

EXHIBIT O-2

MASTER CONSTRUCTION AGREEMENT (DRPT)

BETWEEN

CSX TRANSPORTATION, INC.

AND

THE VIRGINIA DEPARTMENT OF RAIL

AND PUBLIC TRANSPORTATION

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MASTER CONSTRUCTION AGREEMENT (DRPT)

THIS MASTER CONSTRUCTION AGREEMENT (DRPT) is made and entered into on the last date executed below (as amended from time to time, this “**Agreement**”), by and between **CSX Transportation, Inc.**, a Virginia corporation having its place of business at 500 Water Street, Jacksonville, Florida 32202 (“**CSXT**”), and the **Virginia Department of Rail and Public Transportation**, a political subdivision of the **Commonwealth of Virginia**, having its place of business at 600 East Main Street, Richmond, Virginia 23219 (“**DRPT**”) and their successors or permitted assigns.

RECITALS:

- A. DRPT and CSXT (collectively referred to as the “**Parties**,” and individually as “**Party**”) desire to improve rail safety, capacity, passenger service and the transportation infrastructure within the Commonwealth of Virginia and the District of Columbia by completing certain projects as set forth herein.
- B. The Parties have entered into engineering agreements for work to be undertaken by CSXT and DRPT – Master Engineering Agreement (CSXT) and Master Engineering Agreement (DRPT) (the “**Engineering Agreements**”), respectively.
- C. The Parties now desire to enter into construction agreements for work to be undertaken by DRPT and CSXT – this Agreement and the Master Construction Agreement (CSXT), respectively.
- D. All engineering or construction work performed by CSXT will be governed by the Master Engineering Agreement (CSXT) and the Master Construction Agreement (CSXT), respectively, even if such work relates to a Project being undertaken by DRPT under this Agreement.

It is the purpose of this Agreement to provide for the terms and conditions upon which the Work under this Agreement may proceed.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated in this Agreement by reference, and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties do hereby agree to be bound by the following terms and conditions:

1. DEFINITIONS

Capitalized terms used but not otherwise defined herein shall be defined for the purposes of this Agreement as set forth below or as such terms are defined in the Comprehensive Rail Agreement:

Applicable Project Standards – The requirements and standards set forth for a Project in (i) Contract Documents, (ii) CSXT Design and Construction Standards, (iii) Law, and (iv) Governmental Approvals; *provided*, however, that with respect to the design and construction of structures related to the DRPT-owned Long Bridge Improvements and Franconia-Springfield

Bypass, DRPT may elect to apply AREMA's most current recommended practices that are in effect when the applicable project reaches thirty percent (30%) design, so long as it provides for an interoperable freight and passenger rail corridor. CSXT and DRPT may mutually agree to reasonable modifications to AREMA's recommended practices for freight rail that reflect the predominant passenger use of the Long Bridge Improvements and Franconia-Springfield Bypass and the requirement of interoperability.

AREMA – The American Railway Engineering and Maintenance-of-Way Association.

Authorization Notice – The meaning given thereto under the applicable Engineering Agreement.

Business Day – Any day that is not a Saturday, a Sunday, or a federal, Florida or Virginia public holiday.

Code of Virginia – The Code of Virginia of 1950, as amended from time to time.

Commonwealth – The Commonwealth of Virginia.

Comprehensive Rail Agreement – That certain Comprehensive Rail Agreement between DRPT and CSXT, executed on or about March __, 2021, for the sale and purchase of certain rail infrastructure from CSXT to DRPT.

Contract Documents – As set forth in Section 2 (*Contract Documents*), the Comprehensive Rail Agreement, this Agreement and the Project Addendum for each Project, and applicable Modification(s).

Contract Time – The anticipated period of time to complete a Project, as established by the Work Schedule for that Project.

Contractor(s) – Third party contractor(s), including consultants, which may be engaged by DRPT to perform portions of the Work with respect to a given Project.

CSXT Assets Projects – Projects where the Work to be performed will involve facilities, land, and/or other property owned entirely by, or under the primary control of, CSXT, as further described in Exhibit E-1 (*Design, Procurement, and Construction Responsibility Matrix*) of the Comprehensive Rail Agreement.

CSXT Design and Construction Standards – The CSXT design and construction standards that CSXT uses when undertaking design and construction projects at its own cost, including the CSXT standards with respect to grades, degree of curvature, clearances or braking distances in effect as of the original execution date of the Term Sheet; *provided*, that CSXT may modify the CSXT Design and Construction Standards from time to time, *provided, further*, that if the CSXT Design and Construction Standards included in a DRPT Assets Project that has reached thirty percent (30%) design are the then-applicable CSXT Design and Construction Standards, CSXT shall not be entitled to alter, amend or modify the CSXT Design and Construction Standards other than as required by Law, without DRPT's approval, which shall not be unreasonably withheld, conditioned or delayed.

