

PIN 1931.92.321  
Fed. No.

MUNICIPAL AGREEMENT  
BETWEEN  
NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
AND THE VILLAGE OF CASTLETON-ON-HUDSON  
FOR THE REIMBURSEMENT OF COSTS ASSOCIATED  
WITH THE CLOSURE OF SCOTT AVENUE

This Municipal Agreement made as of February 17, 1994  
between the Village of Castleton-on-Hudson  
(hereinafter called "Village") with offices at P.O. Box 126, 85  
South Main Street, Castleton-on-Hudson, New York 12033 and the  
Department of Transportation for the People of the State of New  
York, whose offices are located at 1220 Washington Avenue, State  
Campus, Albany, New York 12232 (hereinafter called "State")

Witnessed:

WHEREAS: The State is interested in promoting High Speed Rail  
(hereinafter called "HSR"), and under current federal regulations,  
it is necessary to restrict access at all public and private  
railroad/highway grade crossings along the High Speed Rail  
corridor.

WHEREAS: The Village desires to assist the State in improving  
public safety along the railroad line over which high speed trains  
will operate.

WHEREAS: The Village plans to construct a riverfront park on  
land currently accessed via a public crossing on Scott Avenue and  
Green Avenue and a private crossing adjacent to the Seaman Dock.

WHEREAS: The Village supports eliminating vehicular access at  
rail crossings within the Village if adequate pedestrian and  
service access to the proposed park is provided and all existing  
businesses are successfully relocated.

WHEREAS: As a first step in this overall effort, the Village  
supports the State plan to enter into a separate agreement with  
Conrail/Amtrak regarding the closing of the Scott Avenue crossing  
for public vehicular use and erection of fencing and pedestrian  
facilities, where appropriate.

WHEREAS: Both parties have agreed to work harmoniously in the  
advancement of the HSR program for the good and safety of the  
general populace including the future closing to public vehicular  
access at the Green Avenue crossing.

WHEREAS: The Congress of the United States has provided for

Federal funds to be expended for the Federal-Aid system as defined in Section 104A(1) of Title 23, United States Code, as amended; and Sections 203 and 230 of PL 93-87.

WHEREAS: The above mentioned sections provide for the apportionment of Federal-Aid funds to the State for the purposes of carrying out the Federal-Aid projects.

WHEREAS: Subdivision 34-a of Section 10 of the New York State Highway Law authorizes the State to enter into agreements with the appropriate local officials in which such Federal-Aid project is located.

WHEREAS: It is recognized by the State and the Municipality that State funds are available for the cost of the non-Federal share of construction of a Federal-Aid project not on the State Highway System.

WHEREAS: The State of New York has appropriated funds for the first instance funding of the Federal share of the cost, and the non-Federal share of the Federal-Aid projects.

WHEREAS: The State is desirous of designating the MUNICIPALITY to undertake a Federal-Aid project not on the State Highway System within such municipality.

WHEREAS: the MUNICIPALITY is desirous of constructing such Federal-Aid project with available Federal and State funds (and maintaining such project at its own expense; and)

WHEREAS: The COMMISSIONER deems it to be in the best interest of the STATE that the MUNICIPALITY construct and maintain the above-identified project; and

WHEREAS: The Legislative Body of the MUNICIPALITY by Resolution No. \_\_\_\_\_ adopted at meeting held on \_\_\_\_\_ DECEMBER 27, 1993 \_\_\_\_\_, approved the construction of the above-identified project by the MUNICIPALITY and the terms and provision of this Agreement and has further authorized the MAYOR of the MUNICIPALITY to execute this Agreement with respect to the construction and maintenance of such project on behalf of the MUNICIPALITY (copy of such resolution is attached to and made a part of this Agreement).

NOW, THEREFORE, in consideration of the mutual benefits moving to each of the parties hereto, it is agreed as follows:

1. The Village will purchase the property west of the Scott Avenue crossing, with such offer to be made contingent upon reimbursement of the purchase price by the State.

