE: Do not include any references to milepost on the insurance policy.
- g. The name and address of the prime contractor must appear on the Declarations.
- h. The name and address of the Department must be identified on the Declarations as the “Involved Governmental Authority or Other Contracting Party.”
- i. Other endorsements/forms that will be accepted are:
- (1) Broad Form Nuclear Exclusion – Form IL 00 21
  - (2) 30-day Advance Notice of Non-renewal or cancellation
  - (3) Required State Cancellation Endorsement
  - (4) Quick Reference or Index Form CL/IL 240
- j. Endorsements/forms that are NOT acceptable are:
- (1) Any Pollution Exclusion Endorsement except CG 28 31
  - (2) Any Punitive or Exemplary Damages Exclusion
  - (3) Known injury or Damage Exclusion form CG 00 59
  - (4) Any Common Policy Conditions form

(1) Any other endorsement/form not specifically authorized in item no. 2.h above.

- B. If any part of the work is sublet, similar insurance, and evidence thereof as specified in A.1 above, shall be provided by or on behalf of the subcontractor to cover its operations on Railroad's right of way.
- C. Prior to entry on Railroad right-of-way, the original Railroad Protective Liability Insurance Policy shall be submitted by the Prime Contractor to the Department at the address below for its review and transmittal to the Railroad. In addition, certificates of insurance evidencing the Prime Contractor's and any subcontractors' Commercial General Liability Insurance shall be issued to the Railroad and the Department at the addresses below, and forwarded to the Department for its review and transmittal to the Railroad. The certificates of insurance shall state that the insurance coverage will not be suspended, voided, canceled, or reduced in coverage or limits without (30) days advance written notice to Railroad and the Department. No work will be permitted by Railroad on its right-of-way until it has reviewed and approved the evidence of insurance required herein.

**DEPARTMENT:**

Paul C. Worley, CPM  
Assistant Director, Engineering & Safety  
NCDOT Rail Division  
1556 Mail Service Center  
Raleigh, NC 27699-1556

**RAILROAD:**

Risk Management  
Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, Virginia 23510-2191

- D. The insurance required herein shall in no way serve to limit the liability of Department or its Contractors under the terms of this agreement.

**15. FAILURE TO COMPLY:**

In the event the Contractor violates or fails to comply with any of the requirements of these Special Provisions:

- A. The Railroad Engineer may require that the Contractor vacate Railroad property.
- B. The Engineer may withhold all monies due the Contractor on monthly statements.

Any such orders shall remain in effect until the Contractor has remedied the situation to the satisfaction of the Railroad Engineer and the Engineer.

**16. PAYMENT FOR COST OF COMPLIANCE:**

**No separate payment will be made for any extra cost incurred on account of compliance with these special provisions. All such costs shall be included in prices bid for other items of the work as specified in the payment items.**

**Office of Chief Engineer**

**Bridges & Structures**

**Norfolk Southern Corporation**

**1200 Peachtree Street, N. E.**

**Internal Box 142**

**Atlanta, GA 30309**



## EXHIBIT G

### PIEDMONT IMPROVEMENT PROGRAM TRACK AND STRUCTURES PROJECTS

#### UNIT COST BASIS FOR NCDOT PORTION OF MAINTENANCE COSTS FOR MAINTENANCE PERFORMED BY NSR

##### **1. General**

The following are the unit costs used to calculate the NCDOT contribution to maintenance costs for the ARRA Projects. These unit costs are based upon the costs for the Year 2011. Costs for future years shall be inflated using the AAR Cost Index (Year 2011 = 379.5).

##### **2. Communication and Signal Maintenance Costs for New Main Track**

The NCDOT contribution to the signal maintenance costs for new main track is based upon increased maintenance costs for maintaining signals to Class 4 (passenger train maximum speed of 79 miles per hour) operations.

The NCDOT portion of signal and communication maintenance cost for new main tracks (Final 2011 AAR Index = 379.5) is \$4979 per mile.

This unit cost standard will be used to calculate the NCDOT portion of the communication and signal maintenance costs for new mainline tracks constructed for the double track Projects (CP Haydock to CP Junker; CP Reid to CP North Kannapolis, and CP Bowers to CP Lake).

##### **3. Track Maintenance Costs for New Main Track**

The NCDOT contribution to the track maintenance costs for new main track is based upon increased costs for maintaining track to Class 4 (passenger train maximum speed 79 miles per hour) operations.