CSXT Work Cost – All reasonable and actual costs and expenses, internal and external, direct and incidental, that comply with all Applicable Project Standards, Laws and Funding Agreement terms and conditions, incurred by CSXT in performing its obligations or exercising its rights pursuant to a Project Addendum under this Agreement. Overhead and indirect expenses shall be calculated using audited rates approved by the Federal Highway Administration and/or Federal Railroad Administration, as applicable.

Designated Representative – The persons appointed by DRPT and CSXT, respectively, to represent that Party in connection with a given Project, pursuant to Section 7.1 (*Designation of Representatives*) of this Agreement.

DRPT Assets Projects – Projects where the Work to be performed will involve facilities, land, and/or other property owned entirely by, or under the primary control of, DRPT, as further described in Exhibit E-1 (*Design, Procurement and Construction Responsibility Matrix*) to the Comprehensive Rail Agreement.

Federal Requirements – The provisions required to be part of federal-aid contracts relating to rail projects and applicable to the Project(s).

Final Completion – Completion of all punch list items, and other conditions as applicable, with respect to a given Project following Substantial Completion.

Force Majeure Events – The occurrence of any of the following events that materially and adversely affects the performance of either CSXT's or DRPT's obligations, *provided* that such events (or effects of such events) could not have been avoided by the exercise of reasonable caution, due diligence, or efforts by the affected Party: (a) war (including civil war and revolution), invasion, armed conflict, violent acts of a foreign enemy, military or armed blockage, or military or armed takeover of the Project, in each case occurring within the Commonwealth; (b) any act of terrorism or sabotage that causes direct physical damage to or otherwise directly causes interruption to construction or direct losses during operation of the Project; (c) nuclear explosion or contamination, in each case causing direct physical damage to the Project or radioactive contamination of the Project; (d) riot, strikes, or other labor disputes (including the resolution or settlement of strikes or other labor disputes), and civil commotion on or in the immediate vicinity of the Project including protests; (e) acts of God such as flood, earthquake, hurricane, tornado and other significant storm or weather occurrence, in each case that causes directly physical damage to the Project; (f) fire or explosion not attributable to the fault of CSXT or any Contractor that directly impacts a material element of the physical improvements to the Project or that materially impacts performance of the Work; (g) epidemic or other significant disease that directly impacts the ability to perform the Work; and (h) Construction Emergencies, vandalism, inability to obtain materials or equipment or the authority to use the same, or any other event beyond the reasonable control of either Party, which has the effect of preventing either from timely or properly performing its obligations under this Agreement.

Franconia-Springfield Bypass – The proposed project between CSXT Milepost CFP 96.2 and CFP 98.8, between the Newington and Franconia-Springfield areas of Fairfax County, Virginia, that includes a new grade separated, aerial two-track bridge structure and retained earth embankments, crossing over the existing CSXT double mainline tracks.

Funding Agreement – An agreement between DRPT and a Funding Partner governing such Funding Partner’s provision of funding for one or more Projects.

Funding Partners – Those entities other than DRPT providing funding for a Project.

Governmental Approvals – All local, regional, state, and federal agreements, studies, findings, permits, approvals, authorizations, certifications, consents, decisions, exemptions, filings, leases, licenses, registrations, rulings and other governmental authorizations required to be obtained or completed under Law prior to undertaking any particular activity contemplated by the Contract Documents. The term “**Governmental Approvals**” includes NEPA Documents and the USACE 404 Individual Permit.

Governmental Entity – The government of the United States of America, the District of Columbia, the Commonwealth, the cities and counties within the Commonwealth and any other agency, or subdivision of any of the foregoing, including any federal, state, or municipal government, and any court, agency, special district, commission or other authority exercising executive, legislative, judicial, regulatory, administrative or taxing functions of, or pertaining to, the government of the United States of America, the Commonwealth or the cities and counties within the Commonwealth. However, for the purposes of this Agreement, “Governmental Entity” does not include DRPT.

Joint Operating and Maintenance Agreement – The agreement between DRPT and CSXT, executed on March __, 2021, for the continued operation and maintenance of the Projects following Final Completion.

Law – All laws, treaties, ordinances, judgments, Federal Requirements, decrees, injunctions, writs and order of any Governmental Entity, and all rules, regulations, orders, formal interpretations and permits of any Governmental Entity having jurisdiction over construction of the Project(s), performance of the Work, or operation of the Project(s), or the health, safety, or environmental condition of the Project(s), as the same may be in effect from time to time. Laws include the Code of Virginia.

LE Interlocking – L’Enfant Interlocking at CSXT Milepost CFP 111.5.

Long Bridge Improvements – A series of projects between RO Interlocking in Arlington, Virginia and LE Interlocking in the District of Columbia that includes a second two-track railroad bridge over the Potomac River upstream of the Long Bridge, a series of additional bridges in accordance with the FRA Record of Decision dated August 12, 2020, related track work, and a bicycle and pedestrian bridge or bridges upstream of the new bridge span over the Potomac River.