2. The State will make federal matching funds available to reimburse the Village for the cost of the property purchase and the cost to construct a fence and locked gate on the East side of the tracks.
3. The Village supports the State's effort to close the Scott Avenue crossing to public vehicular access in accordance with the Memorandum of Understanding signed by the parties on January 21, 1994.
4. General Description of Work. Such work herein contemplated consists generally of the work program attached hereto as Schedule 1, and any additions or deletions made thereto by the New York State Department of Transportation subsequent to the execution of this Agreement for the purposes of conforming to State and Federal requirements. Such work shall include engineering inspection.
5. Method of Performance of Work. Such work shall be performed by the forces of the MUNICIPALITY. Work under this Agreement shall not be started until the MUNICIPALITY has been officially notified by the COMMISSIONER that the work has been authorized and the MUNICIPALITY'S schedule for the conduct of the work has been approved by the COMMISSIONER.
6. Reimbursement of Costs. Upon written notice from the MUNICIPALITY to the COMMISSIONER that such work has been completed and upon final inspection thereof, to the satisfaction of the STATE and the Federal Highway Administration, the STATE will reimburse the MUNICIPALITY the Federal and STATE reimbursable costs incurred by the MUNICIPALITY (or the Municipality's designated contractor(s)) in connection with the work on a force account basis including the costs of labor, fringe benefits and materials.

If the MUNICIPALITY finds it desirable to have reimbursement made periodically between the start of the work and the final inspection, the STATE shall reimburse the MUNICIPALITY the eligible costs of the work, as disclosed by payment vouchers provided by the STATE, with final adjustment to be made after audit by the STATE and/or Federal Highway Administration.

Eligible costs may include the expenses of construction, construction inspection, design engineering, and associated closing expenses.

237,000  
 165,000  
 72,000  
 70,000

The maximum reimbursement under this Agreement shall be \$ 237,000 unless increased by a supplemental agreement.

7. Maintenance of Project. The MUNICIPALITY shall, at its own expense, properly maintain the completed physical and operational improvements.

8. Access to and Control of Work. The STATE and the Federal Highway Administration shall have access to all phases of such work during its prosecution and to records pertaining thereto, including time records, payrolls, invoices, work orders and other similar records.

9. Unsatisfactory Work: Ambiguity of Plans. Should work at any time be unsatisfactory to the STATE, that fact shall, without unnecessary delay, be brought to the attention of the MUNICIPALITY who shall take remedial action promptly.

In case of any ambiguity in the plans, specifications, or maps, or conflict between them, the matter shall be immediately submitted to the STATE which shall adjust the same, and its decision in relation thereto shall be final and conclusive upon the parties.

10. Audit and Inspection. The MUNICIPALITY shall permit the COMMISSIONER'S and STATE Comptroller's and the Federal Highway Administration's authorized representatives to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant construction, equipment, data and records; and to audit the books, records and accounts of the MUNICIPALITY pertaining to the work and to provide copies if requested.

11. Liability Insurance. The MUNICIPALITY shall, for itself, procure and maintain until final acceptance by the STATE of the work covered by this Agreement, insurance for liability for damages imposed by law, of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the STATE, covering all operations under this Agreement performed by the MUNICIPALITY. Before commencing the work, the MUNICIPALITY shall furnish to the COMMISSIONER a certificate or certificates of such insurance in form satisfactory to the COMMISSIONER showing that it has complied with this paragraph, which certificate or certificates shall provide that the policies shall not be changed or cancelled until thirty (30) days written notice has been given to the COMMISSIONER. The kinds and minimum amounts of insurance are as follows:

<i>Bodily Injury Liability</i>	<i>Property Damage Liability</i>	
<i>Each Occurrence</i>	<i>Each Occurrence</i>	<i>Aggregate</i>
\$1,000,000	\$500,000	\$1,000,000

for all damages arising during the policy period, shall be furnished in the types specified, viz:

A. Liability insurance issued to and covering the liability for damages imposed by law upon the STATE and the MUNICIPALITY with respect to all work performed by it under this Agreement.

B. Protective liability insurance issued to and covering the liability for damages imposed by law upon the MUNICIPALITY, the STATE, the COMMISSIONER and all employees or other representatives of each of them, both officially and personally with respect to all operations under the Agreement performed for the MUNICIPALITY, by itself including omissions and supervisory acts of the MUNICIPALITY, the STATE, the COMMISSIONER and their employees or other representatives.

C. Completed Operations' Liability insurance issued to and covering the liability for damages imposed by law upon the STATE and the MUNICIPALITY arising between the date of final cessation of work and the date of final acceptance thereof.

12. Funds Available. It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the moneys available to the STATE and no liability on account thereof shall be incurred by the STATE beyond moneys available for the purposes thereof.

13. Assignment or Other Disposition of Agreement. The MUNICIPALITY agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or of its right, title or interest therein, or its power to execute such Agreement to any person, company or corporation without previous consent in writing of the COMMISSIONER.

