

**MEMORANDUM OF AGREEMENT**  
**For**  
**LOUISVILLE JEFFERSON COUNTY METRO GOVERNMENT, NORFOLK SOUTHERN**  
**RAILWAY COMPANY, AND**  
**THE COMMONWEALTH OF KENTUCKY, TRANSPORTATION CABINET,**  
**DEPARTMENT OF HIGHWAYS**

**THIS AGREEMENT**, made and entered into by and between the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways, Party of the First Part, hereinafter called the "Department" and Norfolk Southern Railway Company, 3 Commercial Place, Norfolk, VA 23510, Party of the Second Part, hereinafter called the "Railroad" and Louisville Jefferson County Metro Government, 601 W. Jefferson Street, Louisville, Kentucky 40202, Party of the Third Part, hereinafter called "LJCMG".

**WITNESSETH, THAT:**

**WHEREAS**, Title 23, United States Code (23USC130) the Surface Transportation and Uniform Relocation Assistance Act of 1987, and Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) of 2012, appropriated Federal Funds to implement safety improvements at public grade crossings (installation of warning devices at hazardous crossings);

**WHEREAS**, as part of its 2012 Program, and in the interest of public safety and convenience, the Department proposes to construct a corridor project in Louisville, Jefferson County, Kentucky that will consist of the upgrade and installation of

**EXHIBIT A**

Warning Devices at seven crossings and the permanent road closure of four streets and two alleys. This work as proposed shall be collectively referred to as the 'Project'.

Warning devices shall consist of an automatic gate system, flashing light signals and bell. The installation of Warning Devices is proposed to take place at the intersection of Railroad tracks and LJCMG roads at the following listed crossings in Jefferson County, Kentucky:

<u>Street</u>	<u>DOT #</u>
25 <sup>th</sup> Street	850 983 C
Wilson Avenue	850 984 J
28 <sup>th</sup> Street	850 987 E
Catalpa Street	850 989 T
Woodland Avenue	850 992 B
Hale Avenue	850 995 W
Greenwood Avenue	850 998 S

Permanent road closure may consist of the taking up of pavement, installation of barriers, curbing, signage, paint markings, etc. for the purpose of negating vehicular through travel at the Railroad crossing. The closure of LJCMG roads is proposed to take place at the following listed crossings in Jefferson County, Kentucky:

<u>Street</u>	<u>DOT #</u>
23 <sup>rd</sup> Street	850 982 V
Cypress Street	960 114 L
Olive Street	850 986 X
Hemlock Street	850 991 U
Alley	between Olive Street and Wilson Avenue
Alley	at Woodland Avenue

**GENERAL TERMS OF AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual provisions contained herein, the parties hereto, for the purpose of executing the Project, hereby agree as follows:

SECTION 1 - The parties agree that the Project as defined herein is worthwhile and the parties shall execute assigned duties toward its completion.

SECTION 2 - All necessary Federal approvals will be secured and the parties agree that the Project will be done as herein set forth within 18 months from the date of final state authorization to begin construction ("authorized start date").

SECTION 3 - The Department shall be the lead agency in overseeing the execution of the Project, serving as the manager of the Project. The Department agrees to dedicate funding not to exceed \$2,000,000.00 to be utilized toward the construction of Warning Devices.

SECTION 4 - The Railroad shall provide materials, labor, and equipment necessary for installing the Warning Devices at the locations designated.

SECTION 5 - The Railroad will prepare the track drawings, estimate costs, and provide any required specifications for the proposed Warning Devices.

Section 6 - The expense for the work defined in Sections 4 and 5 shall be chargeable to the Project and the parties agree that the cost of the Project (for the installation of warning devices) shall be borne jointly between the Railroad and the Department. The Railroad shall be responsible for twenty-five percent (25%) and the Department shall be responsible for seventy-five percent (75%) of the actual cost (for the installation of warning devices) to its maximum participation amount as defined in Section 3.

SECTION 7 - The Railroad shall furnish all materials and complete all work in accordance with U.S. Department of Transportation Manual on Uniform Traffic Control Devices in Parts 4 & 8 and Section 646(A & B) of Federal-aid Highway Policy Guide. The Railroad shall keep an accurate and detailed account of the expense incurred by it for its account in the performance of the work which it has herein agreed to perform or cause to be performed, and the Department shall reimburse the Railroad therefore in accordance with the regulations and provisions set forth in Section 646(B) of Federal-aid Highway Policy Guide.

