AGREEMENT No. DTFH71-06-X-00018

Memorandum of Agreement

between

Norfolk Southern Railway Company

and the

Department of Transportation,
Federal Highway Administration,
Eastern Federal Lands Highway Division

for the

Environmental Planning, Design and Construction
of the Heartland Corridor Project

PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to establish the roles, responsibilities, funding, and procedures by which Norfolk Southern Railway Company (the "Railroad") and the United States Department of Transportation, Federal Highway Administration, Eastern Federal Lands Highway Division (the "EFLHD"), (collectively hereinafter referred to as the "Parties"), will jointly participate in the environmental planning, design, and construction of the Heartland Corridor - a project to increase freight capacity on the vital Virginia to Ohio route.

The "Clearance Project" portion, (for purposes of this Agreement hereinafter referred to as the "Project"), consists of all work to allow double-stacked freight trains to run between the Hampton Roads region in Virginia and Columbus, Ohio. A double-stacked freight train is a train configured to carry two layers of standard freight containers. The Project does not include work at rail facilities, nor at any stations or sidings along the route. The EFLHD is responsible for the coordination and facilitation of the overall schedule for the entire Project, as well as for the management of the Federal funding. Only certain portions of the work will be paid for in part with Federal funds, as noted below. The design and construction of the Project will be done by the Railroad.

BACKGROUND - LEGISLATIVE HISTORY

The Project is described twice in Public Law 109-59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). At Section 1301(m)(2) it is described as: "Heartland Corridor Project including multiple intermodal facility improvements and improvements to facilitate the movement of intermodal freight from VA to OH." At Section 1702, Project No. 5072, it is described as: "Double stack clearance of tunnels on the Norfolk and Western Mainline in Virginia located on the Heartland Corridor."

In addition, Section 1301(a), Findings, at Subsection (a)(4) also states: "Projects of national and regional significance have national and regional benefits, including improving economic productivity by facilitating international trade, relieving congestion, and improving transportation safety by facilitating passenger and freight movement."

AUTHORITIES

WHEREAS, Congress has authorized $95 million for this Project in Public Law 109-59, SAFETEA-LU; $90 million under Sections 1301(m)(2) and $5 million under 1702, Project No. 5072;

WHEREAS, Norfolk Southern Railway Company has authority to design and construct renovations to its rail corridor;

WHEREAS, the States of Virginia, West Virginia, and Ohio (the "States") have agreed under a separate Memorandum of Agreement to request the funds as required under those Sections of Public Law 109-59 and to authorize the transfer of those funds to the EFLHD under authority of Title 23, United States Code, Section 104 and the legislative authority given to their respective Departments of Transportation;

WHEREAS, Title 23 United States Code, Section 308(a) authorizes the United States Secretary of Transportation to perform engineering or other services in connection with the survey, design, construction, and improvements of highways for other Federal or State cooperating agencies, and "highways" has been interpreted to include surface transportation projects such as this one; and whereas that authority has been delegated to the Federal Highway Administration by authority of Title 49, Code of Federal Regulations, Section 148; and whereas that authority has been delegated to the Federal Lands Highway Program and to the Eastern Federal Lands Highway Division by authority of FHWA Order M1101.1A, Chapters 4 and 6;

WHEREAS, the Federal funds authorized by this project are being used to achieve significant public benefits, including the reduction of congestion, the improvement of safety, and the improvement of the health and welfare of the national economy;

WHEREAS, the Railroad is not providing EFLHD any services or any property in exchange for

such Federal funds, but will abide by the terms of this agreement as a condition of receipt of the Federal funds; and

WHEREAS, the parties intend to be fully bound by the terms and conditions set forth herein.

NOW THEREFORE, the Railroad and the EFLHD do hereby mutually agree as follows:

ARTICLE I: SCOPE OF WORK (Obligations, Responsibilities, and Funding)

A. The Railroad agrees to:

1. Participate in the environmental review by the EFLHD, including public involvement as applicable, and shall cooperate in the efforts of the EFLHD to obtain the required final environmental clearances. The Railroad will cooperate with the EFLHD to the extent practicable with regard to assistance and support in the preparation and/or revision of environmental reports or other documents, and in the defense of any environmental litigation resulting from the planning, design, and/or construction of the Project.

