

CITY OF CHARLOTTE

CITYWIDE RECORDS PROGRAM

PUBLIC RECORDS REQUEST #2697

The following materials have been gathered in response to public records request #2697. These materials include:

1952 Contract With Southern Railway Company

For further information about this request or the Citywide Records Program, please contact:

Cheyenne Flotree

Citywide Records Program Manager
City of Charlotte/City Clerk's Office
600 East 4th Street, 7th Floor
Charlotte, NC 28202
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Dated July 7, 1952.

Vial Map

V-35a

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City of Charlotte, N. C.

AND

Southern Railway Company

Agreement

For elimination of grade crossings of tracks, etc., at Charlotte.

This Agreement, made and entered into this 7th day of July, 1952, by and between

CITY OF CHARLOTTE, a municipal corporation organized and existing under and by virtue of the laws of the State of North Carolina, hereinafter for convenience styled the City, party of the first part; and

SOUTHERN RAILWAY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Virginia, hereinafter for convenience styled the Company, party of the second part;

Witnesseth: That

WHEREAS, the City, in the interest of public safety and convenience, desires to improve the grade crossing situation by the elimination of interference that now exists between rail and vehicular traffic, and to that end has had a survey and recommendation made by its Consulting Engineer, Frank T. Miller, of Greensboro, North Carolina, hereinafter referred to as the City's Engineer, as embodied in his report to the City dated August 22, 1950; and

WHEREAS, the City and the Company have agreed that certain of the grade crossings referred to in said report should be eliminated by grade separation structures, and the rail traffic over certain other crossings eliminated or reduced by the construction of a cross line for use by the Company, all as hereinafter described and referred to as the "project"; and

WHEREAS, the City desires to eliminate hazards to the movement of traffic and feels itself required to take such steps as may be necessary to promote the safe movement of traffic, and as a result of negotiations the City and the Company have reached an understanding with respect to this project for this purpose, a part of the work in performance of which shall be done by the Company on a force account basis, and the City and Company desire to enter into this agreement setting forth such understanding and agreement in lieu of other action by the City;

Now, THEREFORE, the City and the Company, each in consideration of the premises, and of the covenants, promises and undertakings of the other hereinafter expressed and

contained, do hereby covenant and agree, each with the other, as follows:

1. That said project contemplates and shall include, but not be limited to, the following items of construction, all as shown on Drawing 33/417 dated August 30, 1951, entitled "Charlotte, N. C.—Map of City and Vicinity," attached to and made a part of this agreement:

- (A) Cross line:—Construct new line of railway for the Company from a point at or near Griffith Station, on the Charlotte-Columbia line of the Company, northwardly to a point of connection at or about Milepost 381, approximately two (2) miles east of Juneau, on the Charlotte-Atlanta line of the Company, with grades, right of way, automatic signals, suitable connection near Juneau with remote control of its switches, grade separation structures and other facilities, all as required to produce satisfactory operating conditions for the Company. To the extent that may be practicable, automatic signals will be provided by the removal and relocation of similar facilities which at present exist between said Griffith Station and a point at or about East Morehead Street overhead bridge.
- (B) West Trade Street:—The construction of a new underpass to eliminate the present crossing at grade near the Company's passenger station including a raise in grade of the Company's tracks approximately twelve feet.
- (C) Passenger Station:—The necessary remodeling in front of the present west wall of the Company's passenger station and related facilities and tracks of the Company to conform with the change in grade of the main tracks and other tracks of the Company; it being understood that any rearrangement of the facilities in the interior of said passenger station the Company may elect to make in the interest of improved service shall be acceptable to the City.
- (D) West Sixth Street Underpass:—Raise tracks and remodel and extend present structure to suit new grade and track arrangement.
- (E) West Sixth Street Underpass (on industry track):—Raise and relocate industry track including trestle and street underpass, as may be necessary.

- (F) West Fourth Street:—Construct new underpass where no grade crossing now exists. *44*
- (G) Piedmont and Northern Railway Company Underpass:—Remodel present underpass to conform with new line and grade of the Company's tracks contemplated by this project. *P.W.*
- (H) West Hill—West Stonewall Streets:—Construct new underpass to eliminate the present grade crossing of West Hill Street.
- (I) West Morehead Street Underpass:—Raise track and remodel and extend structure to suit new grade and track arrangement.
- (J) South Tryon Street:—Remove the present track of the Company within the limits of street.
- (K) East Fourth Street Underpass:—Widen existing structure for street and raise tracks.
- (L) West Park Avenue:—Construct new underpass for street as proposed to be extended.
- (M) East Eleventh Street Overhead Bridge:—Replace present timber overhead bridge with permanent structure.
- (N) Switching lead south of depot.

