

Agreement No. _____

**Project: Replace Existing SC 7
Bridge over NS & CSX
Charleston, County, SC
Approximate NS RRMP SC 53
NS File: BR 0013186
SCDOT File: 10.038657A**

THIS AGREEMENT, made this _____ day of _____, 20____,
between;

**NORFOLK SOUTHERN RAILWAY COMPANY, a corporation organized
and existing under and by virtue of the laws of the Commonwealth of Virginia, hereinafter
called the “Railway”; and**

**SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION hereinafter
called the “Department”;**

**WITNESSETH THAT, in consideration of the mutual undertakings
hereinafter set out, the parties agree:**

General

**The Department proposes to replace the overhead bridge and approaches
carrying SC 7 over, above, and across the tracks and property of Railway and CSXT, located
at approximate Railway Milepost SC-53, and approximate CSXT Railroad Milepost ACN
389.74, in Charleston County, South Carolina, in accordance with the Department’s plans,
specifications, and special provisions after said plans, specifications, and special provisions
shall have been approved by the Railway. The replacement of the bridge and approaches will
be performed under File No. 10.038657. The work shall be performed upon the terms and
conditions hereinafter expressed and contained and shall be hereinafter together referred to
as the “Project”;**

**The Project shall be performed in accordance with the reasonable
requirements of the Railway so as to prevent interruption of, interference with, danger or
delay to railroad operations: and to that end. No structure shall be erected by the
Department, or its contractor, during the progress of said work nearer the top of the rails or
the center of the track of the railroad than the structure and clearances approved by the
Railway.**

NOW THEREFORE, the PARTIES HERETO agree as follows:

1. Division of Costs

Inasmuch as no benefit will accrue to the Railway by the widening of this structure, the entire cost will be for the account and expense of the Department using Federal Funds as may be allocated for this project.

2. Right-of-Way Use

Railway, to the extent that its present right, title and interest permits or enables it so to do and without warranty, hereby grants to the Department an easement to widen said highway, replace overhead bridge structure and approaches, thereto, across the right-of-way and over the tracks of the Railway at the location shown on the project plans in accord with this agreement. Plans, Specifications and Special Provisions prepared by the Department and approved by the Railway; provided, however, that:

- a. Such easement is limited to the use for highway purposes of space required for columns, foundations and other parts of the bridge and drainage structures, and is limited vertically by a horizontal surface 20 feet above the roadway surface of said bridge, together with the use of reasonable additional space for widening and for access to the highway facilities for maintenance purposes; it being understood that the easement shall not restrict the Railway from utilizing the airspace under said bridge for railroad operations and for wire lines or other facilities which will not encroach on the reasonable requirements for maintaining the highway facilities.
- b. The Department, in its maintenance of the highway facilities, agrees to obtain permission from the Railway before undertaking any work, which may interfere with, or be a real or potential hazard to passage of trains or other railroad operations and agrees to bear all expenses for watchmen and flagging service, which the Railway may deem necessary.
- c. Railway agrees to notify the Department prior to undertaking the use of airspace over the easement and prior to starting the construction of any fixed installation other than its customary signal and communication facilities, within 8 feet of underside of said bridge or within 50 feet of said easement, it being understood that such use will afford reasonable protection and safety to the highway facilities and highway traffic and will not unreasonably interfere with the maintenance of the highway facilities.
- d. All other rights are reserved unto the Railway.

3. Special Insurance

The Department will require its contractors engaged to perform this work to furnish the Railway with the special insurance protection contained in Paragraph XIV of the attached document "Special Provisions for Protection of Railway Interests", dated January 4, 2010, jointly prepared by the Department and Railway.

4. Contract Special Provisions

The Department will require its contractors engaged to perform this work to comply with the attached document "Special Provisions for Protection of Railway Interests", dated January 4, 2010, jointly prepared by the Department and Railway.

5. **Work by DEPARTMENT:**

In the event that DEPARTMENT performs any work associated with the Project, with its own employees or agents other than the Contractor, DEPARTMENT shall perform such work in accordance with and abide by “Special Provisions for Protection of Railway Interests”, except that Railway acknowledges that Department’s liability for damages of any kind arising from its own tortuous activity is limited by the S. C. Tort Claims Act (S. C. Code Section 15-78-10, et seq.) and the Department’s general liability insurance covers liability only within the limits of the S. C. Tort Claims Act and nothing in this Agreement or the Special Provisions shall be construed to expand Department’s liability for its actions performed on the Railway right of way beyond the limits of the S. C. Tort Claims Act.