2. Develop, in coordination with the EFLHD, a Financial Management Plan, as required by the FHWA for all projects over $100 million, in order to clarify financial commitments and procedures.

3. Develop, in coordination with the EFLHD, a Project Management Plan, as determined appropriate for this type of project, in order to clarify resource and schedule commitments and procedures.

4. Prepare monthly written status reports for the Project, including a detailed financial accounting, schedule update, contracting activities, and other status information requested by the EFLHD. Provide an opportunity for field reviews when requested by the EFLHD.

5. Award and administer contracts for the design, construction, and/or contract administration of those portions of the Project that Railroad does not normally perform with its own forces. The Railroad will be responsible for the administrative settlement or adjudication of any claims arising from contracts awarded by the Railroad. Reimbursement for any such costs will be subject to the availability of project funds.

6. Prepare design and construction plans, specifications, and estimates ("Plans") for the Project. The Plans shall conform to all applicable Federal and State regulatory standards. The Plans shall be submitted to the EFLHD at 70% and 95% for review by EFLHD, which will coordinate review of the Plans with the appropriate State. Railroad shall also submit Final Plans to EFLHD for approval. When Final Plans are approved by EFLHD, the Railroad will submit the bid package for posting, as set forth in subsection 11, below. The Railroad shall not proceed with construction advertisement until it receives written

approval to proceed from the EFLHD. Any work commenced prior to the receipt of approval from the EFLHD shall be at the risk of the Railroad, including the risk of non-payment of Federal funds for unapproved work. The Plans may be amended by the Railroad upon request to and written approval from the EFLHD.

7. Utility Relocation Costs – As between the Railroad and EFLHD, the Railroad shall be solely responsible for any identified utility relocation costs. EFLHD recognizes that the Railroad may require utilities to relocate facilities at their expense, or to reimburse Railroad for the cost of relocating these facilities, as required by law or as set forth in whatever agreements may exist between the Railroad and the utilities.

8. Grade Crossings - The Railroad certifies that it will conform to all applicable Federal and State specifications and regulations in its work on any public grade crossings, to the satisfaction of the EFLHD.

9. Certify that it has obtained prior to the commencement of construction any and all rights-of-way necessary for construction of the Project. The Railroad will be responsible to record any conveyance of right-of-way in the appropriate government office and be responsible for any recording fees and transfer taxes. Rights-of-way shall be acquired in accordance with all applicable Federal and State laws, policies and procedures.

10. The Railroad shall obtain from the appropriate governmental agencies all necessary clearances, permits, licenses, and other approvals necessary to proceed with the construction phase of the Project prior to the commencement of the Project construction, except for any approvals that EFLHD agrees to obtain pursuant to Section B of this Article I.

11. In selecting construction contractors, the Railroad will ensure that:
    a. contracting is done competitively in accordance with the Federal Acquisition Regulations;
    b. the contracts contain no restrictions on local hiring;
    c. bid packages are sent to EFLHD so that solicitations may be posted on State DOT websites and linked to a Federal website as allowed;
    d. contractors meet State licensing requirements to the extent such requirements can be met after bid opening but prior to award of the contract; and
    e. the total cost of contracts awarded will not exceed the sum of Railroad's total capital improvement budget authorization for the Project, plus any reimbursement pursuant to this Agreement.

12. Construction Inspection - The Railroad, with its own forces or by contract, shall provide staff to adequately inspect and supervise all construction work for the Project. Proper supervision and construction inspection must be provided to ensure that all Project work is completed in accordance with the Plans and in compliance with applicable State and Federal regulatory requirements.

13. Buy American Act - Materials furnished will be provided in accordance with the requirements of the Buy American Act. All steel materials or steel products must be of domestic origin or manufacture, as set forth in the Buy American Act.

14. Disadvantaged Business Enterprise - The Railroad shall follow EFLHD's guidance and directives to ensure that construction contracts contain disadvantaged business and small business subcontracting provisions in compliance with the requirements of the Federal Acquisition Regulations (FAR), including the submission for approval of a small business and disadvantaged business subcontracting plan, as required by Part 19 of the FAR.

15. Maintenance Requirements - Assume all future maintenance and liability for improvements to Railroad-owned facilities and property, including structures carrying Railroad facilities, signalization (signals), crossing surfaces, and any other maintenance responsibilities as may be assigned in connection with utilities.

