

CONTRACT NO: \_\_\_\_\_  
VENDOR NO: \_\_\_\_\_ (\_\_\_\_\_  
FILE: Engineering Services-\_\_-200\_\_-\_\_

## SAMPLE ENGINEERING SERVICES AGREEMENT

This Agreement ("Agreement") executed as of this the \_\_\_th day of \_\_\_\_\_, 200\_ by and between **NORFOLK SOUTHERN RAILWAY COMPANY** ("Railway") and \_\_\_\_\_ ("Contractor"),

**WHEREAS**, Contractor is in the business of providing certain services and is willing to provide such services to Railway; and

**WHEREAS**, Railway desires to utilize Contractor's services provided for herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

### 1. GENERAL TERMS AND CONDITIONS

1.1 The general terms and conditions of this Agreement are set forth in Appendix A, attached hereto and incorporated herein by reference.

### 2. GENERAL SCOPE OF WORK

2.1 Contractor shall provide the engineering services set forth in Appendix B and as incorporated herein by reference ("Services"). Contractor shall furnish all reports, plans, specifications, and any other documents ("Deliverables") in accordance with the terms set forth herein.

### 3. PERIOD OF PERFORMANCE

3.1 The period of performance for this Agreement shall be from \_\_\_\_\_ through \_\_\_\_\_, unless terminated in accordance with the terms set forth in Appendix A.

### 4. FEES AND PAYMENT

4.1 In consideration of Services performed, Railway's payment to Contractor shall not exceed the total lump sum consideration of \$\_\_\_\_\_, unless otherwise so authorized by Railway's officer. Pricing is based on directed services performed during the term of this Agreement, and at the rates shown on Contractor's "Cost Proposal" correspondence attached as Appendix C.

4.2 Contractor is not authorized to make expenditures or incur obligations unless otherwise specified herein.

### 5. ORDER OF PRECEDENCE

5.1 In the event of a conflict in the terms and conditions of this Agreement, the following order of precedence shall apply:

- A. This Agreement
- B. Attached Appendix A ("General Terms and Conditions")
- C. Attached Appendix B ("General Scope of Work")
- D. Change Orders (if applicable)
- E. Attached Appendix C (Contractor's "Cost Proposal" correspondence)

6. NOTICE

6.1 Any notices required to be given under this Agreement shall be in writing, signed by or on behalf of the party giving same, and transmitted to the address shown below or such successor address(es) as that party may specify by notice hereunder. Such notices shall be transmitted by United States registered or certified mail with return receipt requested, or by telegram or interoffice facsimile transmittal with confirmed receipt, and addressed to the following officer and address:

**To Railway:**

\_\_\_\_\_  
Norfolk Southern Railway Company  
1200 Peachtree Street, NE  
Atlanta, GA 30309

**To Contractor:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. ENTIRE AGREEMENT

7.1 Both parties acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and further agree that it is the entire agreement between the parties hereto which supersedes all prior agreements, written or oral, relating to the subject matter hereof. No modification or waiver of any provision shall be binding unless in writing signed by the party against whom such modification or waiver is sought to be enforced.

**IN WITNESS WHEREOF**, Railway and Contractor have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**FOR:**

**NORFOLK SOUTHERN RAILWAY COMPANY**  
**(“Railway”):**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**FOR:**

\_\_\_\_\_  
**(“Contractor”):**

By: \_\_\_\_\_

Title: \_\_\_\_\_

## APPENDIX A

### GENERAL TERMS AND CONDITIONS

1. Contractor's Responsibilities. Contractor shall perform the Services utilizing the standard of care normally exercised by professional engineering and design firms in performing comparable services under similar conditions.
2. Railway's Responsibilities. Railway shall provide to Contractor such information as may be reasonably available to Railway and as may be required by Contractor to properly perform the Services. Railway shall provide site access at such times as may reasonably be required by Contractor and shall make timely payments in accordance with the terms of this Agreement.
3. Proprietary Information. All information submitted to Contractor by Railway in connection with the Services ("Proprietary Information") is and shall remain the property of Railway. The Proprietary Information shall not be (1) used by Contractor other than in connection with providing the Services, (2) disclosed, sold, assigned, leased or otherwise provided to third parties by Contractor or (3) commercially exploited by or on behalf of Contractor, its employees or agents.

