NS FILE NO. BR0018445

IN THE MATTER OF THE REMOVAL AND
RECONSTUCTION OF THREE (3) OVERHEAD
RAILROAD BRIDGE STRUTURES THAT CARRY THE
TRACKS OF NORFOLK SOUTHERN RAILWAY
COMPANY OVER PROSSER AVENUE, I.R. 75 AND S.R. 562
IN THE CITY OF CINCINNATI, HAMILTON COUNTY, OHIO.

AGREEMENT NO.:23888
PID: 77889

AGREEMENT

THIS AGREEMENT, made this 17th day of January, ~~2018~~ 2020 between the **State of Ohio**, acting by and through the Director of Transportation of the State of Ohio, as First Party, hereinafter referred to as the STATE, and **Norfolk Southern Railway Company**, as the Second Party, hereinafter referred to as the COMPANY.

WITNESSETH:

WHEREAS, the STATE proposes to widen I.R. 75 and reconstruct the S.R. 562/Northwood Lateral Expressway interchange with I.R. 75 in the City of Cincinnati in Hamilton County, Ohio, and

WHEREAS, said construction requires the removal and reconstruction of three (3) grade separation structures that carry the COMPANY's Cincinnati-Plum Run line over Prosser Avenue at MP CT-0.89 (AARDOT #481676J); over I.R. 75 at MP CT-0.94 (AARDOT #481677R), and S.R. 562/Northwood Lateral Expressway at MP CT-1.41 (AARDOT# (unknown)). Said work and the necessary approaches thereto are collectively hereinafter referred to as the PROJECT; and

WHEREAS, no existing COMPANY grade crossing will be eliminated as a result of the proposed construction; and

WHEREAS, under such conditions, Chapter 5523 of the Revised Code of Ohio and other grade crossing elimination laws of the State of Ohio do not apply to the PROJECT herein considered; and

WHEREAS, the Director of Transportation of the State of Ohio is empowered generally by Chapter 5501 of the Revised Code of Ohio to carry forward highway improvements of the type herein contemplated; and

WHEREAS, the Federal-Aid Highway Act of 1956, as amended, and Section 5531.03 of the Revised Code of Ohio have become effective, providing funds for the construction costs of projects such as is contemplated herein; and

WHEREAS, it is desired by the parties hereto to carry out and accomplish the construction of the PROJECT that carries the tracks of the COMPANY over the referenced roadways at the points hereinbefore mentioned and to determine and agree upon the manner of doing said work and the portion of said work to be done by each of said parties respectively, and the proportion of costs and expenses to be paid by each of said parties, and the mode and time of payment therefore

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, it is agreed between the parties as follows:

SECTION 1

The plans of the STATE for the said improvement are identified by title as follows:

"State of Ohio, Department of Transportation, HAM-75-7.85, City of Cincinnati, Hamilton County".

Before this agreement shall be in force and effect, the foregoing plans shall meet the approval of the parties hereto, and upon such approval shall become a part of this agreement by reference.

SECTION 2

The work to be done under this agreement and shown on the plans, which are attached hereto and incorporated herein as if fully written and are described under SECTION 1 of this agreement, consists of the removal and reconstruction of three (3) grade separation structures that carry the COMPANY's Cincinnati-Plum Run line over Prosser Avenue at MP CT-0.89 (AARDOT #481676J); over I.R. 75 at MP CT-0.94 (AARDOT #481677R), and S.R. 562/Northwood Lateral Expressway at MP CT-1.41 (AARDOT# (unknown)).

The construction of the highway and the necessary trackwork and grade separation structures to effect the clearances are as shown in the plans, and includes the removal of the existing sub- and superstructure; installation of new steel piles, concrete abutments & piers; new steel superstructure; new concrete deck and parapets; grading, draining and paving of the highway, the sodding, seeding and planting of slopes, the settlement of claims for property purchased, appropriated or damaged by such construction, and the maintenance of railroad traffic and rearrangement and restoration of railroad facilities made necessary by the work herein contemplated, shall be considered as necessary items to be included as part of this improvement.