Master Construction Agreement (CSXT) – That certain agreement between CSXT and DRPT, executed contemporaneously with this Agreement, in which CSXT has agreed to undertake the work contemplated therein.

Master Work Schedule - The critical path method schedule to be maintained by DRPT for all Projects under this Agreement, the Master Construction Agreement (CSXT), the Engineering Agreements, or any other agreements entered into intended to further the purpose of the Comprehensive Rail Agreement.

Maximum Not To Exceed Amount – The maximum amount allocated by DRPT for each Project set forth in the applicable Project Addendum.

Modification(s) – All written and duly executed amendments to the Contract Documents (excluding the Comprehensive Rail Agreement), including amendments to Project Addenda, establishing, modifying or adjusting the Work or the Work Schedule with respect to a given Project.

NEPA – The National Environmental Policy Act, 42 U.S.C. § 4321 *et. seq.*, as amended and as it may be amended from time to time.

NEPA Documents – The Environmental Impact Statements (EIS) and Environmental Assessments (EA), as well as Categorical Exclusions (CE) and any other items required by Section 102 in Title I of the National Environmental Policy Act (NEPA).

Project – Each of the set of improvements that will be more specifically described in Project Addenda related to this Agreement. “Projects” shall also include, collectively, CSXT Assets Projects and DRPT Assets Projects.

Project Addendum – A written and duly executed addendum to this Agreement whereby CSXT and DRPT establish, for each Project, the Work to be performed by DRPT, pursuant to Section 3 (*Work and Project Addenda*) of this Agreement, as amended from time to time by Modifications.

Retained RF&P Corridor – The portion of the RF&P Corridor retained by CSXT after CSXT’s conveyance of its right, title, and interest in Segment 1 to DRPT pursuant to Section 4.2.1 of the Comprehensive Rail Agreement. “RF&P Corridor” and “Segment 1” have the meaning ascribed to them in the Comprehensive Rail Agreement.

RO Interlocking – The Rosslyn Interlocking at CSXT Milepost CFP 109.9.

Substantial Completion – The achievement of the conditions set forth in the relevant Project Addendum with respect thereto.

Term Sheet – That certain binding term sheet between CSXT and DRPT, dated December 16, 2019 and amended on June 29, 2020 and August 31, 2020.

VPRA – The Virginia Passenger Rail Authority.

Work – All tasks, duties, obligations, services, requirements and activities of whatever kind or nature, express or implied, direct or incidental, to be performed, and all items tangible and intangible, to be provided by DRPT respecting each Project pursuant to this Agreement, including but not limited to administration of the Project and the furnishing of labor, materials, supplies and equipment associated with such Project.

Work Schedule – The critical-path-method schedule prepared by DRPT in collaboration with CSXT and incorporated into the relevant Project Addendum for the Work for a given Project.

Work Windows – Periods when Contractor and/or DRPT forces will have access to DRPT facilities to perform Work on a given Project pursuant to this Agreement, as identified by the applicable Work Schedule, during which time rail operations may be suspended or otherwise modified through all or part of the Project area.

2. CONTRACT DOCUMENTS

2.1 Identification. The Contract Documents for each Project shall consist of the following:

- (a) the Comprehensive Rail Agreement;
- (b) this Agreement;
- (c) Project Addenda; and
- (d) any and all applicable Modifications.

2.2 Priority. In the event of conflict among the Contract Documents, the terms of one shall prevail over another in the following order of priority, from highest to lowest:

- (a) any and all applicable Modifications;
- (b) the relevant Project Addenda;
- (c) this Agreement; and
- (d) the Comprehensive Rail Agreement.

3. WORK AND PROJECT ADDENDA

3.1 Projects. Projects have been or shall be assigned for construction as between CSXT and DRPT in accordance with Section 14.8, and Exhibit E-1 of the Comprehensive Rail Agreement, which may be amended from time to time. Any variance from the construction responsibilities set forth in Exhibit E-1 to the Comprehensive Rail Agreement shall be handled according to the Comprehensive Rail Agreement. The Parties agree that this Agreement shall be used for any Projects to be constructed by DRPT. The Parties shall use the Master Construction Agreement (CSXT) for any improvements to be constructed by CSXT. Projects constructed by DRPT shall be in accordance with the Contract Documents applicable to each Project unless otherwise specified in the Project Addendum.

3.2 Submission of Project Addendum.

(a) Upon completion of the engineering and design work for each Project pursuant to the applicable Authorization Notice, DRPT shall work collaboratively with CSXT to prepare and submit a Project Addendum to CSXT for its review and comment. Such Project Addendum shall specifically describe the Work to be performed by DRPT and include (i)

insurance requirements, (ii) permitting requirements, and (iii) any other information necessary for the performance of the Work.

