

PROJECT AGREEMENT 530.100.000

**High Point Railroad Slopes and Drainage Improvements
Downing Street to Lindsay Street
City of High Point, Guilford County
NCRR/NS Milepost 298.35 to 299.5**

NORTH CAROLINA RAILROAD COMPANY

AND

CITY OF HIGH POINT

AND

NORFOLK SOUTHERN RAILWAY COMPANY

THIS PROJECT AGREEMENT made and entered into this the _____ day of _____, 2016, ("Project Agreement") between NORTH CAROLINA RAILROAD COMPANY ("NCRR"), the CITY OF HIGH POINT (City) and NORFOLK SOUTHERN RAILWAY COMPANY ("NSR");

I. RECITALS

WHEREAS,

- A. NCRR and NSR entered into a Master Agreement dated July 27, 1999 ("Master Agreement");
- B. NCRR and NSR entered into a Capital Improvement Agreement dated March 20, 2002 ("Capital Agreement"); the Capital Agreement contains certain provisions and obligations with regard to improvements to railroad property owned by NCRR and operated by NSR; and
- C. NCRR and NSR may separately, jointly, or with other parties develop capital improvement plans subject to, and in accordance with, Section 9 of the Master Agreement; and
- D. In 2013 the City approached NCRR with questions regarding the stability and appearance of portions of the slopes on the NCRR railroad corridor through High Point; and
- E. The City, NCRR and NSR have conducted meetings and site visits to discuss the proposed project scope and participant's responsibilities; to view the existing conditions of the surface street drainage and railroad slopes; and to arrive at a potential approach leading to improving the railroad slopes and surface street drainage along portions of the NCRR railroad corridor in High Point; and

- F. The City, NCRR and NSR propose a three pronged approach to proceed with the project:
1. The City will have responsibility to design, construct and maintain measures seeking to mitigate the discharge of street level surface drainage onto portions of the NCRR railroad corridor, particularly the discharge of storm water and surface drainage onto railroad slopes and the track level infrastructure. The mitigation of storm water and surface drainage onto the railroad slopes and track infrastructure is a key component to the overall project improvements and needs to be addressed prior to investing in improvements to the railroad slopes and track bed; and
 2. NCRR will have responsibility for improvements to the railroad slopes and associated measures within portions of the NCRR railroad corridor for the purpose of seeking to mitigate and address slope stability and appearance concerns on portions of the NCRR railroad corridor after the surface drainage issues have been addressed; and
 3. NSR will have responsibility for improvements to seeking to address the track level drainage on portions of the NCRR railroad corridor after the surface drainage and railroad slope issues have been addressed.
- G. The benefits of this project will include:
1. The amount of City storm water and surface drainage will be minimized to the greatest extent possible. Minimizing the surface drainage being discharged onto the railroad slope and track bed area is expected to lessen the deterioration of the slopes; and
 2. The impacted portion of the railroad's slopes will be stabilized and improved to seek to reasonably minimize erosion and related impacts; and
 3. The drainage ditches along the impacted portion of the NCRR/NSR tracks will be improved to seek to reasonably provide for a better track structure and to seek to reasonably minimize related impacts; and
 4. The drainage and slope improvements are expected to reduce maintenance requirements related to the tracks and railroad slopes in this confined area which will in turn be expected to reduce freight and passenger train delays due to maintenance activities. This NCRR railroad corridor currently handles over 40 trains (including both freight and passenger) per day; and
 5. It is expected that this project will beneficially impact the appearance of the NCRR railroad corridor roadbed and slopes through the center of the City.

The City, NCRR and NSR have agreed to participate in the manner and to the extent as set out herein. Except as otherwise set forth herein, the Capital Agreement shall govern the conduct of the parties who originally executed that Capital Agreement as set forth in Recital B above.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows.

II. PROJECT DESCRIPTION, PLANS AND SPECIFICATIONS, PERMITS, SOLICITATION OF COMPETITIVE BIDS, CONSTRUCTION MANAGEMENT, CONSTRUCTION AND WORK SCHEDULE

