

IN THE MATTER OF THE DESIGN AND
CONSTRUCTION FOR WIDENING OF THE GRADE
SEPARATION STRUCTURE CARRYING ABBEY
ROAD OVER THE TRACKS OF NORFOLK
SOUTHERN RAILWAY COMPANY IN THE CITY OF
CLEVELAND, CUYAHOGA COUNTY, OHIO.

AGREEMENT NO.: 23255

PID: 77332
(Preliminary Design/ROW)
PID 85531
(Final Design/Construction)

AGREEMENT

THIS AGREEMENT, made this 12th day of March, 2010 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; the **City of Cleveland**, as Second Party, hereinafter referred to as the CITY and **Norfolk Southern Railway Company**, as the Third Party, hereinafter referred to as the COMPANY.

WITNESSETH:

WHEREAS, Abbey Road crosses over the COMPANY's tracks by an existing grade separation structure (AARDOT No. 472160R), and the STATE and the CITY have determined that the existing grade separation structure needs to be widened, and

WHEREAS, The STATE proposes to utilize a Design-Build contractor to design and construct the work needed to widen the existing grade separation structure (AARDOT No. 472160R) that carries Abbey Road over the tracks of the COMPANY at milepost B-184.92 in the City of Cleveland, Cuyahoga County, Ohio, and

WHEREAS, said work requires the design and construction for widening the existing grade separation structure (AARDOT No. 472160R) that separates the grade of the track of the COMPANY and the highway at the point hereinbefore mentioned. Said design and the resulting structure and necessary approaches thereto are 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 design and construction of the PROJECT over the tracks of the COMPANY at the point 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 anticipated to be identified by title as follows:

"State of Ohio, Department of Transportation, CUY-90-14.90 (Design-Build Westbound bridge), City of Cleveland, Cuyahoga County, Ohio".

In order for this agreement to remain in force and effect, future 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 to be shown on future plans, which will be attached hereto by future Addendum and incorporated herein as if fully rewritten described under SECTION 1 of this agreement, consists of the design and construction for widening of the existing grade separation structure (AARDOT No. 472160R) carrying Abbey Road over the tracks of the COMPANY and the necessary approaches thereto.

Said work for the widening of the existing grade separation structure is anticipated to consist of rehabilitation of the existing steel superstructure, and installation of new concrete parapets, deck and sidewalks on both sides of the existing span.

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 procurement as provided by law, at PROJECT expense, subject to the provisions of this agreement:
 - 1. Procurement of a Design-Build contractor to complete the design and construction for rehabilitation and widening of the existing grade separation structure.
 - 2. Acquisition and payment for all necessary temporary and permanent Right-of-Way.

3. Said Design-Build contractor will complete remaining design phases of the project, including but not limited to, rehabilitation of the existing superstructure to accommodate widened roadway and sidewalk design; coordination of necessary utility and railroad interface, and construction of the new proposed rehabilitation work, including all grading, superstructure modifications, roadway deck and lighting fixtures, drainage structures, approaches and all other elements deemed necessary for completion of the PROJECT.
- 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. 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, or by that of the STATE's Design-Build contractor.
 3. Timely coordination and cooperation with the STATE's Design-Build contractor throughout the design and construction of the project, including reviewing and returning engineering comments within thirty (30) days from date of receipt at the office of COMPANY's designated representative to time of response back to the Design-Build contractor.

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 future plans, together with such other plans and specifications, detailed and supplementary thereto, as may be mutually agreed upon and as may be necessary to carry out the work fully in accordance with the intent of this agreement and in accordance with good engineering practice.

The STATE will require its Design-Build contractor to use Railroad protective personnel, services or devices as determined by the COMPANY 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 Railroad Requirements – Norfolk Southern Corporation Special Provisions" and which are included in this agreement by reference.

The COMPANY agrees to furnish the STATE's Design-Build contractor at PROJECT expense, and the STATE shall require its Design-Build contractor to use railroad protective personnel, services and devices, other than engineering personnel, as in the opinion of the COMPANY are required to promote the safety and insure continuity of railroad traffic during construction 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 and the Design-Build contractor shall have general charge of the engineering work on the PROJECT, and the COMPANY shall provide such engineering services as the STATE's Design-Build contractor may require. Nothing herein shall deny the COMPANY the right to place inspectors on work being done on its property or facilities.

