



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY
GOVERNOR

LYNDO TIPPETT
SECRETARY

April 1, 2008

Ms. Nanci Scott
Manager Contract Services
Norfolk Southern Corporation
1200 Peachtree Street, NE
12th Floor, Suite 1245
Atlanta, GA 30309-3579

Reference: Fully Executed Norfolk Southern Railway Crossing Master Agreement

Dear Ms. Scott:

Enclosed is one original of the fully executed Master Agreement for crossing safety projects. The revised Master Agreement will streamline construction authorizations by eliminating the additional time for drafting and executing individual agreements for projects at crossings involving municipal streets and preempted traffic signals after engineering and estimates have been prepared and submitted, in addition to continuing the long and successful history of doing so on state-maintained road crossings. The Authorization for Construction form as currently utilized will remain the instrument for individual project authorizations.

If you have any questions or comments, please do not hesitate to contact me by telephone at (919) 733-5564 or by e-mail at dthomas@dot.state.nc.us.

Yours truly,

A handwritten signature in black ink, appearing to read "Drew Thomas".

Andrew R. (Drew) Thomas, PE
Crossing Safety Engineering Manager

ART

Enclosure

cc: R. H. Ray
Paul C. Worley
Diane Jones, w/att.

MAILING ADDRESS:
RAIL DIVISION
ENGINEERING & SAFETY BRANCH
1556 MSC
RALEIGH NC 27699-1556

TELEPHONE: 919-715-8803
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WEBSITE: www.bytrain.org

LOCATION:
CAPITAL YARD
862 CAPITAL BOULEVARD
RALEIGH, NC 27603

**NORTH CAROLINA
WAKE COUNTY**

THIS AGREEMENT, made this the 28th day of March, 2008 between Norfolk Southern Railway Company, a corporation of Virginia, hereinafter called "Railroad", and the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter called "Department";

WITNESSETH:

THAT WHEREAS, the parties hereto desire to install, revise, modify or replace automatic railway-highway grade crossing signals, gates, and traffic control devices, such signals, gates, and traffic control devices being hereinafter referred to as "devices", at various locations throughout the State of North Carolina, including roads and streets under jurisdiction of a municipal governing authority, and to perform other work in connection therewith, the locations for said installation to be determined as hereinafter provided.

NOW THEREFORE, the Department and the Railroad do agree:

1. The Director - Engineering & Safety, Rail Division, on behalf of the Department, and the Chief Engineer – C&S, on behalf of the Railroad, and/or their designees as authorized in writing, are hereby designated representatives of Department and Railroad, respectively, for the purpose of coordinating internal actions within each of the parties as necessary to plan, design, and construct said devices at various locations throughout the State of North Carolina as selected by Department in accordance with North Carolina General Statute 136-20 and/or any and all Federal-Aid regulations.

2. After written notification by letter or by electronic medium from Department, the Railroad shall prepare or have prepared by its consultant preliminary engineering, including all necessary plans, specifications, estimates and materials list, incorporating any necessary field diagnostic review, and shall submit the same to the Department for approval prior to beginning each project; said preliminary engineering being incorporated within each project by reference and made a part thereof. All project work pursuant hereto shall be in accordance with said plans and specifications as approved by Department. All plan changes shall be likewise subject to approval of Department. Preliminary Engineering costs incurred after said letter or electronic medium notification to prepare them shall be part of the cost of the project; costs prior to said notice may be declared ineligible for reimbursement as part of the cost of the project. Railroad will make a best effort to provide plans, specifications, estimates and materials list for each project within four months following notification from Department, however, should additional time be needed, the railroad will discuss with the Department and the Department will acknowledge.

3. Railroad will purchase or provide the necessary materials and will perform all work with its own forces in connection with said installation of devices in accordance with Federal-Aid Policy Guide 23 CFR 140I, and supplements thereto; it is understood, however, that if conditions make it impossible for Railroad to do the work with its own forces, Railroad will so notify the Department and will obtain bids for the work from qualified contractors in accordance with FAPG 23 CFR 646B. Railroad may use existing contracts for engineering services, warehousing, logistics services, equipment rental or lease, and material purchase without

separately obtaining bids for individual projects, provided that Railroad shall make all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate contracted costs incurred under this Agreement.

4. Per OMB Circular A-133, Railroad is prohibited from contracting with or making subawards under transactions covered by this Agreement to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$ 25,000 and all nonprocurement transactions (e.g., subawards to subrecipients). Contractors receiving individual awards for \$ 25,000 or more and all subrecipients must certify that the organization and its principals are not suspended or debarred. Railroad may rely upon the certification unless it knows that the certification is erroneous. Railroad 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.

