

NORTH CAROLINA  
ORANGE COUNTY

DATE: MARCH \_\_ 2023

NORTH CAROLINA DEPARTMENT  
OF TRANSPORTATION

HILLSBOROUGH PASSENGER STATION  
PRELIMINARY ENGINEERING  
REIMBURSEMENT AGREEMENT

AND

TIP: P-5701A&B

TOWN OF HILLSBOROUGH

AND

NORFOLK SOUTHERN RAILWAY  
COMPANY

AND

NORTH CAROLINA RAILROAD  
COMPANY

**THIS HILLSBOROUGH PASSENGER STATION PRELIMINARY ENGINEERING REIMBURSEMENT AGREEMENT** (hereinafter "Agreement") is made and entered on the last date executed below, by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina (hereinafter "Department"); the TOWN OF HILLSBOROUGH, a local government entity (hereinafter "Municipality"); NORFOLK SOUTHERN RAILWAY COMPANY, a corporation in the State of Virginia (hereinafter "NSR"); and NORTH CAROLINA RAILROAD COMPANY, a corporation in the State of North Carolina (hereinafter "NCRR"). The Department, the Municipality, NSR, and NCRR are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties."

**WITNESSETH:**

**WHEREAS**, the Municipality has proposed to construct, at the expense of parties other than NSR and NCRR, a new passenger station in Hillsborough, North Carolina (as defined in Section 1(a) below, and hereinafter referred to as the "Hillsborough Station Project"; and

**WHEREAS**, NCRR is the owner of the railroad right-of-way property and the existing NC-Line tracks (hereinafter “NCRR Corridor”) containing the NC-Line and the proposed new station platform; and

**WHEREAS**, pursuant to an Agreement dated July 27, 1999, between NCRR and NSR, as well as a certain Trackage Rights Agreement between NCRR and NSR, NSR has exclusive freight trackage rights over the lines and properties of NCRR in the NCRR Corridor, including the NC-Line; and

**WHEREAS**, NSR operates on and over property that would be impacted by the Hillsborough Station Project, including a line or lines of railroad known as the "NC-Line"; and

**WHEREAS**, the Municipality and the Department are responsible for preparing certain designs and plans for the Hillsborough Station Project and the Municipality is requesting that NSR and NCRR perform engineering design and review services for the Hillsborough Station Project; and

**WHEREAS**, a Rail Traffic Controller (hereinafter “RTC”) study will be performed to analyze the impact of constructing the Hillsborough Station Project on the fluidity of the rail network and determine the Infrastructure Solution Set (as defined in Section 1(a) below) that would mitigate the adverse impact on fluidity, if any; and the Municipality is requesting that NSR and NCRR perform engineering design and review services for the preliminary engineering of the relevant Infrastructure Solution Set identified in the RTC study; and

**WHEREAS**, the Municipality has requested, and NSR and NCRR are willing to furnish, preliminary engineering and plan review services in order to provide the Parties with further information on the configuration and costs associated with the Project to better inform discussion and consideration; and

**WHEREAS**, the Municipality and the Department specifically acknowledge that both NCRR and NSR will review, comment, or determine the constructability of the Hillsborough Station Project and any identified Infrastructure Solution Set, if applicable; and

**WHEREAS**, this Agreement does not sanction or approve the Hillsborough Station Project or otherwise imply that NCRR or NSR is willing to agree to or is otherwise associated with, responsible for, or liable for the design, construction, maintenance, or operation of the proposed passenger rail station in Hillsborough; and

**WHEREAS**, the Municipality anticipates that Amtrak would include the proposed station in associated routes, and therefore, pursuant to this Agreement, the Municipality will ensure that Amtrak concurs with the configuration of the proposed station platforms, pedestrian access, and facilities; and

**WHEREAS**, NSR and NCRR will each determine whether there are portions of the Hillsborough Station Project that (1) are not within the NCRR Corridor, (2) do not affect the NCRR Corridor, and (3) will not be reviewed by NSR and NCRR. NSR and NCRR each have the

discretion to determine what portions of the Hillsborough Station Project impact the NCR Corridor and what will need to be reviewed; and

**WHEREAS**, the Municipality, the Department, NSR, and NCR are willing to assist with and review the preliminary engineering for the Hillsborough Station Project and the Infrastructure Solution Set (and together with all or any portion of the responsibilities that make up such activities and other items set forth hereinafter, collectively, the "Work").

**NOW, THEREFORE**, this Agreement states the promises and undertakings of each Party as herein provided, and the Parties do hereby covenant and agree as follows:

## **1. SCOPE OF WORK**

(a) The Hillsborough Station Project shall be defined in preliminary plans to be developed and reviewed under this Agreement. These plans will generally consist of identifying improvements associated with the proposed Hillsborough Amtrak Station on the NCR Corridor (hereinafter "NCR Corridor Plans"). The NCR Corridor Plans are intended to include adding a passenger boarding platform, pedestrian overpasses, signal modifications, drainage features, ditches, culverts, and other associated structures, together with the improvements identified as the Infrastructure Solution Set.