A. Project Description

1. The High Point Railroad Slopes and Drainage Improvements Project includes:
 - a. Improvements to certain storm drainage system facilities owned by the City; surface drainage from City owned streets, other streets and paved vehicle surfaces; and drainage from other areas adjacent to the NCRR railroad corridor which together or separately discharge water onto the NCRR railroad corridor will be the responsibility of and designed and constructed by the City (hereunder being the "City Project") in a manner which will minimize the surface drainage being discharged onto the railroad slope to the greatest extent possible. The locations of the City Project are generally (1) between Lindsay and Centennial Streets and (2) in the area adjacent to the pedestrian overpass at Washington Street near Day Place.
 - b. Improvements to the railroad slopes with the goal of seeking to stabilize the slopes, minimize erosion to the extent possible and enhance the current appearance of the slopes will be the responsibility of the NCRR (hereunder being the "NCRR Project"). The location of the NCRR Project will generally be (1) between Wrenn and Centennial Streets and (2) in the area adjacent to the pedestrian overpass at Washington Street near Day Place.
 - c. Improvements to the drainage systems (i.e., ditches) at the railroad track level will be the responsibility and in the sole discretion of NSR (hereunder being the "NSR Project"). The location of the NSR Project will generally be (1) between Wrenn and Centennial Streets and (2) in the area adjacent to the pedestrian overpass at Washington Street near Day Place. The NSR Project work will mainly consist of ditch improvements.
 - d. The NCRR Project and the NSR Project are hereunder collectively referred to as the "Railroad Project". The Railroad Project and City Project are hereunder collectively referred to as the "Project."
2. NCRR and NSR will jointly (in the manner outlined below) develop a plan for improvements to the railroad slopes and railroad roadbed drainage ditches that will seek to achieve the NCRR Project's and NSR Project's goals; prepare plans, specifications and other documents for the railroad slopes and railroad roadbed drainage ditch improvements; and, subject to the preconditions stated in Sections II.G.1 and II.G.2 of this Project Agreement, construct all such improvements. NCRR will retain ownership of all railroad improvements.
3. The City will separately develop a plan for improvements to the surface and storm water drainage systems that will seek to achieve the project's goals, prepare plans, specifications and other documents for the surface and storm water drainage system improvements and construct all such improvements. Upon completion of the Project, the City will thereafter maintain all City owned improvements to seek

to ensure a continuation of an important goal of the Project which is, to the greatest extent possible (zero discharge is not possible), that City storm and surface drainage does not discharge onto the NCRR railroad corridor slopes upon completion of Project.

4. The City will furnish plans, specifications and related documents (and any supplemental ones) for review and approval of NCRR and NSR as they relate to the discharge of storm water and surface drainage onto the NCRR railroad corridor infrastructure. The City's work shall be performed per the approved plans, specifications and related documents (including any approved revisions).
5. The feasibility of constructing certain improvements and scope of improvements that could be constructed within the budget limits will be evaluated and determined during the preliminary design phase of both the City Project and the Railroad Project. The preliminary plans shall be reviewed and approved in the manner outlined in this Project Agreement by the City (City Project and NCRR Project only), NCRR and NSR prior to proceeding into final design and construction of the Project. It is understood during this preliminary design phase, the estimated cost of the work depicted in such preliminary plans for the City Project, NCRR Project or NSR Project may result in one or more the parties seeking to seek concurrence (as required under this Project Agreement) to modify or change the plans for the portion of the work for which a party is responsible under this Project Agreement if the cost to a particular party of such work is greater than expected. In such a case, if the parties are not able to agree on such modifications or changes, it is understood and agreed that this Project Agreement will be subject to possible termination by any one of the parties under Section XI of this Project Agreement.

B. Utilities

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

C. Plans and Specifications

1. NSR shall at NCRR expense design or cause to be designed all phases of the design for the NCRR Project. The NCRR Project plans and specifications, prepared subsequent to the execution of this Project Agreement by NSR and

NSR's consultant(s), will be submitted to the City and NCRR for review and approval prior to issuing construction drawings or solicitation of bids.

2. NSR shall at NSR expense design or cause to be designed all phases of the design for the NSR Project. The NSR Project plans and specifications, prepared subsequent to the execution of this Project Agreement by NSR and NSR's consultant(s), will be submitted to NCRR for review and approval prior to issuing construction drawings or solicitation of bids.
3. Plans for the purpose of the Railroad Project shall consist of engineering calculations and drawings needed to prepare the Design Plans, as prepared by NSR and/or its consultant(s) and as approved by the City (railroad slope improvement plans only) and NCRR.
4. Specifications for the Railroad Project will reflect those used by NSR on other similar projects on its railroad. These specifications, prepared by NSR, will be submitted to the City (railroad slope improvement specifications only) and NCRR for review and approval prior to issuing for construction. Additional specifications used by NSR for this Project may include:
 - a. NSR's "Standard Specifications for Material and Construction" (Current version);
 - b. American Railway Engineering and Maintenance-of-Way Association's (AREMA) recommended practices;
 - c. North Carolina Department of Transportation's (NCDOT) standard plans and specifications;
 - d. NCRR's specifications for utility occupancy and work on its right of way.