Each party shall handle Proprietary Information received from the other party in the same manner as the receiving party handles its own Proprietary Information. Disclosure of Proprietary Information shall be restricted, to those individuals who need access to such Proprietary Information as needed to ensure proper performance of the Services.

Neither party shall be liable for disclosure or use of Proprietary information which: (1) was known by the receiving party at the time of the disclosure due to circumstances or events unrelated to this Agreement; (2) is generally available to the public without breach of this Agreement; (3) is disclosed with the prior written approval of the disclosing party; or (4) is required to be released by law or court order.

Upon payment in full for the Services, and unless otherwise stated herein, deliverables, analysis and reports developed under this Agreement ("Deliverables") shall be the property of Railway. Contractor shall not disclose the Deliverables relating to the Services to a third party without the prior written authorization of Railway. Railway shall be solely responsible for any disclosure of the Deliverables which may be required by law and agrees to indemnify and hold Contractor harmless for any loss resulting from Railway's failure to make such disclosure. Where applicable law requires immediate disclosure by the contractor, contractor shall make its best efforts to give prior notice to railway. At Railway's request and expense, Contractor will assist the Railway in making such disclosures as may be required by law.

Ownership in the Deliverables shall pass upon payment of the related invoice. Under no circumstances is Railway or anyone acting through, with, or on behalf of Railway permitted to use any Deliverable (or other work product of Contractor under this Agreement) in connection with any sale or offering for sale of securities, including without limitation stock, bonds, notes or any other instruments or transactions which call for investments, loans or other transfers of money to Railway without Contractor's prior written authorization. Railway will indemnify and hold harmless Contractor, its directors, officers, employees, and agents from any loss, claim, suit, expenses or other cost (including attorneys and court costs and other costs of investigation, defense and consulting) which may be incurred in connection with any violation of this provision.

## APPENDIX A

### **GENERAL TERMS AND CONDITIONS (con't.)**

3. Proprietary Information (text continued from previous page)

Each party shall return all Proprietary Information relating to this Agreement to the disclosing party upon request of the disclosing party or upon termination of this Agreement, whichever occurs first. Each party shall have the right to retain a copy of the Proprietary Information for their internal records and subject to the restrictions set forth in this section. This section shall survive termination of this Agreement.

4. Payment Terms. Invoices may be submitted on a monthly basis and will be handled for payment as quickly as possible, with the understanding that prompt payment is a very important part of this Agreement.

5. Indemnification and Limitations of Liability.

(a) Contractor hereby agrees to indemnify and hold harmless Railway from and against any and all loss, cost, claim, expense or liability (including but not limited to attorney's fees) resulting from the loss of life of or personal injury to the officers, employees or agents of Contractor or the damage to or loss of the property of Contractor, its officers, employees or agents, arising from, incident to or occurring in connection with the performance by Contractor of its obligations under this Agreement or the presence of its officers, employees or agents of Contractor on the property of Railway; provided, however, the foregoing indemnification shall not extend to loss of life, personal injury or property loss or damage caused solely by the negligence of Railway.

(b) Except as provided in subsection (a) above, each party hereto agrees to indemnify and hold harmless the other party from and against any and all loss, cost, claim, expense or liability (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 arising from, incident to or in connection with the negligent acts or omissions of the indemnifying party; provided, however, the responsibility of the indemnifying party to indemnify the other party shall be reduced in proportion to the negligence of the other party, if any, which proximately contributed to said loss of life, personal injury or property loss or damage.

(c) The indemnification extended by Contractor to Railway under this Agreement shall extend not only to Norfolk Southern Railway Company but also to Norfolk Southern Corporation and any corporate affiliate or subsidiary of Norfolk Southern Corporation or Norfolk Southern Railway Company and their officers, agents, employees and customers. In the event that this Agreement has been issued by either Norfolk Southern Corporation or Norfolk Southern Railway Company as agent for Consolidated Rail Corporation, the indemnification extended by Contractor to Railway under this Agreement shall extend also to Consolidated Rail Corporation and its subsidiaries and affiliates and their officers, agents, employees and customers.

