

EXHIBIT O-1

MASTER CONSTRUCTION AGREEMENT (CSXT)

BETWEEN

CSX TRANSPORTATION, INC.

AND

THE VIRGINIA DEPARTMENT OF RAIL

AND PUBLIC TRANSPORTATION

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MASTER CONSTRUCTION AGREEMENT (CSXT)

THIS MASTER CONSTRUCTION AGREEMENT (CSXT) 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 CSXT and DRPT – this Agreement and the Master Construction Agreement (DRPT), respectively.

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:

Acceptance Date – As such term relates to a given Project, the date on which the Work on a given Project is completed, as evidenced by a certificate of Final Completion delivered by DRPT to CSXT.

Amtrak – The National Railroad Passenger Corporation, and its successors or assigns.

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.

Appropriated Amount – The amount appropriated by the General Assembly and allocated by the Commonwealth Transportation Board for the construction of all Projects.

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.

Construction Contingency Reserve – Shall have the meaning ascribed to it in Section 8.1 (*Availability of Construction Contingency Reserves*).

Construction Contingency Threshold – A dollar amount expressed as a percentage of the Construction Contingency Reserve, or an absolute dollar amount, or both, agreed by the Parties and established within each Project Addendum. If the Parties fail to establish a Construction Contingency Threshold within a Project Addendum, then the Construction Contingency Threshold for that Project Addendum shall be the lesser between: (i) ten percent (10%) of the established Construction Contingency Reserve, and (ii) one million dollars (\$1,000,000).

Construction Emergency – Any unplanned event affecting a Project that: (i) presents an immediate or imminent hazard or a risk of immediate or imminent structural failure, or an immediate or imminent risk of damage to a third party's property or equipment, or an immediate or imminent risk of damage to the environment or a threat to the long term integrity of a Project; (ii) has jeopardized the safety of passenger or freight users using the Project; (iii) is a declared state of emergency pursuant to Commonwealth or federal law; or (iv) is recognized or declared by any law enforcement agency or any other Governmental Entity (other than DRPT) as an emergency.

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 CSXT to perform portions of the Work with respect to a given Project, but excluding the subcontractors which may be hired by CSXT’s contractor.

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-Caused Delay – A delay to the Work, based on the Work Schedule, caused by CSXT (*e.g.*, without limitation, allocation of Contractors or CSXT employees, equipment, or other resources to work outside of the applicable Project).

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, and *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 Self-Performed Work – Work that, pursuant to CSXT’s collective bargaining agreements and other similar labor agreements, CSXT is legally bound to perform with its own forces and is prohibited from using Contractors to complete, or when determined by mutual agreement of the Parties to be in the best interest of a Project (such agreement shall not be subject to dispute resolution in accordance with Section 20 (*Dispute Resolution*)), other work performed by CSXT forces.

Designated Representative – The persons appointed by DRPT and CSXT, respectively, to represent that Party in connection with a given Project, pursuant to Section 10.1 (*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*) of the Comprehensive Rail Agreement.

Estimated Project Cost (or “EPC”) – The estimate of CSXT’s Project Costs of performing the Work to be undertaken with respect to a given Project, as set forth in the applicable Project Addendum.

Federal Requirements – The provisions required to be part of federal-aid contracts relating to rail projects and applicable to the Project(s), exclusive, as to CSXT, of any service outcome requirement.

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.

Good Industry Practice – The degree of skill and judgment prevailing on the effective date of the relevant Project Addendum that is expected to be exercised by prudent, skilled, and experienced contractors on similar projects in the Commonwealth of Virginia, taking into consideration safety, operational requirements, level of service, and life cycle costs.

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.

Long Stop Date – The date that is three hundred sixty-five (365) days after the expected date of Final Completion, as shown in the most current Work Schedule.

Master Construction Agreement (DRPT) – That certain agreement between CSXT and DRPT, executed contemporaneously with this Agreement, in which DRPT 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 (DRPT), the Engineering Agreements, or any other agreements entered into intended to further the purpose of the Comprehensive Rail Agreement.

Maximum Bid Amount – The maximum amount established by the Parties that may be accepted by CSXT when awarding a Project-related contract to a Contractor.

Maximum Not To Exceed Amount – The maximum amount allocated by DRPT for each Project, which typically will be the sum of the EPC and the Construction Contingency Reserve for that Project.

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 Estimated Project Cost, 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).

No Construction Notice – Shall have the meaning ascribed to it in Section 3.2 (*No Construction Notice by CSXT*).