The specifications will provide details of an exact statement of particulars prescribing materials, dimensions and workmanship to be used in constructing the Railroad Project.

5. Supplemental Plans and Specifications, if any, shall be submitted by NSR to the City (railroad slope improvement specifications only) and NCRR for its review and approval, and the City and NCRR and/or their consultant(s) shall promptly review and approve and/or provide comments on the Plans and Specifications to NSR.
6. During bid review and/or construction of the Railroad Project, if any changes in the Plans and Specifications are necessary, NSR and/or its consultant(s) shall promptly prepare and submit revised Plans and Specifications to NCRR and the City (railroad slope improvement specifications only) for its review and approval.
7. It is understood that the Plans and Specifications will provide that the Railroad Project will be built under traffic and that any required outages shall be kept to a minimum.

D. Permits

1. City shall have responsibility for obtaining permits as follows:
 - a. City and/or its consultant(s) and contractor(s) shall be responsible for seeking all required environmental and/or planning documents for the City Project, including any environmental permits, and performing any necessary engineering studies and field surveys required in conjunction with obtaining those permits.
 - b. NCRR and NSR shall reasonably provide assistance to City necessary with regards to securing the permits required for completion of the City Project.
2. NSR shall have responsibility for obtaining permits as follows:
 - a. NSR and/or its consultant(s) and contractor(s) shall be responsible for seeking all required environmental and/or planning documents for the Railroad Project, including any environmental permits, and performing any necessary engineering studies and field surveys required in conjunction with obtaining those permits.
 - b. NCRR and the City shall reasonably provide assistance to NSR as necessary with regards to securing the permits required for completion of the Railroad Project.

E. Solicitation for Competitive Bids for Construction Work:

NSR shall prepare bid packages and conduct the bidding process for construction work to be performed by a contractor(s) to be engaged by NSR. The following shall apply:

1. Except for that work which NSR will perform using its own forces, NSR shall prepare a bid package for the proposed Railroad Project work. The bid package shall be prepared to the standards of NSR and NCRR, and contain the Plans and Specifications as prepared by NSR and/or its consultant(s). NCRR shall promptly review and approve the bid documents prepared by NSR and/or provide reasonable comments on the documents to NSR.
2. Except for that work which NSR will perform using its own forces, NSR shall obtain bids for the Railroad Project construction work from a minimum of three (3) NSR-qualified and experienced contractors. It is agreed to by NSR, the City and NCRR that NSR shall only solicit bids from contractors with the expertise and capability to perform the work within track outages as stipulated by NSR in order to minimize annulment of, or delay to, freight trains and passenger trains.
3. NSR and NCRR shall jointly review contractors' bids prior to NSR awarding the construction contract and agree on the successful contractor. The minimum criteria for a successful bidder will be as follows:
 - a. The successful bidder must be a Contractor licensed in North Carolina.

- b. The successful bidder must have previous railroad construction experience, including experience performing railroad construction work under traffic.
 - c. The successful bidder must agree to abide by the schedule for construction established in the construction contract.
 - d. The successful bidder must agree to comply with track outages as stipulated by NSR.
 - e. While bid price shall not be the sole determining criteria for award, the successful bidder will be expected to have provided a competitive price for the contemplated construction work.
 - f. The successful bidder shall provide contract payment and performance bonds for the full value of the construction project or, in lieu thereof, shall tender letters of credit acceptable to each of the City, NCRR and NSR.
- 4. In the event that NSR modifies the Plans or Specifications during the bid review process described in Section II.B.5 of this Project Agreement, and NCRR agree with the modifications, NSR shall review the modifications with the successful bidder to determine if a change in bid price is justified.
 - 5. In the event that NSR and NCRR fail to agree on a successful bidder, or if NSR and the successful bidder fail to agree on price changes described in Section II.E.4 of this Project Agreement, NSR shall re-bid the work.

After NCRR furnishes NSR written notice to proceed with construction, NSR shall enter into a construction contract, in a form similar to other NSR construction contracts, and which will reference the provisions of this Project Agreement, with the successful bidder.