Construction engineering and inspection costs incurred by the COMPANY subsequent to the award of the Design-Build contractor by the STATE may be charged against the PROJECT

SECTION 7

If at any time the STATE's Design-Build contractor requires a temporary crossing over the COMPANY's tracks, the STATE shall require said Design-Build contractor to arrange with the COMPANY for such crossing, and to pay any and all associated costs for said temporary crossing

SECTION 8

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 within 90 days of project completion, 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 or the Design-Build contractor, 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 9

The COMPANY may bill the STATE monthly or periodically 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 bill 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 bills that have been approved within sixty (60) days after receipt thereof. The STATE may hold a retainer on all bills 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 10

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, the CITY and/or its Design-Build 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, through the Design-Build contractor, 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 11

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.

Required insurance provisions are specifically set forth in the attached "Special Railroad Requirements – Norfolk Southern Corporation Special Provisions" which are included in this agreement by reference.

SECTION 12

The work provided for in this agreement shall be commenced by the parties hereto upon the date on which the COMPANY has been notified by the STATE and/or the Design-Build contractor to proceed or 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, or as agreed upon by the parties.

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, 2011. If construction covered under said agreement is not complete by June 30, 2011, it is the expressed intention of the parties to renew said obligations for one successive biennium period; with the renewal period beginning July 1, 2011 and ending no later than June 30, 2013; 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 obligations.

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 13

Upon completion of the PROJECT herein contemplated the CITY 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 bridge structure and 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 to perform said maintenance and shall at its own cost and expense, maintain, repair and renew all of its facilities constructed or changed under the terms of this agreement. The COMPANY will not be vested with any rights of ownership of the bridge structure, and will not have a duty to maintain the bridge structure, and will not, if the structure ceases to be a part of the highway system, have a duty to remove the facility from the COMPANY right of way.

The COMPANY shall have the right to attach to the portion of said structure, where it crosses the property of the COMPANY, such signal, electric and communication wires as may be requisite or useful in the operation of the COMPANY; any such attachments which are not a part of the PROJECT shall be made and maintained by the COMPANY at its own expense. No such attachments shall be made without the approval by the CITY of the COMPANY's detailed plans.

SECTION 14

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, the CITY and COMPANY and the successors and assigns of the COMPANY.

SECTION 15

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 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

In carrying out this contract, the COMPANY shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, or Vietnam-era veteran status. The COMPANY will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, disability, age, or Vietnam-era veteran status.

Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.

SECTION 18

COMPANY agrees to comply with all applicable state and federal laws regarding drug-free workplace. COMPANY shall make a good faith effort to ensure that all COMPANY employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

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 Jolene M. Molitoris
Jolene M. Molitoris
Director

THE CITY OF CLEVELAND

By J. Wasik
Print Name JOMARIE WASIK
Title DIRECTOR OF PUBLIC SERVICE

By _____
Print Name _____
Title _____

The legal form and correctness of the within instrument is hereby approved.

Robert J. Triozza, Director of Law

By D. M. [Signature]
Chief Asst. Director of Law

Date 3-10-10

By _____
Print Name _____
Title _____

By _____
Print Name _____
Title _____

NORFOLK SOUTHERN RAILWAY COMPANY

By J.W. Hall
Print Name J.W. Hall
Title General Manager

CUYAHOGA COUNTY
CUY-INNERBELT BRIDGE CCG-1 (Abbey Road), PID 77332/85531
NS Dearborn Division, Lake Erie District
MP B-184.92

SPECIAL RAILROAD REQUIREMENTS

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NORFOLK SOUTHERN CORPORATION SPECIAL PROVISIONS

I. Overview

The Design-Build contractor will be responsible for all technical coordination and drawing reviews with Norfolk Southern (NS), as well as construction and flagman scheduling during subsequent construction phases. NS's primary technical contact is:

Ms. Rhonda Moore
Engineer Public Improvements
Norfolk Southern Corporation
1200 Peachtree Street, N.E.
Atlanta, GA. 30309
Phone: 404-529-1436
Email: rhonda.moore@nscorp.com

Copies of all correspondence with NS should be copied to ODOT's State Rail Coordinator via email:

Rich Behrendt
Program Manager/State Rail Coordinator
Ohio Dept. of Transportation
1980 W.Broad St.
Columbus, OH. 43223
Phone: 614-387-3097
Email: richard.behrendt@dot.state.oh.us

NS may utilize, at their own discretion, the services of an outside General Engineering Consultant (GEC) for technical reviews and construction issues, at which time the Design-Build contractor will be notified of the appropriate contact person

Construction around active track, and/or on Railroad Right-of-Way, cannot begin until NS (and/or their designated General Engineering Consultant) has acknowledged, in writing, approval of the project; and a fully executed Standard Railroad Construction Agreement has been received by the State through ODOT's State Rail Coordinator in Columbus, and necessary insurance coverage (as stipulated on pgs. SC-2 – SC-4) as submitted by the Design-Build contractor has been acknowledged to be satisfactory in writing by NS.

