

RESOLUTION

BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That the Municipal Agreement by and between the City of New Bern and the North Carolina Department of Transportation, a copy of which is attached hereto and incorporated herein by reference, be and the same is hereby approved, and the Mayor and the City Clerk are hereby authorized and directed to execute the same for and on behalf of the City.

ADOPTED THIS 27TH DAY OF JULY, 2010.

MAYOR

CITY CLERK

NORTH CAROLINA
CRAVEN COUNTY

Y-4802C
WBS: 40325.1.15 (PE)
NORFOLK SOUTHERN RAILWAY
722 705K
GUION STREET
5/25/2010

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

AND

MUNICIPAL AGREEMENT

CITY OF NEW BERN

THIS MUNICIPAL AGREEMENT is made and entered into on the last date executed below, by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the CITY OF NEW BERN, a municipal corporation, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, the Federal Highway Administration is authorized and directed by the provisions of Section 401 of Chapter 23 of the United States Code to assist and cooperate with State and Local Governments to increase highway safety, and,

WHEREAS, the "Transportation Equity Act for the 21st Century" provides funds for correcting safety hazards not on the Federal-Aid System as selected or designated by the State and subject to the approval of the U S. Secretary of Transportation; and,

WHEREAS, Highway - Railway at Grade Crossing #722 705K on Guion Street in New Bern has been selected for participation in the "Transportation Equity Act for the 21st Century" in accordance with the Federal-Aid standards and requirements, and,

WHEREAS, 23 USC 405(f) provides that in any state wherein the state is without legal authority to construct or maintain a project under this system, such state shall enter into a formal agreement for such construction or maintenance with the appropriate local officials of the municipality in which such a project is located, and,

WHEREAS, the Department is authorized by the provisions of G.S. 136-18 (12) to carry out the provisions of Federal-Aid highway acts for improvement projects on streets on the Municipal Street System; and,

WHEREAS, the Department and the Municipality are authorized to enter into agreements for the performance of such work on the Municipal Street System by the provisions of G.S. 136-18(12), G.S. 136-41.3, and G S 136-66.1, and,

WHEREAS, the Department will enter into such agreements as are necessary to improve the protective devices at the crossings selected and to obtain maximum Federal-Aid participation in the cost of the project, but in any event, the Municipality shall be responsible for any and all expense incurred in the planning, design, and installation of the protective devices incurred by the Department, but not reimbursed by the Federal Highway Administration.

WHEREAS, funding of the Guion Street crossing warning devices will be covered under the agreement entered into and executed October 1, 2007 by the Department, Norfolk Southern Railway and North Carolina Railroad Company, which specifies engineering and construction funding for the project, leaving the financial responsibility of the municipality consisting of only annual maintenance payments after installation of said improvements

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1 The Department will arrange to have the necessary plans and detailed estimate prepared by the railroad concerned (or by a consultant for the railroad) and will review such plans with the Municipality before approving them for construction

2. The Department will enter into an agreement with the railroad or railroads for the installation of the protective devices The Department will supervise, as necessary, the work of installing the protective devices to insure installation is according to the approved plans In the event substantial changes in the plans are found necessary during construction, the Department will

consult with the Municipality before approving such changes. The Department will also make a final evaluation of the completed installation to insure it operates according to plans.

3. The Department will obtain all necessary Federal Highway Administration approvals.

4. All sites selected for improvement, all plans for improvements and all contracts with the railroad will be subject to the prior approval of the Municipality

5 If the Municipality causes the professional engineering services required by this Agreement to be performed by contracting with a private engineering firm and seeks reimbursement for said services under this agreement, it is agreed as follows:

(A) The Municipality shall ensure that an engineering firm is obtained through an equitable selection process and that prescribed work is properly accomplished in a timely manner, at a just and reasonable cost.

(B) The Municipality, when procuring architectural, professional and engineering services, must adhere to Title 23 of the Code of Federal Regulations, Part 172. The Municipality shall comply with the policies and standards for negotiated contracts as contained in the Federal-Aid Policy Guide, Part 172, said policies and standards being incorporated in this Agreement by reference (www.fhwa.dot.gov/legsregs/legislat).

(C) The Municipality shall submit all professional services contract proposals to the Department for review and approval prior to execution of any professional services contract by the Municipality. In the event that the professional services contract proposal (engineering) exceeds \$30,000, a pre-negotiation audit must be requested from the Department's External Audit Branch

(D) Reimbursement for construction administration costs cannot exceed fifteen percent (15%) of the total construction cost. This applies to private engineering firms and/or work performed by the Municipality and/or the Department. The Municipality and/or its agent, shall perform project administration in accordance with all Departmental and Federal policies and procedures

6 In accordance with G S 160A-298(c), the Municipality shall be responsible for all improvements to and repair of the municipal street approaches to the subject grade crossing

signalization project. Improvements shall consist of, but not be limited to, installation of all pavement markings, signs, drainage, sidewalk relocation/repair, fill materials, and pipe extensions. In addition, the Municipality shall be responsible for securing any additional easement or right of way if necessary. All work shall be performed within the existing right of way and in accordance with Departmental standards and specifications, and all local codes and ordinances. The Municipality, and or its agent, shall enter into and administer the construction contract for said work and the procedures set out herein below shall be followed:

(A) The construction engineering and supervision will be furnished by the Municipality.