F. Construction Management

- 1. NSR, at the Project's expense, shall be responsible for providing construction management services for the construction of the Railroad Project. NSR may elect to procure a consultant(s) with the prior approval of NCRR, such approval not to be unreasonably withheld.
- 2. NCRR, at NCRR's expense, shall have the right but not the duty to provide its representative to perform such items as construction observation, inspection, quality control, reviewing invoices, reviewing change requests, attending project meetings, or providing status reports to NCRR management as outlined in Section V of this Project Agreement. NCRR may elect to utilize a consultant(s).
- 3. The City, at the City's expense, shall have the right but not the duty to provide its representative to perform with respect to the NCRR Project such items as construction observation, inspection, quality control, reviewing invoices, reviewing change requests, attending project meetings, or providing status reports to City management as outlined in Section V of this Project Agreement. The City may elect to utilize a consultant(s). In no event shall City nor any City consultant enter on any land or right of way of NCRR without first having executed

NCRN/NSR's standard entry agreement ("ROE") for such purpose and provided all that may be required by such ROE.

G. Construction procedures shall be as follows:

1. A condition precedent to NSR being required to commence the actual field construction NCRN Project or the actual field construction NSR Project work shall be full completion by City of the City Project work and written notification to NSR and NCRN to that effect. NSR in its sole discretion may elect to commence such NCRN Project and/or NSR Project work before such City Project work is fully complete and NSR is otherwise allowed under this Project Agreement to proceed.
2. A condition precedent to NSR being required to commence the actual field construction NSR Project work shall be the full completion by NSR of the NCRN Project work. NSR in its sole discretion may elect to commence such NSR Project work before such NCRN Project work is fully complete and NSR is otherwise allowed under this Project Agreement to proceed.
3. Subject to the foregoing conditions, NSR shall commence the actual field construction of the Railroad Project after NCRN has given its written authorization for construction, the construction contract is signed with the successful bidder, and all applicable permits required for construction of the Railroad Project are obtained.
4. During construction, if any changes in the Plans and Specifications are necessary, NSR shall provide cost estimates for such changes and shall secure written approval from the City (NCRN Work only) and NCRN prior to the work, as described in Section II.C.4. of this Project Agreement.
5. All work in the construction of the Railroad Project shall be performed [i] in accordance with NSR standards and specifications, applicable to such work on its own railroad system, [ii] in accordance with the approved Plans and Specifications, [iii] in accordance with all applicable Federal and State regulations, and [iv] generally consistent with AREMA recommended practices.
6. NSR, by itself or through consultant(s) and contractor(s), shall provide all labor, purchased services, construction engineering, supervision and all equipment and materials necessary for the completion of the Railroad Project (including without limitation NSR's work under Section II.C of this Project Agreement) or NSR's review of the City's plans, specifications and related documents, and, except for that specifically done only for the NSR Project Work, all such work such be at NCRN's expense.
7. NCRN, at its expense, shall have the right but not the duty to inspect, sample or test, and approve or reject any materials or construction methods to be used during the construction of the Railroad Project provided that any rejection can only occur if the materials or construction methods are found not to meet the approved Plans and Specifications. NCRN's exercising of this right shall not unduly delay the Project.

8. Except for as provided in Section III.C of this Project Agreement, NSR's construction contract with the contractor shall provide that the contractor shall have the responsibility to coordinate its work with any third parties, including utility companies, and be liable to NCRR and NSR for any third party claims of interference or damages arising out of the acts or omissions of the contractor.
9. During construction of the Railroad Project, NSR and/or its consultant(s) will document as-built dimensions and revisions to the approved construction and shop drawings. Within three (3) months after completion of the Railroad Project, NSR and/or its consultant(s) will furnish NCRR an electronic copy of the CAD file, in PDF format, showing the as-built plans.

H. Work Schedule

1. NSR shall commence work on preparing and issuing a Request for Proposals for the design within ten (10) days of (i) the date of the execution of this Project Agreement.
2. Within thirty (30) days after the Notice to Proceed for the design of the Project, NSR or its Consultant shall prepare and furnish to NCRR a proposed schedule for the design and construction of the Project.
3. Within sixty (60) days after NSR's and NCRR's approval of the Plans and Specifications, NSR will confirm with NCRR a proposed schedule. NSR and/or its consultant will be responsible for furnishing the schedule for obtaining the necessary environmental permits for the work for inclusion into NSR's prepared schedule.
4. a. NSR shall commence the actual field construction on the NCRR Project within ninety (90) days of the later of (i) approval of the plans and specifications and (ii) receipt of the written notification by City that City has fully completed the City Project and NSR shall complete the NCRR Project within fifteen (15) months after the later of the date on which (i) NSR receives the written notification by City that City has fully completed the City Project (ii) all permits required for the construction of the NCRR Project are obtained and the construction contract(s) is signed with the successful bidder(s), and (iii) NCRR gives NSR written authorization to proceed with construction of the NCRR Project as provided in Section II.F.1 of this Project Agreement, provided, however, that if any NSR work hereunder is delayed due to any moratoria established by any applicable federal and/or state agency which relates to the NCRR Project, NSR's time for completion of its work hereunder shall be extended for a period equal to the time of such moratoria. In the event that the NCRR Project is delayed as a result of delay in obtaining a necessary permit, the arising of an unforeseen condition, the failure of NCRR to timely review revised Plans and Specifications or revised estimates of cost, or the failure of NCRR to acquire sufficient interest in any required real property, the construction schedule shall be revised and all parties hereto will agree on the revised schedule. Any failure to agree on the revised schedule shall be addressed by the Policy Planning Committee and