Standard Railroad Construction Agreements needed for this project with NS will be handled exclusively by ODOT's State Rail Coordinator.

The Design-Build contractor should refer to Norfolk Southern's ***Guidelines for Design of Highway Separation Structures over Railroad (Overhead Grade Separation)*** which are included herein, for additional guidance and details of designing the new substructure and superstructure alongside and over NS's track.

The Railroad will require review and approval of preliminary and final drawings of those elements of the project that may impact the Railroad. The Railroad has agreed to provide a thirty (30) day maximum review time from the time documents are received in their office to the time comments and/or approval(s) are issued.

The following are General Requirements for the Design-Build contractor when working on or around active Norfolk Southern railroad tracks.

II General Requirements:

The Design-Build contractor for this improvement agrees:

1. To cooperate at all times with the local officials of the railroad company.
2. To use all reasonable care and diligence in the work in order to avoid accidents, damage or unnecessary delay to, or interference with the trains and other property of the railroad company.
3. To conduct his work in a manner satisfactory to the Chief Engineer of the railroad company or his authorized representative, to perform his work in such manner and at such time as not to unnecessarily interfere with the movements of trains or railroad traffic, and to hold his work at all times open to inspection of railroad company inspectors.
4. To cooperate with a public utility, railroad or other organizations having occasion to do work on or in connection with the improvement.
5. To avoid unnecessary use of railroad property without written permission of the railroad company and to leave railroad roadbed and property in a condition acceptable to the Chief Engineer of the railroad company.
6. To execute a bond conditioned according to Section 5525.16 of the Revised Code of Ohio, in favor of the State of Ohio, and further to carry insurance of the following kinds and amounts:

a) Railroad Protective Liability Insurance.

Railroad Protective Liability Insurance having a combined single limit of not less than \$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 above railroad protective policy of insurance shall conform to the Railroad Liability requirements prescribed by the Federal Highway Administration in Federal-Aid Policy Guide 23 CFR 646A as amended.

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

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

The policy must be written using one of the following combinations of Insurance

Services Office (“ISO”) Railroad Protective Liability Insurance Form Numbers:
CG 00 35 01 96 and CG 28 31 10 93; or CG 00 35 07 98 and CG 28 31 07 98; or CG 00
35 10 01; or CG 00 35 12 04.

The named insured shall read:

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, Virginia 23510-2191
Attn: S.W. Dickerson, Director Risk Management

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.

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.

The name and address of the prime Design-Build contractor must appear on the Declarations.

The name and address of the Department must be identified on the Declarations as the “Involved Governmental Authority or Other Contracting Party.”

Other endorsements/forms that will be accepted are:
Broad Form Nuclear Exclusion – Form IL 00 21
30-day Advance Notice of Non-renewal or cancellation
Required State Cancellation Endorsement
Quick Reference or Index Form CL/IL 240

Endorsements/forms that are NOT acceptable are:
Any Pollution Exclusion Endorsement except CG 28 31
Any Punitive or Exemplary Damages Exclusion
Known injury or Damage Exclusion form CG 00 59
Any Common Policy Conditions form
Any other endorsement/form not specifically authorized above.

The number of trains operating over this crossing is estimated to be:

 0 Passenger trains per day @ a maximum authorized operating speed of miles per hour.

 Freight trains per day @ a maximum authorized operating speed of miles per hour.

(b) **Commercial General Liability Insurance**

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 subsection (a) above as the certificate holder, and as additional insured, and shall include a severability of interests provision.

(c) **General Insurance Requirements**

The insurance hereinbefore specified shall be with an acceptable insurance company authorized to do business in the State of Ohio, and shall be taken out before execution of the Contract by the Director and kept in effect until all work required to be performed under the terms of the contract is satisfactorily completed as evidenced by the formal acceptance by the State. Such policies shall include thirty (30) days canceling notice. The cost of insurance hereinbefore specified in subsection (a) will be a specific bid item.