That the construction of underpasses on the double track main line and the raising of the Company's main line tracks will make necessary the raising of the present Columbia Division track for some distance southward from the passenger station. This track raise will involve the remodeling of the present underpass at South Graham Street and the remodeling of the present underpass used by the Piedmont and Northern Railway Company in the vicinity of West First Street. A new crossing at grade is to be provided for West Stonewall Street as extended toward the new Hill Street Underpass. The cost of these changes shall be included in the cost of the project.

It is understood that the items of construction listed in this section as (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K) and (N) will be constructed under the project; and that if by reason of constructing item (N) (Switching lead south of depot), the total cost of the project exclusive of items (L) and (M) exceeds Five Million Dollars,

then the Railway Company shall pay to the City a part of the additional cost occasioned by construction of the switching lead, as hereinafter in Article 6 provided. If, after constructing items (A) through (K) and item (N), the City still has sufficient funds to do either or both of items (L) and (M), preference shall first be given to construction of item (M), namely the overhead bridge at East 11th Street.

2. That in connection with the prosecution of the project and the items and changes enumerated above, modifications of the Company's facilities and additions to facilities of the Company and changes in the operations of the Company will be required as a result of and during the construction of the project, some of which are listed below for convenient reference:

- (A) The construction of temporary double track detour for use during the various stages of construction.
- (B) Suitable temporary facilities for the handling of passengers, mail, express, switching of passenger trains, and the heating and other servicing facilities for passenger trains.
- (C) The relocation and rearrangement of signals, signal wires, communication wires, poles, pipes and other facilities, of or in the service of the Company, to fit the general plan of the project.
- (D) The provision for a new or remodeled building and related facilities to take care of the Company's mail and express business, including carload shipments of same.

The cost of providing the above facilities and other facilities, including the cost of rights of way, which are required because of the construction shall be included in the cost of the project. Any and all rights of way, acquired for railroad purposes, tracks, buildings, structures and other railroad facilities acquired, furnished, constructed or erected hereunder as a part of the project, other than the overhead bridges, shall be and remain the property of the Company.

3. That in connection with the project the City will (except as hereinafter in this article mentioned) close the following streets upon and across the right of way of the Company by appropriate councilmanic action, whether such streets are now open and used or whether such crossings are dedicated

Southern Rwy to own rights of way for underpasses.

City to close former road rights of way for the Project.

or not, and will upon the closure of such portion of said streets erect adequate barricades for the purpose of preventing (a) vehicular traffic from using the crossing, at grade, of West 7th Street, and (b) vehicular and other traffic from using such of the other crossings, at grade, as are now in use, viz:

- West 8th Street
- West 7th Street (to be closed only to vehicular traffic)
- West 6th Street Place
- Oates Street (as to main line of Company)
- West 5th Street (to be closed for the present)
- West Trade Street (new underpass to be constructed)
- West 3rd Street
- West 2nd Street
- West Hill Street (new underpass to be constructed)
- Dunbar Street
- West Palmer Street
- East Third Street

West Trade closed; new City r/w subject r/w as described in this agreement.

4. That the Company to the extent that its right, title and interest may permit or may enable it so to do, and without warranty of title, hereby agrees that the City shall have permission to build and construct streets across rights of way now owned or hereafter acquired, as contemplated by this project, and to construct the underpasses and overhead bridges and approaches thereto across such rights of way, as contemplated by this project, all in accordance with plans and specifications to be approved by the City and the Company before the work is undertaken.

Southern permits construction of roads on its r/w for the project.

5. That the Company will undertake to acquire, in its name or the name of its nominee, at the cost of the City as a part of the cost of the project, the rights of way or property required for railroad purposes of the Company in connection with the project, either by purchase, or, if unable for any reason to purchase, by condemnation, provided the Company has the right to and may under the laws of the State of North Carolina condemn rights of way or property required by the Company for such purposes. The City will furnish such assistance as it may be practicable for it so to do in the procurement of such rights of way or property as may be so required by the Company. In the event the Company is unable for reasons beyond its control to purchase or acquire such rights of way or property or in the event the prices demanded or amounts awarded in any legal proceedings are

not acceptable to the City and the Company, then and in such event or events the City and the Company will take such action in the premises as may be mutually agreed upon by the City Manager and the City's Engineer, representing the City, and the Chief Engineer of the Company, representing the Company.

That the City will handle direct with owning companies the removal or relocation of any pole lines, wires and pipes now located upon the right of way of the Company or in City streets as may be required by the construction of the project.