dispute resolution process set forth in the Master Agreement if the dispute is between NCRR and NSR.

- b. NSR shall commence the actual field construction on the NSR Project within ninety (90) days of the later of (i) approval of the plans and specifications and (ii) NSR completion of the NCRR Project and NSR shall complete the NSR Project within fifteen (15) months after the later of the date on which (i) NSR completes the NCRR Project (ii) all permits required for the construction of the NSR Project are obtained and the construction contract(s) is signed with the successful bidder(s), and (iii) NCRR gives NSR written authorization to proceed with construction of the NSR Project as provided in Section II.F.1 of this Project Agreement, provided, however, that if any NSR work hereunder is delayed due to any moratoria established by any applicable federal and/or state agency which relates to the NSR Project, NSR's time for completion of its work hereunder shall be extended for a period equal to the time of such moratoria. In the event that the NSR Project is delayed as a result of delay in obtaining a necessary permit, the arising of an unforeseen condition, the failure of NCRR to timely review revised Plans and Specifications or revised estimates of cost, or the failure of NCRR to acquire sufficient interest in any required real property, the construction schedule shall be revised and all parties hereto will agree on the revised schedule. Any failure to agree on the revised schedule shall be addressed by the Policy Planning Committee and dispute resolution process set forth in the Master Agreement if the dispute is between NCRR and NSR.

III. PROPERTY

- A. If any additional real property interests are needed in order to construct the Railroad Project, it will be the sole responsibility of NCRR to acquire such real property interests at NCRR's sole expense and the acquisition of a sufficient interest to such real property as may be needed will be a precondition to NSR's responsibility to commence NSR's work on any part of the Railroad Project.
- B. If any additional real property interests are needed for the construction of the City's storm water and surface water drainage improvements, it will be the sole responsibility of the City to acquire such real property interests at the City's sole expense and the acquisition of a sufficient interest to such real property as may be needed.
- C. If the Plans and Specifications identify encumbrances, including without limitation water lines, wire lines, pipe lines, parking lots and buildings, (together "Encumbrances") located on NCRR property that must be moved, relocated, adjusted or otherwise accommodated in order for construction of the Railroad Project, or if subsequent to the preparation of the Plans and Specifications but prior to NSR's commencement of the Railroad Project other Encumbrances are discovered, NCRR shall be solely responsible, at NCRR's sole expense, for seeking, obtaining and coordinating the said movement, relocation, adjustment or accommodation and this will be a precondition to NSR's responsibility to commence NSR's work on the Railroad Project. NSR agrees to cooperate in NCRR's efforts.