(B) The Department's Rail Division shall have the right to inspect any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement.

(C) During said work, if any changes in the plans are necessary, such changes must be approved by the Department's Rail Division prior to the work being performed.

(D) All materials used by the Municipality shall be in reasonable close conformity with the Standards and Specifications of the Department.

(E) Prior to the final acceptance and payment by the Department, the Rail Division shall have the right to make a final inspection of the completed work.

(F) The Municipality shall perform said work in conjunction with the railroad's completion of the installation of the protective devices in order not to delay the completion of the project.

(G) The Municipality shall complete said work within sixty (60) days of installation of the protective devices.

7. The Municipality, and/or its agent, shall comply with the following federal policies: (a) Conflict of Interest; (b) Equal Employment Opportunity; and (c) Title VI – Civil Rights Act of 1964.

8. The Municipality, and/or its agent, including all contractors, sub-contractors, or sub-recipients, shall also comply with the following federal policy:

(A) Any contract entered into with another party to perform work associated with the requirements of this agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or Small Professional Services Firm (SPSF) as required and defined in 49 CFR Part 26 of the Code of Federal Regulations and the North Carolina Administrative Code. The Department will provide the appropriate provisions to be contained in those contracts. Those provisions are available on the Department's website at:

<https://apps.dot.state.nc.us/quickfind/forms/Default.aspx>

(B) No advertisement shall be made nor any contract be entered into for services to be performed as part of this agreement without prior written approval of the advertisement or contents of the contract by the Department.

(C) Failure to comply with these requirements will result in funding being withheld until such time as these requirements are met.

9 Upon completion of the project, the Municipality agrees to reimburse the Department 100% of the cost not reimbursed to the Department by the Federal Highway Administration. Said reimbursement shall be made as follows:

(A) The Department shall reimburse the Municipality to the extent of one hundred percent (100%) of the approved allowable project costs incurred by the Municipality for the approach work. Said reimbursement shall be subject to the policies and procedures contained in Federal-Aid Policy Guide 23 CFR Part 140, Subpart G which is being incorporated into this Agreement by reference, is currently available at, (http://www.access.gpo.gov/nara/cfr/waisidx_02/23cfr140_02.html). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration which is to participate in the costs of the project to the extent of fifty six percent (56%) of allowable project costs as defined in the corridor project agreement among North Carolina Department of Transportation, Norfolk Southern Railway, and North Carolina Railroad Company, subject to compliance with all applicable federal policy and procedural rules and regulations.

(B) Upon completion of the approach work, the Municipality will bill the Department for actual costs as herein stated by submitting an itemized invoice to the Department's Rail Division. Upon approval of said invoice by the Rail Division and the Department's Financial Management Division, the actual cost of the approach work shall be payable to the Municipality.

(C) Upon completion of the Project, the Department shall submit an invoice to the Municipality denoting the balance of the Municipality's costs not reimbursed by the Federal Highway Administration. Reimbursement to the Department shall be made within sixty (60) days of receiving an invoice from the Department. The Department shall charge a late payment penalty and interest on any unpaid balance due in accordance with G.S. 147-86 23.

(D) The Municipality shall be responsible for adhering to applicable administrative requirements of 49 CFR Part 18 and is currently available at <http://www.fhwa.dot.gov/hep/49cfr18.htm>. If the work is performed by Municipal force account, said invoices shall show a summary of labor, labor additives, equipment, materials and other qualifying cost in conformance with the standards for allowability of costs set forth in Office of Management and Budget (OMB) Circular A-87 and is currently available at, www.whitehouse.gov/OMB/circulars/a087/a087-all.html. Reimbursement shall be based on actual cost incurred with the exception of equipment owned by the Municipality. Reimbursement for rates of equipment owned by the Municipality cannot exceed the Department's rates in effect for the time period in which the work is performed. If the work is performed by a contractor, said invoices shall show the contract cost.

(E) In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" and is currently available at, www.whitehouse.gov/OMB/circulars/a133/a133.html dated June 27, 2003 and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

(F) Per OMB Circular A-133, Municipality is prohibited from contracting with or making subawards under transactions covered by this agreement to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all nonprocurement transactions (e.g., subawards to subrecipients). Contractors receiving individual awards for \$ 25,000 or more and all subrecipients must certify that the organization and its principals are not suspended or debarred. The Municipality may rely upon the certification unless it knows that the certification is erroneous. The Municipality agrees that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by Federal department or agency.