6. That the entire project contemplated hereunder is estimated to cost Five Million Dollars (\$5,000,000), and any cost in excess of the amount paid by the Company as hereinafter provided shall be financed and paid for by the City in consideration of the surrender of such of the Company's rights, easements, and facilities as may be necessary for the completion of the project. The Company shall and hereby agrees that it will pay an amount equal to one-fourth ($\frac{1}{4}$) of the total cost of the project, provided, however, that in no event shall the Company have any obligation, except as hereinafter in this Article 6 provided, to pay an amount in excess of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000). The said payment by the Company is to be paid in fifty (50) equal installments of Twenty-five Thousand Dollars (\$25,000) per month, beginning on the first day of the month following the month in which the work is substantially started by the City, until its total agreed payment is paid, and provided, further, that in the event work on said project is discontinued at any time, or from time to time, for any reason, then and in such event the obligation of the Company to make such payments to the City shall, during the period or periods the work is discontinued, cease and determine until such time as the work is fully resumed, and provided, further, that in the event the cost of said project, exclusive of items of construction designated as (L) and (M) in Section 1 of this agreement, exceeds Five Million Dollars (\$5,000,000), then and in that event the Company shall pay to the City, in addition to the amount payable to the City as aforesaid, an amount equal to fifty per cent (50%) of the additional cost occasioned by construction of Item (N) Switching Lead south of depot, and the City shall pay or assume the balance of the remaining fifty per cent (50%) of such additional cost; the intention being that if the cost of the entire project, exclu-

sive of Items (L) and (M), does not exceed \$5,000,000 the Company shall have no obligation to make any additional payment due to the construction of said Item (N); it being understood that appropriate records and accounts of the cost of construction of said Item (N) shall be kept during the progress of said work in order that the actual cost of same may be determined upon the completion thereof.

7. That from and after the date of this agreement the City will diligently prosecute, or cause to be prosecuted, to as early a completion as may be practicable, the work involved in the several items of work comprising the project; it being understood that such work shall be prosecuted in such manner as will not unduly interfere with street traffic or the operations of the Company.

8. That any track work, bridge work or other work in connection with the project may, when mutually agreed upon by the parties hereto, be performed by the Company under the terms of agreements then in effect between the Company and its employees concerning wages and working conditions, provided, however, that the Company shall have no liability to the City for its failure to perform said work when such failure is due to strikes, riots, insurrection, acts of Providence or other causes beyond its control. The Company will prepare and submit to the City an estimate of the cost of the work to be done and performed by it in connection with each item of construction comprising the project, or each group of related items as may be required for the orderly prosecution of the work, such estimates to describe the work to be done by the Company and the location of same. The aforesaid estimates when approved by representatives of the City shall be and become a part of this agreement. The details concerning the preparation of estimates of cost, billing, accounting and other procedures incident to the performance of such work by the Company and reimbursement of the Company by the City shall be such as may be agreed upon, in writing, by and between the City Manager and the City's Engineer, representing the City, and the Chief Engineer of the Company, representing the Company. The Company shall be reimbursed for the entire cost of such work, including, without limitation, cost of labor, materials, supervision, engineering, rental of equipment, insurance, accounting and the estimated excess cost of maintaining new tracks or relocated tracks for a period of six (6) months following the date of completion and acceptance

of said work by the Company. Such reimbursement shall be based on bills rendered by the Company; it being understood that errors or omissions on any bill will not be cause for withholding payment of same, but such errors or omissions will be corrected on a subsequent or final bill; and, furthermore, that such reimbursement shall not be limited to the amount of any preliminary estimate.

9. That the City will make, or cause to be made, a field survey to determine the location for the cross line and appurtenances and the cost of the survey will be considered as a part of the total cost of said project. The location of said cross line shall be subject to approval by the Company.

10. That since the purpose of the construction of the cross line is to eliminate schedule train operations over the Charlotte-Columbia line of the Company from North Charlotte Yard, via the Company's present freight depot, to a point at or near Griffith Station and also to eliminate the present grade crossing of South Tryon Street by the Company's passenger line, the Company agrees, for itself and as lessee, that it will, as soon as it may be practicable so to do, eliminate scheduled train service over the aforementioned lines, except during emergencies.

That after the work of building the cross line shall have been completed the normal operation of both scheduled passenger and freight trains to and from Columbia will be via the double track line passing the present passenger station, and the cross line from the point of its connection with the Charlotte-Atlanta line near Juneau to a point at or near Griffith Station on the said Charlotte-Columbia line of the Company.