14. Independent Contractor. The MUNICIPALITY agrees that it will neither hold itself out as, nor claim to be, an officer or employee of the STATE, and that it will not by reason hereof, make any claim, demand of, application to, or for any right or privilege applicable to an officer or employee of the STATE, including, but not limited to, Workmen's Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or membership or credit for retirement.

15. Risk of Liability. The MUNICIPALITY agrees to indemnify and hold harmless the STATE, the COMMISSIONER, the DEPARTMENT and their respective employees and representatives (indemnified parties) from any and all liability for injury or death of any person or persons or for any loss or damage to, or destruction of any property or equipment which arises from activities conducted by or on behalf of the MUNICIPALITY, arising during the course of the work done pursuant to this AGREEMENT, or subsequently, because of the manner in which the work was performed, except when

attributable to the fault or negligence of the STATE or its agents, employees, or contractors other than the MUNICIPALITY

IN WITNESS WHEREOF, the STATE has caused the Instrument to be signed by the COMMISSIONER of Transportation and the MUNICIPALITY has caused this Instrument to be signed by its

MAYOR SETH HONEYMAN  
VILLAGE OF CASTLETON-ON-HUDSON

BY: Seth Honeyman

RECOMMENDED

BY: Michael P. Curtett  
Director, Grade Crossing  
& Signal Section

THE PEOPLE OF THE STATE OF NEW YORK

BY: [Signature]  
Commissioner of Transportation

APPROVED AS TO FORM & CONTENT

MAR 14 1994

\_\_\_\_\_  
Municipal Attorney

(Acknowledgement of Municipality)  
State of New York  
County of

On this 17TH day of FEBRUARY 1994, before me personally came SETH HONEYMAN, to me known, who being duly sworn, did depose and say that he resides in VILLAGE OF CASTLETON-ON-HUDSON, that he is the MAYOR of the VILLAGE OF CASTLETON and that he signed his name hereto by order of the Board of VILLAGE OF CASTLETON of said

APPROVED AS TO FORM  
NEW YORK STATE  
APPROVED AS TO FORM  
ATTORNEY GENERAL  
MAR 16 1994

BY: [Signature]  
Assistant Attorney General

Agency Certification

Contract No. 0008054

Elizabeth A. Hudson  
NOTARY PUBLIC  
ELIZABETH A. HUDSON  
Notary Public, State of New York  
Reg. No. 4988639  
Qualified in Rensselaer County  
My Commission Expires Nov. 12, 1995

APPROVED: DATE MAR 21 1994

BY: [Signature]  
For the New York State Comptroller  
Pursuant to Section 112, State  
Finance Law

In addition to the acceptance of this contract, I also  
require page will  
of this contract.

[Signature]  
Commissioner of Transportation

# SCHEDULE 1

ESTIMATED COSTS ASSOCIATED WITH CLOSURE OF SCOTT AVENUE IN THE VILLAGE OF CASTLETON-ON-HUDSON.

1.	PURCHASE OF REAL ESTATE	\$165,000
2.	CLOSING COSTS	22,000
3.	REMOVAL OF WARNING DEVICES	35,000
4.	ERECTION OF FENCE WITH LOCKED GATE	10,000
5.	CONTINGENCIES	<u>5,000</u>
	TOTAL	\$237,000

COMPLETION OF WORK - The work proposed herein must be completed by

SEP 1 1994

DO NOT SIGN

OKED UNTIL BOARD OF RAIL

AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1994 by and between CONSOLIDATED RAIL CORPORATION, a corporation organized under and existing by virtue of the laws of the Commonwealth of Pennsylvania, hereinafter called "RAILROAD" and the VILLAGE OF CASTLETON-ON-HUDSON, a municipal corporation of the County of Rensselaer and the State of New York, hereinafter called "VILLAGE".

WHEREAS, in accordance with a Regulatory Order issued on February 22, 1994 by the New York State Department of Transportation, VILLAGE proposes to install fencing on and along RAILROAD's right of way and across the easterly roadway approach to the Scott Avenue grade crossing over the Hudson Line of RAILROAD's Albany Division at Mile Post 134.20, hereinafter called Project; and,

WHEREAS, RAILROAD is to be reimbursed for the cost of work to be performed by RAILROAD forces related to the development of the Project and the RAILROAD's work connected with the construction phase of the aforesaid Project as undertaken by VILLAGE under the terms of a separate arrangement between RAILROAD and the New York State Department of Transportation; and,

WHEREAS, in order to accomplish the work hereinabove proposed by VILLAGE and to determine and agree upon the manner of performing said work, the portion of it to be done by each of the parties, all upon terms, covenants and provisions hereinafter set forth.