16. Records - The Railroad and its consultant and/or contractor shall maintain all books, documents, papers, records, supporting cost proposals, account records, electronic employee payroll records, and other evidence pertaining to the Project costs, and shall make such materials available to the Parties to this Agreement or their designees for inspection and audit at all reasonable times during the contract period and for three (3) years after the date of final payment to any contractor, whichever is later in time. For hourly employees of Railroad, a complete record shall also be kept for personnel assigned part-time to the Project, which record shall include such personnel's time dedicated to work outside of the Project. In addition, the computation of overhead costs will be supported by audit.

B. <u>The EFLHD agrees to</u>:

1. Coordinate the overall schedule for the entire Project and facilitate cooperation among the Parties and the Railroad.

2. Accept and manage Federal funding for the Project and reimburse Railroad for its eligible costs in accordance with Article II of this Agreement.

3. Act as the lead agency for the coordination, preparation, and approval of the environmental documentation required pursuant to the National Environmental Policy Act (NEPA), 23 CFR §771, 49 U.S.C. §303, and Section 106 of the National Historic Preservation Act (including environmental documentation, 4(f) statement, and Section 106 statement) for the Project.

4. Select consulting services, as appropriate, for environmental planning assistance using procurement procedures in accordance with the Federal Acquisition Regulation (FAR), and the Transportation Acquisition Regulation (TAR).

5. Provide a quarterly status report to the Railroad and the State DOTs, both written and oral (face-to-face, videoconference, or teleconference), on the overall management of the Project. The report will detail, at a minimum, the financial status, schedule, and current and upcoming contracting activities of the Project, as well as any specific issues that have arisen.

6. Provide a Special Project Manager to coordinate day-to-day administration, including technical issues, of the Project. Technical issues will be discussed between the Parties as issues arise.

7. Review and approve the Financial Plan to be prepared by the Railroad for the Project.

8. Work jointly with the Railroad to determine appropriate action regarding a Project Management Plan.

9. Serve as a representative of the State DOTs on any consultant selection panel convened by the Railroad.

10. Ensure to the maximum extent possible that:
    a. design and construction work will be contracted out, except work that is normally done by the Railroad's employees. (It is recognized that decisions regarding whether to contract for construction engineering and inspection must be made by the Railroad.)
    b. contracting is done competitively and that the contracts contain no restrictions on local hiring.
    c. solicitations are posted on State DOT websites and linked to a Federal website as allowed;
    d. contractors meet State licensing requirements to the extent such requirements can be met after bid opening but prior to award of the contract;
    e. contracts contain disadvantaged business and small business subcontracting provisions in compliance with the requirements of the Federal Acquisition Regulations (FAR), including the submission for approval of a small business and disadvantaged business subcontracting plan, as required by Part 19 of the FAR.

11. Receive from the Railroad and provide to the State DOTs for review as appropriate the plans, specifications, and estimates, along with other necessary design documents for review and comment at the normally scheduled milestone completion percentages.

12. Approve the annual budget of the State DOTs for their anticipated costs.

13. Require its employees, contractors, and agents to comply with any job site safety training and safety requirements of the Railroad.

C. Responsibility of the Parties

1. Both Parties to this Agreement shall agree to cooperate with each other and with their respective Contractor(s) so as to coordinate their respective schedules in an effort to not delay the completion of the Project.

2. Both Parties to this Agreement will be afforded the opportunity to inspect, review and comment on, at any time, work in progress, the financial records, and any other supporting documentation; and to participate in all meetings and field reviews.

ARTICLE II. FUNDING AND REIMBURSEMENT

The respective financial obligations of the parties under this Agreement shall be as follows:

A. The Heartland Corridor Project is subject to and contingent upon the funds identified under Sections 1301 and 1702 of Public Law 109-59 (SAFETEA-LU) being transferred to the EFLHD for administration and the approval by the Board of Directors of Railroad's parent, through its capital improvement budget authorization process, of sufficient monies to fund the difference between the total Project cost and the actual Federal reimbursement provided under this Agreement. Failure to obtain the funds as required by law or the Railroad's internal processes shall relieve the Parties of their obligations under this Agreement.