That in cases of emergency, it may be necessary for the Company and the Company shall have the right to operate some or all of its scheduled trains between Charlotte and Columbia via its present freight line, but in such event the Company will use its best efforts to restore normal operating conditions as soon as practicable.

11. That after the completion of the cross line the Company will remove its passenger main track across South Tryon Street at or near the building of the Charlotte Observer. That the remaining portions of the passenger line between the passenger depot and a point near East Morehead Street overhead bridge may be continued in service by the Company for industrial purposes.

12. That the Company may continue in service its line of railway and subsidiary tracks from North Charlotte Yard via the Company's freight depot passing under East Morehead Street overhead bridge and thence to Griffith Station; PROVIDED, however, that operations over this line will normally be restricted to switching movements. The Company will conduct such operations when in the judgment of the Company the same will least interfere with street traffic.

13. That the work involved in that portion of the project located as shown on Drawing No. 1 (b) (condensed), General Layout Plan for Grade Crossing Elimination at Charlotte, N. C.—West Side, dated August 20, 1951, prepared by the City's Engineer, a copy of said drawing being hereunto annexed and made a part of this agreement, shall be substantially in accordance with said drawing No. 1 (b) and that the work involved in the remainder of the project shall be substantially in accordance with such additional drawings as may be prepared and mutually agreed upon by the City's Engineer and the Company, subject, however, to such revisions, additions and changes in all said drawings, including drawing No. 1 (b), as may be mutually agreed upon by and between the City's Engineer and the Company, and the work shall be done and performed pursuant to drawing No. 1 (b), and said additional drawings (as the same or any of them may be so revised), under such plans, specifications and special provisions as may be adopted and mutually agreed upon by the City's Engineer and the Company.

14. That the City and the Company will severally require any Contractor or Contractors to whom or to which it or they may let the work (or any part or portion thereof) hereinbefore recited and herein undertaken to be done and performed by the City and the Company, respectively, to execute an agreement containing, in addition to such other covenants as the City and the Company, respectively, require, a specific covenant on the part of the Contractor or Contractors to indemnify the City and the Company, said covenant to be such as may be approved by the City Manager and the City's Engineer, representing the City, and the Chief Engineer of the Company, representing the Company.

15. After the completion of the underpasses to be built as part of the project, the Company will at its own cost maintain and make all necessary repairs to the substructures and superstructures of same and the City will at its own cost maintain the roadways and sidewalks of the streets passing

Sets out bridge and roadway maintenance for underpasses built for the project.

Section covering
lighting.

beneath the structures and all facilities in connection with said streets, including highway drainage and lighting; and after the completion of overhead bridges to be built as part of the project, the City will maintain at its own cost the superstructures and substructures of said overhead bridges and the approaches thereto, within the City limits, including the street paving, sidewalks, highway drainage and lighting. It is further understood and agreed that the maintenance obligations assumed by the parties hereto are intended to cover ordinary maintenance only and are not intended to obligate either party in the event changed conditions or major deterioration should require a new structure.

16. That as a part of the cost of this project, the City will assume responsibility for, defend or dispose of all claims and demands and all costs and expenses incident thereto arising out of or in anywise connected with the carrying out of the objectives of this project which may be asserted by any person, firm or corporation on account of property loss, damage to property (real or personal), personal injury or loss of life suffered by anyone, including employees of the Company, or on account of any breach of contract concerning industrial or other tracks, or the inability or failure of the Company to discharge its common carrier duties, any fault or negligence of the Company to the contrary notwithstanding, provided, however, that the liability of the City, as defined in this paragraph, shall not apply to any operations of the Company which may be in no wise connected with the prosecution or completion of this project; that the City will indemnify and save the Company harmless against any loss suffered by the Company in, or in connection with, the carrying out of the objectives of this project; and that, for the protection of the City and the Company, in connection with the work involved in this project, against loss which either the City or the Company may suffer on account of personal injury, loss of life, property loss, damage to property (real or personal), breach of contract, or inability or failure of the Company to discharge its common carrier duties, or otherwise, appropriate forms of insurance shall be obtained at the proper time in amounts which the parties hereto may deem adequate, and the cost thereof shall be considered a part of the cost of this project. Any cost or expense incurred by the City and Company, or either of them, in settlement of claims or judgments for any loss, injury or damage not covered by such insurance shall be considered a part of the cost of the project.

17. That the project contemplated hereunder is intended by both the City and the Company, upon its completion, to meet the requirements for grade separation for many years in the future and it is agreed that the prosecution of the project will be directed to that end so that additional separation of grades will not be necessary or required.