SECTION 3

Responsibility for the several necessary items of work shall be as follows:

a. The following items shall be let in contract by the STATE after competitive bidding as provided by law, at PROJECT expense, subject to the provisions of this agreement:

    1. Removal of the three (3) referenced existing bridge substructures and superstructures, and construction of three (3) new bridges; grading, draining and paving of the highway, including constructing any necessary side drives and approaches; grading and installation of sub-ballast for realigned permanent railroad track.

    2. Sodding, seeding and planting of slopes.

    3. Erecting necessary highway guardrails.

b. The following items shall be done or caused to be done by the COMPANY with its own forces, at PROJECT expense, subject to the provisions of this agreement.

1. Changes in communication and signal lines, interlocking and signal apparatus.

2. Removal of existing track, ties, rail and other OTM from the three (3) referenced existing bridge locations, and within Berry Yard as needed, along with installation of ballast, ties, rail and other necessary trackwork items for any temporary and/or permanent railroad track including connections to existing mainline tracks.

3. Provision of flagmen, watchmen and other protective services and devices to promote safety and insure continuity of train operations as may be necessary in connection with the work performed by the COMPANY's forces.

SECTION 4

Any work not specifically provided for in SECTION 3 shall be done by one of the parties hereto as may be mutually agreed upon from time to time during progress of the work, as provided for by the rules and regulations of the Federal Highway Administration as then in effect.

SECTION 5

All work to be done by the COMPANY under the provisions of this agreement shall be done in accordance with the plans described in SECTION 1, and in accordance with good engineering practice. All work to be done by the STATE shall be done in accordance with said plans and under the standard and supplemental specifications of the Department of Transportation in force on the date of the award of the contract, together with such special provisions as may be agreed upon by the parties hereto.

The STATE will require its contractor to use Railroad protective personnel to protect railroad traffic made necessary or occasioned by his operations, as set forth in special provisions to be approved by the parties hereto, which are more specifically set forth in the "Special Clauses in the Proposal" and which are included in this agreement by reference.

The COMPANY agrees to furnish the STATE's contractor at PROJECT expense, and the STATE shall require its contractor to use, all applicable and reasonable protective personnel, services and devices, other than engineering personnel, as in the opinion of the COMPANY that are required to promote the safety and insure continuity of railroad traffic during the contractor's operations.

The COMPANY agrees to bill the STATE as a part of its regular force account work the actual cost for such protective services and devices, including the actual rate of pay, plus the amount paid for overtime, insurance, railroad retirement, vacation allowance, holidays, health and welfare, transportation, deadhead and turn around time, accounting and billing.

The STATE agrees to reimburse the COMPANY for said protective services and devices as a part of its regular force account work as set forth in this agreement.

SECTION 6

The STATE shall have general charge of the engineering work on the PROJECT, but the COMPANY shall provide such engineering services as the STATE may require.

All engineering and related inspection costs incurred by the COMPANY subsequent to the award of a construction contract by the STATE may be charged against the PROJECT under the terms of Engineering Agreement #23887 previously executed between the STATE and the COMPANY.

SECTION 7

It is understood that the construction costs of the PROJECT herein contemplated are to be financed from funds provided by the STATE expended in accordance with Federal regulations, that all plans, specifications, estimates of costs, awards of contracts, acceptance of work and procedure in general will at all times conform to all Federal laws, rules, regulations, orders and approvals applying to a Federal-Aid Project, and the STATE shall reimburse the COMPANY for construction costs and for preliminary and construction engineering costs in accordance with Federal-Aid Policy Guide 140(I) of the Federal Highway Administration or any subsequent amendments thereto, in such amounts and forms as are proper and eligible for payment from Federal-Aid highway funds. The COMPANY shall render its billings to the STATE in accordance with said rules and regulations, and further agrees to provide and furnish such itemized records of and substantiating data for such costs as may be necessary.

In the event that delays or difficulties arise in securing necessary approvals or in securing necessary rights of way or settling damages or damage claims which, in the opinion of the STATE, render it impracticable to utilize funds from the current appropriation for the construction of the PROJECT, the STATE may serve formal notice of cancellation upon the COMPANY and this agreement shall, with the exception of the obligations set forth in the following sentence, become null and void.

The STATE shall reimburse the COMPANY for all costs and expenses incurred by it at the request of the STATE, on account of the PROJECT prior to such cancellation, and shall restore the COMPANY's property to the condition existing prior to the initiation of the PROJECT construction.