(b) The Municipality shall develop, or have developed, concept level NCR Corridor Plans and 25% NCR Corridor Plans based on field surveys, which will be subject to review and preliminary constructability determination by NSR and NCR. Upon such review and preliminary determination by NSR and NCR, the Municipality shall develop more detailed plans for the Hillsborough Station Project that will include track, grading, and structures at the 65%, 90%, and 100% plan levels, which will also be subject to review by the Parties. NSR shall review the plans to ensure compliance with NSR's passenger station requirements; its construction, design, and maintenance standards; usual and customary construction, design, and maintenance standards; and the then-current AREMA Manual for Railway Engineering. NCR shall review the plans to ensure compliance with NCR's passenger station requirements; its construction, design, and maintenance standards; usual and customary construction, design, and maintenance standards; and the then-current AREMA Manual for Railway Engineering. NCR must approve all construction documents for improvements within the NCR Corridor. NSR must approve (i) all construction documents for improvements within twenty-five feet (25') of the center line of any track including the entirety of any structures that may have elements which are outside the twenty-five feet (25') area and (ii) all plans for railroad operations. Additionally, NSR may provide comments to construction documents concerning improvements outside twenty-five feet (25') of the center line of any track.

(c) All signal design engineering for all railroad signal work shall be performed by NSR in accordance with Section 4 below.

(d) No construction work shall be performed pursuant to this Agreement.

(e) Prior to undertaking construction of the Project, the Parties acknowledge and agree to develop and implement a written strategy that will provide comprehensive liability protection for NSR and NCRR claims arising out of (i) construction, (ii) the presence of, or (iii) the operation of the Project that are not otherwise covered by Amtrak. Notwithstanding the foregoing or any other provision of this Agreement, by entering into this Agreement, the Parties do not commit or agree to draft, negotiate, or enter into any separate construction, maintenance, or other agreement for the Hillsborough Station Project and/or the Infrastructure Solution Set.

(f) No design or construction work associated with this project shall preclude the construction of the NCRR's Hillsborough Curve Improvement Project which is a track project in the general location of Milepost (MP) 41.6-NC to MP 42.4-NC and is generally located adjacent to the limits of this station project.

## **2. ALLOCATION OF PROJECT WORK**

The Parties shall have the following responsibilities in connection with the Work.

(a) NSR shall perform or cause to be performed the following items (hereinafter "NSR Work"):

- i. Review, comment on, or approve, as described herein, communication and signaling, and structure design plans for the Hillsborough Station Project that are provided by the Municipality and for the Infrastructure Solution Set;
- ii. Assist the Municipality with development of engineering plans for any needed additions or modifications to NSR-maintained track, structures, signals, communications, and/or other facilities;
- iii. Assist NCRR as reasonably necessary to identify existing encroachment/license exhibit drawings and culvert reports within the Hillsborough Station Project area and provide said information to the Municipality provided, however, that, except for drawings depicting encroachments and/or licenses, NSR will not provide any portions of any third-party agreements to the Municipality;
- iv. Prepare cost estimates for the NSR Work;
- v. Coordinate with the Municipality and NCRR by way of meetings, which may include business travel, phone conferences or video teleconferences, and/or site visits;
- vi. Verify the Municipality's design with field survey work, at NSR's sole discretion;
- vii. Subject to the terms of this Agreement and to the availability of NSR forces based on NSR needs, and as part of the reimbursable NSR Work, provide any railroad protective services NSR deems required for the Municipality Work, NSR Work, and/or NCRR Work;
- viii. Prepare final NSR signal and communication engineering plans and specifications for the Hillsborough Station Project and the Infrastructure Solution Set;
- ix. Coordinate with NCRR, the Municipality, and the Department on the design of the Infrastructure Solution Set; and
- x. At NSR's sole discretion, perform any other requested work associated with progressing the design and evaluation of the Hillsborough Station Project and the Infrastructure Solution Set.

(b) NCRR shall perform or cause to be performed the following items (hereinafter "NCRR Work"):

- i. Review, comment on, or approve, as described herein, track, communication and signaling, and structure design plans for the Hillsborough Station Project that are provided by the Municipality and on the Infrastructure Solution Set or will involve Work within the NCRR Corridor;
- ii. Assist NSR as necessary to identify existing encroachment/license exhibit drawings and culvert reports within the Hillsborough Station Project and the Infrastructure Solution Set areas and provide said information to the Municipality provided, however, that, except for drawings depicting encroachments and/or licenses, NCRR will not provide any portions of any third-party agreements to the Municipality;
- iii. Prepare cost estimates for the NCRR Work;
- iv. Coordinate with the Municipality and NSR by way of meetings, which may include business travel, phone conferences or video teleconferences, and/or site visits;
- v. Verify the Municipality's design and field survey at NCRR's discretion; and
- vi. At NCRR's sole discretion, approve all work and perform any other requested work associated with progressing the design and evaluation of the Hillsborough Station Project and the Infrastructure Solution Set.