18. That the obligations of the parties hereto to perform their respective covenants and agreements herein contained are contingent on approval of this contract by any governmental or public authority having jurisdiction in the premises.

19. This agreement supersedes and cancels as of the date hereof any and all existing agreements between the parties hereto having to do with this project, including memorandum of agreement, bearing date of November 21, 1950.

IN WITNESS WHEREOF, the City, acting by and through its Mayor, thereunto duly authorized by resolution of the City Council of the City adopted on the 19th day of December, 1951, and the Company have caused these presents to be executed and their respective corporate seals to be hereunto affixed and attested by their officers thereunto duly authorized, the day and year first above written.

CITY OF CHARLOTTE, North Carolina,
By
VICTOR SHAW,
Mayor.

[SEAL]

Attest:

LILLIAN R. HOFFMAN,
City Clerk.

SOUTHERN RAILWAY COMPANY,
By
D. W. BROSNAN,
Vice-President.

[SEAL]

Attest:

R. L. EDDINGTON,
Assistant Secretary.

Approved as to form and legal sufficiency:

JNO. D. SHAW,
City Attorney.
J. B. A.
F. H. T.

CITY OF CHARLOTTE

North Carolina

A regular meeting of the City Council of the City of Charlotte, North Carolina, was held in the Council Chamber, City Hall, on Wednesday, December 19, 1951, at 4 o'clock p.m., with Mayor Shaw presiding, and Councilmen Albea, Baxter, Boyd, Coddington, Delinger, Jordan and Van Every present.

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH SOUTHERN RAILWAY COMPANY WITH RESPECT TO GRADE-CROSSING ELIMINATION PROGRAM IN THE CITY OF CHARLOTTE

WHEREAS, it is in the public interest and safety of the citizens and property of the City of Charlotte that traffic congestion in the uptown portion in the City of Charlotte be given immediate attention and alleviation.

AND, WHEREAS, the City Council of the City of Charlotte finds as a fact that the plans prepared by Frank T. Miller, Consulting Engineer are the best available and practical solution of unbottling the uptown portion of the City of Charlotte by eliminating through trains on the east side of Charlotte upon the Charlotte-Columbia division of the Southern Railway and providing for the elimination of grade-crossings on the west side of town.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE:

THAT, the Mayor and the City Clerk be and they are hereby authorized and empowered and directed by and on behalf of the City of Charlotte to enter into a contract in form hereto attached with Southern Railway Company to accomplish said purpose and the various officials and employees of the City are requested with all due dispatch to prosecute said program as outlined in said contract to a speedy conclusion in the best interest of the citizens of the City of Charlotte; it being understood and agreed that the City of Charlotte will not be called upon to spend, and will not spend as its part of the cost of the project more than one-fourth thereof at any time.

I, Lillian R. Hoffman, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of a Resolution adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 19th day of December, 1951, and is so recorded in Minute Book 34, at Page 168 and in Resolutions Book 1, at Page 452.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 17th day of June, 1952.

(SEAL)

LILLIAN R. HOFFMAN,
City Clerk.

SOUTHERN RAILWAY SYSTEM
OFFICE OF VICE PRESIDENT
IN CHARGE OF OPERATION
WASHINGTON 13, D. C.

July 8, 1952.
117-8017

Subject: Grade Separation Project—Charlotte, North Carolina.

Mr. H. A. Yancey, City Manager,
City of Charlotte,
Charlotte, North Carolina.

Dear Mr. Yancey:

The City of Charlotte and Southern Railway Company have negotiated and agreed upon a contract providing for grade crossing eliminations in the City of Charlotte. The Supreme Court of North Carolina, in an opinion published on June 11, 1952, in the case of *Austin v. Shaw*, has approved the power of the City to execute the contract, and following the publication of this opinion the contracting parties, acting through their duly authorized officers, executed the contract on July 7, 1952. Immediately thereafter certain questions arose concerning the manner and timing of performance of the contract.

In the agreement between the City and the Railway Company certain items of construction are outlined to be accomplished, but the sequence of performing these several items is not specifically set forth except in one instance. In order to consummate the project with a minimum of interference with vehicular and pedestrian traffic in the City's streets and with the operations of the Railway Company, as provided in Article Seven of the contract, it seems desirable that the total project be divided into construction phases and that these several phases of construction be undertaken in sequence and only at such time as the proper representatives of the City and the Railway Company are satisfied that funds are, or in all probability will be, available to carry through the individual phase to prompt completion and thus avoid undue interference with street and railway traffic.