The NCDOT portion of the 2011 maintenance cost for new main tracks (Final 2011 AAR Index = 379.5) is \$6052 per mile.

This unit cost standard will be used to calculate the track maintenance costs for a) new main tracks constructed for the double track Projects (CP Haydock to CP Junker; CP Reid to CP North Kannapolis, and CP Bowers to CP Lake); and b) for the new main track to be constructed/removed on the CP Merrill to CP Haw River Project.

##### **4. Communication and Signal Maintenance and Track Maintenance Costs for New Passing Sidings on the H Line (CP Merrill to CP Haw River and CP Nelson to CP Clegg)**

The NCDOT contribution to the maintenance cost for new passing sidings (Final 2011 AAR Index = 379.5) = \$5790 per mile. This cost is inclusive of both signal and communications and track maintenance costs.

This unit cost standard will be used to calculate the maintenance cost for the CP Merrill to CP Haw River and CP Nelson to CP Clegg passing siding Projects on the H-Line.

## **5. Curves with a Speed Increase of Between 5 and 9 Miles Per Hour**

The NCDOT contribution to the maintenance cost of curves where the passenger train speed has been increased between 5 and 9 miles per hour due to improvements (Final 2011 AAR Index = 379.5) is \$6621 per mile.

This unit cost standard will be used to calculate the maintenance cost associated with the curve improvements that increase speeds between 5 and 9 miles per hour.

## **6. Curve Speed Increase of Between 10 and 25 Miles Per Hour**

The NCDOT contribution to the maintenance cost of curves where the passenger train speed has been increased between 10 and 25 miles per hour due to improvements (2011 Final AAR Index = 379.5) is \$14,485 per mile.

This unit cost standard will be used to calculate the maintenance associated with the curve improvements that increase speeds between 10 and 25 miles per hour.

## **7. No. 20 and No. 24 Turnouts**

### a. Removed Turnouts

Currently all maintenance costs for the existing No. 20 turnouts are borne by NSR; therefore, no maintenance cost savings for the removal of the No. 20 turnouts will be credited to the Program.

### b. Main Line

The total annual maintenance cost for No. 24 turnouts on the Main Line attributable to passenger trains is \$2050 per year, and is the NCDOT contribution to the maintenance cost.

This unit cost standard will be used to calculate the annual maintenance costs for the new No. 24 turnouts to be installed on the Main Line.

### c. H-Line

The turnout maintenance costs for the CP Merrill to CP Haw River and CP Nelson to CP Clegg passing sidings are calculated separately but are included in the track and signal and communication maintenance cost for each Project.

## **8. No. 10 Turnouts**

### a. Removed Turnouts

For those No. 10 turnouts permanently retired and removed, an annual maintenance cost credit of \$250 will be applied to the maintenance cost calculation.

For those No. 10 turnouts removed and replaced in-kind, a credit/cost of \$6571 will be applied to each turnout as appropriate. The result is a net maintenance cost of \$0 for each turnout removed and replaced in-kind.

### b. Main Line

The NCDOT contribution to the annual maintenance costs for No. 10 turnouts in new main tracks on the Main Line = \$775.

### c. H - Line

The NCDOT portion of the annual maintenance costs for No. 10 turnouts in new main tracks and passing siding tracks on the H-Line = \$1577.

## **9. Retire and Remove Siding Tracks**

An annual maintenance cost credit of \$1000 per mile will be applied to siding tracks permanently retired and removed through these Projects.

## **10. Ballasted Deck Railroad Bridge**

In accordance with North Carolina General Statutes 136-20(h), NCDOT is responsible for the maintenance cost associated with the construction of highway overpasses and the railroads are responsible for the cost of maintenance for highway underpasses. Therefore, no maintenance costs will be allocated to highway underpass structures.

No additional maintenance cost is attributed to new and rehabilitated railroad bridges over waterways.

## **11. Grade Crossings**

### **a. Single Track Crossing with Flashers**

The grade crossing maintenance rates for crossings on single track with flashers and gates (per NCDOT/railroad agreed-upon policy) is \$3064 annually. NCDOT, or the street owner, is responsible for 50% (\$1532) of the costs with the remaining \$1532 being the responsibility of the railroad.

### **b. Multiple Track Crossing with Flashers**

The grade crossing maintenance rates for crossings on multiple tracks with flashers and gates (per NCDOT/railroad agreed-upon policy) is \$3848 annually. NCDOT, or the street owner, is responsible for 50% (\$1924) of the costs with the remaining \$1924 being the responsibility of the railroad.