(d) The indemnity provided hereunder shall be without additional charge.

(e) The parties agree that Railway will limit Contractor's liability to Railway or any third party relating to Contractor's negligent acts, errors or omissions such that Contractor's total maximum aggregate liability shall not exceed \$2,000,000.

## APPENDIX A

### **GENERAL TERMS AND CONDITIONS (con't.)**

6. **Conflict of Interest.** Railway acknowledges that the Contractor provides similar services for a broad range of other clients and agrees that Contractor shall be free to work for other clients in matters that do not involve the use of any Proprietary Information that has been disclosed by the Railway under the terms of this Agreement or do not directly relate to the specific Services provided by the Contractor to Railway under this Agreement.
7. **Termination.** This Agreement may be terminated in whole or in part for any reason by Railway upon seven (7) days prior written notice at any time during the period of performance without penalty to Railway. Upon receipt of notice of termination or partial termination from Railway, the Contractor shall immediately cease performance of the Services to the extent set forth in the termination notice and shall take all reasonable steps to minimize costs relating to such termination. Railway shall pay for Services properly rendered through the date of termination.
8. **Force Majeure.** Neither party shall be responsible for any delay or failure in performance, except obligations to make payments hereunder for work previously performed, to the extent that such delay or failure was caused by a force majeure event including Act of God, war, civil disturbance, governmental action, labor dispute unrelated to the party claiming the force majeure event, computer virus or denial of access to the Site or any other event beyond the reasonable control of the claiming party.

Performance under this Agreement shall resume promptly once the cause of delay or failure ceases and an equitable adjustment shall be made to the price and/or schedule of the Services.

9. **Changes to the Services.** Railway may direct changes within the general Scope of Work. Upon notification of such direction, the Contractor shall prepare an estimate of the additional cost and time required, if any, to perform the change. Upon mutual written agreement, Contractor shall perform the change and an equitable adjustment shall be made to the price and/or time schedule as appropriate.
10. **Insurance.** Contractor shall, at its expense, obtain and maintain during the period of this Agreement, in a form and with companies satisfactory to Railway, the following insurance coverages:
  - (a) Workers' Compensation Insurance to meet fully the requirement of any compensation act, plan or legislative enactment applicable in connection with the death, disability or injury of contractor's officers, agents, servants or employees arising directly or indirectly out of the performance of this Agreement;
  - (b) Employers' Liability Insurance with limits of not less than \$500,000 each accident, \$500,000 policy limit for disease, and \$500,000 each employee for disease;
  - (c) Commercial General Liability Insurance with a combined single limit of not less than \$1,000,000 per occurrence for injury to or death of persons and damage to or loss or destruction of property and \$2,000,000 in the aggregate. Such policy shall be endorsed to provide products and completed operations coverage and contractual liability coverage for liability assumed under this Agreement. In addition, said policy or policies shall be endorsed to name Norfolk Southern Railway Company as an additional insured;

## APPENDIX A

### **GENERAL TERMS AND CONDITIONS (con't.)**

10. Insurance. (text continued from previous page)

(d) Errors and Omissions Insurance with a limit of not less than \$1,000,000 each claim.

Contractor shall provide Railway's Risk Manager (at 3 Commercial Place, Norfolk, VA 23510-2191) with certificate(s) of insurance certifying the existence of such insurance. Copies of all certificates of insurance shall be simultaneously sent to the appropriate officer in Railway's Material Management Department. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, or reduced in coverage or limits without thirty (30) days prior written notice to Railway. Contractor shall require all subcontractors who are not covered by the insurance carried by Contractor to maintain the insurance coverage described in this Section.

The insurance coverage required herein shall in no way limit the Contractor's liability under this Agreement.