Project – Each of the set of improvements that will be more specifically described in Project Addenda related to this Agreement. “Project” 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 CSXT and the Estimated Project Cost and Work Schedule, pursuant to Section 3 (*Work and Project Addenda*) of this Agreement, as amended from time to time by Modifications.

Project Cost(s) – 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 the Work with respect to a given Project, including, but not limited to, all equipment, materials, supplies, tools, labor, supervision, overhead and indirect expenses utilized in performing the Work, and all sums payable to Contractors and other consultants retained by CSXT in connection with the Project (including engineering consultants), insurance costs, and other costs and expenses, as more particularly described by, and subject to the terms and conditions of, this Agreement, including Section 16.2 (*Travel Expenses*) through Section 16.9 (*Audit*) and Section 18 (*Insurance*). Overhead and indirect expenses shall be calculated using audited rates approved by the Federal Highway Administration and/or Federal Railroad Administration, as applicable.

Proposed Contractor – CSXT’s proposed, pre-award, Contractor to be selected to perform Work with respect to a Project following a procurement.

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 has the meaning ascribed to it in the Comprehensive Rail Agreement.

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

Segment 1 has the meaning ascribed to it in the Comprehensive Rail Agreement.

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 CSXT respecting each Project pursuant to this Agreement, including but not limited to the administration of the Project and furnishing of labor, materials, supplies and equipment associated with such Project.

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

Work Windows – Periods when Contractor and/or CSXT forces will have access to CSXT 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. Subject to Section 3.2, 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 CSXT. The Parties shall use the Master Construction Agreement (DRPT) for any improvements to be constructed by DRPT. It is anticipated that all projects constructed by CSXT shall be delivered using the design-bid-build delivery method and shall be in accordance with the Contract Documents applicable to each Project unless otherwise specified in the Project Addendum. If the parties agree for CSXT to use a design-build delivery method for a particular project, it is agreed that additional terms and conditions applicable to this delivery method will be included in the Project Addendum.

3.2 No Construction Notice by CSXT. Notwithstanding Exhibit E-1 of the Comprehensive Rail Agreement, for Projects on which CSXT has begun engineering and design work and (according to Exhibit E-1 of the Comprehensive Rail Agreement) is also to undertake construction of such Project, CSXT may provide written notice to DRPT that CSXT has elected not to enter into a construction agreement with a Contractor for the construction of such Project (a “**No Construction Notice**”). After delivery of a No Construction Notice, CSXT shall continue and complete the engineering and design work with respect to the applicable Project and make the final design and all associated work product available to DRPT for construction; thereafter, DRPT will be responsible for entering into and administering a contract for construction of the Project. CSXT may not deliver a No Construction Notice to DRPT with respect to any Project if CSXT has already reached agreement with a Contractor to perform the applicable Work.

3.3 Submission of Project Addendum.

(a) Upon completion of the engineering and design work for each Project pursuant to the applicable Authorization Notice, CSXT shall work collaboratively with DRPT to prepare and submit a Project Addendum to DRPT for its review and comment. Such Project Addendum shall specifically describe the Work to be performed and include (i) the Project’s EPC, to include any advance payments required for mobilization; (ii) the Work Schedule; (iii) insurance requirements; (iv) permitting requirements; (v) liquidated damages as described in Section 5.4 (*Liquidated Damages- Contractors*), as applicable; and (vi) any other information necessary for the performance of the Work.

(b) Upon receipt of the Project Addendum, DRPT shall have 30 days to review the Project Addendum and provide comments. As one portion of its review, but in particular, DRPT will assess NEPA compliance for the Project. Within 30 days of receipt of DRPT’s comments, CSXT shall prepare and resubmit a revised Project Addendum that reflects DRPT’s comments. CSXT shall incorporate DRPT’s comments unless such comments, in CSXT’s reasonable opinion, would (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. In the event that DRPT does not agree with CSXT’s determination as to whether its comments would materially

adversely affect freight and/or passenger rail operations, materially adversely affect any other rights of CSXT with respect to the Project or the Retained RF&P Corridor, or materially conflict with Applicable Project Standards, DRPT may submit such dispute for resolution in accordance with Section 20 (*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 CSXT commences Work on that Project.

4. SCOPE OF WORK

4.1 Scope. CSXT agrees that it will perform, or contractually require to be performed, all Work referenced in the Project Addendum for each Project. Such Work performed by CSXT shall be performed in accordance with the Applicable Project Standards, and CSXT shall contractually require its Contractors to perform the Work it performs in accordance with the Applicable Project Standards and Good Industry Practice.