### **c. Upgraded Warning Devices**

The additional maintenance costs for upgraded warning devices when adding a second main track or a passing siding track (per NCDOT MOU with the railroads) is \$784. NCDOT is responsible for 50% (\$392) of the costs with the remaining \$392 being the responsibility of the railroad.

### **d. Crossing Surfaces**

The estimated annual cost for maintenance cost for a timber and asphalt crossing surface (renewed every 4 years for surfacing) is \$1800 per track through a crossing. This cost is currently entirely borne by NSR.

### **e. Private Grade Crossings**

The estimated annual maintenance cost for a private grade crossing is \$200. This cost is currently entirely borne by NSR.

### **f. Cost Basis**

Since the closure of grade crossings is possible only due to the construction of grade separations by the Projects, and recognizing that NSR will have the responsibility to maintain additional underpass bridge structures, the grade crossing maintenance cost savings credited to the program will be as follows:

- For those grade crossings eliminated as a result of an overhead bridge structure, the entire NSR portion of the crossing maintenance cost will be credited to the Program.

- For those grade crossings eliminated as a result of an underpass bridge structure, 50% of the NSR portion of the crossing maintenance cost will be credited to the Program as follows and NSR will realize the remaining 50% of the maintenance cost savings.

g. Cost Summary for Grade Crossings

- Total Project savings for removed crossings with flashers and gates on a single track and closed in conjunction with an overhead bridge grade separation is \$1532 (signal) + \$1800 (track) = \$3332.
- Total Project savings for removed crossings with flashers and gates on a single track and closed in conjunction with underpass bridge grade separations is \$1666.
- For removed crossings with flashers and gates on a double track, the total Project savings for removed crossings with flashers and gates on a double track closed in conjunction with an overhead bridge grade separation is \$1924 (signal) + \$3600 (track) = \$5524.
- Total Project savings for removed crossings with flashers and gates on a double track closed in conjunction with underpass bridge grade separations is \$2762.
- For installing upgraded warning devices for a second track in crossing, the total increase is \$392 (signal) + \$1800 (track) = \$2192
- For removed private crossings, the total Project savings is \$200.

## EXHIBIT H

### AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) MONTHLY DATA REPORTING REQUIREMENTS

#### 1. Introduction

The American Recovery and Reinvestment Act of 2009 (ARRA) provided the State Departments of Transportation and Federal Lands Agencies with \$27.5 billion for highway infrastructure investment. With acceptance of these funds comes an increased level of data reporting with the stated goal of improving transparency and accountability at all levels of government. Section 1512, the Jobs Accountability portion of ARRA, requires that any entity that receives ARRA funds directly from the Federal government, including the states, to provide regular "Recipient Reports."

This Exhibit describes the process for submitting employment data that the North Carolina Department of Transportation (Department) requires from all agencies, including MPOs, RPOS, Cities, Municipalities, and Counties, and contractors and subcontractors who are performing work on projects or purchase orders that are funded with ARRA funds. These reporting requirements are mandatory for each ARRA-funded contract and purchase order.

#### 2. Information Needed From Contractors and Subcontractors

Each prime contractor will provide a completed Monthly Employment Report (Form FHWA-1589) to the Department's ARRA Program Coordinator by the seventh (7<sup>th</sup>) of the month for the preceding reporting period. The prime contractor is responsible for providing its data as well as all subcontractor data for the reporting period. The ARRA Program Coordinator will review for completeness all submitted FHWA-1589 forms for inclusion in the Department's Monthly Employment Summary Report to United States Department of Transportation (USDOT), Federal Railroad Administration (FRA), and Office of Management and Budget (OMB). The Program Coordinator will contact the prime contractor when a revised FHWA-1589 is needed.

At any time to facilitate easy form completion, the prime contractor may contact the ARRA Program Coordinator for assistance before submitting the form.

#### 3. Reporting the Specifics

Contractors and subcontractors should provide only direct project labor, i.e., labor costs directly charged to the ARRA-funded projects received by workers during the reporting period. This includes those workers staffed to the project that are paid by ARRA-funds. General company management, overhead, and indirect labor charges should not be included in this report but rather will be determined by USDOT and FRA to ensure consistency at a national level.