(b) Upon receipt of the Project Addendum, CSXT shall have 30 days to review the Project Addendum and provide comments. Within 30 days of receipt of CSXT's comments, DRPT shall prepare and resubmit a revised Project Addendum that reflects CSXT's comments that relate to Applicable Project Standards only. DRPT shall incorporate CSXT's comments unless such comments, in DRPT's reasonable opinion, are not necessary to comply with Applicable Project Standards. In the event that CSXT does not agree with DRPT's determination as to whether its comments are necessary to comply with Applicable Project Standards, CSXT may submit such dispute for resolution in accordance with Section 12 (*Dispute Resolution*). Upon the satisfaction of DRPT and CSXT of the contents of the Project Addendum, the Parties shall execute the Project Addendum.

(c) DRPT shall have the right to abandon a Project at any time before commencement of Work on that Project.

4. SCOPE OF WORK

4.1 Scope. DRPT agrees that it will perform, or cause to be performed, all Work referenced in the Project Addendum for each Project. Such Work shall be performed in accordance with the Applicable Project Standards.

4.2 Entry and Inspection.

(a) With respect to the Retained RF&P Corridor, subject to DRPT's prior coordination with CSXT, DRPT may have its employees, consultants and Contractors enter any location where Work is being performed for the purpose of: (i) observing the Work or (ii) exercising any right or performing any obligation that DRPT has under this Agreement or Contract Documents. Prior to such entry to the Retained RF&P Corridor, CSXT may require DRPT's consultants and Contractors to execute CSXT's standard Right of Entry Agreement (exclusive of any environmental matters governed by the environmental Right of Entry Agreement dated February 25, 2020, executed by the Parties). If DRPT employees wish to enter the Retained RF&P Corridor for the purpose of observing or inspecting the Work, then they will either need to execute a Right of Entry Agreement, or DRPT will need to provide insurance for CSXT's benefit that covers the risk of injury or death of any of its employees with combined limits of at least Five Million Dollars (\$5,000,000) per occurrence. Such insurance requirement may be satisfied by the insurance procured by DRPT pursuant to Section 13.3 of the Joint Operating and Maintenance Agreement.

(b) With respect to property owned or controlled by DRPT, CSXT may at reasonable times and upon reasonable notice to DRPT, enter any location where Work is being performed for the purpose of: (i) observing the Work; (ii) monitoring compliance by DRPT with its obligations under this Agreement and the Contract Documents, or (iii) exercising any right or performing any obligation that CSXT has under this Agreement or Contract Documents.

(c) When exercising this right, CSXT shall do so in a manner that: (i) does not unreasonably interfere with DRPT's performance of the Work or exercise of its rights under this

Agreement or the Contract Documents; and (ii) complies with DRPT's reasonable site access and work health and safety policies and procedures.

4.3 Permits and Approvals. The Parties shall obtain permits and Governmental Approvals as described and required in the permitting plan attached to each Project Addendum. If requested by DRPT, CSXT shall assist DRPT in obtaining any required permits.

4.4 Change in Scope - Generally.

(a) Either Party may request a change in the scope of the Work by submitting a written request to the other Party for a Modification using the procedures set forth in Section 4.5 (*Change in Scope – Additional Work*) below. All requests shall set forth a complete description of the proposed change and such other information as may be appropriate or required by other Sections of this Agreement.

(b) Except as otherwise set forth herein, CSXT shall have the right to refuse to accept any request that would cause the relevant Work to (i) materially adversely affect freight and/or passenger rail operations, (ii) materially adversely affect any other rights of CSXT with respect to the Project or the Retained RF&P Corridor, or (iii) materially conflict with Applicable Project Standards (any conflict with Law shall be deemed material). In the event that DRPT does not agree whether the request would cause the relevant Work to (i) materially adversely affect freight and/or passenger rail operations, (ii) materially adversely affect any other rights of CSXT with respect to the Project or the Retained RF&P Corridor, or (iii) materially conflict with Applicable Project Standards, DRPT may submit such dispute for resolution in accordance with Section 12 (*Dispute Resolution*).

(c) DRPT shall have the right, in its sole discretion, to reject any request unless such rejection would cause the relevant Work to materially conflict with the Applicable Project Standards.

4.5 Change in Scope - Additional Work.

(a) If DRPT identifies additional Work that is required in order to meet the intent of the Project and that is not specifically identified in the applicable Project Addendum, but which is necessary for carrying out the intent of a given Project, DRPT shall submit a request to CSXT for a Modification. Such Modification shall include a description of the additional Work to be performed in specific detail to enable CSXT to evaluate the request. CSXT shall evaluate the Modification, only taking into account whether the change in scope of Work would cause the relevant Work to (i) materially conflict with Applicable Project Standards (any conflict with Law shall be deemed material), (ii) materially adversely affect freight and/or passenger rail operations, or (iii) materially adversely affect any other rights of CSXT with respect to the Project or the Retained RF&P Corridor.