4.2 Inspection.

(a) Subject to DRPT's prior coordination with CSXT, DRPT may at reasonable times and upon reasonable notice to CSXT, have its employees, consultants and Contractors enter any location where Work is being performed for the purpose of: (i) observing the Work; (ii) monitoring compliance by CSXT with its obligations under this Agreement and the Contract Documents, or (iii) exercising any right or performing any obligation that DRPT has under this Agreement or Contract Documents. However, with respect to Work performed on 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) When exercising this right, DRPT shall do so in a manner that: (i) does not unreasonably interfere with CSXT's performance of the Work or exercise of its rights under this Agreement or the Contract Documents; and (ii) complies with CSXT'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 CSXT, DRPT shall assist CSXT in obtaining any required permits.

4.4 Change in Scope - Generally.

(a) Each Project Addendum will establish a fixed scope of the Work to be accomplished by CSXT under such Project Addendum for compensation not in excess of the

Maximum Not To Exceed Amount established in the same Project Addendum. However, 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*). 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, DRPT shall have the right to refuse to accept any request that would materially change the scope of the Work, EPC, Work Schedule, which may otherwise be deemed unreasonable, or which DRPT, in its sole discretion, determines is not required to meet the intent of the Project, unless the failure to accept the change in scope would materially adversely affect freight and/or passenger rail operations or materially conflict with Applicable Project Standards; *provided*, that any conflict with Law shall be deemed material.

(c) CSXT shall approve any request unless such approval would materially adversely affect freight and/or passenger rail operations, materially adversely affect any other rights of CSXT with respect to the Project or the Retained RF&P Corridor, cause the relevant Work to materially conflict with the Applicable Project Standards (any conflict with Law shall be deemed material), or unless DRPT fails to commit sufficient funds to cover the proposed Modification.

(d) In the event of a disagreement between the Parties, either Party may submit such dispute for resolution in accordance with Section 20 (*Dispute Resolution*).

4.5 Change in Scope - Additional Work.

(a) If CSXT 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, CSXT shall submit a request to DRPT for a Modification. Such Modification shall include a description of the additional Work to be performed and the changes to the EPC (together with any requests for the Construction Contingency Reserve), and Work Schedule in specific detail to enable DRPT to evaluate the request. DRPT shall evaluate the Modification, taking into account all relevant issues, including whether the change in scope of Work: (i) involves any increase to payments from DRPT, (ii) exceeds the Maximum Not To Exceed Amount for the Project; (iii) affects the quality of the Work or the likelihood of successful delivery of the Work; (iv) materially adversely impacts the Work Schedule or Master Work Schedule; or (v) is required to accomplish both Parties' objectives with respect to the applicable Project.

(b) Promptly after receiving CSXT's Modification request, the Parties shall meet to discuss the matters referred to in such request. During such discussions, DRPT and CSXT may propose changes to the Modification request. DRPT shall promptly approve the Modification by executing and delivering such Modification to CSXT, or reject the Modification. The Parties shall 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. In the event performance is suspended, DRPT shall provide evidence satisfactory to CSXT that additional funding has been acquired prior to CSXT resuming Work.

(d) In the event a Modification under this Section 4.5 (*Change in Scope – Additional Work*) increases the EPC, the performance and payment security provided under Section 9.4 (*Payment and Performance Security*) shall each be increased by an amount equal to the increase in EPC that is subject to the security. Any increase in the performance and/or payment security in accordance with this Section shall constitute a Project Cost.

(e) Where additional Work is authorized pursuant to an approved Modification under this Section 4.5 (*Change in Scope – Additional Work*), to the extent permitted, CSXT shall use its forces in accordance with Section 9.3 (*Contractor Procurement*).

5. PROJECT TIME FRAME

5.1 Commencement Date. Unless otherwise specified by the relevant Project Addendum, CSXT shall commence Work on a given Project within thirty (30) days following delivery of a notice to proceed from DRPT to CSXT. However, DRPT shall not deliver such notice, unless and until: (a) DRPT and CSXT have executed and delivered a Project Addendum for such Project; (b) CSXT has received payment of that portion of the Project's EPC as specified in the Project Addendum, as an advance against the Project Costs required by CSXT or its Contractor for mobilization and long lead time materials, (c) DRPT has provided an indication, to CSXT's satisfaction, that funding for the Project is or will be available for DRPT to make regular and timely payments to CSXT, and (d) all amounts due under the applicable Authorization Notice for that given Project have been paid.