IV. REIMBURSEMENT

- A. NCRR's Board of Directors has approved a budget not exceeding \$3,000,000 for the NCRR Project.
- B. The City has a budget not exceeding \$1,500,000 for improvements to the storm water and surface drainage improvements.
- C. The proposed funding for the Project is as follows:
 - 1. The City will contribute up to \$1,500,000 toward the planning, design and construction of the storm water and surface drainage improvements and associated work (the City Project). Except as provided in this Project Agreement, both NCRR and NSR have no responsibility for this work.
 - 2. NCRR will contribute up to \$3,000,000 toward the cost of the NCRR Project. These funds may be applied to the engineering design and construction of the NCRR Project and associated work. Except as provided in this Project Agreement, both the City and NSR have no responsibility for funding this work.
 - 3. NSR will fund the improvements to the railroad roadbed drainage ditch improvements and associated work (NSR Project). Except as provided in this Project Agreement, both NCRR and the City have no responsibility for this work.
- D. As part of the design, NSR, or NSR's Consultant, will prepare an updated estimated cost for the NCRR Project which will be submitted to NCRR for review and approval. If upon completion of the design estimate, it is determined that the cost of the NCRR Project will exceed the NCRR budget, NSR shall inform NCRR in writing with explanation of increase. If the estimated cost exceeds the total funding in IV.C a revised funding agreement will be prepared and submitted for approval to NSR and NCRR. NSR shall not proceed with the bid process until NSR and NCRR agrees in writing on the increase for the NCRR Project. This paragraph is also subject to the provisions of Sections II.A.5 and XI of this Project Agreement with respect to potential termination of this Project Agreement.
- E. Upon selection of the successful bidder for the NCRR Project, NSR will prepare an updated estimate of cost for NSR to complete the work (the proposed NCRR Project budget). If upon completion of the design estimate, NSR determines the cost of the NCRR Project will exceed the preliminary estimate, NSR shall inform NCRR in writing with explanation of increase. NSR shall not issue notice to proceed for the NCRR Project until NCRR agrees in writing on the increase for that project.
- F. Regardless of the provisions of this Project Agreement (including without limitation Section IV.C.2 of this Project Agreement), NCRR shall reimburse or arrange for reimbursement to NSR for the actual, documented cost of the design and construction of the NCRR Project and NSR review of the plans, specifications and related documents for the City Project. In addition, NCRR shall reimburse or arrange for reimbursement to NSR of NSR's administrative fees and additives.
- G. Except for those items described in Section III of this Project Agreement (i.e., property and encumbrances) which under Section III are solely the responsibility of the City, and

except for costs associated with the City Project, and except for costs clearly only associated with the NSR Project, NCRR shall be responsible for one hundred percent (100%) of the actual, documented costs associated with the NCRR Project, including the cost for NSR and NSR's consultant(s) to prepare the Design Plans and NSR's administrative fees and additives.

- H. If during the course of the construction work unanticipated conditions arise which affect the cost of the work, the following shall apply:
 - 1. If unanticipated conditions arise prior to the construction of the Project, NSR shall notify NCRR in writing of the condition and the estimated cost to remedy the condition. NCRR shall furnish to NSR written approval to commence the remedy. If NCRR fails to approve the cost of remedy of a condition within 14 days of receipt of the notice, work on the NCRR Project shall not begin until agreement is reached. NCRR shall reimburse NSR for the cost, if any, claimed and reasonably documented by the contractor associated with delay to the contractor's work on the Project. If the Project is terminated as a result of the condition, then the provisions of Section XI of this Project Agreement shall also apply.
 - 2. If unanticipated conditions arise during the course of the construction work, NSR shall notify NCRR in writing of the condition and the estimated cost to remedy the condition. NCRR shall furnish to NSR written approval to commence the remedy. If NCRR fails to approve the cost of remedy of a condition within 14 days of receipt of the notice, work on the NCRR Project shall cease until agreement is reached. NCRR shall reimburse NSR for the cost, if any, claimed and reasonably documented by the contractor associated with delay to the contractor's work on the Project. If the NCRR Project is terminated as a result of the condition, then the provisions of Section XI of this Project Agreement shall also apply.
- I. Reimbursement shall be pursuant to the following procedures:
 - 1. NSR shall submit invoices for progress payments and a final payment to the NCRR at intervals no more frequently than thirty (30) days with the reimbursement amounts based on the actual costs of work completed. Supporting documentation for invoices shall be in the form described in Section IV.I.3. of this Project Agreement.
 - 2. NSR shall submit all invoices not previously submitted, together with the supporting documentation as required by Section IV.I.3. of this Project Agreement, for the Project within one hundred eighty (180) days after completion and acceptance of the work by the NCRR and the City.
 - 3. NSR shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Project Agreement. NSR shall make such materials available at its office at all reasonable times during the construction period, and for three (3) years from the date of final payment for the Project under this Project Agreement, for inspection and audit by NCRR at reasonable times during normal working hours at the location where such records are normally maintained by NSR.
 - 4. NCRR agrees to reimburse NSR upon each invoice rendered within thirty (30)

days of NCRR's receipt of a written invoice.