11. Disputes/Arbitration.

(a) The parties adopt the following arbitration provisions to avoid the problems of litigation or deadlock in the event the parties cannot resolve any dispute between themselves. Any claim, dispute or controversy where the amount in issue is less than \$\_\_\_\_\_ arising out of or relating to this Agreement, the parties' relationship under this Agreement, or the breach of this Agreement, shall be determined by arbitration by a single arbitrator pursuant to the Commercial Rules of the American Arbitration Association ("AAA") in effect at the time the demand for arbitration is filed. Each party shall be responsible for the fees and expenses of its own attorneys and witnesses. The fees and expenses of the sole arbitrator shall be borne equally by the parties. The party filing the arbitration shall be solely responsible for the filing fee with the AAA. The decision of the arbitrator shall be final and not subject to appeal. Judgment to enforce the decision or award of the arbitrator may be entered in any court having jurisdiction.

(b) Service of process in connection therewith shall be made by certified mail. In any judicial proceeding to enforce this Agreement to arbitrate, the only issues to be determined shall be the existence of the agreement to arbitrate and the failure of one party to comply with that agreement, and those issues shall be determined summarily by the court without a jury. All other issues shall be decided by the arbitrator, whose decision thereon shall be final and binding. There may be no appeal of an order compelling arbitration except as part of an appeal concerning confirmation of the decision of the arbitrator.

(c) Neither party shall institute any legal proceeding against the other to enforce any right hereunder or for breach hereof, except that either party may institute litigation (i) to enforce its rights of arbitration hereunder, (ii) to confirm and have judgment entered upon any arbitration award issued hereunder, and (iii) to stay the running of any statute of limitation or prevent any other occurrence (including, without limitation, the passage of time) which would constitute laches, estoppel, waiver or any other such legal consequence that suit is necessary to avoid, provided, however, that neither party shall pursue litigation under item (iii) beyond such action as is necessary to prevent prejudice to its cause of action pending ultimate resolution by arbitration under this Section 11.

## APPENDIX A

### **GENERAL TERMS AND CONDITIONS (con't.)**

11. Disputes/Arbitration. (text continued from previous page)

(d) If any dispute between the parties arises from or in connection with any claim of litigation initiated by any third party (either as claimant, plaintiff, counter claimant, or defendant/third party plaintiff), then, unless the parties agree otherwise, the resolution of that dispute under the arbitration provisions of this Section may at the option of either party be deferred until the resolution of that third-party claim or litigation, provided, however that in the event of any such dispute in connection with a claim or litigation so initiated by a third party, either party may at any time initiate arbitration under this Section 11 to determine prospective liability between the parties upon facts which are stipulated, admitted solely for the purpose of arbitrating prospective liability, or not reasonably in dispute. The issue of whether any fact is "reasonably in dispute" under the preceding sentence shall be subject to mandatory arbitration hereunder upon the demand of either party. In the event Railway is made a party to such claim or litigation so initiated by a third party, Railway shall select its own counsel and have complete control over all claim or litigation decisions concerning its participation in that claim or litigation, regardless of whether Railway is required to, or in fact does, initiate a crossclaim, counterclaim, or third-party claim under subclause (iii) of Subsection (c) above, and regardless of Contractor's indemnity obligations under Section 5 above.
12. Independent Contractor. The Contractor is an independent contractor and shall not be deemed to be an employee or agent of Railway. Contractor shall indemnify and hold Railway harmless against all liability and loss resulting from Contractor's failure to pay all taxes and fees imposed by the government under employment insurance, social security and income tax laws with regard to Contractor's employees engaged in the performance of this Agreement.
13. Non-Solicitation of Employees. Neither party shall solicit for employment the employees of the other party involved in the management or performance of the Services during the term of this Agreement and for one year thereafter.
14. Nonwaiver. No waiver of any breach of this Agreement shall operate as a waiver of any similar subsequent breach or any breach of any other provision of this Agreement.
15. Records and Audits. During the existence of this Agreement and for eighteen (18) months thereafter, Railway and its duly authorized representatives shall be permitted access, within a reasonable time after request, to Contractor's books, records, accounts and other related documentation, pertaining to any Services performed by Contractor under this Agreement for the purpose of auditing and verifying the Services, the cost of said Services and/or any other charges or payments made under this Agreement.
16. Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be severed from this Agreement and to the extent possible, this Agreement shall continue with regard to the remaining provisions.
17. Assignment/Subcontracts. Neither party may assign this Agreement without the written consent of the other party, which shall not unreasonably be withheld. Contractor shall not subcontract any of the Services without the prior written consent of Railway.