We think that the work to be performed under the contract is susceptible of division into three major phases or components, the first being the construction of the cross line (Paragraph I, Item A of the contract) and removal of the South Tryon Street grade crossing (Paragraph I, Item J of the contract), and the other two being, respectively, the work to be done on the west side of the City along the double track main line and the work to be done on the east side of the City along the freight line of the Railway Company.

Included in the work to be done along the west side are: The construction of a new underpass at West Trade Street, including a raise in the grade of the tracks of the Railway Company of approximately 12 feet; change in grade of tracks and work done in connection with facilities relating to the passenger station; remodeling of West Sixth Street underpass on main tracks; remodeling of underpass carrying West Sixth Street under industry track; construction of new underpass at West Fourth Street; remodeling of Piedmont and Northern Railway Company underpass; new underpass at West Hill—West Stonewall Street; remodeling of West Morehead Street underpass; and other work incidental to raising the grade of the double track main line, all as more particularly set forth in Article I of the contract.

Included in the work to be done on the east side is the remodeling of the East Fourth Street underpass as set forth in Article I of the contract.

You will note that we have not attempted to allocate to either of these three phases of work the construction of the new underpass at West Park Avenue, the replacement of the East Eleventh Street overhead bridge, or the construction of the switching lead south of the depot, inasmuch as special provision is made in the contract itself governing the sequence in which these last three items will be performed.

With this division of the contract into three major phases, we think that the ends to be accomplished with respect to facilitating street and railway traffic can best be achieved by pursuing each of these phases independently and in the sequence named, that is to say, the construction of the cross line should be first undertaken and completed and then construction on the West side should be undertaken and completed, and, finally, the construction on the East side should be undertaken and completed. As to securing or having a reasonable prospect of securing adequate funds for the completion of the contract, we think that the matter can most satisfactorily be handled by securing or having assurance of securing the funds necessary for the completion of phase one before the work on phase one is begun, and likewise with respect to phases two and three.

The question of what constitutes reasonable assurance of securing necessary funds for the completion of any one of the phases of the contract must, of necessity, be determined at the proper time by representatives of the contracting parties. Accordingly, it is our understanding that the City Manager and the City's Engineer, on the one hand, and the Chief Engineer of the Railway Company, on the other hand, will, for the purpose of this understanding, have authority in each instance to determine whether there is such reasonable assurance of securing necessary funds as will permit the commencement of work on any one of the three phases of the contract as outlined above.

If you, the Mayor of the City of Charlotte, and the City's Engineer agree with our suggestions and understanding as herein expressed, will you kindly sign and have the Mayor and the City's Engineer, Mr. Miller, also sign one copy of this letter and return it to me. One signed copy of the letter is enclosed for this purpose and there are also enclosed several additional unsigned copies for such use as you may wish to put them.

Yours very truly,

D. W. BROSNAN.

AGREED:

CITY OF CHARLOTTE, N. C.

By VICTOR SHAW, <i>Mayor.</i>	Date July 24th, 1952.
By H. A. YANOEY, <i>City Manager.</i>	Date July 24th, 1952.
By FRANK T. MILLER, <i>City's Engineer.</i>	Date July 24th, 1952.

SOUTHERN RAILWAY SYSTEM
OFFICE OF CHIEF ENGINEER
WASHINGTON 13, D. C.

July 9, 1952
117-8017

Subject: Grade Separation Work—Charlotte, N. C.

Mr. H. A. Yancey, City Manager,
City of Charlotte,
Charlotte, North Carolina.

Dear Mr. Yancey:

The agreement between the City of Charlotte and Southern Railway Company, dated July 7, 1952, covering grade separation work at Charlotte, including the cross line, stipulates in Article 14 the following:

"That the City and the Company will severally require any Contractor or Contractors to whom or to which it or they may let the work (or any part or portion thereof) hereinbefore recited and herein undertaken to be done and performed by the City and the Company, respectively, to execute an agreement containing, in addition to such other covenants as the City and the Company, respectively, require, a specific covenant on the part of the Contractor or Contractors to indemnify the City and the Company, said covenant to be such as may be approved by the City Manager and the City's Engineer, representing the City, and the Chief Engineer of the Company, representing the Company."