(b) Promptly after receiving DRPT's Modification request, the Parties shall meet to discuss the matters referred to such request. During such discussions, DRPT and CSXT may propose changes to the Modification request. CSXT shall promptly approve the Modification by executing and delivering such Modification to DRPT, or reject the Modification on the basis that it would cause the relevant Work to (i) materially conflict with Applicable Project Standards,

(ii) materially adversely affect freight and/or passenger rail operations, or (iii) materially adversely affect any other rights of CSXT with respect to the Project or the Retained RF&P Corridor. The Parties will use commercially reasonable efforts to resolve Modification requests promptly, the speed of which will be determined by the immediacy of the need for Modification.

(c) In the event the Modification will cause the funds needed to complete the applicable Project to exceed the Maximum Not To Exceed Amount, DRPT and CSXT shall meet in accordance with Section 4.5(b) (*Change in Scope – Additional Work*) to determine in good faith whether: (i) the scope of Work can be reduced so as not to exceed the Maximum Not To Exceed Amount, while maintaining the quality and meeting the intent of the Project; (ii) additional funds can be procured in order to pay for the amount in excess of the Maximum Not To Exceed Amount; or (iii) the Project should be suspended or terminated. In the event DRPT and CSXT cannot reduce the scope of Work or acquire additional funding, either Party may suspend performance or terminate the Contract Documents as it relates to the relevant Project.

5. PROJECT TIME FRAME

5.1 Work Schedule.

(a) DRPT shall develop and maintain a Master Work Schedule for completion of all Projects under this Agreement or any other agreements that further the purpose of the Comprehensive Rail Agreement.

(b) DRPT, and/or its Contractors, shall make commercially reasonable efforts to complete the Work addressed in the relevant Project Addendum in accordance with the Contract Time and Work Schedule.

(c) DRPT and CSXT shall collaborate to establish the Work Schedule, together with Contract Time and Work Windows, for a given Project, taking into account, among other things, the Work Schedules for all other Projects, the efficient utilization of the Parties' resources, and the effects of the Work on freight and passenger rail services. Such Work Schedule shall be consistent with the Master Work Schedule.

(d) The Parties understand that, from time to time during the construction of Projects and in furtherance of safe and efficient implementation of the Work required of DRPT, DRPT may require temporary suspensions or modifications to commuter, passenger, or freight operating schedules, and the Work Schedules may contemplate that certain phases of the Work will necessitate delays to such services; *provided*, however, no suspension or modification to a freight schedule will be permitted without CSXT's written consent, which may be given or withheld in its sole discretion. The Parties agree that any changes to the Work Schedule that affect one or more Contract Time(s) shall be approved by both Parties using the procedures for a change in the scope of Work set forth in Section 4 (*Scope of Work*) prior to implementation of a revised Work Schedule. DRPT may amend the Work Schedule without CSXT approval if such amendment does not suspend or modify a freight schedule as provided above, and does not impact one or more Contract Time(s), in which case DRPT will provide notice to CSXT of amendments to the Work Schedule in its Project evaluation reports.

5.2 Work Windows. DRPT and its Contractors will require access to CSXT's property and facilities to perform the Work, in accordance with CSXT's rules, and such access will only occur during certain established Work Windows. CSXT recognizes that initial bids from successful Contractors will be based on a Work Schedule and Work Windows during which DRPT has indicated that DRPT and the Contractors may expect to have access to the Project site to perform the Work, but CSXT expressly recognizes that such Work Windows may change under reasonable circumstances, and subject to Section 5.1(d) (*Work Schedule*). Accordingly, the Parties recognize and agree that changes to Work Windows, the Contract Time and Work Schedule, may be necessary during the course of performing the Work. DRPT may make temporary changes to the Work Windows without approval from CSXT so long as: (i) such changes do not affect the critical path of the Work Schedule; (ii) it provides at least thirty (30) days' notice to CSXT; and (iii) it does not suspend or modify a freight schedule as provided in Section 5.1(d) (*Work Schedule*). Any other changes to the Work Windows require mutual consent of the Parties.

6. PROJECT REVIEWS

6.1 Meetings. The Parties agree to hold at least monthly Project review meetings to be scheduled at the convenience of the Parties to conduct Project coordination and discuss and review Project progress. Such meetings shall be attended by CSXT's Designated Representative and DRPT's Designated Representative, and be governed and guided by DRPT's Designated Representative.

6.2 Project Evaluation Reports. After commencement of each Project, DRPT's Designated Representative or its designee will provide CSXT's Designated Representative with a written Project evaluation report on a monthly basis, to be discussed at each Project review meeting described in Section 6.1 (*Meetings*). Such report shall: (i) describe the progress of the Work, to include (a) a percentage of the Work completed, (b) any short-term and long-term concerns as required by federal regulations governing reimbursement of federal funding in each Project Addendum, and (c) any anticipated completion dates, (ii) identify any issues that appear at the time of the report likely to require the Parties to execute a Modification for that Project, (iii) provide any updates to the baseline Work Schedule (in .pdf and native format); and (iv) include any additional information required to satisfy reporting requirements by Funding Partners.