B. Congress has authorized $95 million for this Project in Public Law 109-59, SAFETEA-LU. Under Section 1301(m)(2), Congress authorized $90 million for the work of the Project; and under Section 1702, Project No. 5072, Congress authorized $5 million for the work in Virginia. Both Sections authorize an annual distribution. For Section 1301, funds are distributed as follows: for fiscal year 2005 -- 10%, for fiscal year 2006 -- 20%, for fiscal year 2007 -- 25%, for fiscal year 2008 -- 25%, and for fiscal year 2009 - 20%. For Section 1702, funds are distributed at 20% per fiscal year. In addition, for fiscal years 2005 and 2006, Congress has imposed an obligation limitation in order to protect the funds in the Highway Trust Fund. This results in a reduction of the available funds that are set for each year. For fiscal year 2005, the obligation limitation was 85.5%. For fiscal year 2006, the obligation limitation was 87%. It can be assumed that Congress will impose an obligation limitation in future fiscal years as well. Finally, for funds available in fiscal year 2006, Congress imposed an additional 1% rescission of funds to all Federal funding categories, in order to provide for emergency supplemental appropriations to address damages from the hurricanes in the Gulf in 2005 (Public Law 109-148).

C. Federal funding available for the Project requires a "State match" of 20%, which for Section 1301 funds will be provided by the Railroad and for Section 1702 by the State or the Railroad.

D. The EFLHD will provide Federal funding up to 80% of the total Project costs, up to the amount available under the law, as discussed above. EFLHD's costs for the environmental review and general project oversight are to be reimbursed out of this 80%. The Railroad shall be responsible for the remaining total cost of the Project. To ensure that the total cost of the Project less the amount of actual Federal reimbursement is within its capital improvement budget authority, Railroad reserves the right to reject bids, re-bid the Project or portions thereof as appropriate, re-design the Project or portions thereof as appropriate, or take such further reasonable measures as may be appropriate under the circumstances.

E. The Railroad agrees to make its invoices and supporting records available for Federal audit.

F. The Railroad may bill the EFLHD no more frequently than every thirty (30) days for any and all actual and approved costs within the scope of the Project. The Railroad, for the purpose of reimbursement, shall submit to the EFLHD on a monthly basis:

   a) Certified invoices, including proof of allowable costs, for work performed by the Railroad forces on the Project. The proof of allowable costs may include but not be limited to, time sheets, material invoices and equipment records of the Railroad. Invoices shall be deemed certified when they are signed and dated by an authorized representative of the Railroad.

   b) Certified invoices already paid by the Railroad based on current estimates of the work performed on the Project by the Railroad's contractors and/or consultant. Copies of the estimates will be included with the invoices. Invoices shall be deemed certified when they are signed and dated by an authorized representative of the contractor of consultant.

   Upon receipt of such invoices, the EFLHD will promptly make payment to the Railroad after review and approval of the invoice.

G. The EFLHD and the Railroad understand that the Federal funds are available as follows: 30% in 2006; 25% in 2007, 25% in 2008, and 20% in 2009. Unused prior year funds may be expended in the current year, but subsequent year funds cannot be disbursed until the appropriate federal fiscal year.

H. Nothing in this Agreement shall preclude the Railroad from submitting bills for costs incurred by in-house forces necessary to accomplish the Project. Proof of costs incurred or payments by the Railroad must be submitted along with the request for reimbursement under this Agreement.

I. The Railroad, by executing this Agreement, certifies that it has on hand sufficient funds to

meet all of its obligations under the terms of this Agreement, and that it, not the other Parties to this Agreement, shall provide all funds needed to pay any costs incurred in excess of those costs eligible for Federal participation and shall bear all excess costs, subject to Railroad's right to control, reduce or eliminate costs in consultation with EFLHD. The Railroad shall be solely responsible for one hundred percent of this portion of the total Project costs. The Railroad may use any combination of funds from its own budget and/or outside sources, whether public or private.

J. The EFLHD shall not reimburse any additional or extra work done or materials furnished that are not specifically provided for in the approved plans and the specifications, unless the EFLHD has first approved such additional or extra work or materials in writing. Any such work done or materials furnished without such written approval first having been given by the EFLHD shall be at the Railroad's own risk, cost and expense.