5. The Railroad shall comply with the Department's policies and procedures regarding participation by Disadvantaged Business Enterprises (DBE) firms. DBE firms as identified in 49 CFR Part 26 shall have the maximum opportunity to participate in the projects.

DISADVANTAGED BUSINESS ENTERPRISE

It is the policy of the Department that Disadvantaged Business Enterprises ("DBEs") have the opportunity to participate in the performance of contracts financed in whole or in part by federal funds. To the extent that NSR hires any contractors to perform work that is part of this Project and such Project work is to be funded in whole or in part by Federal funds, the provisions of Appendix A, revised August 6, 2007 (attached hereto and made part of this Agreement) shall apply to such Project work.

6. The Railroad will begin the work of installation, revision, or replacement of devices as soon as practicable after date of authorization to begin construction and shall complete the work within a reasonable time thereafter. The Railroad will make a best effort to construct the devices within six months following authorization for construction, however, should additional time be needed, the railroad will discuss with the Department and the Department will acknowledge.

7. That in accordance with Federal-Aid Highway Policy Guide 23 CFR 646B and/or the provisions of this Agreement, Department shall pay the entire cost of said installation, unless a special corridor project is pursued with the Railroad under a separate agreement or supplement.

8. At the appropriate time Department will notify Railroad, in writing by letter or by electronic medium, that Railroad is authorized to proceed with the construction and upon receipt of such notice and acceptance thereof by Railroad all terms of this Agreement shall become operative in respect to the individual project so authorized. Notification by Department to Railroad shall be in the form of an Authorization for Construction, having been executed by both parties, setting forth details as to each project with respect to location, project numbers, type of devices to be installed, approved cost estimate, and such other information as may be necessary to carry out the provisions of this Agreement, which Authorization for Construction is made a part hereof by reference. Railroad agrees that it will not begin construction prior to receipt of a fully executed copy, either by mail or electronic medium of the aforesaid Authorization for Construction and that any expense Railroad incurs prior to such authorization not connected with or necessary to the preliminary engineering cost required to develop the plans and estimates may be declared ineligible for reimbursement.

9. If during the progress of the work it develops that work not covered by the original estimate is required, or that a material change in the proposed work is necessary to accomplish the desired purpose, the party responsible for such additional work will promptly notify the other party of the proposed change and the estimated cost thereof, and before proceeding with the additional work prior approval by the other party shall be obtained; it being understood that representatives of the parties may verbally agree to such changes, subject to subsequent written or electronic confirmation.

10. That after the devices have been installed and found to be in satisfactory working order by the parties hereto, they shall be put into service and operated from and after the hour mutually agreed upon by the Railroad and the Department, and shall be thereafter in the custody of the Railroad and operated and maintained by it so long as it may operate its railroad at said crossing, or until it is determined by the Department that the devices are no longer necessary or until said crossing may be abandoned or other legal requirements make it necessary to cease operation and maintenance of the devices thereat. The cost of the maintenance of said devices will be shared by the Department and the Railroad as prescribed by the laws of the State of North Carolina. In the event the devices at the crossing covered in this Agreement are for the above reasons abandoned or their use is discontinued, at the direction of the Department the devices at said crossing are to be recovered, disposed of, or reinstalled at a grade crossing designated by the Department, agreed to by Railroad and the cost therewith should be borne by the Department, and shall thereafter be subject to the terms of this article.

11. Upon receipt of the executed Authorization for Construction, Railroad may submit or render actual cost progress bill or bills for expenditures incurred up to 85% of the estimate provided as part of the original preliminary engineering. Upon completion of the project and acceptance by the Department and within nine (9) months thereof, the Railroad will render a final bill for actual costs in accordance with FAPG 23 CRF 140I and the Department after review and approval will pay the amount of said bill to the Railroad. All invoices must be submitted within nine (9) months of completion and acceptance of the installation. Representatives of the Department shall have such access to the books and accounts of the Railroad as may be required to audit said bill. After the bill has been audited by the Department, Department will pay to Railroad any amount remaining due to Railroad in addition to the amount previously paid, or will advise the Railroad by letter of overpayment. Promptly after being advised of an overpayment, Railroad will forward to the Department reimbursement for said overpayment. In the event Railroad fails for any reason to repay said overpayment, Railroad hereby authorizes the Department to withhold so much of Railroad's share of funds allocated to Railroad as defined under G.S. 136-20(h), until such time as the Department has received payment in full. Railroad shall make all books, documents, papers, accounting records, and such other evidence either in hard copy or electronic form as may be appropriate to substantiate costs incurred under this Agreement. Further, Railroad shall make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of final payment under this Agreement.