7. DESIGNATED REPRESENTATIVES

7.1 Designation of Representatives. By the Project Addendum for each Project, DRPT and CSXT shall identify its Designated Representative who shall serve as its primary point of contact with respect to such Project. The Parties may also identify secondary representatives who will receive copies of all correspondence on such Project.

7.2 DRPT's Designated Representative. All Modifications will require the signature of either DRPT's Chief of Rail or his/her designee. DRPT's Designated Representative for a given Project shall be available during all working hours to confer with CSXT's Designated Representative.

7.3 CSXT's Designated Representative. CSXT's Designated Representative for a given Project shall be available during all working hours to confer with DRPT's Designated Representative.

8. OPERATION AND MAINTENANCE AFTER ACCEPTANCE

Following Final Completion of a given Project, operation and maintenance of said Project shall be governed by the provisions of the Joint Operating and Maintenance Agreement, unless otherwise stated in the Project Addendum.

9. PROJECT COMPLETION

9.1 Substantial Completion.

(a) DRPT shall provide written notice to CSXT when it anticipates achieving Substantial Completion at least fifteen (15) Business Days prior to the anticipated date for Substantial Completion, so as to allow CSXT sufficient time to commence its review of those Substantial Completion conditions that are (i) directly related to Applicable Project Standards and (ii) capable of being reviewed at the time of such notice. The notice shall include a list of all conditions directly related to Applicable Project Standards that will be satisfied and a proposed punch list. Any failure of DRPT to include a condition directly related to Applicable Project Standards on such list or an item on the proposed punch list shall not relieve DRPT of its obligations to complete the Work in accordance with the Applicable Project Standards.

(b) No later than ten (10) Business Days prior to satisfying the conditions for Substantial Completion, DRPT and CSXT shall meet and confer to confirm the list of conditions directly related to Applicable Project Standards is in accordance with the Project Addendum with respect to the Project. Following the initial meeting, DRPT and CSXT shall meet, confer, and exchange information on a regular basis to allow for CSXT's timely inspection of the relevant design and construction documents, conditions for achievement of Substantial Completion directly related to Applicable Project Standards, and any other relevant information.

(c) DRPT shall provide written notice to CSXT once it has satisfied all conditions to Substantial Completion directly related to Applicable Project Standards. Within fifteen (15) Business Days of receiving DRPT's notice, CSXT shall inspect design and construction documents and any other documents and conduct such investigation as CSXT deems necessary to evaluate whether DRPT has satisfied all conditions to Substantial Completion directly related to Applicable Project Standards. CSXT shall: (i) if all applicable conditions to Substantial Completion directly related to Applicable Project Standards have been satisfied, issue a written certificate that certifies that DRPT has achieved Substantial Completion, or (ii) if any applicable conditions to Substantial Completion directly related to Applicable Project Standards have not been satisfied, notify DRPT in writing of the reasons why Substantial Completion has not been achieved. Upon and following Substantial Completion, DRPT shall continue to complete remaining Work listed on a corresponding punch list as it progresses the Work toward Final Completion.

(d) If any condition to Substantial Completion directly related to Applicable Project Standards has not been satisfied, DRPT may resubmit a notice in accordance with

Section 9.1(a) (*Substantial Completion*) once the relevant condition has been satisfied and Section 9.1(c) (*Substantial Completion*) shall apply. Such process will be repeated until CSXT issues a written certificate that certifies that DRPT has achieved Substantial Completion.

(e) If DRPT does not agree with CSXT's determination as to whether a condition to Substantial Completion directly related to Applicable Project Standards has been achieved, DRPT may submit such dispute for resolution in accordance with Section 12 (*Dispute Resolution*).

9.2 Final Completion. CSXT shall conduct a review and issue a certificate of Final Completion using the procedures set forth in Section 9.1 (*Substantial Completion*), *mutatis mutandis*.

10. COSTS AND PAYMENT

10.1 Payments. DRPT shall pay CSXT for all CSXT Work Costs incurred under this Agreement. Payments shall be made by DRPT to CSXT upon approval of an invoice. Such invoice shall include: (i) the hourly rates of, and hours worked by, CSXT personnel, (ii) all actual expenses incurred during the period of the invoice, (iii) a certification that the hours worked and the costs incurred are accurate and reflect the total amount due to CSXT for the period of the invoice, and (iv) any supporting documentation evidencing the actual costs incurred during the period of the invoice. DRPT reserves the right to request additional supporting documentation to substantiate any amounts specified in the invoice. DRPT shall remit payment to CSXT within a timely manner, subject to state or federal prompt payment requirements as applicable for delivery of such invoice to DRPT. CSXT agrees that it shall bear all Work Costs that it is unable to reasonably substantiate actual costs or any costs that have been deemed unallowable by DRPT. CSXT further agrees that it will not submit invoices for payment more frequently than once every thirty (30) days. Payment shall be subject to correction at the time of any final audit.