(c) The Municipality and/or the Department shall perform or cause to be performed the following items (hereinafter "Municipality Work" and/or "Department Work"):

- i. Consult with Amtrak to ensure that Amtrak reviews and provides comments on the Plans to ensure compliance with Amtrak's guidelines and standards for stations and passenger platforms;
- ii. Acquire surveys for final design for the Hillsborough Station Project and the Infrastructure Solution Set;
- iii. Coordinate development of engineering plans, engineering calculations, specifications, and drawings, including geotechnical and geophysical investigations and surveys, for the Hillsborough Station Project and Infrastructure Solution Set;
- iv. Prepare preliminary and final track, structure, and civil design plans for the Hillsborough Station Project and the same provide to NSR, NCRR, and other stakeholders for review at concept, 25%, 65%, 90%, and 100% levels;
- v. Coordinate relocation design of affected utilities;
- vi. Delineate wetlands and streams and survey for natural resources;
- vii. Be solely responsible for the preparation and submittal of environmental or other documents and communications to comply with the North Carolina Environmental Policy Act and any other laws or regulations applicable to the Work, the Hillsborough Station Project, and the Infrastructure Solution Set;
- viii. Prepare cost estimates for any proposed Work, including the Department Work, contemplated to be completed by or on behalf of the Department;
- ix. Coordinate with NSR and NCRR on the design of the Infrastructure Solution Set; and
- x. Perform any other mutually agreed upon work that will progress the planning of the Hillsborough Station Project and the Infrastructure Solution Set.

Nothing in this Agreement shall preclude the Parties from entering into any other written agreement, including but not limited to any agreement to cover the reimbursement of costs and expenses that are outside the scope of this Agreement and therefore not reimbursable hereunder.

### **3. NOTICE TO PROCEED**

Upon execution of this Agreement by the Parties and subsequent to the Municipality's notice to NSR and NCRR that the funds (hereinafter "Funds") are available to finance the Work, the Municipality will provide a written Notice to Proceed ( hereinafter "NTP"). NSR and NCRR shall endeavor to commence the NSR Work and the NCRR Work within forty-five (45) calendar days following the receipt of the NTP provided, however, that failure to initiate the NSR Work and/or the NCRR Work within that forty-five (45) calendar day period shall not be considered a breach. Further, commencement of the NSR Work and/or the NCRR Work, particularly as to the schedule for review and approval of any of the Municipality's plans, calculations, specifications, or drawings, shall depend on the date such plans are provided; and NSR shall review in accordance with the schedule in Section 4 herein. Any NSR Work performed by NSR prior to receipt of the NTP from the Municipality will be ineligible for reimbursement.

### **4. PROFESSIONAL AND ENGINEERING SERVICES**

#### **(a) NSR In-House Staff/Existing Service Contracts**

It is anticipated that NSR will undertake the majority of the professional and engineering services required for the NSR Work by using in-house staff and/or existing service contracts. NSR may in its sole discretion use or decline to use such staff or such contractors as are already covered under existing service contracts. In the event that NSR determines that additional professional engineering design services are needed, NSR shall follow the procurement procedures set out below. Notwithstanding the foregoing, nothing in this Agreement shall preclude NSR from submitting invoices under the terms of this Agreement to be reviewed and approved by the Municipality for eligible costs incurred by in-house forces and/or under NSR's existing professional engineering design service contracts necessary to accomplish the NSR Work.

#### **(b) NSR Procurement Procedures**

##### **i. Guidance**

When procuring professional services to accomplish NSR Work that exceed fifty thousand dollars (\$50,000), NSR shall comply with the current applicable portions of N.C.G.S. §§ 143-64.31–.34 and the Department's Policies and Procedures for Major Professional or Specialized Services Contracts. The procurement procedures of this Agreement shall be incorporated into and made part of any new subcontract pursuant to this Agreement.

ii. Small Professional Services Firms Requirements

Any contract entered into with another party to perform NSR Work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (hereinafter "SPSF"). This policy conforms to the SPSF Guidelines as approved by the NC Board of Transportation. The current provisions are incorporated into this Agreement by reference. Neither NSR nor its contractors are required to award contracts solely based on SPSF program certification. These requirements will not apply to professional and engineering consulting firms that have existing service contracts with NSR, should NSR decide to use one or more of these firms for NSR Work. However, NSR shall make best efforts to ensure that those firms were obtained through an equitable selection process at a just and reasonable cost.

iii. E-Verify Compliance

E-Verify is the federal program operated by the United States Department of Homeland Security (hereinafter "DHS") and other federal agencies used to verify the work authorization of newly hired employees pursuant to federal law. NSR warrants that it, and it will ensure that any subcontractor performing NSR Work: (i) uses E-Verify, or any successor or equivalent program that may be adopted by DHS in lieu of E-Verify, if required to do so by North Carolina law; and (ii) otherwise complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. A breach of this warranty by NSR will be considered a breach of this Agreement that entitles the other Parties to terminate this Agreement, without penalty, upon notice to NSR.

(c) Railroad Protective Services

In the event that NSR determines that railroad protective services (which may include observer services) will be required for the safety of railroad operations, the Municipality shall bear the cost of such railroad protective services, including indirect and overhead costs. Subject to other needs of NSR, which may in some cases result in a delay in railroad protective services for the Work, NSR will make a commercially reasonable effort to provide railroad protective services to accommodate the Work. The Municipality acknowledges that NSR must reasonably allocate limited railroad protective services across NSR's network. Subject to other needs of NSR, the Parties agree to cooperate in a commercially reasonable manner as to the timeliness and availability of railroad protective services. Notwithstanding the forgoing, NSR reserves the right to provide some or all of such railroad protective services, at the Municipality's expense, via one or more qualified contractors. The Municipality agrees to halt any Work that requires entry on the NCR Corridor or any other property owned or operated by NCR or NSR if railroad protective services become temporarily unavailable, without seeking redress or construction-delay claims or other claims.

