

ORIGINAL
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RESOLUTION NO.: R-2022-082

Authorizing the City Manager to execute a Quiet Zone Construction Agreement With Special Provisions between the City of Columbia and Norfolk Southern Railroad

BE IT RESOLVED by the Mayor and City Council this 20th day of September, 2022, that the City Manager is authorized to execute the attached Quiet Zone Construction Agreement with Special Provisions between the City of Columbia and Norfolk Southern Railroad for implementation of the Quiet Zone project in a final format to be approved by legal.

Requested by:

Assistant City Manager Gentry

Approved by:

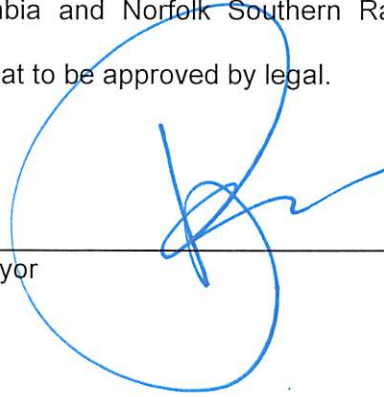
Charisa B. Wilson
City Manager

Approved as to form:


City Attorney

Introduced: 9/20/2022
Final Reading: 9/20/2022

Mayor



ATTEST:

Erika D. Hammond
City Clerk

THIS AGREEMENT, made and entered into by and between:

Norfolk Southern Railway Company, a Virginia corporation, hereinafter styled "Railway;" and the **County/City of City, State**, a Local governmental entity, hereinafter styled or "Public Authority":

W I T N E S S E T H: THAT

WHEREAS, the Public Authority, for its sole benefit and at its own cost and expense, is proposing to implement a Quiet Zone at which locomotive horns are not routinely sounded for at grade rail/highway crossings, as set forth in federal regulation (49 CFR Part 222) within their community between railroad Milepost W-161.10 MP and Milepost R 107.83 MP, and which implementation requires modifications to public roads identified as

Gadsden Street, DOT Crossing Number 716366U; MP 161-10;
Lincoln Street, DOT Crossing Number 716365M; MP R-108.59
Assembly Street, DOT Crossing Number 7156208R; MP 108.35
Main Street, DOT Crossing Number 715621X; MP 108.30
Pickens Street, DOT Crossing Number 715866N; MP 107.85
Wheat Street, DOT Crossing Number 715867V; MP 107.83
Green Street, DOT Crossing Number 715869J; MP 107.40
College St, DOT Crossing 904228Y MP 107.35

within the County/City of Richland County, State of South Carolina and, hereinafter called "Public Crossing" upon and across, at grade, the right of way or property and track (whether more than one track) of Railway; and

WHEREAS, Public Authority has requested Railway to perform certain work, hereinafter called "**Modifications**" (involving one or more Railway Departments), in connection with Public Authority's intent to implement a Quiet Zone encompassing the Public Crossing, all of which Railway is willing to do per the terms and conditions hereinafter expressed and contained; and

WHEREAS, Public Authority proposes to construct or cause to have constructed concrete medians (channelization) in both approaches to the crossing, hereinafter included as part of the "**Modifications**", in connection with Public Authority's intent to implement a Quiet Zone encompassing the Public Crossing, but upon the terms and conditions hereinafter expressed and contained;

NOW THEREFORE, the PARTIES HERETO agree as follows:

1. The Public Authority, in order to obtain entitlement to or approval of a Quiet Zone under 49 CFR Part 222, hereby contracts with Railway to allow construction and/or installation upon and across, at grade, the right of way or property and track (whether more than one track) of Railway, the **Modifications** as shown on Signal Plans for Plainview Drive in Exhibit 'A' and County Road Plans in Exhibit 'B' (as required for establishment of a Quiet Zone under 49 CFR Part 222) of such character, specification and design as may be approved by the Superintendent of Railway or his duly authorized representative; RESERVING, however, unto Railway the right to continue to maintain, repair, renew and operate its railway and appurtenances across the Public Crossing, and to construct such additional tracks and other railway facilities across the Public Crossing, and to maintain, repair, renew and operate the same as in the judgment of Railway may be requisite; it being understood that if Railway elects or is required to construct any additional tracks or other structures or facilities thereon, and shall find it necessary to disturb the Public Crossing, the **Modifications**, or any portion of the highway located within the limits of said right of way in so doing, Public Authority will, at its own cost and expense, upon notice in writing so to do served upon it by Railway, make such changes in the Public Crossing, the **Modifications**, or in said highway, or arrange for such changes to be made at the Public Authority's expense, as may be necessary to accommodate the work of Railway.

2. Railway will, for the accommodation of and at the expense of the Public Authority, perform part of the Modifications; and revise, relocate, maintain and reconstruct signal facilities and other railway facilities in such manner as may be necessary to this undertaking, all in accordance with plans, specifications and estimates prepared by Railway; said plans, specifications and estimates will be or have been provided to the Public Authority and is made a part hereof by reference. Public Authority will pay to Railway, promptly upon bill rendered therefore, the actual cost of all Modifications and associated work performed by Railway Personnel pursuant to this Agreement, including but not limited to the expenditures herein expressly described, and including all costs associated with flagging undertaken at the Public Crossing. Estimated cost for Railway Signal Department modifications is \$1,493,597.79.