Notwithstanding the Department's Construction and Material Specification No.107.12 "Evidence" as above set forth shall consist of furnishing the Director of Transportation three (3) certified copies of the railroad policy.

7. The Railroad company will assign, at the sole cost and expense of the Ohio Department of Transportation, railroad flaggers or other protective services and devices as necessary to insure the safety and continuity of the work to be performed as a part of this contract. Said services and devices will be provided when necessary, as determined by the railroad company, because of any of the Design-Build contractor's operations over, under or adjacent to tracks over which trains are operating. The provision of such protective personnel and devices does not relieve the Design-Build contractor from the liability of payment for damage caused by his operations.

The Design-Build contractor shall notify the following named individual for each railroad company at least 30 days, or as directed by the authorized representative of the Railroad, in advance of starting any work which might require protection:

J.N. Carter, Jr., Chief Engineer
Bridges and Structures
Norfolk Southern Corporation
1200 Peachtree Street, N.E.
Atlanta, GA 30309
Attn: Rhonda Moore
Telephone: (404) 529-1436

The Design-Build contractor shall notify the railroad at least 5 working days in advance of suspending or ceasing operations that require a flagger.

The Design-Build contractor will be responsible for protective services provided at his request and not utilized due, in the opinion of the Engineer, to a change in the Design-Build contractor's construction schedule or if it is determined by the Engineer that the requested services were not necessary. The actual costs for such protective services so assessed to the Design-Build contractor will be deducted from the Contract.

The decision of the Director of Transportation shall be final in the event of controversy as to the necessity for any protection services provided and not utilized by the Design-Build contractor as described in the preceding paragraph.

8. To pay the railroad or owning company for any changes, requested for his convenience, to railroad property, facilities, wire, fiber optic and/or pipe lines other than shown on the plans for the project.
9. If at any time the Design-Build contractor desires a temporary crossing of the railroad's tracks, he shall make a request for a temporary crossing from the railroad. If approved, he shall arrange with the railroad company, execute its regular form of private grade crossing agreement covering the crossing desired, paying all construction, maintenance, removal, protection and other costs.
10. Methods and procedures for performing work on property of Norfolk Southern Railway Company must be approved by: J.N. Carter, Jr. / Rhonda Moore.

AUTHORITY OF RAILROAD ENGINEER AND STATE ENGINEER

The authorized representative of the Railroad company, hereinafter referred to as the 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.

NOTICE OF STARTING WORK

- A. The Design-Build contractor shall not commence any work on Railroad right of way until he has complied with the following conditions:
 1. Give the Railroad Engineer at least ten working day advance written notice, with copy to the Engineer, of the date he proposes to begin work on railroad right of way. Said notice shall be sent to Mr. J.N. Carter, Jr., Chief Engineer, Bridges and Structures, Norfolk Southern Corporation, 1200 Peachtree Street, N.E., Atlanta, Georgia 30309.
 2. Obtained written authorization from the Railroad Engineer to begin work on Railroad right of way.
 3. Obtained written approval from the Railroad of the Railroad Protective Liability Policy of Insurance.
- B. The Railroad Engineer's written authorization to proceed shall include the names, addresses, and telephone numbers of the railroad's local representatives who are to be notified as hereinafter required. Where more than one representative is designated, the area of responsibility shall be specified.

FLAGGING SERVICE

A. WHEN REQUIRED

Under the terms of the Agreement between the Department and the Railroad, the Railroad has the sole authority to determine the need for flagging required to protect its operations. In general, the requirements of such flagging services will be whenever the Design-Build contractor's men or equipment are, or are likely to be, working on the Railroad's right of way and is across, over, adjacent to, or under a track, or when such work has disturbed or is likely to disturb a railroad track structure, railroad roadbed or the track surface and alignment of any track to such an extent that the movement of trains must be controlled. Normally the Railroad will assign one flagger to a project; but in some cases, more than one may be necessary. However, if the Design-Build contractor works within distances that violate instructions given by the Railroad's local representative, or performs work that has not been scheduled with the Railroad's local representative, additional flaggers may be required full time until the project has been completed.

B: SCHEDULING AND NOTIFICATION

The Design-Build contractor shall furnish to the Railroad's local representative and the Engineer a schedule for all work required to complete the portion of the project within the Railroad right of way and arrange for a job site meeting between the Design-Build contractor, Engineer and the Railroad's local representative. Flagging services may not be provided until such meeting has been conducted and the contractor's work scheduled.