6. **Public Utilities**

If changes in wire or pipe lines or other facilities of any public utility not owned by, but located on the property of the Railway are necessary. Such changes shall be made under agreement between any such utility company and Department without cost to the Railway or the contractor. However, the contractor will be required to bear the cost of any changes which are not necessary for the widening of the project but which are made at his request solely for his convenience in the conduct of his operations.

7. **Flagging Service**

Any flagging service required, when in the opinion of the Railway such service is necessary for the safety of its railroad operations because of work performed by the Department’s contractor or in connection therewith will be provided by the Railway. In general, such services will be required to such extent that movement of trains should be controlled by flagging, whenever the contractor or equipment are, or may be, working within approved track clearances, or over tracks, or when the contraction’s work has disturbed, or may disturb, the surface and alignment of any operated track. The Department will reimburse the Railway for all cost of flagging which is required on account of the widening of the grade separation project, within Railway’s right-of-way, which is shown in the project plans, or which is covered by an approved plan revision, supplemental agreement or change order. Any flagging cost deemed to be caused by acts of omission, carelessness, negligence, or unnecessary delays by the contractor will be borne by the Department but will be deducted from progress or final payment made to the contractor. However; this deduction will be made only after the Department has given the contractor written notification that these flagging costs have been determined to be the contractor’s responsibility. The contractor will be required to reimburse the Railway under separate arrangement between the contractor and the Railway for any flagging required on account of **WORK FOR THE BENEFIT OF THE CONTRACTOR** as discussed in the attached document “Special Provisions for Protection of Railway Interests”, dated January 4, 2010.

The estimated cost of the flagging service is \$ _____ (Itemization Attached Hereto). However; the Railway cannot warrant the class of its employee to be used in such work, or that the estimated cost may not be exceeded since the contractor and type of construction equipment are unknown.

8. **Payment to Railway**

Railway will provide and furnish labor, equipment and materials necessary therefore to rearrange its signal and communication lines if necessary, and do and perform any other work incident to the widening of the proposed structure or approaches which is not specified or foreseen, but which is necessary in the judgment of the representatives of the Railway for safety and maintenance of traffic and for the protection of property of the railroad; it being understood that final payment to the Railway will be in accordance with the applicable rules and regulations as contained in 23 CFR 1401 of the Federal-Aid Policy Guide, and amendments thereto issued by Federal Highway Administration. The estimated cost of force account work to be performed by Railway (not including flagging services, which work is covered in Paragraph 7) is \$ _____ and is itemized as attached. Cost principles and procedures shall be as set forth in 48 CFR 31 of the Federal Acquisition Regulations as appropriate. When specific Federal Highway Administration reimbursement policy differs from Federal Acquisition Regulations, the Federal Highway Administration policy shall apply.

9. Invoices

Upon completion of the project, the Railway will render invoice to the Department for the actual cost of flagging service and the actual cost of any work performed by the Railway as provided in Paragraphs 7 and 8 and hereof, and the Department will pay such invoice promptly, but in any event within thirty (30) days from receipt of such invoice after receipt of all final costs. The Railway and its subcontractors shall keep and preserve all books, documents, papers, accounting records, and other evidence pertaining to cost incurred and to make such available at their respective offices at reasonable times during the contract period and for three (3) years from the date of final payment under the contract, for inspection by the Department, Federal Highway Administration, or any authorized representative of the Federal Government, and copies thereto shall be furnished if requested.

10. Maintenance

The Department will not be responsible for maintenance of roadbed and ditches of the railroad under the proposed structure, however, the Department will have its contractor repair any damage to the railroad's ditches, embankment, or track caused by erosion of the approaches to the overhead bridge or by operations of the contractor during widening of this project. After completion, the Department shall maintain the new bridge approaches, and drainage structures without cost to the Railway.

11. General Compliance with Laws

The parties agree to observe and comply with all Federal, State, and local laws, ordinances and regulations applicable to the Project.

12. The word "Railway" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Railway. Said term also shall include Railway's officers, agents, and employees, and any parent company, subsidiary or affiliate of Railway and their officers, agents and employees.

13. This Agreement shall take effect as of the _____ day of _____,
20____.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, each part being an original, as of the _____ day of _____, 20_____.

Witness:

**NORFOLK SOUTHERN RAILWAY
COMPANY**

As to Railway:

**By: _____
General Manager**

Witness:

**SOUTH CAROLINA DEPARTMENT
OF TRANSPORTATION**

As to Department:

**By: _____
Director of Preconstruction**

SAMPLE