Please review the attached blank *ARRA Monthly Employment Report Form: FHWA-1589*, included herein as Attachment 1, and *Instructions for Completing the Form: FHWA-1589*, included herein as Attachment 2, for more details about providing employment data. Contractors and subcontractors should note the specific directions included for establishing the dates for each reporting period or "month." Each contractor and subcontractor should provide employment data based on their specific payroll schedules in order to prevent duplication in submitting information during the life of the project and to minimize necessary reporting from their payroll systems.

#### **4. A Few General Details**

It is extremely important that the deadlines for submitting the completed FHWA-1589, "Monthly Employment Report," be met in order for the Department to meet its deadline for submission of all employment data to the USDOT, FRA, and OMB. These agencies do not allow previously reported monthly data to be amended or altered once it is officially reported by the Department. In order to meet the intent of ARRA, the employment data must be provided on schedule by the 7<sup>th</sup> of each month to preserve transparency and provide real time reporting information.

EXHIBIT H -- ATTACHMENT 1

ARRA MONTHLY EMPLOYMENT REPORT

FORM: FHWA-1589

MONTHLY EMPLOYMENT REPORT AMERICAN RECOVERY AND REINVESTMENT ACT			
1. Report Month: (mm/yyyy)		2. Contracting Agency	
3. Federal-Aid Project Number	4. State Project Number or ID Number	5. Project Location: State, County or Federal Region	
6. CONTRACTOR NAME AND ADDRESS Name: Address:  City: State: Zip:			
7. Contractor/Subcontractor DUNS Number:			
8. Employment Data			
	EMPLOYEES	HOURS	PAYROLL
Prime Contractor Direct, On-Project Jobs (see guidance for definitions)			
Subcontractor Direct, On-Project Jobs			
Subcontractor Name			
Prime and Subcontractor Totals	0	0	0.00
9. PREPARED BY CEO or Payroll Official:			DATE:
Name:			
Title:			

**EXHIBIT H -- ATTACHMENT 2**

**INSTRUCTIONS FOR COMPLETING ARRA MONTHLY EMPLOYMENT REPORT  
FORM: FHWA-1589**

The North Carolina Department of Transportation (Department) requires that employment data be provided by each agency, contractor, consultant, and funding recipient working on an ARRA-funded project. The agency and prime contractor for each project shall be responsible for providing their workforce data as well as all other subcontractor and subconsultant data for those personnel working with them. This report is only required for contracts and purchase orders that use ARRA funds.

The prime contractor is required to complete a report for each reporting month or period from the date of the Notice to Proceed until completion of the contract or September 2017, whichever occurs sooner. Contractors and consultants are required to provide the required data for their own workforce as well as the workforce of all subcontractors that were active on their ARRA-funded project(s) for the reporting period.

The “reporting period” shall be established for each contractor and subcontractor individually based on their payroll periods. The last day of the monthly reporting period will be the last day of the last full pay period within the reporting month. The dates for the reporting month will include any additional days from the previous month for partial pay periods at the beginning of the calendar month. For the example, in Figure 1 below, the contractor’s payroll period ends every two weeks ending on Friday and includes May 8 and 22, 2009, and June 5 and 19, 2009. This contractor’s reporting period would be from May 23, 2009, through June 19, 2009, for the “June 2009 Monthly Employment Report.”

**Bi-Weekly Payroll**

May 2009							June 2009						
S	M	T	W	TH	F	S	S	M	T	W	TH	F	S
					1	2		1	2	3	4	5	6
3	4	5	6	7	8	9	7	8	9	10	11	12	13
10	11	12	13	14	15	16	14	15	16	17	18	19	20
17	18	19	20	21	22	23	21	22	23	24	25	26	27
24	25	26	27	28	29	30	28	29	30				
31													

**Figure 1: “June 2009” Reporting Period for Contractor/ Subcontractor with Bi-Weekly Payroll**

**Weekly Payroll**

May 2009							June 2009						
S	M	T	W	TH	F	S	S	M	T	W	TH	F	S
					1	2		1	2	3	4	5	6
3	4	5	6	7	8	9	7	8	9	10	11	12	13
10	11	12	13	14	15	16	14	15	16	17	18	19	20
17	18	19	20	21	22	23	21	22	23	24	25	26	27
24	25	26	27	28	29	30	28	29	30				
31													

**Figure 2: “June 2009” Reporting Period for Contractor/ Subcontractor with Weekly Payroll that**

Likewise, if the contractor’s payroll period were every week on Friday as included in Figure 2 above, its reporting period would be from May 30, 2009, through June 26, 2009, for the “June 2009 Monthly Employment Report.” It is acceptable to report information for a different date range for each subcontractor during month as long as the periods are consistent for that subcontractor throughout the reporting process. Only labor costs paid to employees from ARRA funds during the monthly reporting period established should be reported on the FHWA-1589 for that period.