The Design-Build contractor shall give the Railroad's local representative, copy to the Engineer, at least 10 working days of advance written notice of work to be performed within railroad right of way. Such notices shall include sufficient details of the proposed work to enable the Railroad's local representative to determine if flagging will be required. If flagging is required no work shall be undertaken until the flaggers are present at the job site. Railroad labor agreements usually require flaggers to be assigned to a project on a continual basis and therefore cannot be called for on a spot basis. If flagging service becomes unnecessary and is suspended it may take up to thirty days to again obtain service from the Railroad. The Design-Build contractor shall give five working days notice to cease flagging service.

C: EMERGENCIES

If emergencies arise which require the flagger's presence elsewhere, the Design-Build contractor shall delay his work until such time as the flaggers are again available.

D: SUSPENSION OF WORK

If work is suspended the Design-Build contractor shall give the Railroad's local representative at least three working days notice before resumption of said work.

E. VERIFICATION

The Railroad flagman assigned to the project will be responsible for notifying the State or Design-Build contractor's on-site project representative or Design-Build contractor's Superintendant 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 State or Design-Build contractor's on-site project representative will document such notification in the project records. When requested, the State or Design-Build contractor's on-site project representative will also sign the flagman's diary, timesheet or flagging report showing daily time spent and activity at the project site.

III. Special Provisions For Protection Of Railway Interest

INTERFERENCE WITH RAILROAD OPERATIONS:

- A. The Design-Build 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 Design-Build contractor from liability. Any work to be performed by the Design-Build contractor which requires flagging service or inspection service shall be deferred by the Design-Build 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 Design-Build 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 Design-Build contractor shall make such provisions. If in the judgment of the Railroad Engineer, or in his absence, the 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 Design-Build contractor's expense and without cost to the Railroad or the Department.

TRACK CLEARANCES:

- A. During the performance of the work, temporary construction clearances of 22'-0" vertically above the top of rail and 13'-0" horizontally from the centerline of a track shall be maintained to any form work, false work or other temporary obstruction.
- B. However, before undertaking any work within Railroad right-of-way, or before placing any obstruction over any track, the Design-Build 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 Engineer has received copies of notice to the Railroad and of the Railroad's response thereto.

CONSTRUCTION PROCEDURES:

A. General:

Construction work and operations by the Design-Build contractor on Railroad property shall be:

1. Subject to the inspection and approval of the Railroad.
2. In accordance 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 accordance with these Special Clauses / 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. Design-Build contractor will not be required to make existing section meet this specification if substandard, in which case existing section will be maintained

C. Excavation for Structures:

The Design-Build 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 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 Engineer and the Railroad Engineer, but such approval shall not relieve the Design-Build contractor from liability.

D. Demolition, Erection, Hoisting

1. Railroad tracks and other railroad property must be protected from damage during the procedure.
2. The Design-Build 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's 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 Engineer and the Railroad Engineer, but such approval does not relieve the Design-Build contractor from liability.

E. Blasting:

1. The Design-Build contractor shall obtain advance approval of the Railroad Engineer and the 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 Design-Build 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 Design-Build 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 an authorized representative of the Railroad. 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 Design-Build contractor shall bear the entire cost thereof.

2. The Railroad representative will:

- (a) Determine approximate location of trains and advise the Design-Build 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 Design-Build 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 Design-Build 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 Design-Build contractor's operations shall be done at the Design-Build 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 Design-Build contractor to move, at the Design-Build 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 Design-Build 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 Design-Build contractor's failure to immobilize grading or construction machinery.

H. Cleanup:

Upon completion of the work, the Design-Build 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 Design-Build contractor, and leave said rights-of-way in a neat condition satisfactory to the Chief Engineer of the Railroad or his authorized representative.

DAMAGES:

- A. The Design-Build 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 Design-Build contractor, shall be paid directly to the Railroad by the Design-Build contractor.

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 State has included arrangements for such haul in its agreement with the Railroad, the Design-Build contractor will be required to make all necessary arrangements with the Railroad regarding means of transporting such materials across the Railroad. The Design-Build 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 Design-Build 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 private crossing agreement has been executed between the Design-Build contractor and Railroad.

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 Design-Build 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 Design-Build contractor's expense.

COOPERATION AND DELAYS:

- A. It shall be the Design-Build 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 Design-Build contractor against either the State 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.

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.

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. Safety boots are strongly recommended.
- 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.

GUIDELINES FOR 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.