SECTION 8

The COMPANY may invoice the state no more than monthly for its force account when costs exceed $1,000. Progressive invoices may be submitted for work done during the previous month or period showing the portion of estimated cost completed. A final invoice covering actual cost of work and showing all details shall be submitted to the STATE within ninety (90) days after completion of said work. The STATE shall pay all invoices that have been approved within sixty (60) days after receipt thereof. The STATE may hold a retainer on all invoices not to exceed eight percent (8%) until final payment. Final payment for all amounts due the COMPANY shall be paid by the STATE within sixty (60) days after the final audit has been made and approved.

SECTION 9

The STATE shall acquire or settle all property, property rights and all damages to property affected by the PROJECT. The cost of said property, property rights and damages to property shall be included as a part of the PROJECT expense.

The COMPANY, insofar as it has the legal right so to do, shall permit the STATE and/or its contractor to enter upon lands owned or operated by the COMPANY to construct and occupy said

highway facilities across its property with sufficient width to permit construction and maintenance of the PROJECT. The STATE and COMPANY shall enter into good faith negotiations for a price to be consistent with the property interest determined by the Director of Transportation to be needed for the proposed improvement.

However, the price to be paid by the STATE to the COMPANY for said conveyances (representing the fair market value thereof plus damages, if any, to the residue) shall be as mutually agreed upon within nine (9) months from the date of occupancy by the STATE, and if agreement as to price is reached, an additional period of ninety (90) days shall be allowed for settlement, it being agreed however, that if no agreement as to price is reached within the aforesaid nine (9) month period, the STATE will within ninety (90) days thereafter institute an eminent domain proceeding authorized by law for the determination of the value of same. The provisions of this agreement shall survive the institution of such eminent domain proceeding.

The STATE shall furnish the plans and descriptions for any such conveyance. It is understood however, that the foregoing right of entry is a permissive use only, and this Section is not intended to convey or obligate the COMPANY to convey any interest in its land.

In case any action involving said improvement is brought by or against any party hereto, said party shall promptly notify the other parties of the pendency of such action.

SECTION 10

Each party hereto waives, but only against the others, any and all damages or right to claim damages to any of its property growing out of or in any way connected with the improvement herein contemplated, except as otherwise provided for in this agreement.

The STATE shall require of its contractor a bond, conditioned according to Section 5525.16 of the Revised Code of Ohio, in favor of the STATE, and shall further require its contractor to take out before work is commenced, and keep in effect until work is completed and accepted, a policy of Railroad Protective Liability Insurance from an insurance company authorized to do business in the State of Ohio, to protect the COMPANY against loss or damage to property and injury to or death of persons, and against all claims, demands, expenses, suits or judgments arising because of, or resulting from the operations of the contractor, his subcontractor, agents or employees, such policy of insurance

Required insurance provisions are more specifically set forth in the "Special Clauses in the Proposal" which are included in this agreement by reference.

SECTION 11

The work provided for in this agreement shall be commenced by the parties hereto within thirty (30) days from the latter of the following: (1) the date on which this agreement becomes effective, (2) the date on which the COMPANY has been notified by the STATE to proceed or (3) the date on which all funds necessary therefore on the part of the STATE have been properly certified and made available; and it shall be completed within a reasonable time thereafter. Buying and assembling of materials shall be construed as compliance with the foregoing thirty (30) day provision.

All obligations of the STATE provided for in this agreement which require the expenditure of funds by the STATE shall terminate at the end of the present biennium, being June 30, 2019. If construction covered under said agreement is not complete by June 30, 2019, it is the expressed intention of the parties to automatically renew said obligations for one successive biennium period; with the

renewal period beginning July 1, 2019 and ending no later than June 30, 2021; until such time as construction covered under said agreement is complete. Said renewal is conditioned upon the STATE determining future appropriations will permit the STATE to renew said obligation.

All financial obligations of the STATE as provided for in this agreement are subject to the provisions of Section 126.07 of the Ohio Revised Code.