V. STATUS MEETINGS AND INSPECTIONS AND PROJECT COMPLETION

- A. NCRR, the City and NSR shall meet periodically at the request of either party during the life of the Project to discuss the Project's status. Meetings shall be held on mutually acceptable dates at mutually acceptable locations. It shall be acceptable for attendance at meetings to occur telephonically.
- B. NCRR, the City and NSR shall arrange for inspections of work on the Project as jointly deemed necessary by the parties.
- D. Upon substantial completion and prior to final delivery of the Project and final payment by the NCRR to NSR for the construction of the NCRR Project, NCRR, the City (City Project and NCRR Project only) and NSR shall perform a project close-out that will provide the parties an opportunity to assure the Project has been constructed as described under Section II.B of this Project Agreement. The project close out shall consist of a joint final inspection with NSR's Construction Manager and NCRR's and the City's representatives. The final inspection will produce a mutually acceptable final inspection correction list. NSR, as Construction Manager, will correct or cause to be corrected the items (if any) in the final inspection correction list.
- E. Upon completion of the items (if any) on the final inspection list, NSR will distribute the list to NCRR and the City as notification the Project has achieved Final Field Acceptance. Upon issuing the Final Field Acceptance, NSR will furnish to NCRR records as noted in Section A.9. of the Capital Agreement and furnish to NCRR the as-built plans as noted in Section II.F.7. of this Project Agreement. Upon the delivery to NCRR of the documents in this section, the Project will be accepted by the parties as complete.
- E. NSR will issue the final invoice in accordance with Section IV.I.2. of this Project Agreement. The final invoice and payment shall serve as final acceptance of this Project by the parties.

VI. SALVAGE

- A. The scrap value of salvaged running rail and other salvaged steel materials removed from the Project will be returned to the NCRR Project as a credit.
- B. NSR's contractor(s) shall retain all other salvaged scrap materials generated as a result of the Project. Scrap materials are to be removed from NCRR's right of way and disposed of in accordance with applicable local, state and federal laws and regulations.

VII. MAINTENANCE/OWNERSHIP

The infrastructure constructed by NSR for the NSR Project after completion of the Project shall owned by NCRR and shall be maintained by NSR in accordance with Section 8 of the Master Agreement, except that the NSR Project shall not be deemed an upgrade for purposes of Section 8(e) of the Master Agreement. The slope improvements and any other improvements made by this Project, shall be owned and maintained by NCRR.

VIII. INDEMNIFICATION/INSURANCE

1. NSR agrees to and does hereby indemnify and hold NCRR and the City harmless from and against any and all loss, cost, claim, liability or expense (including but not limited to attorney's fees) resulting from the loss of life of or personal injury to any person or the loss of or damage to any property occurring during the construction phase of the Railroad Project which arises from the construction activities of NSR or its contractor(s), except to the extent that such loss of life, personal injury or property loss or damage is caused by the negligence of NCRR or the City.
2. To the extent allowed by law, the City agrees to and does hereby indemnify and hold NCRR and NSR harmless from and against any and all loss, cost, claim, liability or expense (including but not limited to attorney's fees) resulting from the loss of life of or personal injury to any person or the loss of or damage to any property occurring during the construction phase of the Railroad Project which arises from the construction activities of the City or its contractor(s), except to the extent that such loss of life, personal injury or property loss or damage is caused by the negligence of NCRR or NSR. City also agrees City and its Prime Contractor shall be required to provide to NCRR and NSR such insurance as is listed on Exhibit A, attached hereto and made a part hereof.

IX. MERGER

Except for the Master Agreement, the Capital Agreement and this Project Agreement constitute a final expression of all the terms agreed upon and are a complete and exclusive statement of those terms, superseding all other prior understandings and agreements, both written and oral, between the parties with respect to the Project. The Capital Agreement and this Project Agreement may be supplemented, amended or modified at any time and in any and all respects only by an instrument in writing executed by NSR and NCRR.

X. ASSIGNMENT

This Project Agreement may not be assigned by any of the parties without the written consent of the remaining two parties, which consent shall not be unreasonably withheld.

XI. TERMINATION.

NCRR, NSR and City shall have the right to abandon the Project at any time prior to the time NSR has been authorized to begin construction work on the Railroad Project. Termination of NSR's, NCRR's or City's participation must be effected by written notice to other two parties a minimum of thirty (30) days prior to the termination date. Furthermore, failure on part of NSR, NCRR or City to comply substantially with any of the material provisions of this Project

Agreement prior NSR's commencement of the Railroad Work will be grounds for NSR, NCRR or City (as the case may be) to withdraw participation in the project. However, should NSR, NCRR or City timely withdraw its participation under any provision of this Project Agreement, NCRR shall reimburse NSR, within ninety (90) days of receipt of an invoice, the actual cost of the work performed by NSR (except for that work which under this Project Agreement is to be performed by NSR at NSR's expense), including any costs or penalties associated with early termination of the construction contract.