NOW THEREFORE, for and in consideration of the premises and of the promises and covenants hereinafter set forth, it is agreed between the parties hereto as follows:

WITNESSETH

**ARTICLE I.** VILLAGE without cost to RAILROAD shall arrange for the preparation of documents, specifications, and/or drawings necessary for the Project. Said documents, specifications and/or drawings shall be submitted to the Chief Engineer of RAILROAD for their approval without which the VILLAGE shall not commence any work connected with the Project on or in the vicinity of RAILROAD's property or facilities. Approved plans may not be changed nor modified in any way which may affect RAILROAD's property or operation without prior approval in writing by RAILROAD's Chief Engineer. RAILROAD agrees to promptly review and advise VILLAGE and/or other appropriate party of its approval or disapproval of said plans.

**ARTICLE II.** VILLAGE, at its sole cost and expense, shall perform or otherwise arrange for the performance of all necessary construction work as required under the Project including without limitation any work to restore RAILROAD's



property to a condition acceptable to RAILROAD upon the completion of said Project work.

RAILROAD shall perform all work in connection with the review of plans and inspection and monitoring of construction activities within RAILROAD's right of way including arrangements for flagging services as RAILROAD deems necessary. The determination as to the need for flagging services or the alteration of any railroad facilities shall be at the sole discretion of the RAILROAD.

**ARTICLE III.** In connection with the work to be performed by the VILLAGE, it is agreed that the safety and continuity of operation of railroad traffic shall be of first importance, shall be at all times protected and safeguarded, and VILLAGE shall perform and arrange its work accordingly. Whenever, in the judgment of the Chief Engineer of RAILROAD or his representative, the work may affect or involve the safety of railroad facilities or movement of trains, the method of doing such work shall be first submitted to the Chief Engineer of RAILROAD or his duly authorized representative for his approval, without which it shall not be commenced or prosecuted. The approval of the Chief Engineer of RAILROAD or his duly authorized representative, shall not be considered as a release from responsibility or liability for any damage which RAILROAD or any other railroad operating in the area of work under the Project may suffer or for which it may be held liable by the acts of the VILLAGE or its contractor or those of his subcontractor or his or their employees.

**ARTICLE IV.** VILLAGE shall give written notice to the Chief Engineer of RAILROAD, or his duly authorized representative, not less than ten (10) days in advance of when it will start work on or in vicinity of RAILROAD's right-of-way in order that necessary arrangements may be made promptly to protect railroad traffic and facilities.

If during the performance of the work, railroad trains, tracks, or other facilities are endangered, the VILLAGE shall immediately do such work to restore safety and, upon failure of the VILLAGE to carry out such work immediately, the RAILROAD may take whatever steps are necessary to restore safe conditions. The cost and expense of restoring safe conditions or for any damage to railroad trains, tracks or other facilities caused by the VILLAGE's operations shall be considered a charge against the VILLAGE and the VILLAGE shall be responsible for payment of those charges.

In performing construction operations both on and off RAILROAD's right-of-way, the VILLAGE shall prevent the fouling of the track ballast with earth, mud, silt or other foreign matter. Where, in the opinion of the RAILROAD, any aspect of the improvement work in the vicinity of a railroad track will result in ballast becoming fouled, the VILLAGE shall take preventive measures to protect the entire ballast section. The work required to protect the railroad track ballast shall be performed by and at the expense of the VILLAGE and under the supervision of and to the satisfaction of the Chief Engineer of RAILROAD or his authorized representative.

In the event railroad ballast does become fouled, the RAILROAD shall arrange for the removal and replacement of the fouled ballast with clean ballast. The charges for this work will be billed against the VILLAGE and the VILLAGE shall be responsible for payment of those charges.

**ARTICLE V.** The VILLAGE shall be solely responsible for the cost of any RAILROAD work not reimbursed to RAILROAD under the terms of the aforementioned separate arrangement with the New York State Department of Transportation for RAILROAD work connected with this Project.

**ARTICLE VI.** The VILLAGE shall require its contractor to indemnify, defend and save harmless the RAILROAD from and against any and all liability, damages, costs and expenses for loss or damage to property whatsoever and injury to or death of persons whomsoever arising or growing, in whole or in part, out of or in connection with the performance of any of the work under the Project or the presence of any such property or persons on the premises of the RAILROAD at the site of said Project, even though railroad operations may have caused or contributed thereto. The foregoing provisions of this Article shall not apply when such damages, costs and expenses are caused by the sole negligence of RAILROAD.