## APPENDIX A

### **GENERAL TERMS AND CONDITIONS (con't.)**

18. **Barred Workers.** Railway, at its sole discretion, reserves the right to bar from Railway's property any of Contractor's employees, servants or agents (herein called "Workers") with or without cause. Upon request by Railway, Contractor will exclude from the performance of any work under this Agreement and bar from the Railway's property any of Contractor's Workers designated by Railway as excluded under this Agreement. Railway shall not be required to specify, in any such request or otherwise, either the basis for its decision or which objections, if any, it has to the excluded person. Contractor agrees to hold harmless and indemnify Railway for any loss, cost, expense, including, but not limited to, reasonable attorneys' fees, and liability arising out of or relating in any way to Railway's decision to bar or exclude one of Contractor's Workers from Railway's property or from work under this Agreement.
19. **Governing Law.** The interpretation of the terms and conditions shall be governed by the laws of the Commonwealth of Virginia. The performance of the Services shall be in full compliance with the laws of the state in which the Services are performed.
20. **Consolidated Rail Corporation.** In the event that this Agreement has been issued by Norfolk Southern Corporation ("NSC") as agent for Consolidated Rail Corporation ("CRC"), "Railway", for the purposes of this Agreement (including but not limited to Section 5 (c) above) shall mean not only NSC, its subsidiaries and affiliates but also CRC, its subsidiaries and affiliates. If CRC is the Principal for this Contract, neither NSC nor any of its own subsidiaries and affiliates shall have individual corporate liability hereunder. Notwithstanding such notice of the status of NSC as agent, NSC shall have full authority with regard to this Agreement, including, without limitation, authority to demand and/or enforce any of the Principal's rights hereunder and to perform, as agent, any act required or expected of Principal under or in connection with this Agreement.
21. **Contractor's Employees Background Checks.** (i) Contractor must secure background investigations of its employees through e-RAILSAFE.com. Contractor employees successfully undergoing the background investigation will be issued a picture identification card which will be required for Contractor's employees to enter and work on Railway's property or perform services for Railway. Contractor employees without the identification card will not be allowed to work on Railway's property. Employees leaving the employment of Contractor must surrender the identification card to either Contractor or to Railway. While Railway has negotiated on the behalf of contractor standard volume rates with e-RAILSAFE.com for the investigations, identifications cards and other products, all charges incurred in the use of e-RAILSAFE services and products are the sole responsibility of Contractor. Where a contract permits Contractor to charge travel and business expenses to Railway, the e-RAILSAFE.com charges are not included among such recoverable expenses. Contractor may include such charges as a part of its overhead costs in determining its price proposals. Contractor must execute e-RAILSAFE.com's standard Subscriber Agreement – failure to do so voids this Contract. (ii) In the event that Railway ceases the use of e-RAILSAFE.com for background investigations or switches to another similar service, Contractor will be notified by Railway of the termination and/or transfer. In the event that Railway switches to another vendor for similar services the requirements of this Section will apply to Contractor with regard to the use of the alternative vendor's services. (iii) Railway does not warrant or guarantee either the accuracy or completeness of the services performed by e-RAILSAFE.com; and Railway shall have no responsibility to Contractor for the services performed by e-RAILSAFE.com. Contractor uses such services as between e-RAILSAFE and contractor solely at the risk of Contractor. Railway leaves it to the sole discretion of Contractor as to performing other background investigations of Contractor's employees.



## **APPENDIX B**

### **GENERAL SCOPE OF WORK**

## **APPENDIX C**

### **CONTRACTOR'S COST PROPOSAL**