Pursuant to the above stipulation, I submit for your consideration our suggestion for such a covenant, viz.:

- (A) The Contractor covenants that the Contractor will indemnify and save harmless the City against any and all loss of or damage to its property, and that it will indemnify and save harmless Southern Railway Company against any and all loss of or damage to its property or property in its care, custody or control, and, furthermore, against any and all claims, demands, suits, judgments, fines or sums of money accruing, or claimed to accrue to any person, corporation, municipality, firm or company, against the City and/or Southern Railway Company, for loss of life or injury or damage to person, or property, or violation of any municipal law or regulation, growing out of or claimed to grow out of, any act or omission of, or method pursued or hazard encountered by the Contractor, or from or as a consequence of the use in said work of defective or inferior materials, or by or on account of any improper material or workmanship used or employed in the prosecution of said work, or by or on account of any accident, or of any other act or omission of the said Contractor, its agents, employees, servants or workmen, in or about or in connection with the work herein undertaken to be done and performed by the Contractor. The Contractor, moreover, agrees to indemnify and save harmless the City and/or Southern Railway Company against any and all claims or liens which may be made or placed upon the said work by any laborer, materialman or furnisher of materials purchased and furnished by the

Contractor, or any other person, exclusive of the materials, if any, purchased and furnished by the City and Southern Railway Company, and will, furthermore, reimburse the City and Southern Railway Company for any attorney's fees, costs or other expenses incurred by it or them growing out of or arising by reason of any claim or lien, unless within the exception mentioned above in this article, upon said work; nor shall the City or Southern Railway Company be responsible to the Contractor for any delay to, or interruption of, said work which may be caused by any legal proceeding or the action of any governmental or public authority.

- (B) That the Contractor will, at the cost and expense of the Contractor, for the further protection of the City and Southern Railway Company, take out and deliver to the City and Southern Railway Company, respectively, and at all times during the progress and until the final inspection and acceptance of said work by the City and Southern Railway Company maintain in full force and effect a policy or policies of contractual liability insurance in favor of and in form and amount satisfactory and acceptable to the City and Southern Railway Company. The obligation of such insurance policy or policies shall include, without exception or exclusion, the following obligation:

"The Contractor covenants that the Contractor will indemnify and save harmless the City against any and all loss of or damage to property of the City, and that the Contractor will indemnify and save harmless Southern Railway Company against any and all loss of or damage to its property or property in its care, custody or control, and, furthermore, against any and all claims, demands, suits, judgments, fines or sums of money accruing, or claimed to accrue to any person, corporation, municipality, firm or company, against the City and/or Southern Railway Company, for loss of life or injury or damage to person, or property, growing out of or claimed to grow out of any act or omission of, or method pursued or hazard encountered by the Contractor, or from or as a consequence of the use in said work of defective or inferior materials, or by or on account of any improper material or workmanship used or employed in the prosecution of said work or by or on account of any accident or of any other act or omission of the Contractor, its agents, servants, employees or workmen, in or about or in connection with the work herein undertaken to be done and performed by the Contractor."

It is distinctly understood by the Contractor that the furnishing by the Contractor of such policy or policies of insurance and the acceptance thereof by the City and Southern Railway Company is not intended to, and shall not, limit, affect or modify the obligations or liabilities of the Contractor under the foregoing paragraph (A).

- (C) The Contractor further covenants to pay all taxes now or hereafter imposed upon any income of the Contractor, and any sales tax, use tax or other tax the obligation to pay which is created by the purchase of building materials, other tangible personal property or the performance of services in or in con-

nection with the work herein undertaken to be done and performed by the Contractor; to furnish the City and Southern Railway Company evidence satisfactory to them of the payment of such taxes, and to indemnify and save harmless the City and Southern Railway Company, and each of them, from and against the consequences of the failure on the part of the Contractor to pay such taxes.

If you and Mr. Frank T. Miller, the City's Engineer, approve the foregoing covenant, kindly sign and have Mr. Miller sign the stipulation to that effect appended to the enclosed copy of this letter and return to me.

Two (2) extra signed copies of this letter are enclosed, one of which should be retained by Mr. Miller as the above stipulations, with an appropriate preface will have to be included in any specifications that he may write for various parts of the project.

Yours very truly,

J. B. AKERS
Chief Engineer
Southern Railway Company

APPROVED:

CITY OF CHARLOTTE, N. C.

By H. A. YANCEY
City Manager

Date July 24th, 1952.

By FRANK T. MILLER
City's Engineer

Date July 24th, 1952.

SOUTHERN RAILWAY SYSTEM
OFFICE OF CHIEF ENGINEER
WASHINGTON 13, D. C.

July 10, 1952
117-8017

Subject: Grade Separation Work—Charlotte, N. C.

Mr. H. A. Yancey, City Manager,
City of Charlotte,
Charlotte, North Carolina.