**ARTICLE VII.** It is hereby understood and agreed that in addition to any other forms of insurance or bonds required under the terms of any contract between the VILLAGE and its contractor, the VILLAGE shall require its contractor to carry insurance in the name of RAILROAD and any other party designated by RAILROAD in the amounts and types as set forth in Exhibit "A" attached hereto and made a part thereof.

**ARTICLE VIII.** RAILROAD, insofar as its title enables it to do so and subject to its right to operate and maintain railroad operations and appurtenances in, on and over its property and the rights of others in, on and over such property, hereby permits VILLAGE and its agents to enter upon lands owned and operated by RAILROAD for the purposes set forth in this Agreement. As this Project will require the acquisition of real property interests by VILLAGE for future maintenance purposes, the above right of entry shall not be effective until written agreement is reached by the parties hereto as to the extent, type and consideration for such interests. The parties hereto, through their real estate representatives, shall negotiate in good faith regarding such issues, including any resulting damages to be suffered by RAILROAD. In the event the parties hereto cannot reach agreement on such issues within six (6) months after execution of this Agreement, VILLAGE shall file and prosecute an eminent domain proceeding as authorized by law for determination of such issues. The provisions of this Agreement shall survive institution of such eminent domain proceeding.

**ARTICLE IX.** Any construction work not specifically provided for in this Agreement shall be done by one of the parties hereto as may be mutually agreed upon from time to time during the progress of the Project.

**ARTICLE X.** Upon completion of the fence installation work under this Project, the VILLAGE perform all work and be solely responsible for all costs associated with the maintenance of the fencing and all related appurtenances. Said costs shall also include any costs for railroad flagging or other services necessitated by the performance of maintenance activities by VILLAGE.

**ARTICLE XI.** The VILLAGE shall be responsible for the implementation of all appropriate measures necessary to prohibit vehicular parking or any other obstruction of the remaining easterly portions of Scott Avenue between the fencing, once installed, and State Route 9J that might impair the use of the gates or prevent and/or inhibit access to those gates or the RAILROAD's property by duly authorized parties.

**ARTICLE XII.** This Agreement, when properly executed, shall be binding upon the parties hereto and their respective successors and assigns and upon the adoption of a resolution by the VILLAGE OF CASTLETON-ON-HUDSON accepting said Agreement and authorizing the signature thereof by the proper official or officials of VILLAGE, a certified copy of said resolution shall be attached to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers thereunto authorized, the day and year first above written.

CONSOLIDATED RAIL CORPORATION

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
CHIEF ENGINEER - CONSTRUCTION

VILLAGE OF CASTLETON-ON-HUDSON

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

\_\_\_\_\_  
WITNESS

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

# EXHIBIT "A"

## Insurance Requirements

In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, Contractor will be required to carry insurance of the following kinds and amounts:

### 1. Contractor's Public Liability Insurance

Contractor shall furnish evidence that, with respect to the operations it performs, it carries regular Contractor's Public Liability Insurance providing for a limit of not less than \$2,000,000 single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

### 2. Contractor's Protective Public Liability Insurance

Contractor shall furnish evidence that, with respect to the operations performed by subcontractors, it carries in its own behalf regular Contractor's Protective Public Liability Insurance providing for a limit of not less than \$2,000,000, single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

### 3. Railroad Protective Public Liability Insurance

In addition to Items 1 and 2 shown above, Contractor shall furnish evidence that, with respect to the operations it or any of its subcontractors perform, it has provided Railroad Protective Public Liability Insurance (ISO-RIMA form) in the name of Consolidated Rail Corporation providing for a limit of not less than \$2,000,000 single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Such insurance shall be furnished with an aggregate of not less than \$6,000,000 for all damages as a result of more than one occurrence.

The insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the contract is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a violation of contract. Contractor shall furnish to Consolidated Rail Corporation a copy of the Public Liability Insurance policy and the original of the ISO-RIMA policy for Railroad's Protective Public Liability Insurance. Each insurance company shall notify the following via registered or certified mail at least thirty days in advance of termination of or any change in the policy:

J. D. Cossel, Chief Engineer - Construction  
Consolidated Rail Corporation  
2001 Market Street - 12B  
P. O. Box 41412  
Philadelphia, PA 19101-1412

M. J. Rochford, Director - Insurance  
Consolidated Rail Corporation  
2001 Market Street - 25B  
P. O. Box 41425  
Philadelphia, PA 19101-1425

It is agreed that the providing of any conductors, flag personnel or other employees shall not relieve Contractor from liability of payment for any damages caused by its operations.