10.2 Payment Remedies.

(a) In the event that DRPT fails to pay to CSXT undisputed sums due under the Agreement DRPT shall pay CSXT interest at a variable rate per annum at all times equal to the prime rate of interest announced publicly by *The Wall Street Journal* (or its successor) on the delinquent sum until paid in full in accordance with Virginia Code § 2.2-4355 of the Virginia Public Procurement Act.

(b) All invoices from CSXT shall be delivered to DRPT in accordance with Section 17 (*Notices*) of this Agreement. All payments by DRPT to CSXT shall be made by electronic funds transfer, where possible, otherwise by certified check, referencing the invoice number(s) for which payment is made, mailed to the following address or such other address as designated by CSXT's notice to DRPT:

CSX Transportation, Inc.
PO BOX 530192
Atlanta, GA 30353-0192

11. INSURANCE

DRPT or its Contractor as applicable shall procure and maintain insurance, in form and substance acceptable to CSXT and DRPT, during the performance of the Work, as more particularly described in the Project Addendum for each Project. The Parties agree all such insurance will include coverage liabilities or claims arising out of construction activities occurring within close proximity (within fifty feet) of DRPT property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing. Execution of the Project Addendum shall constitute CSXT's approval of the form and substance of the insurance for the Project.

12. DISPUTE RESOLUTION

The Parties shall utilize the dispute resolution procedures set forth in Article 24 (*Dispute Resolution*) of the Comprehensive Rail Agreement. Each Party shall be responsible for its own costs with respect to engaging in dispute resolution under this Agreement.

13. PROVISIONS REQUIRED BY FUNDING PARTNERS

The Parties agree to add to any Project Addendum those provisions required by one or more Funding Partners for the corresponding Project. The Funding Partner requirements must be communicated and included in the Project Addendum prior to execution of the Project Addendum by DRPT.

14. TERMINATION OF AGREEMENT

14.1 Termination by CSXT. In addition to the rights and remedies of CSXT pursuant to the Contract Documents or as may be available under Law, including Section 4.5 (*Change in Scope – Additional Work*) and Section 10.2 (*Default Remedies*), CSXT may suspend its obligations with respect to this Agreement immediately upon written notice to DRPT, only if DRPT shall materially breach or default with respect to the Contract Documents for that certain Project. If such material breach or default remains uncured for a period of 365 days following receipt of CSXT's written notice, CSXT may terminate this Agreement and/or the associated Contract Documents with respect to the affected Projects. For avoidance of doubt, CSXT may not terminate a Project for which a material breach or default has been committed with respect to another Project.

14.2 Termination by DRPT. At any time DRPT may terminate the Work on a Project and the associated Contract Documents by delivery of written notice to CSXT, which termination shall be effective as of the date set forth in such notice, for any reason, including (i) CSXT's failure to perform its obligations under the Contract Documents; (ii) DRPT's determination that such termination is in the best interests of DRPT; (iii) executive orders of the President of the United States relating to the prosecution of war or national defense, or a national emergency which creates a serious shortage of materials; (iv) orders from duly constituted authorities relating to energy conservation; or (v) a restraining order or injunction obtained by third-party citizen action, relating to national or local environmental protection laws.

14.3 Termination of the Comprehensive Rail Agreement. In the event the Comprehensive Rail Agreement is terminated, this Agreement and all Contract Documents shall immediately terminate.

14.4 Consequences of Termination. Notwithstanding the termination of any or all Projects or the associated Contract Documents, the provisions of Section 8 (*Operations and Maintenance After Acceptance*), Section 10 (*Costs and Payment*), Section 12 (*Dispute Resolution*), Section 15 (*Indemnification*) and Section 16.11 (*Controlling Law*) shall survive. Furthermore, nothing in this Agreement shall alter, modify or diminish the requirement that the Projects in Phase 2 under the Comprehensive Rail Agreement be completed in order for additional passenger trains to be added to the Service Plan.

15. INDEMNIFICATION

Indemnification for the benefit of CSXT shall be governed by the Comprehensive Rail Agreement. In addition, DRPT shall require its Contractors to defend, indemnify, and hold harmless CSXT, its respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claims for damages and/or liabilities of any nature in connection with such Contractors' performance of the Work. CSXT shall not be responsible for any damages, claims, or other liabilities, which may be initiated by third parties.

16. MISCELLANEOUS

16.1 Benefit. The provisions of this Agreement shall inure to the benefit of, and bind the permitted successors and assigns of DRPT and CSXT, but shall not inure to the benefit of any other party or other persons.

16.2 Assignment. Assignment of this Agreement, whether by DRPT to the VPRA or any other entity, or by CSXT, will be permitted under the same terms and conditions as provided in the Comprehensive Rail Agreement, *mutatis mutandis*.