3. The Modifications and associated equipment by the Railway, as installed or constructed pursuant to this Agreement, shall be maintained in operation by Railway, and the Modifications and associated equipment by the Public Authority, as installed or constructed pursuant to this Agreement, shall be maintained in operation by the Public Authority, so long as Railway may operate its railway at the Public Crossing or until it is mutually agreed between the parties hereto that the Modifications are no longer necessary at the Public Crossing, or until the Public Crossing is abandoned or other legal requirements make it necessary to cease operation and maintenance.

4. As part of the **Modifications** the Public Authority in order to contribute toward the safety of train and motor vehicle operations at the Public Crossing, Public Authority will:

(a) Adhere to all requirements as set forth in Norfolk Southern – Special Provisions for Protection of Railway Interest “Appendix E” attached hereto and incorporated by reference herein.

(b) At all times during the life of this Agreement, keep the vegetation on its property cut in such manner and to such extent as is necessary to permit a person approaching the Public Crossing from either direction to see approaching trains before such person reaches a position on or near the Public Crossing. Public Authority also will prevent the erection on its premises of any structures that would interfere with the view of approaching trains or other rail equipment operating on said track.

(c) At no time will Public Authority’s personnel or contractors be on Railway property without appropriate Railway personnel present for the aforementioned Modifications. Additionally, due to Road Worker Protection rules (49 CFR 214) at no time will Public Authority’s personnel or contractors perform any work within 25 feet of Railway Track(s) regardless of location without Railway personnel present as necessary to provide required protection for train movements. The Public Authority will reimburse the Railway for actual costs associated with these Modifications.

5. If vandalism, damage or malfunctions occurs to the Public Crossing, the Public Authority will pay to Railway over and above the annual maintenance fee costs (if applicable) for repair and/or replacement of the vandalized, damaged or malfunctioning equipment relative to the Modifications as set forth in this Agreement. Since the aforementioned expenditures may be an unexpected cost and off budget for the Public Authority, the Railway realizes the Public Authority may have to go through a Budget Cycle to encumber funds for reimbursement as allowed to the extent according to law.

6. If it is determined that the Public Authority finds it necessary to enter onto Railway property during construction of the **Modifications** relative to this agreement, the following provisions apply:

Indemnity and Insurance

(a) The Public Authority shall require that any contractor engaged by them agree, in writing, to indemnify the Railway for injury to or death of any person, or loss of or damage to property arising from any work performed by such contractor pursuant to this agreement, and shall conform to the requirements specified in Appendix 'E' ("Special Provisions").

(b) The Public Authority shall procure and maintain in force insurance protection which shall conform to the requirements specified in Paragraph 14 of Appendix 'E' while the City performs installation or maintenance of equipment at the crossing for which they have sole responsibilities including, but not limited to, vehicle channelization systems. In addition, Public Authority shall provide evidence of insurance pool participation naming the Railway as an additional insured.

(c) The Public Authority shall provide written notice to Railway of its proposed entry onto Railway right-of-way or property and conform to requirements as specified in Paragraph 2 of Appendix 'E', and shall secure Railway's approval to enter upon its right-of-way or property prior to entry.

7. It is agreed that Railway shall be exempt from any and all charges or assessments of any kind or character on account of the location, construction and/or improvement or maintenance of the Public Crossing within the limits of the right of way or property of Railway pertaining to work performed by Railway in making the Modifications described in this Agreement or in performing normal maintenance on the Modifications.

8. If future highway traffic conditions or amendments to 49 CFR Part 222, require that the Project be upgraded, or require the separation of grades at the Public Crossing, Public Authority may, at the Public Authority's option, request that Railway, at no expense to Railway, install and/or upgrade and maintain said additional signals, or Public Authority may, at the Public Authority's option and at no expense to Railway, construct and maintain such grade separation structures as may be necessary, without contribution by Railway to the cost of said additional signals or structures.

9. Should the use of the Public Crossing be abandoned as a public roadway, then all rights hereby granted to Public Authority and duties assumed by the Public Authority shall thereupon cease and terminate. The Public Authority shall install and maintain barricades at the crossing being abandoned. The Public Authority's Interconnection remaining in right-of-way of the Railway will be deemed abandoned by the Public Authority.

10. 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.

11. The Public Authority shall keep other warning devices as specified in the Manual of Uniform Traffic Control Devices, for which they have sole responsibility such as, but not limited to, pavement markings,

advance warning signs (W-10-1), No Train Horn signs (W-10-9) etc., in good functional condition as long as the crossing is open for public use or until this agreement is terminated.

12. Either party hereto may terminate this Agreement, in whole or in part, at any time hereafter by serving upon the other thirty (30) days written notice of election so to do. If Public Authority shall violate any of its covenants herein, Railway may terminate this Agreement forthwith by written notice to Public Authority of its election so to do. Upon termination of this agreement such Modifications deemed non-essential to the continued operation of the Public Crossing warning devices shall be removed and the Warning Devices shall be returned to their pre-Modifications condition, thereafter the Railway's train crews will start sounding the train horn on an normal basis.

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

NORFOLK SOUTHERN RAILWAY COMPANY

Witness:

By

As to Railway

Signature

Title

PUBLIC AUTHORITY

Witness:

CITY OF Columbia, SC

[Signature]

Teresa B. Wilson
Signature

Title: Office Manager

Print Name: Teresa Wilson

Title: City Manager

APPROVED AS TO FORM
[Signature]
Legal Department City of Columbia, SC
9/22/2022

Enter Billing Information Below:

Dana Higgins
Director of Engineering
PO Box 147, Columbia SC 29217
803-545-3285