Dear Mr. Yancey:

The agreement between the City of Charlotte and Southern Railway Company, dated July 7, 1952, covering the grade separation work at Charlotte, including the construction of the cross line, provides in Article 5 that Southern Railway Company will undertake to acquire the rights-of-way and property required for railroad purposes at the cost of the City. The agreement does not provide how the Railway Company is to be reimbursed for the cost of acquiring such rights-of-way and property.

Article 8 of the agreement provides for work to be done by the Railway Company on the basis of force account estimates to be submitted to and approved by the City. The details concerning the preparation of estimates of cost, billing, accounting and other procedures incident to the performance of such work by the Railway Company and reimbursement of the Railway Company by the City shall be such as may be agreed upon, in writing, by and between the City Manager and the City's Engineer, representing the City, and the Chief Engineer of the Company, representing the Company.

I submit below, for your consideration, our suggestions for such details and procedures, viz.:

- (1) Reimbursement of Railway Company by City for Expenditures in connection with Acquisition of Rights-of-Way and Property

Expenditures made by the Railway Company for acquisition of rights-of-way and property, including all costs incidental thereto, will be billed to the City monthly on the basis of expenditures made in connection with such acquisitions. The actual amounts of such expenditures shall be used in preparation of these bills. Payment of such bills shall be made by the City within 30 days of the date of rendering each bill.

- (2) Reimbursement of Railway Company by the City of Charlotte for work done under provisions of the agreement

Any expenditures for labor and materials by Southern Railway Company (hereinafter referred to as Company) for account of the City of Charlotte, N. C. (hereinafter referred to as City), or any work done by the Company in connection with any portion of work included in the project, including cost of engineering services, field and shop inspection, the cost of accounting, work train employees, foremen, cooks on camp cars and other employees used on the work, will be considered or treated as part of the cost of the project. Such expenditures shall be detailed and all accounts of either party hereto shall

be subject to audit by the other party hereto. Reimbursement of the Company by the City shall be on the basis of monthly bills prepared by the Company and submitted to the City for payment within thirty (30) days. Such bills shall be prepared on the following basis:

- (a) Labor costs shall consist of the payroll cost of all labor actually used on the work, plus the current rate for vacation allowance (now 3%), to which shall be added six and one-fourth per cent (6¼%), or such other rate as may be in effect when the work is performed, for railroad retirement and unemployment taxes. Ten per cent (10%) of payroll cost shall be added to cover supervision, and use of small tools.
- (b) The actual cost of insurance taken out by the Company to protect the Company and/or the City as provided in the agreement dated July 7, 1952.
- (c) Material cost shall be the actual invoice price, plus freight at regular tariff rates for material purchased specifically for the work; other material furnished from stock of the Company shall be billed at stock value, plus fifteen per cent (15%) to cover freight and handling. The cost of material shall also include any Federal, State and City taxes levied on the cost of the material and on the freight charges for such material. All salvaged material, except such material as may be turned over to the City as provided in the specifications, shall be credited at its appraised value, less fifteen per cent (15%) for freight and handling, when no longer required for the work. Such appraisal shall be made and agreed to jointly by the City's Engineer and an authorized representative of the Company's Chief Engineer.
- (d) Equipment furnished by Company:

Rental rates for equipment used shall be the then current rates prescribed by the General Managers' Association of Chicago. For equipment used but not covered by the above rates, the then current rental rates established by the Associated Equipment Distributors shall be used. For equipment used but not covered by either of the above said rate schedules, rental rates shall be such as may be established by mutual agreement between the City's Engineer and the Chief Engineer of the Company, or his authorized representative.

The charges for fuel, oil, supplies and servicing of work train and other equipment to be included in the costs to be paid by the City hereunder shall be those customarily made by railroads for such materials, supplies and services.

For cost of moving work equipment of the Company in trains of the Company, but not on its own wheels, one (1) cent per ton mile each way to and from the site of said work.

For cost of moving work equipment of the Company on its own wheels in trains of the Company twenty (20) cents per mile for pile drivers and cranes, six (6) cents per mile

for camp cars and other cars, and equitable and comparative costs for moving other equipment, each way to and from the site of said work.

If you and Mr. Frank T. Miller, the City's Engineer, are agreeable to such details and procedure, kindly sign and have Mr. Miller sign the stipulation to that effect appended to the enclosed copy of this letter and return it to me. Two (2) extra signed copies of this letter are also enclosed for such use as you may have for same.

Yours very truly,

J. B. AKERS,
Chief Engineer,
Southern Railway Company

APPROVED:

CITY OF CHARLOTTE, N. C.
By H. A. YANCEY,
City Manager.

Date July 24th, 1952.

By FRANK T. MILLER,
City's Engineer.

Date July 24th, 1952.