16.3 Complete Understanding. The Parties agree that this Agreement, as supplemented by the Comprehensive Rail Agreement, Project Addenda, Amendments, and/or Modifications, embodies the complete understanding of the Parties with respect to the construction of the Projects and supersedes other prior or contemporaneous, written or oral agreements, understandings and negotiations with respect to the construction of the Projects, including the Term Sheet.

16.4 Amendment. This Agreement and the other Contract Documents may be amended only by a written instrument signed by both Parties. Both Parties acknowledge that this Agreement and other Contract Documents may require amendments based on negotiations between DRPT and its Funding Partners. CSXT agrees to work cooperatively with DRPT to assess whether or not amendments are required to this Agreement and other Contract Documents to comply with the requirements of DRPT's Funding Partners and to negotiate any such amendments in good faith, without obligation to agree to any amendment.

16.5 Waiver. If DRPT or CSXT should fail to enforce their respective rights under this Agreement or the other Contract Documents, or fail to insist upon the performance of other Party's obligations, such failure shall not be construed as a permanent waiver of either Party's rights or obligations as stated in this Agreement or the other Contract Documents.

16.6 Severability. The Parties agree that if any part, term or provision of this Agreement is held to be illegal or in conflict with any state or federal law or regulation, such provision shall be severable, with the remaining provisions remaining valid and enforceable.

16.7 Force Majeure. Neither Party shall be held responsible to the other for delays caused by Force Majeure Events nor shall such delays be deemed a breach or default under this Agreement or any of the Contract Documents. Force Majeure Events shall suspend the running of any time periods under this Agreement and either Party may suspend performance of its obligations under this Agreement until any disruption resulting from the Force Majeure Event has been resolved. In no event, however, shall Force Majeure Events excuse either Party's payment obligations under the Contract Documents.

16.8 Expiration. This Agreement, with the exception of Section 8 (*Operations and Maintenance After Acceptance*), Section 10 (*Costs and Payment*), Section 12 (*Dispute Resolution*), Section 14.4 (*Consequences of Termination*), Section 15 (*Indemnification*), and Section 16.11 (*Controlling Law*), shall expire at the conclusion or termination of all Work on the Projects.

16.9 DRPT Interest. No member, officer or employee of DRPT shall have any interest, direct or indirect, in this Agreement or the proceeds therefrom.

16.10 Compliance. Each Party shall be responsible for ensuring compliance with all Laws with respect to its rights and obligations under this Agreement, and shall be responsible for any fines, assessments, or other penalties resulting from non-compliance. However, DRPT shall have sole responsibility to review and approve Project documents for NEPA compliance.

16.11 Controlling Law. This Agreement shall be construed and interpreted under the laws of the United States of America and the Commonwealth of Virginia.

16.12 Ethics. The Parties acknowledge that Commonwealth procurement professionals are subject to §2.2-4367 *et. seq.* of the Code of Virginia: Ethics in Public Contracting and State and Local Government Conflict of Interests Act (§2.2-3100 *et. seq.*), the Virginia Governmental Frauds Act (§18.2-498.1 *et. seq.*) and Articles 2 (§18.2-438 *et. seq.*) and 3 (§18.2-446 *et. seq.*) of Chapter 10 of Title 18.2.

17. NOTICES

Notice under this Agreement shall be in writing and sent by registered or certified mail, return receipt requested, or by courier, express or overnight delivery, and by confirmed e-mail.

The date such notice shall be deemed to have been given shall be the business day of receipt if received during business hours, the first business day after the business day of receipt if received after business hours on the preceding business day, the first business day after the date sent by courier, express or overnight ("next day delivery") service, or the third business day after the date of the postmark on the envelope if mailed, whichever occurs first.

Mailing Address

If to CSXT	CSX Transportation, Inc. 500 Water Street J-340 Jacksonville, FL 32202 Attention: AVP – Engineering	If to DRPT	Virginia Department of Rail and Public Transportation 600 E. Main St. 21 st Floor Richmond, VA 23219 Attention: Director
With a copy to	CSX Transportation, Inc. 500 Water Street J-315 Jacksonville, FL 32202 Attention: Assistant Vice President – Network Planning & Joint Facilities	With a copy to	Office of the Attorney General 202 N. 9 th St. Richmond, VA 23219 Attention: Transportation Section Chief
With a copy to	CSX Transportation, Inc. 500 Water Street Jacksonville, Florida 32202 Attention: Assistant General Counsel		

(Signatures appear on following page)

IN WITNESS WHEREOF, this Agreement has been executed the day and year set out below, on the part of DRPT and CSXT by authority duly given.

ATTEST:

CSX TRANSPORTATION, INC.

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

(CSXT SIGNATURE PAGE)

IN WITNESS WHEREOF, this Agreement has been executed the day and year set out below, on the part of DRPT and CSXT by authority duly given.

ATTEST:

**VIRGINIA DEPARTMENT OF RAIL
AND PUBLIC TRANSPORTATION**

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

(DRPT SIGNATURE PAGE)