(d) NCR In-House Staff/Existing Service Contracts

It is anticipated that NCR will undertake the majority of the professional and engineering services required for the NCR Work by using in-house staff and/or existing service contracts.

NCRR may in its sole discretion use or decline to use such staff or such contractors as are already covered under existing service contracts. In the event that NCRR determines that additional professional engineering design services are needed, NCRR shall follow the procurement procedures set out below. Notwithstanding the foregoing, nothing in this Agreement shall preclude NCRR from submitting invoices under the terms of this Agreement to be reviewed and approved by the Municipality for eligible costs incurred by in-house forces and/or under NCRR's existing professional engineering design service contracts necessary to accomplish the NCRR Work.

(e) NCRR Procurement Procedures

iii. Guidance

When procuring professional services to accomplish NCRR Work that exceed fifty thousand dollars (\$50,000), NCRR shall comply with the current applicable portions of N.C.G.S. §§ 143-64.31–.34 and the Department’s Policies and Procedures for Major Professional or Specialized Services Contracts. The procurement procedures of this Agreement shall be incorporated into and made part of any new subcontract pursuant to this Agreement.

iv. Small Professional Services Firms Requirements

Any contract entered into with another party to perform NCRR Work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (hereinafter “SPSF”). This policy conforms to the SPSF Guidelines as approved by the NC Board of Transportation. The current provisions are incorporated into this Agreement by reference. Neither NCRR nor its contractors are required to award contracts solely based on SPSF program certification. These requirements will not apply to professional and engineering consulting firms that have existing service contracts with NCRR, should NCRR decide to use one or more of these firms for NCRR Work. However, NCRR shall make best efforts to ensure that those firms were obtained through an equitable selection process at a just and reasonable cost.

iii. E-Verify Compliance

E -Verify is the federal program operated by the United States Department of Homeland Security (hereinafter "DHS") and other federal agencies used to verify the work authorization of newly hired employees pursuant to federal law. NCRR warrants that it, and it will ensure that any subcontractor performing NCRR Work: (i) uses E-Verify, or any successor or equivalent program that may be adopted by DHS in lieu of E-Verify, if required to do so by North Carolina law; and (ii) otherwise complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. A breach of this warranty by NCRR will be considered a breach of this Agreement that entitles the other Parties to terminate this Agreement, without penalty, upon notice to NCRR.



## **5. TIMEFRAME**

(a) Upon receipt of the NTP from the Municipality, each of NSR and NCRR shall proceed with its review of the Hillsborough Station Project's concept level plans provided by the Municipality. Each of NSR and NCRR shall use commercially reasonable means to seek to complete its review of the concept level plans and provide approval or written comments (which may be in the form of electronic communications) to the Municipality within sixty (60) days of receipt of the concept level plans from the Municipality. If NSR or NCRR, or both, submit comments on the concept level plans, the Municipality shall address such comments to the satisfaction of NSR and NCRR, revise the concept level plans accordingly and, if the concept level plans are so revised, re-submit the concept level plans to NSR and NCRR for further review. The Parties shall repeat this process until the concept level plans have all comments closed out or the understanding that comments will be further addressed in subsequent plan sets. Thereafter, the Municipality shall continue preparing the design plans for the Hillsborough Station Project. A similar process shall be developed and followed with regard to the Infrastructure Solution Set.

(b) Provided that all preceding comments are closed out or will be addressed in a subsequent plan set, the process set forth in subsection (a) above for concept level plans shall be repeated for the 25%, 65%, 90% and 100% plans.

(c) The Municipality may extend any timeframe for plan review if, in the reasonable opinion of the Municipality, circumstances warrant. Extensions of time granted by the Municipality will be documented in writing. NSR and NCRR shall endeavor in good faith to complete requested actions contemplated herein within the stated timeframes. In the event that NSR and NCRR do not complete such actions in the time given for any reason whatsoever, such absence of completion shall not indicate NSR's or NCRR's approval of or consent to the plans. If NSR and NCRR do not provide written comments to the Municipality within the applicable timeframe for a particular stage for the Hillsborough Station Project, then the reviewing engineers from NSR and NCRR and the design engineers from the Municipality shall conduct a conference call meeting within ten (10) business days after the end of such timeframe for review to discuss the status of the plan review. A meeting summary shall be provided to all participants documenting this conference call meeting and the status of the plan review for the Hillsborough Station Project. In no event shall any failure by NSR or NCRR to complete the review of plans in any applicable timeframe constitute approval of or consent to plans by NSR or NCRR, as the case may be.

(d) Concurrently with the track design plans to be prepared by the Municipality, NSR may begin preparing the Hillsborough Station Project's communications and signal (hereinafter "C&S") design plans. The Municipality understands that any changes to plans after the twenty-five percent (25%) design level may increase C&S design costs. NSR shall submit the C&S design plans to the Municipality for review and approval. The Municipality shall provide NSR with approval or written comments within forty-five (45) days of receipt of the C&S design plans from NSR.