## Instructions Continued

**Format:** Form FHWA-1589 (**Microsoft Excel Spreadsheet Form**)

**Due Date:** The seventh (7<sup>th</sup>) day of each month for the previous reporting period.

**Due To:** ARRA Program Coordinator at [arra.reporting@hatchmott.com](mailto:arra.reporting@hatchmott.com).

### **Form Coding Instructions**

**BOX 1: Report Month:** The month and year of the reporting period covered by the report, as *mm/yyyy* (e.g. "May 2009" would be coded as "05/2009").

**BOX 2: Contracting Agency:** Enter "NCDOT."

**BOX 3: Federal-Aid Project Number:** The grant number assigned by FRA.

**BOX 4: State Project Number or Identification Number:** Record the WBS number, TIP number, and Contract number in this box.

**BOX 5: Project Location:** Enter "North Carolina" as the state where the project occurs.

**BOX 6: Contractor Name and Address:** The name and address of the contracting or consulting firm shall include the name, street address, city, state, and zip code (in a zip+4 format).

**BOX 7: Contractor DUNS number:** The unique nine-digit number issued by Dun & Bradstreet, followed by the optional 4 digit DUNS Plus number, reported as "99999999.9999".

**BOX 8: Employment Data:** The prime contractor or consultant will report the direct, on-the-project jobs for its workforce and the workforce of its subcontractors active during the reporting month. These jobs data include employees actively engaged in projects who work on the jobsite, in the project office, in the home office or telework from a home or other alternative office location. This also includes any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the ARRA-funded project. This does not include material suppliers such as steel, culverts, guardrail, and tool suppliers. Do not include estimated indirect labor, such as material testing, material production, or estimated macro-economic impacts. All indirect labor costs will be estimated based on the information provided in this report along with other USDOT data. The form requests specifically:

- a. **Subcontractor Name:** The name of each subcontractor that was active on the project for the reporting month.
- b. **Employees:** The number of project employees on the contractor's workforce that month, and the number of project employees for each of the active subcontractors for the reporting month. Do not include material suppliers. Total field at bottom will be automatically calculated and reported as a whole number.

## Instructions Continued

- c. **Hours:** The total hours on the specified project for all employees reported on the contractor's or consultant's project workforce that month, and the total hours for all project employees reported for each of the active subcontractors that month. Total field at bottom will be automatically calculated and reported as a whole number.
- d. **Payroll:** The total dollar amount of wages paid by the contractor or consultant that monthly reporting period for employees on the specified project, and the total dollar amount of wages paid by each of the active subcontractors that monthly reporting period. Payroll only includes wages and does not include overhead or indirect costs. Total field at bottom will be automatically calculated and will be rounded to the nearest whole dollar and reported as a whole number.

### BOX 9: Prepared By:

- a. **Name:** Indicate the person responsible for preparation of the form. By completing the form the person certifies that they are knowledgeable of the hours worked and employment status for all the employees. Contractors, consultants, and their subcontractors are responsible to maintain data to support the employment form and make it available to NCDOT should they request supporting materials. **Note:** Forms do not need to be signed.
- b. **Date:** The date that the contractor completed the Monthly Employment Form. Reported as "*mm/dd/yyyy*." (e.g. "May 1, 2009" would be coded as "05/01/2009").

A completed *Form: FHWA-1589* is attached herein as an example as Attachment 3.