12. In the event that project location or locations occur at crossings located on roads or streets maintained by municipal government authority or any public road authority other than Department, Department will be responsible to comply with all applicable laws, regulations, and policies governing Department participation in work on those roads or streets that are not directly under Department's jurisdiction. Department will execute agreement with authorized municipal government officials to permit project or projects to be constructed on municipal road

or street and to provide for participation by municipal governments in maintenance of devices as prescribed by the laws of the State of North Carolina.

13. In the event that a project location occurs at crossings with adjacent highway intersections equipped with, or requiring installation of, highway traffic signals, or if highway traffic signals are installed at location(s) adjacent to existing active highway-rail crossing warning devices, and the Department requires provisions for interconnection between devices and highway traffic signals to provide preemption of normal traffic signal operations, Department will provide any specific or unique design parameters required by traffic signal design in the notification for Railroad to prepare or have prepared by its consultant all necessary Preliminary Engineering, including plans, specifications, estimates and materials lists. Operation of the interconnected system and unique responsibilities of the parties shall be as follow:

The devices shall be interconnected to the control system for the traffic signals at the highway intersection or intersections so that, when said devices are activated by a train, the traffic signals will enter the preemption sequence shown on the traffic signal plans attached hereto and made a part hereof.

The preemption sequence will be designed to effect and maintain traffic signal displays which will permit vehicles to clear the tracks during the track clearance phase of preemption, and then will stop and hold vehicles off the tracks during the remainder of the preemption sequence.

The interconnection circuit shall be a closed electrical circuit, originating in the traffic signal control system, passing through a closed contact in the devices and then returning to the traffic signal control system to energize a relay which, upon becoming de-energized upon detection of a train, will cause the traffic signals to enter and maintain the preemption sequence shown on traffic signal plans prepared by the Department or consultant to be provided to Railroad with notification to prepare preliminary engineering, but in no case later than the time that construction of devices is authorized.

Railroad will, as part of the cost of the project, provide one or more normally closed electrical contact(s) controlled by train detection device(s) for activation of the traffic signal preemption sequence(s) as required by the Department.

Department will provide and install the necessary interconnection cable from the traffic signal controls to a mutually agreed upon junction point on railroad right-of-way, said interconnection cable to be in conduit or be proper underground cable.

Expense incident to the maintenance of the interconnecting system shall be divided as follows:

- a. Railroad shall maintain at its expense the devices providing the normally closed contacts controlled by train detection as prescribed by the laws of the State of North Carolina.
- b. Department shall maintain at its expense the interconnection system between the devices providing the normally closed contacts and the traffic control signals.

Department shall not disconnect the interconnection circuit or change the signal sequence herein described without prior notice to the Railroad and likewise the

Railroad shall not disconnect the interconnection circuit or otherwise alter the devices in a manner that would change the sequence described herein without prior notice to the Department.

Railroad shall have and assume the responsibilities and obligations for the operation of its devices.

Department shall have and assume responsibilities and obligations for the operation of the traffic signals.

Department and Railroad shall coordinate the interconnection of said traffic signals and said devices in a manner that ensures that the traffic signals are not placed into service until said devices are properly interconnected to said traffic signals and the herein before mentioned preemption sequence is operating properly.

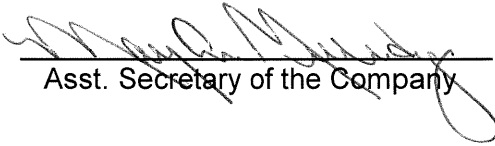
14. No member, officer or employee of the Department shall have any interest, direct or indirect, in this Agreement or the proceeds therefrom.

15. Upon full execution, this Agreement replaces and supercedes the Master Agreement dated June 12, 1975 and any and all Supplemental Agreement(s) thereto. This Agreement shall continue in effect until such time as either party hereto provides at least sixty days written notice that the Agreement shall be terminated.


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

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be duly signed and sealed, the day and year first above written:

ATTEST:


Asst. Secretary of the Company


NORFOLK SOUTHERN RAILWAY COMPANY

BY: ^{4/24} 

AS ITS General Manager

SEAL

ATTEST:


Secretary to the Board of Transportation
and Custodian of the Seal of the
Department of Transportation

DEPARTMENT OF TRANSPORTATION

BY: 
_____ Deputy Secretary for Transit

SEAL

APPENDIX A - 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 Appendix 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 Appendix A 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 Appendix 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 Appendix 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 Appendix A 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 Appendix A is attached.
- D. Nothing in this Appendix 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 Appendix A 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 Appendix A 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 Appendix A 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 \$750,000.00 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.