SECTION 8 - The LJCMG will be responsible for planning and executing the permanent closure of said roads and alleys, and providing support to warning device installations, such as; installing bump outs where needed, relocating drainage basins,

installing any curb work needed, installing any signs needed, providing easements to the railroad, any needed right of way, and relocating any utilities. The activities defined in Section 8 shall be executed at the expense of LJCMG under the guidance and in cooperation with the Railroad. The Railroad will compensate LJCMG \$30,000 each to permanently close the four crossings on LJCMG roads (23<sup>rd</sup> Street, Cypress Street, Olive Street, Hemlock Street).

SECTION 9 - The Railroad, LJCMG and the Department, through their representatives, agree to cooperate in every reasonable way for the prompt and safe execution and completion of the work in accordance with the terms of this agreement.

SECTION 10 - Upon completion of the Project, the Railroad shall thereafter operate and maintain the Warning devices in proper working condition including such repairs as may become necessary. The Department shall pay the Railroad for costs incurred in maintaining said Warning Devices at these locations in accordance with the then current maintenance agreement between the Department and Railroad.

SECTION 11 - By execution of this Memorandum of Agreement all parties will work together to complete the Project within 18 months from the authorized start date.

SECTION 12 - The Department reserves the right to terminate this Memorandum of Agreement if unexpected state, federal or local conditions occur which are beyond the control of LJCMG, the Railroad and the Department, causing Department to determine that termination of this Memorandum of Agreement is deemed to be in the Department's best interest, by giving thirty (30) days written notice of such termination to LJCMG and the Railroad. In the event of such termination the Department hereby agrees that it will reimburse the Railroad for that portion of the Project that the Railroad has already completed, in accordance with the formula set forth in Section 6 herein.

SECTION 13 - It is understood and agreed by the Parties that if any part of this Memorandum of Agreement is in conflict with any law of the Commonwealth of Kentucky, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Memorandum of Agreement did not contain the particular part, term, or provision held to be invalid.

SECTION 14 - This agreement shall be binding upon the legal representatives and assigns of the respective parties hereto.

SECTION 15 - The Railroad shall obtain any required permits for work to be accomplished on public right-of-way from the

LJCMG. Concurrence must be provided by the Department prior to the execution of any work.

SECTION 16 - To the extent permitted by law, LJCMG shall indemnify and hold harmless the Department and all of its officers, agents, and employees from all suits, actions, or claims of any character because of any injuries or damages received by any person, persons, or property resulting from construction of the herein set forth Project which arise from the negligence of LJCMG, its employees or agents working within the scope of their employment.

SECTION 17 - The Railroad and LJCMG shall maintain for a period of three (3) years all records of materials, equipment, and labor costs involved in the performance of work of said Project.

SECTION 18 - In order to obtain reimbursement from the Department for constructing said Project, the Railroad shall submit to the Department's coordinator a completed Statement of Charges form (TC 69-008) along with documented invoices of materials, equipment, and labor used on the Project. The Railroad may submit to the Department's coordinator current billings reflecting the actual cost of work incurred during any given work period, in which case the current billings will be paid within thirty (30) days after receipt of same by the

Department; however, in no event is the Railroad to submit billings for work performed for less than a thirty (30) day period.

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IN WITNESS WHEREOF, the parties have caused these presents to be executed by their officers thereunto duly authorized.

This the 30 day of May, 2014.

COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET  
DEPARTMENT OF HIGHWAYS

By: Keith McDonald  
Keith McDonald, Director  
Division of Right of Way & Utilities

NORFOLK SOUTHERN RAILWAY COMPANY

By: Scott J. Reynolds  
General Manager  
Title

Louisville Jefferson County Metro Government

By: Ray Fortley  
Mayor  
Title

APPROVED, FORM AND LEGALITY:

Scott M. Lee  
OFFICE OF LEGAL SERVICES  
TRANSPORTATION CABINET

Approved for Utilities &  
Rails Branch  
DATE: 5/30/14