(e) The Municipality shall have the right, upon not less than thirty (30) days' written notice to NSR, to de-obligate the Funds and terminate this Agreement if the Work does not proceed in a reasonably satisfactory manner. In such event, the provisions of Section 9(d) of this Agreement shall apply.

## **6. ESTIMATED PRELIMINARY ENGINEERING COSTS**

(a) The total estimated cost for Work to be performed by or on behalf of NSR with regard to the Hillsborough Station Project is not to exceed **TBD dollars (\$TBD)** without an amendment to this Agreement. The line-item cost estimate provided by NSR, attached as Exhibit A and made a part of this Agreement, lists NSR Work as estimated (hereinafter "NSR Estimate"). Staff time, wage rates, proposed equipment usage and, if applicable, labor additives, overhead, and fees are included in the NSR Estimate.

(b) The total estimated cost for Work to be performed by or on behalf of NCRR with regard to the Hillsborough Station Project is not to exceed **TBD dollars (\$TBD)** without an amendment to this Agreement. If a line-item cost estimate provided by NCRR, that cost estimate (hereinafter "NCRR Estimate") will be attached as Exhibit B and made a part of this Agreement. Staff time, wage rates, proposed equipment usage and, if applicable, labor additives, overhead, and fees are included in the NCRR Estimate.

(c) It is understood by all Parties that the NSR Estimate and/or the NCRR Estimate are subject to change. Revised costs will be submitted to the Municipality for timely review and approval upon discovery of any cost change that would exceed the Estimate. Subject to the provisions of Sections 9(g) and 9(j) of this Agreement, if either NSR or NCRR determines that any Work will cause its total cost to exceed its estimate, that Party shall provide the Municipality a written estimate of the anticipated overruns and a description of the outstanding NSR Work or NCRR Work subject to the revision for the Municipality's review and approval. The Municipality will provide NSR and NCRR with written approval of any revised costs prior to any NSR Work or NCRR Work covered by the revised estimated costs being performed by or on behalf of NSR and/or NCRR, with a copy to be provided by the Municipality to the other Parties. Failure of the Municipality to approve the revised costs shall result in cessation of work by NSR and NCRR and/or termination of this Agreement per the provisions set forth in Section 9(j) below.

## **7. REIMBURSEMENT**

### **(a) Reimbursement Guidance**

NSR and NCRR shall furnish or caused to be furnished, at the expense of the Municipality and in accordance with the stipulations as contained in 23 C.F.R. Parts 140I (Reimbursement for Railroad Work), 172 (Procurement, Management, and Administration of Engineering and Design Related Services), and 646B (Railroad-Highway Projects), in each case where relevant, all the labor costs, labor additives, overhead and indirect costs, materials and supplies, contracted services, transportation, work equipment, and other related items required to perform and complete the NSR Work and/or NCRR Work.

(b) Reimbursement Amount

Subject to compliance by NSR with the provisions set forth in this Agreement, the Municipality shall reimburse NSR one hundred percent (100%) of the actual eligible costs of all NSR Work. Subject to compliance by NCCR with the provisions set forth in this Agreement, the Municipality shall reimburse NCCR one hundred percent (100%) of the actual eligible costs of all NCCR Work. Reimbursement for labor additives for NSR will be at the most current NSR rates as of the time of performance of the labor and surcharges for entry into the billing system and accepted by the Municipality. All Parties, respectively, shall adhere to applicable State and federal statutory and regulatory requirements regarding reimbursements for rail projects. When there is any question as to compliance therewith, the Municipality, NCCR, and NSR agree to collaborate to determine what statute, regulation, or rule applies. The Municipality, NCCR, and NSR may also mutually agree to seek non-binding guidance from the Federal Railroad Administration on any such issues.

The Municipality understands that if NSR has not been fully reimbursed for its performance of any portion of the NSR Work, in addition to any other relief available to NSR by law, which rights are expressly preserved, NSR shall have the right to cease the NSR Work under Section 9(j) until such time as NSR has been fully reimbursed for outstanding invoices.

The Municipality understands that if NCCR has not been fully reimbursed for its performance of any portion of the NCCR Work, in addition to any other relief available to NCCR by law, which rights are expressly preserved, NCCR shall have the right to cease the NCCR Work under Section 9(j) until such time as NCCR has been fully reimbursed for outstanding invoices.

(c) Invoicing The Municipality

NSR and NCCR shall make commercially reasonable efforts to submit an itemized invoice, including any required supporting documentation, based on actual cost of NSR Work or NCCR Work, as the case may be, completed, to the Municipality on a monthly basis but no less than every six (6) months. By submittal of an invoice to the Municipality, the Party submitting the invoice certifies that it has adhered to all applicable State and federal laws, policies, rules, regulations, and statutes regarding reimbursements for rail projects. If NSR or NCCR is unable to invoice the Municipality for a period that exceeds six (6) months, that Party shall provide an explanation of the circumstances to the Municipality by letter or by written electronic communication.

(d) Reimbursement Terms

The Municipality shall, within sixty (60) days of receipt of an itemized invoice pursuant to Section 7(c) or Section 7(e), reimburse the invoicing Party for actual eligible costs.

(e) Final Invoice

The term "Submission Period" means a period of time within six (6) months of the earlier of: (i) completion and acceptance by the Municipality of both the NSR Work and the NCCR Work or (ii) termination of this Agreement as contemplated by Section 9(d).

