

ENGINEERING SERVICES AGREEMENT: SCXXXX

This Agreement ("Agreement") executed as of this the ___ day of _____, **2003**, by and between **Norfolk Southern Railway Company** ("Company") and _____ ("Contractor"),

WHEREAS, Contractor is in the business of providing certain Engineering Services ("Services") and is willing to provide such Services to Company; and

WHEREAS, Company desires to utilize Contractor's Services as 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. SCOPE OF WORK

2.1 Contractor shall provide the Services set forth, or incorporated by reference, in Appendix B, attached hereto and incorporated herein by reference ("Services"). Contractor shall furnish all reports and deliverables ("Deliverables") as set forth in Appendix B in accordance with the terms set forth therein.

3. PERIOD OF PERFORMANCE

3.1 The period of performance for this Agreement shall be from _____, **2003** through _____, **2007**.

4. FEES AND PAYMENT

4.1 In consideration of Services performed, Company shall pay Contractor the fees set forth in Appendix C attached hereto and herein incorporated by reference.

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

5. NOTICE

5.1 All notices required to be given under this Agreement shall be in writing, signed by or on behalf of the party giving the same, and transmitted to the addresses 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 return receipt requested, or by telegram

or fax, with confirmed receipt, addressed to the following officers and addresses:

To Company: To Contractor:

Mrs. C. S. Croft Mr.
Assistant Manager Service Contracts
Norfolk Southern Corporation
110 Franklin Road, SE – Box 72
Roanoke, VA 24042

All notices shall be effective on the business day following confirmed receipt of the letter, telegram, or fax.

6. ORDER OF PRECEDENCE.

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. General Terms and Conditions (Appendix A)
- C. Statement of Work
- D. Contractor's Proposal dated

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 superseding 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, Company and Contractor have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

Norfolk Southern Railway Company

Signature _____
Signature

Assistant Manager Service Contracts _____

DATE Name (Typed or Printed)

Title: _____

Date: _____

Appendix A - SCXXXX

GENERAL TERMS AND CONDITIONS

1. Contractor's Responsibilities. Contractor shall perform the Services utilizing the standard of care normally exercised by professional engineering firms in performing comparable services under similar conditions. Contract documents shall bear the seal and signature of a professional engineer licensed in the state in which the work will occur.
2. Company's Responsibilities. Company shall provide to Contractor such data as may be reasonably available to Company and as may be required by Contractor to properly perform the Services. Company 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. Proprietary confidential information ("Proprietary Information") developed or disclosed by either party under this Agreement shall be clearly labeled and identified as Proprietary Information by the disclosing party at the time of disclosure. When concurrent written identification of Proprietary Information is not feasible at the time of such disclosure the disclosing party shall provide such identification in writing promptly thereafter. Oral communications pertaining to the Services shall be presumed to be Proprietary Information unless otherwise indicated by the disclosing party.

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 Company. Contractor shall not disclose the Deliverables relating to the Services to a third party without the prior written authorization of Company. Company shall be solely responsible for its failure to make any disclosure of the Deliverables which may be required by law and agrees to indemnify and hold Contractor harmless for any loss resulting from Company's failure to make such disclosure. Where applicable law requires immediate disclosure by Contractor, Contractor shall make its best efforts to give prior notice to Company. At Company's request and expense, Contractor will assist Company in making such disclosures as may be required by law.

Ownership in the Deliverables shall pass upon payment of the related invoice.

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 the internal records and subject to the restrictions set forth in this section. This section shall survive termination of this Agreement.

4. Payment Terms. Except as otherwise provided, Invoices may be submitted on a Monthly basis and are due net thirty (30) days.

5. Indemnification and Limitations of Liability.

(a) Contractor hereby agrees to indemnify and hold harmless Company 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 Company; 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 Company;

(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 Company under this Agreement shall extend not only to Norfolk Southern Corporation but also to Norfolk Southern Railway Company 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 Company 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 the Company will limit Contractor's liability to Company 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.

6. Conflict of Interest. Company acknowledges that Contractor provides similar services for a broad range of other companies/clients and agrees that Contractor shall be free to work for other companies/clients in matters that do not involve the use of any Proprietary Information that has been disclosed by Company under the terms of this Agreement or do not directly relate to the specific Services provided by Contractor to Company under this Agreement.

7. Termination. This Agreement may be terminated in whole or in part for any reason by Company upon thirty (30) days prior written notice at any time during the period of performance without penalty to Company. Upon receipt of notice of termination or partial termination from Company, 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. Company 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 an 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. Company may direct changes within the general Scope of Work. Upon notification of such direction, 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 Company, the following insurance coverages:

(a) Worker's 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 the Agreement. The contractual liability coverage shall of a form that does not deny coverage for operations conducted within 50 feet of any railroad hazard. In addition, said policy or policies shall be endorsed to name Company as an additional insured and shall include a severability of interests provision;
- (d) If the use of motor vehicles is required, Automobile Liability Insurance with a combined single limit of not less than \$1,000,000 each occurrence for injury to or death of persons and damage to or loss or destruction of property. Said policy or policies shall be endorsed to name Company as an additional insured and shall include a severability of interests provision;
- (e) Errors and Omissions Insurance with a limit of not less than \$1,000,000 each claim.

Contractor shall furnish certificates of insurance to Company's Risk Manager, Three Commercial Place, Norfolk, Virginia 23510-2191, certifying the existence of such insurance. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits without (30) days advance written notice to Company.

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 \$150,000 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 applicable Rules of Practice and Procedure of the American Arbitration Association in effect at the time the demand for arbitration is filed. Unless otherwise agreed by the parties, the location of the arbitration shall be at Norfolk, Virginia. The decision of the arbitrator shall be final and binding. 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.
- (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, counterclaimant, 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 Company is made a party to such claim or litigation so initiated by a third party, Company 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 Company 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. Contractor is an independent contractor and shall not be deemed to be an employee or agent of Company. Contractor shall indemnify and hold Company 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. 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.
- 14. Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, that provision shall be severed from this Agreement and

the remaining provisions this Agreement shall continue in full force and effect.

15. 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 Company.
16. 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.
17. Consolidated Rail Corporation. In the event that this Agreement has been issued by Norfolk Southern Corporation as agent for Consolidated Rail Corporation, ~Company~ for the purposes of this Agreement shall mean not only Norfolk Southern Corporation, its subsidiaries and affiliates but also Consolidated Rail Corporation (~CRC~), its subsidiaries and affiliates. If CRC is the Principal for this Agreement, neither Norfolk Southern Corporation(~NS~) nor any of its own subsidiaries and affiliates shall have individual corporate liability hereunder. Notwithstanding such notice of the status of NS as agent, NS 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.
18. Records and Audits. During the existence of this Agreement and for eighteen (18) months thereafter, Company 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.
19. Norfolk Southern Operating Guidelines for Contractors. Contractor, its employees, agents and subcontractors, while engaged in the performance of the Work or while on the property of Company, shall conduct their activities in accord with Norfolk Southern Operating Guidelines for Contractors (~the Guidelines~) a copy of which is included among the Contract Documents. Contractor shall ensure that its employees, agents, and subcontractors are familiar with the Guidelines. The Guidelines are not exclusive and Contractor must adopt and enforce such additional rules or practices as may be necessary for the safe performance of the Work. The Guidelines do not prohibit Contractor from adopting more restrictive rules and instruction for the government of its employees than those contained in the Guidelines.