XII. FORCE MAJEURE

NSR, NCRR and City agree to pursue the completion of the work for the Project covered by this Project Agreement as expeditiously as possible and to complete said work in accordance with the requirements of the Project Agreement. If City or NSR are unable to complete their portion of the work for the Project specified in this Project Agreement due to a condition of *force majeure* or other conditions beyond the reasonable control of NSR or City (as the case may be), then NSR or City (as the case may be) will diligently pursue completion of the Project once said condition or conditions are no longer in effect.

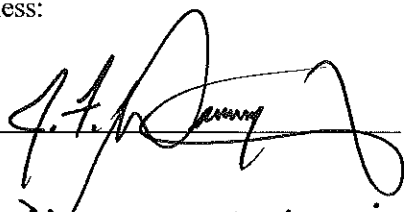
XIII. MISCELLANEOUS

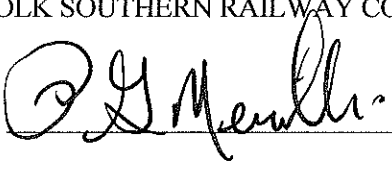
- A. Governing Law. This Project Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without giving effect to the principles thereof relating to conflicts of law.
- B. Captions. The captions contained in the Agreement are for convenience and reference only, and do not define, describe, extend or limit the scope or intent of the Agreement or the scope or intent of any provision contained herein.
- C. No Waiver. Any failure by either party to enforce any of the provisions of the Agreement or to require compliance with any of its terms at any time during the term of the Agreement shall in no way affect the validity of the Agreement, or any part hereof, and shall not be deemed a waiver of the right of such party thereafter to enforce any such provision.
- D. Iran Divestment. Each of NSR, NCRR and City hereby certifies that, as of the date of this Agreement, neither it nor any of its contractors who have been selected to perform work under this Agreement are on the Final Divestment List as created by the State Treasurer pursuant to N. C. Gen. Stat. § 147-86.58. In compliance with the requirements of the Iran Divestment Act, N.C. Gen. Stat. § 147-86.55, et seq., each of NSR, NCRR and city covenants that it shall not enter into a contract with a subcontractor to perform work under this Agreement if such subcontractor is at that time identified on the Final Divestment List

IN WITNESS WHEREOF, this Project Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the City of High Point, NCRR and NS by authority duly given.

Witness:

NORFOLK SOUTHERN RAILWAY COMPANY

By: 

By: 

Title: DIRECTOR OF ENGINEERING

Title: VP ENGINEERING

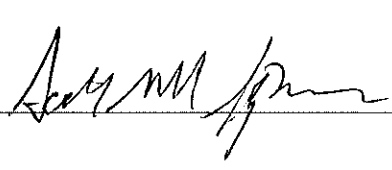
Federal Tax Identification Number: 56-6002016
Norfolk Southern Railway Company

Remittance Address:
Norfolk Southern Railway Company
c/o Norfolk Southern Corporation
Miscellaneous Billing 1200 Peachtree Street NE, Box 34
Atlanta, GA. 30309

Witness:

NORTH CAROLINA RAILROAD COMPANY

By: 

By: 

Title: Planning Director

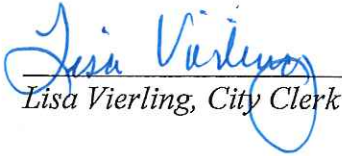
President

Federal Tax Identification Number 56-6003280
North Carolina Railroad Company

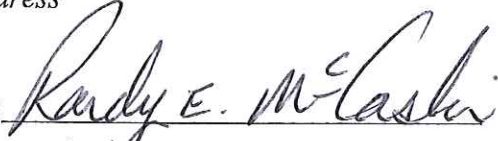
Remittance Address:
North Carolina Railroad Company
2809 Highwoods Boulevard
Raleigh, NC 27604-1640
Attn: Dan Halloran, CFO

CITY OF HIGH POINT, NORTH CAROLINA
The City

P O Box 230, High Point, NC 27261
Address

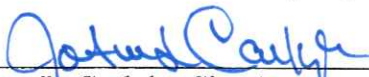

Lisa Vierling, City Clerk



By: 
6/29/14, Assistant City Manager

APPROVAL BY CITY ATTORNEY

Approved as to form and legality:


JoAnne L. Carlyle, City Attorney

Date: 6/29/14

APPROVAL BY FINANCE OFFICER

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.


Jeffrey A. Moore, Director of Financial Services
ERIC OLMEDO, BUDGET DIRECTOR

Date: 6/28/14