K. Work in Kentucky will be paid for in full by the Railroad.

L. Work in Ohio will be paid for in full by the Railroad and the Ohio Rail Development Commission (ORDC).

M. The Railroad will own all of the improvements performed, constructed or completed pursuant to this Agreement, with the exception of improvements to existing nonrailroad-owned public structures that may be impacted by the Project.

ARTICLE III: TERM OF AGREEMENT

1. This Agreement and the authorizations granted in it shall be effective only after the full execution and approval by both Parties to this Agreement.

2. This Agreement shall be in force and effect and shall remain in effect until the work, including payment, has been completed to the mutual satisfaction of both Parties.

3. This Agreement may be modified by the written consent of both of the Parties.

ARTICLE IV: KEY OFFICIALS AND CONTACTS

Designated points of contact for the coordination of this project are as follows:

For the RAILROAD:

Dr. Robert E. Martinez
Vice President Business Development
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510
Phone: (757) 629-2748
Fax: (757) 629-2849
email: robert.martinez@nscorp.com

Mr. James N. Carter, Jr.
Chief Engineer Bridges and Structures
Norfolk Southern Corporation
1200 Peachtree Street
Atlanta, Georgia 30309
Phone: (404) 529-1408
Fax: (404) 527-2589
email: james.carterjr@nscorp.com

For the EFLHD:

Ms. Melisa Ridenour
Division Engineer
Department of Transportation
Federal Highway Administration
Eastern Federal Lands Highway Division
21400 Ridgetop Circle
Sterling, Virginia 20166
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Mr. Kurt Dowden
Special Project Manager
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Eastern Federal Lands Highway Division
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Sterling, Virginia 20166
Phone: (571) 434-1569
Fax: (703) 404-6217
email: kurt.dowden@fhwa.dot.gov

ARTICLE V: TERMINATION AND FORCE MAJEURE

A. This Agreement will terminate when all transfers of funds are completed and all work associated with this Agreement has been inspected and approved in writing by the Parties and the State DOTs. Approval by the State DOTs will be by written notification to the EFLHD, and will be only with regard to facilities impacted by the Project that are owned and maintained by the respective State.

While it is the intention of the Parties to complete this Project, it is recognized that not all future events can be anticipated. If it becomes apparent that total Project costs, less the total amount of reimbursement from Federal funds that will be available under this Agreement, exceed the Railroad's approved capital budget authorization for the Project, the Railroad shall give notice to the EFLHD of the gap in funding. If, at the end of ninety (90) days (or such other period as Railroad and EFLHD may mutually agree) from the date Railroad gives notice, Railroad and EFLHD have failed to reach an agreement on how the gap in funding will be filled, either with as yet unidentified additional Federal funds, Railroad funds or funds

from other sources, the Railroad may terminate this Agreement by sending written notice to EFLHD. If Railroad exercises this termination right, it shall refund to EFLHD any of the Federal funds received by Railroad under this Agreement.

In case of the failure on the part of either Party to observe any of the conditions of this Agreement, the affected Party may terminate this Agreement for default by giving written notice of default to the other Party, which will have thirty (30) days to cure said default (or, if the default cannot be cured in thirty days, such reasonable amount of time as may be necessary to cure the default). If the default is not cured within the applicable cure period, then this Agreement shall terminate effective at the end of the applicable cure period. The Parties agree to try to resolve any such disagreements or differences.

B. The Railroad shall be excused from its obligations hereunder for any period in which the following conditions of force majeure occur: Act of God, act of the public enemy, authority of law, fire or explosion, lockout, strike, war, act of terrorism, insurrection or any like causes beyond the control of the Railroad. If the Railroad declares force majeure, it shall promptly notify EFLHD when the force majeure condition begins, the nature of the force majeure, and when the condition is terminated.

ARTICLE VI: ASSIGNMENT

No transfer or assignment of this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by the other Party, except that the Railroad may freely transfer or assign this Agreement to any of its parents, subsidiaries or affiliates as long as the Railroad's obligations under this agreement are fully assumed by the transferee/assignee.