NSR and NCRR shall make commercially reasonable efforts to submit a final invoice (hereinafter "Final Invoice") within the Submission Period. If either NSR or NCRR is unable to submit a Final Invoice within the Submission Period, that Party shall provide an explanation of circumstances by letter or by electronic submission to the Municipality. Until an explanation is provided, the Municipality will not be obligated to reimburse that Party for the items covered by the Final Invoice.

If either NSR or NCRR identifies and documents additional costs associated with the NSR Work or NCRR Work after the Final Invoice has been submitted, that Party shall, prior to the date that is six (6) months after the end of the Submission Period, submit a supplemental invoice to the Municipality together with an explanation of the circumstances for the delay.

(f) Unsubstantiated or Ineligible Costs

The Parties agree that itemized invoices shall substantiate reasonably the costs set forth therein. If any item of an invoice is rejected, (1) that rejection must occur within thirty (30) days of the receipt of the invoice and (2) the Municipality must provide with the rejection an explanation of the basis for the rejection. If the Municipality fails to seek to reject an item after thirty (30) days of receipt of the associated invoice, such item shall be deemed approved. With respect to any properly rejected item on an invoice that remains under contest, the Municipality will subtract the value of such rejected item from amount due and pay the remainder of the invoice in accordance with Section 7(d). If an item the Municipality seeks to reject is determined to be an eligible Hillsborough Station Project cost, the Municipality will include payment for such item in the next invoice payment. If the item is determined to be ineligible, then it will not be reimbursed.

## **8. PROJECT RECORDS**

NSR and NCRR shall maintain or cause to be maintained all records as may be appropriate to substantiate costs incurred by each under this Agreement, including books, documents, papers, and accounting records (hereinafter "Records"). Each Party shall make the Records that are not subject to an attorney-client privilege available for inspection and audit by the Municipality during that Party's normal business hours at the Party's office location(s) where the Records are normally maintained, or at such other convenient location(s) as each shall reasonably designate. NSR's and NCRR's obligations under this Section 8 shall continue for three (3) years after the date of final payment by the Municipality to each under this Agreement or until all audit exceptions have been resolved, whichever is longer.

## **9. GENERAL PROVISIONS**

(a) Allocation of Liability and Indemnification

For the purposes of this Section 9(a), a reference to a "Party" shall include a reference to each of its employees, licensees, and agents. To the extent authorized by State and federal claim statutes, each Party shall be responsible for its respective actions under the terms of this Agreement, and indemnify and save harmless the other Party(s) for any claims for payment,

damages, and/or liabilities arising as a result such action. Nothing in this Section 9(a) shall be interpreted as superseding any provision in the right of entry agreements entered into pursuant to Section 10 of this Agreement, including but not limited to any allocation of liability, indemnification, hold harmless provision and requirement for the acquisition of insurance therein.

(b) Debarment Policy

By execution of this Agreement, NSR and NCRR each certifies that neither it nor its agents or contractors who will perform Work are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction contemplated by this Agreement by any federal or State agency or department and that they will not enter into agreements related to the NSR Work or NCRR Work, as the case may be, with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction contemplated by this Agreement.

(c) Other Agreements

Subject to the Municipality's agreement to reimburse NSR and NCRR pursuant to the terms of this Agreement, NSR and NCRR, respectively, are solely responsible for all agreements, contracts, and work orders entered into or issued by NSR or NCRR, respectively, in conjunction with this Agreement and the Hillsborough Station Project and/or the Infrastructure Solution Set.

(d) Termination of Project

The Municipality shall have the right, upon not less than thirty (30) days' written notice to NSR and NCRR, to abandon the Hillsborough Station Project and terminate this Agreement pursuant to Section 5(e) or at any time before NSR has been called upon to perform any NSR Work under the terms of this Agreement. Upon termination of this Agreement as contemplated by this subsection (d) or Section 9(j), the Municipality shall reimburse NSR and NCRR, within sixty (60) days of receipt of invoices, for the actual cost of NSR Work performed by NSR and the actual cost of NCRR Work performed by NCRR as of the date of termination, including any costs or expenses associated with early termination of any contract associated with the NSR Work and/or the NCRR Work.

(e) Amendment

This Agreement may be amended only by a written instrument signed by all Parties.

(f) Complete Understanding

This Agreement embodies the complete understanding of the Parties with respect to the subject matter hereof and supersedes any other prior written or oral agreements, understandings, and negotiations with respect to the subject matter hereof. There are to be no third-party beneficiaries of this Agreement.

(g) Severability

If any part, term, or provision of this Agreement is held to be illegal or in conflict with any State or federal law or regulation, such provision shall be severable, and the remaining provisions of this Agreement will remain valid and enforceable.

(h) Assignment

No Party shall assign this Agreement without the prior consent of the other Parties, such consent not to be unreasonably withheld, delayed, or conditioned, provided that neither the Department's consent nor the Municipality's consent shall be required for an assignment by NSR to a company controlling, controlled by, or under common control with NSR.

(i) Force Majeure

Each of the Parties agrees to pursue reasonably and diligently the completion of the Work allocated to that Party in accordance with the various timeframe requirements of this Agreement provided, however, that the timeframes shall be extended for a period coextensive with any period of any force majeure event.