SECTION 12

Upon completion of the PROJECT herein contemplated the STATE shall at its own cost and expense, maintain, repair and renew, or by agreement with others provide for the maintenance, repair and renewal of the I.R. 75 & S.R. 562 bridge sub- and superstructure components, including steel girders, diaphragms, bearing devices, concrete piers, footings, abutments, wing-walls; fencing; drain pipe leaders and connecting underground piping; highway surfaces, approach grades and all other highway facilities constructed or changed under the terms of this agreement. The COMPANY will permit access onto its property below the new grade separation structures to perform said maintenance.

The COMPANY will not be vested with any rights of ownership of any of the highways below the I.R. 75 or S.R. 562 bridge structures, and will not have a duty to maintain the highway or adjoining facilities, and will not, if the highway ceases to be a part of the highway system, have a duty to remove the facility from the COMPANY right of way.

Upon completion of the PROJECT herein contemplated the COMPANY shall at its own cost and expense, maintain, repair and renew, or by agreement with others provide for the maintenance, repair and renewal of the Prosser Avenue bridge sub- and superstructure components, including all sub-ballast, ballast, track, ties, conduits, waterproofing, scuppers, deck- and underdrains, and any other element of the bridge structure, and any railroad infrastructure constructed or changed under the terms of this agreement.

SECTION 13

This agreement shall be for the benefit of the parties hereto only and no person, firm or corporation shall acquire any rights whatsoever by virtue of this agreement, except the STATE and COMPANY and the successors and assigns of the COMPANY.

SECTION 14

The Federal Highway Administration's Federal-Aid Policy Guide 646(B) classifies this PROJECT in Classification No. 2 resulting in no ascertainable benefits to the COMPANY. The Parties signatory to this agreement accept this classification as applicable in this instance. The COMPANY's contribution shall be zero dollars.

SECTION 15

The COMPANY agrees to adhere to the requirements of Ohio Ethics law as provided by Section 102.04 of the Ohio Revised Code (ORC). Contractor affirms that, as applicable to it, no party listed in division (i) or (j) of section 3517.13 of the ORC or spouse of such party has made, as an individual,

within the two previous calendar years, one or more contributions totaling in excess of $1,000.00 to the governor or to his campaign committees.

SECTION 16

The COMPANY agrees to adhere to the requirements of Ohio Ethics law as provided by Section 102.04 of the Ohio Revised Code. O.R.C. Section 102.04(A) prohibits a state official or employee from receiving compensation, other than from his own agency, for personal services rendered in a case, proceeding application, or other matter before any state agency. O.R.C. Section 102.04(B) prohibits state officials and employees from selling goods or services to state agencies, except by competitive bidding.

It is understood by the parties that non-elected state officials and employees may qualify for an exemption under Section 102.04(D), if (1) the agency with which the official or employee seeks to do business is an agency other than the one with which he serves; and, (2) prior to rendering personal services or selling or agreeing to sell goods or services, the official or employee files an O.R.C. Section 102.04(D) statement with the Ohio Ethics Commission, the agency with which he serves, and the agency with which he seeks to do business.

The statement must include a declaration that the non-elected state official or employee disqualifies himself for a period of two years from any participation in his official capacity as a board or commission member in any matter involving any official or employee of the agency with which he seeks to do business.

It is expressly understood and agreed to by the parties that a failure by the COMPANY to file a declaration statement as required under O.R.C. Section 102.04(D), may be considered by the STATE, a breach of material condition of this agreement and the STATE may, if it so elects, void this agreement.

SECTION 17

The COMPANY, as a part of the consideration hereof, does hereby agree that, although the COMPANY will not be involved in the design or construction of the PROJECT, the COMPANY shall not act or omit to act in any manner that (1) causes any person on the ground of race, color, national origin, sex, disability, low-income status, or limited English proficiency, to be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the PROJECT, (2) with respect to the construction of the PROJECT, and the furnishing of services related to the PROJECT, causes any person on the ground of race, color, national origin, sex, disability, low-income status, or limited English proficiency, to be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of, the PROJECT, and (3) causes the PROJECT to fail to be in compliance with all other requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964 and related nondiscrimination statutes.

IN WITNESS WHEREOF, the parties hereunto have caused this agreement to be duly executed in duplicate as of the day and year first above written.

THE STATE OF OHIO

By_____

Jerry Wray
Director of Transportation

NORFOLK SOUTHERN RAILWAY COMPANY

By_____

Print Name TODD L REYNOLDS

Title GENERAL MANAGER