**EXHIBIT H – ATTACHMENT 3**  
**ARRA MONTHLY EMPLOYMENT REPORT**  
**FORM: FHWA-1589 EXAMPLE**

MONTHLY EMPLOYMENT REPORT AMERICAN RECOVERY AND REINVESTMENT ACT			
1. Report Month: (mm/yyyy) 08/2009	2. Contracting Agency NCDOT		
3. Federal-Aid Project Number STM-1234(123)	4. State Project Number or ID Number 56521.3.ST1 U-1234A C100101	5. Project Location: State, County or Federal Region NC	
6. CONTRACTOR NAME AND ADDRESS Name: Prime Contracting Address: 123 Main Street City: Anywhere State: NC Zip: 12345-1234			
7. Contractor/Subcontractor DUNS Number:		123456789	
8. Employment Data			
	EMPLOYEES	HOURS	PAYROLL
<b>Prime Contractor Direct, On-Project Jobs (see guidance for definitions)</b>	12	2520.0	44,756.33
<b>Subcontractor Direct, On-Project Jobs</b>			
Subcontractor Name			
ABC Subcontractor (Period Ending 8-28-09)	4	66.0	1,853.26
123 Contracting (Period Ending 8-31-09)	1	18.0	305.53
<b>Prime and Subcontractor Totals</b>	17	2604	46,915.12
9. PREPARED BY CEO or Payroll Official: Name: John Q Smith Title: Payroll Officer			DATE: 9/7/2009

Form FHWA-1589

EXHIBIT I  
CERTIFICATE OF SELF-INSURANCE



Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191

*CERTIFICATE OF SELF-INSURANCE*

Norfolk Southern Corporation hereby certifies to North Carolina Department of Transportation that it has elected, for itself and its subsidiary companies, including Norfolk Southern Railway, to act as a self-insurer of its general liability and property exposures to a level substantially in excess of the limits normally required.

The undersigned further certifies that Norfolk Southern Corporation does maintain comprehensive liability and property insurance programs above its self-insured retention limits.

IN WITNESS WHEREOF, Norfolk Southern Corporation has executed the Certificate this 24th day of August 2012.

NORFOLK SOUTHERN CORPORATION

A handwritten signature in cursive script that reads "C. W. Bremus".

C. W. Bremus  
Director Risk Management

Operating Subsidiary Norfolk Southern Railway Company

## APPENDIX A

### DEFINITIONS OF TERMS

1. **“Addendum”** has the meaning set forth in Section III.F.1.a.
2. **“Approved Project Cost”** shall mean a project cost that is (a) within the Scope of Work and (b) consistent with the terms of this MPCMA.
3. **“Authorization for Construction”** is an authorization issued by NCDOT to NSR after a Contract Estimate is established allowing NSR to incur construction costs for a specific Project and/or component thereof as set forth in an Addendum.
4. **“Change Order”** is a written notice of changes to the Scope of Work providing all Parties with notice of the change.
5. **“Contract Estimate”** is the final estimate developed by NSR prior to the Authorization for Construction.
6. **“Long Lead Time Materials”** are any materials, assemblies, or components whose ordering and delivery cycle is long enough to be on the critical path of the Project Schedule thereby requiring authorization of purchase prior to execution of any addendum.
7. **“Maintenance Quantities”** will be the actual unit quantities used to calculate the maintenance costs for each individual Project and/or component thereof as set forth in attached Exhibit G.
8. **“Notice to Proceed”** is an Authorization issued by NCDOT to NSR allowing NSR to incur costs including, but not necessarily limited to, the procurement of labor to establish firm estimates related to the preparation of the Contract Estimate.
9. **“Program Estimate”** has the meaning as set forth in Section II.A.
10. **“Progress Meetings”** are Monthly meetings among designated Project Managers and any others to facilitate Project Coordination for the duration of the Piedmont Improvement Program (PIP).
11. **“Project”** or **“Projects”** has the meaning as set forth in the Recitals.
12. **“Project Coordination”** is all communication and activities among Parties to assure that project goals and objectives are accomplished, issues addressed, Project Schedules met, and risks mitigated.
13. **“Project Schedule”** is the schedule for a Project and/or component thereof that sets out milestone marks for completion of the same.

14. "Project Work" has the meaning set forth in Section I.A.
15. "Released Materials" are existing track materials, structure materials, signal materials, and materials that can be salvaged in bulk or by the ton that are removed during the performance of the Project Work. Used wood materials are not Released Materials.
16. "Revised Engineer's Estimate" has the meaning set forth in Section III.F.1.a.
17. "Scope of Work" is the list of agreed-upon items to be performed to complete a Project and/or component thereof.
18. "Supplemental Agreement" is a written agreement among NCDOT, NCR, and NSR that amends an Addendum and/or this MPCMA to reflect modifications (changes) to an Addendum and/or this MPCMA necessary to complete the proposed construction satisfactorily. Modifications (changes) to the contract contained in the Supplemental Agreement may affect the Scope of Work, Contract Estimate, and/or Project Schedule.