(j) Cessation of Work

In the event NSR or NCRRC provides a revised estimate of costs in accordance with Section 5, NSR or NCRRC, as the case may be, shall have the right to cease all NSR Work or NCRRC Work, as relevant, and NSR or NCRRC shall cease all NSR Work or NCRRC Work, as the case may be, if so directed by the Municipality, until the Municipality shall have approved, if applicable, a revised total estimate for the relevant costs to perform the affected Work, and further until revised estimates shall have been documented in a writing signed by all Parties to this Agreement. If there shall be a period where the associated Work has been suspended due to the reasons cited in the previous sentence, and then the associated Work is again commenced upon the execution of the noted writing, then all timeframes for completion of any and all the associated Work and matters arising from said Work hereunder shall be extended for a period coextensive with the period of cessation. If the period of cessation exceeds ninety (90) days, NSR or NCRRC shall have the right, upon not less than thirty (30) days' written notice to the Department and the Municipality, to terminate this Agreement and, in such event, the provisions of Section 9(d) of this Agreement shall apply.

(k) Applicable Law

This Agreement shall be governed by the laws of the State of North Carolina without regard to its conflict of law's provisions and will be binding on the Parties and their respective successors and permitted assigns.

(l) Compliance with Applicable Law

The Parties to this Agreement shall comply, and shall ensure that their respective contractors, subcontractors, agents, and employees shall comply, with all applicable federal, State, and local laws and regulations in effect at the time of the conduct of the Work in the exercise of their respective rights, obligations, and privileges set forth in this Agreement.

(m) Changes in the Law

The Parties understand that federal and State laws and regulations applicable to the transactions and operations contemplated by this Agreement ("Applicable Law") and federal and state policies and related administrative practices applicable to the transactions and operations contemplated by this Agreement ("Applicable Guidance") in effect on the date this Agreement was executed may be modified from time to time. Each of the Parties enters into this Agreement based, and in reliance, upon the Applicable Law and the Applicable Guidance at the time of execution hereof. Should any provision of this Agreement become prohibited or invalid under then-effective Applicable Law or Applicable Guidance, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement. Should such prohibition or invalidity modify materially the obligations or responsibilities one or more of the Parties, the Parties shall meet to determine whether modification of this Agreement is possible in order to effectuate the original intent of the Parties.

If any future Applicable Law or Applicable Guidance, or any changes to existing Applicable Law or Applicable Guidance, increase the costs, obligations, or risk exposure to NSR hereunder, then NSR shall have the right to terminate this Agreement upon reasonable notice to the Municipality without any further obligation unless the Municipality agrees to reimburse or otherwise cover said costs, obligations, or risk exposure of NSR as may be required in order to remove the adverse effect resulting from the same.

**10. RIGHT OF ENTRY TO THE DEPARTMENT BY NSR/NCRR**

Prior to entry upon the NCRR Corridor, the Department, the Municipality, and any contractor, agent, or other party acting under the direction of either the Department or the Municipality, shall be required to execute and deliver to NCRR and NSR a separate right-of-entry agreement in a form materially in conformance with the standard NCRR and NSR right-of-entry forms, respectively. Contractors, agents, or other parties acting under the direction of the Department or the Municipality shall contemporaneously provide certificates of insurance evidencing coverage required therein.

**11. DESIGNATED REPRESENTATIVE**

(a) The designated representative of and manager of this project for the Department is:

Craig M. Newton, PE, cmnewton@ncdot.gov, 919-801-2805

or such other representative(s) as the Department may designate in writing from time to time.

- (b) The designated representative of and manager of this project for the Municipality is:

Stephanie Trueblood, Stephnie.Trueblood@HillsboroughNC.gov, 919-296-9481

or such other representative(s) as the Municipality may designate in writing from time to time.

- (c) The designated representative of and manager of this project for NSR is:

David Becker, david.becker@nscorp.com, 404-545-0621

or such other representative(s) as NSR may designate in writing from time to time.

- (d) The designated representative of and manager of this project for NCRR is:

Donald Arant, DArant@ncrr.com, 919-895-8806

or such other representative(s) as NCRR may designate in writing from time to time.

## **12. FUNDS**

Subject to the provisions of Section 9(d) of this Agreement, NSR acknowledges that this Agreement is contingent upon and subject to the receipt and continuing availability of the Funds.

## **13. INTERPRETATION**

All references herein to "Sections" shall refer to corresponding provisions of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation," unless they are otherwise limited. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement unless specifically limited to a particular provision of this Agreement. The headings contained in this Agreement are inserted for convenience only and shall not be considered in interpreting or construing any of the provisions contained in this Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement, and in the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.