(G) Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the project.

(H) The project must progress in a satisfactory manner in the opinion of the Department and the Municipality must invoice the Department for work accomplished at least once every six (6) months to keep the project funds active and available. If the project does not remain active, the Department and/or FHWA reserves the right to de-obligate said funding. If in the opinion of the Department and/or FHWA, satisfactory progress has not been made to complete the project per the terms of this agreement, the Department and/or FHWA reserves the right to de-obligate said funding

(I) The Municipality shall maintain records that establish final documentation of quantities incorporated into the Project in accordance with established federal procedures

(J) All invoices must be submitted within six (6) months of completion and acceptance of the work by the Department and FHWA or said invoices will be considered ineligible items for payment.

10. The Municipality agrees that, if the Federal Highway Administration does not participate in certain costs because of noncompliance with Federal and/or State regulations, it will reimburse the Department for such costs regardless of any nonparticipation in the costs by the

Federal Highway Administration All costs not reimbursed to the Department by the Federal Highway Administration shall be borne by the Municipality Following completion of the work, the Department shall invoice the Municipality for all costs incurred by said Department that are not reimbursed by the Federal Highway Administration.

11 In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, North Carolina General Statute 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by North Carolina General Statute, Section 136-41.1, until such time as the Department has received payment in full

12 The Municipality and its contractor shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its contractor to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration under this Agreement, for inspection and audit by the Department, the Federal Highway Administration, or any authorized representatives of the Federal Government.

13 It is understood the railroad is responsible for the maintenance of the protective devices and the Municipality shall be responsible for payment to the railroad fifty percent (50%) of the railroad's cost of maintenance of said devices pursuant to the provisions of G S. 160A-298(c).

14 All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available

IT IS UNDERSTOOD AND AGREED that the approval of the project by the Department is subject to the conditions of this Agreement and that no expenditure of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given, as evidenced by the attached certified copy of Resolution, Ordinance or Charter Provision, as the case may be

L.S.
ATTEST

CITY OF NEW BERN

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE _____

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

(SEAL)

Finance Officer

Federal Tax Identification Number

City of New Bern

Remittance Address:
City of New Bern

DEPARTMENT OF TRANSPORTATION

BY _____
DIRECTOR – ENGINEERING and SAFETY

DATE: _____

APPROVED AS TO EXECUTION

BY: _____
ASSISTANT ATTORNEY GENERAL

COPY OF A RESOLUTION PASSED BY THE CITY COUNCIL
OF THE CITY OF NEW BERN, NORTH CAROLINA

A motion was made by _____ and seconded by _____ for the adoption of the following Resolution, and upon being put to a vote was duly adopted

WHEREAS, the Department of Transportation, an agency of the State of North Carolina, pursuant to the provisions of G.S. 136-18(12) proposes to contract with the Federal Highway Administration to obtain Federal-Aid funds for the improvements in the protective devices at certain highway-railway at grade crossings on the Municipal Street System for which the Municipality is responsible, and,

WHEREAS, this project shall consist of the installation of certain automatic warning devices at the crossing of Guion Street and Norfolk Southern Railway Tracks (Crossing No 722 705K); and,

WHEREAS, the Municipality will reimburse the Department of Transportation for 100% of the cost not reimbursed by the Federal Highway Administration; and,

WHEREAS, in order to carry out the aforesaid projects and to promote the public interest and general welfare of the Municipality, it is necessary for the Municipality to enter into a contract with the Department of Transportation to provide for the installation and maintenance of the protective devices at certain highway-railway at grade crossings on the Municipal Street System.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Mayor and the Clerk of the City of New Bern are hereby formally authorized to enter into a contract with the Department of Transportation to obtain Federal-Aid highway funds necessary to improve the protective devices at the said grade crossing under Project Y-4802C, for the Department of Transportation to perform certain work, and the Mayor and Clerk of this Municipality are hereby empowered to sign and execute the Agreement with the Department of Transportation.

I, _____, Clerk of the City of New Bern, do hereby certify that the foregoing is a true and correct copy of excerpts from the Minutes of the meeting of the City Council duly held on the _____ day of _____, 20____.

WITNESS, my hand and the official seal of said Municipality on this the _____ day of _____, 20____

(SEAL)

CLERK
CITY OF NEW BERN

EXHIBIT A

Highway – Railway at Grade Crossing in the Municipality of New Bern, Craven County, North Carolina at which improvements are to be made:

Y-4802C

Crossing of Guion Street and Norfolk Southern Railway Tracks/North Carolina Railroad Company, Crossing No. 722 705K, to be improved by the installation of automatic warning devices at an estimated cost of **\$175,000**.