ARTICLE VII: LIABILITY

1. The Parties accept full responsibility for any property damage, injury, or death caused by the acts or omissions of their respective employees, acting within the scope of their employment, or their contractors' scope of work, to the fullest extent of the law. Each Party shall defend, indemnify and save harmless the other Party and all of its agents and employees from all suits, actions or claims of any character, name or description arising from such damage, injury or death to the extent permitted by law. The EFLHD will require its contractors to carry insurance to indemnify both Parties for any action under their contract. All claims shall be processed pursuant to applicable governing law.

2. Except as provided in Section 1 of this Article VII, the Railroad shall indemnify and save harmless and (if requested) defend the States and/or the United States, and all of their agents and employees from all suits, actions or claims of any character, name or description, including, but not limited to, those relating to title to real property, brought

for or on account of any injuries or damages received or sustained by any person, persons or property, arising out of, resulting from or connected with the design, construction, occupancy, use and/or maintenance of the improvements and/or any other activities relating to the improvements by the Railroad and/or the Railroad contractor(s) or consultant(s) and their officers, agents and employees, whether the same be due to defective materials, defective workmanship, neglect in safeguarding the work, or by or on account of any act, omission, neglect or misconduct of the Railroad and/or Railroad consultant(s) and/or contractor(s), their officers, agents and employees, during the performance of the work or thereafter.

ARTICLE VIII: REQUIRED AND STANDARD CLAUSES

1. Nothing in this Agreement shall be construed as limiting or affecting the legal authorities of the Parties, or as requiring the Parties to perform beyond their respective authorities. Nothing in this Agreement shall be deemed to bind any party to expend funds in excess of available Federal appropriations or the capital improvement budget authorizations of the Railroad.

2. **NON-DISCRIMINATION**: The Parties shall not discriminate in the selection of employees or participants for any employment or other activities undertaken pursuant to this Agreement on the grounds of race, creed, color, sex, or national origin, and shall observe all of the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000(d) et. seq.). The Parties shall take positive action to ensure that all applicants for employment or participation in any activities pursuant to this Agreement shall be employed or involved without regard to race, creed, color, sex, or national origin.

3. **ANTI-DEFICIENCY ACT**: Pursuant to the Anti-Deficiency Act, 31 U.S.C. Section 1341(a)(1) (1994), nothing contained in this Agreement shall be construed as binding the United States or any State to expend any sum in excess of appropriations made by Congress for the purposes of this Agreement, or as involving the United States or any State in any contract or other obligation for the further expenditure of money in excess of such appropriations.

4. **INTEREST OF MEMBERS OF CONGRESS**: No member of, or Delegate to, or Resident Commissioner in Congress shall be admitted to any share or part of this Agreement, or to any benefits that may arise therefrom, unless the share or part or benefit is for the general benefit of a corporation or company.

5. **LOBBY PROHIBITION:** The Parties will abide by the provisions of Section 1913 (Lobbying with Appropriated Monies) of 18 U.S.C., which states:

   No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal

service, advertisement, telegram, telephone, letter, printed or written matter, or other devise, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or its departments or agencies from communicating to Members of Congress on the request of any Members of Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of public business.

6. Public Law 101-121, Section 319, 31 U.S. Code Section 1352, prohibits the recipient or any lower tier sub-recipients of a Federal contract, grant, loan or cooperative agreement from expending federal funds to pay any person for influencing or attempting to influence a Federal Agency or Congress in connection with the awarding of any Federal contract, the making of any federal grant or loan or the entering into of any cooperative agreement.

7. This Agreement is subject to all laws governing Federal and State procurement and to all regulations and rules promulgated thereunder, whether now in force or hereafter enacted or promulgated, except as specified in this Agreement. Nothing in this Agreement shall be construed as in any way impairing the general powers of the Parties for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.

ARTICLE IX. ENTIRE AGREEMENT

This Agreement and its attachments constitute the entire Agreement and understanding of the Parties with respect to the Heartland Corridor Project. No oral or other written provisions shall have any force or effect except those contained in a written amendment to this Agreement executed by the parties or as specifically provided for in this Agreement.

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AGREEMENT No. DTFH71-06-X-00018

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

NORFOLK SOUTHERN RAILWAY COMPANY

Donald W. Seale 8/3/06

Donald W. Seale — Date
Vice President

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
EASTERN FEDERAL LANDS HIGHWAY DIVISION

Melisa L. Ridenour 8 Aug 06

Ms. Melisa Ridenour — Date
Division Engineer