IN WITNESS WHEREOF, this HILLSBOROUGH PASSENGER STATION PRELIMINARY ENGINEERING REIMBURSEMENT AGREEMENT has been executed the last day and year set out below, on the part of the Municipality, the Department, NSR, and NCRR by authority duly given.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Memorandum, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

WITNESS

TOWN OF HILLSBOROUGH

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

SEAL

Approved by the Town of Hillsborough governing board as attested to by the signature of

\_\_\_\_\_  
Clerk of Governing Board, \_\_\_\_\_  
(Date)

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

\_\_\_\_\_  
City Finance Officer

FEDERAL TAX IDENTIFICATION NUMBER

**MAILING ADDRESS**

Town of Hillsborough  
101 East Orange Street  
Hillsborough, North Carolina 27278  
ATTN: Stephanie Trueblood  
Public Space and Sustainability Manager  
Stephanie.Trueblood@HillsboroughNC.gov

IN WITNESS WHEREOF, this HILLSBOROUGH PASSENGER STATION PRELIMINARY ENGINEERING REIMBURSEMENT AGREEMENT has been executed the last day and year set out below, on the part of the Municipality, the Department, NSR, and NCRR by authority duly given.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Memorandum, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

WITNESS

NORFOLK SOUTHERN RAILWAY  
COMPANY

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: Patti Henderson

NAME: John Edwards

TITLE: Assistant to Vice President,  
Strategic Planning

TITLE: General Director, Passenger Policy

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

SEAL

FEDERAL TAX IDENTIFICATION NUMBER

\_\_\_\_\_  
Norfolk Southern Railway Company

**MAILING ADDRESS**

Norfolk Southern Railway Company  
650 West Peachtree Street NW  
Atlanta, Georgia 30308  
ATTN: John Edwards  
General Director, Passenger Policy  
John.Edwards@nscorp.com

IN WITNESS WHEREOF, this HILLSBOROUGH PASSENGER STATION PRELIMINARY ENGINEERING REIMBURSEMENT AGREEMENT has been executed last day and year set out below, on the part of the Municipality, the Department, NSR, and NCRR by authority duly given.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Memorandum, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

WITNESS

NORTH CAROLINA RAILROAD  
COMPANY

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: Donald Arant

NAME: Carl Warren

TITLE: Vice President Engineering

TITLE: President & CEO

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

SEAL

FEDERAL TAX IDENTIFICATION NUMBER

56-6003280  
North Carolina Railroad Company

**MAILING ADDRESS**

North Carolina Railroad Company  
2809 Highwoods Boulevard  
Raleigh, North Carolina 27604  
ATTN: Donald Arant, PE  
Vice President, Engineering  
DArant@ncrr.com

North Carolina Railroad Company hereby consents to this Agreement as owner of the right-of-way between Milepost (MP) 41.5-EC and MP 41.8-EC (Project limits).

IN WITNESS WHEREOF, this HILLSBOROUGH PASSENGER STATION PRELIMINARY ENGINEERING REIMBURSEMENT AGREEMENT has been executed the last day and year set out below, on the part of the Municipality, the Department, NSR, and NCRR by authority duly given.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Memorandum, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

ATTEST

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: Julie White

TITLE: Processing Agent

TITLE: Deputy Secretary for Multi-Modal  
Transportation

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

SEAL

**MAILING ADDRESS**

North Carolina Department of Transportation  
Rail Division,  
Engineering Coordination & Safety  
1553 MSC  
Raleigh, North Carolina 27699-1556  
ATTN: Craig Newton, PE  
Operations and Facilities  
cmnewton@ncdot.gov

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_  
(Date)

**EXHIBIT A**  
**COST ESTIMATE**

<b>BILLABLE EXPENSE ITEMS</b>	<b>ESTIMATED COST</b>
Professional Engineering Services	\$???
NSR Design & Construction Review	\$???
NSR Signal Design	\$???
NSR B&B Review	\$???
<b>TOTAL</b>	<b>\$ ???</b>

**EXHIBIT B**

**NCRR ESTIMATE**

<b>NCRR FORCE ACCOUNT ESTIMATE</b>	
Work to be Performed by:	North Carolina Railroad Company
Project Description:	Hillsborough Passenger Station
Location:	Hillsborough, NC
NCRR Project Number:	PRJ-
STI Project Number:	P-5731 & P-5732 (NCDOT)
Milepost:	316.7
Date:	20-Jul-22
Item A – Preliminary Engineering	\$ (79,650.00)
Total	\$ (79,650.00)
Contingency (10%)	\$ (7,965.00)
Grand Total	\$ (87,615.00)
Rounded to Nearest Thousand	\$ (88,000.00)

<b>Labor Cost</b>			
Personnel	Rate	Quantity (hours)	Cost
Accounting/Administrative	\$ 85.00	16	\$ 1,360.00
Infrastructure Manager	\$ 100.00	56	\$ 5,600.00
Real Estate Representative	\$ 100.00	64	\$ 6,400.00
Engineering Director	\$ 165.00	160	\$ 26,400.00
VP Engineering	\$ 235.00	104	\$ 24,440.00
Legal	\$ 250.00	60	\$ 79,200.00
		Labor Subtotal	\$ 79,200.00
<b>Non-labor Direct Cost</b>			
Item	Unit Cost	Quantity	Cost
Meals	\$ 30	5	\$ 150.00
Mileage	\$ 0.625	480	\$ 300.00
		Direct Cost Total	\$ 450.00
		<b>Grand Total</b>	<b>\$ (79,650.00)</b>

**EXHIBIT C**

**SMALL PROFESSIONAL SERVICES FIRM (SPSF) PROGRAM GUIDELINES**

*(For use by firms in obtaining certification in the Small Professional Services Firm program)*

Revised August 2018

(ATTACHED AS A SEPARATE DOCUMENT)