5.2 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) CSXT and DRPT 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.

(c) It is the intent of the Parties that the Work undertaken pursuant to this Agreement is performed in the spirit of partnership. CSXT shall endeavor to complete all Work addressed in the relevant Project Addendum in accordance with the Contract Time and Work Schedule, where such Work Schedule shall be consistent with the Master Work Schedule. For Projects in which the Work will be performed by a Contractor of CSXT, CSXT shall contractually

require that the Contractor complete such Work in accordance with the Work Schedule, and each contract with a Contractor shall contain pass-through liquidated damages as set forth in Section 5.4 (*Liquidated Damages - Contractors*).

(d) The Parties understand that, from time to time during the construction of the Projects and in furtherance of safe and efficient implementation of the Work required of CSXT, CSXT 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. 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, *provided*, that any Work Schedule revisions will be subject to the rights and obligations under the Operating Agreement (CSXT/Commissions), the Operating Agreement (CSXT/Amtrak), a New Operator Agreement (if applicable), and the BBRC Lease Agreement or the Segment 3 Easement, as applicable (as those terms are defined in the Comprehensive Rail Agreement). Any financial impact that CSXT incurs with respect to Amtrak resulting from the effect of a mutually agreed Work Schedule on the on-time performance of Amtrak trains will be for DRPT's account. CSXT may amend the Work Schedule without DRPT approval if such amendment does not impact one or more Contract Time(s), in which case CSXT will provide notice to DRPT of amendments to the Work Schedule in its Project evaluation reports, and provide at least thirty (30) days' notice for any change that affects the passenger services schedules.

5.3 Work Windows. CSXT and its Contractors will require access to DRPT'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. DRPT recognizes that initial bids from successful Contractors will be based on a Work Schedule and Work Windows during which CSXT has indicated that CSXT and the Contractors may expect to have access to the Project site to perform the Work, but DRPT expressly recognizes that such Work Windows may change under reasonable circumstances and subject to Section 5.2(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. In the event of a Construction Emergency or other unanticipated and unavoidable circumstance that requires CSXT to modify Work Windows, CSXT may make temporary changes to the Work Windows without approval from DRPT so long as: (i) CSXT provides notice to DRPT consistent with its obligation to provide notice to the underlying passenger operators with respect to any change to the Work Windows that affects the passenger services schedules, and (ii) CSXT lifts the temporary change as soon as feasible after the dissipation of the condition requiring the temporary change. Any other changes to the Work Windows require mutual consent of the Parties, which consent shall not be unreasonably withheld or delayed.

5.4 Liquidated Damages - Contractors. CSXT shall include in each contract with a Contractor, liquidated damages for such Contractor's failure to complete the applicable Work in accordance with the Work Schedule set forth in the Project Addendum. In the event CSXT's Contractor fails to complete the Work for a Project by the date of Final Completion provided in the applicable Work Schedule set forth in the relevant Project Addendum, liquidated damages will be assessed in strict accordance with the corresponding contract unless a Party reasonably

demonstrates that such liquidated damages should not be assessed under the circumstances and under the governing contractual provisions. Any such liquidated damages assessed against a Contractor shall be held by CSXT for the benefit of DRPT and CSXT shall promptly remit to DRPT any liquidated damages received from a Contractor.

5.5 Liquidated Damages Not Penalty. The Parties acknowledge, recognize and agree on the following:

(a) that because of the unique nature of each Project, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by DRPT as a result of a Contractor's failure to complete the relevant Work within the applicable time;

(b) that any sums which would be payable under Section 5.4 (*Liquidated Damages- Contractors*) are in the nature of liquidated damages, and not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure; and

(c) that any sums which would be payable herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages, whether special or consequential, and of whatsoever nature incurred by DRPT which are occasioned by any delay in completing applicable Work within the applicable time. Notwithstanding the above, liquidated damages are not intended to excuse CSXT or its Contractors from liability for any other breach of its obligations under the Contract Documents.

5.6 Long Stop Date – CSXT Self-Performed Work. For any Project, or portion of a Project that is CSXT Self-Performed Work and therefore not subject to liquidated damages for late completion under Section 5.4 (*Liquidated Damages – Contractors*), CSXT shall execute the relevant Work in accordance with the Contract Time and Work Schedule. If, solely because of one or more CSXT-Caused Delays, a Project has not achieved Final Completion by the applicable Long Stop Date, then such Project shall be deemed complete solely for the purposes of (i) Sections 3.6.3, 3.6.4, and 5.2 of the Joint Operating and Maintenance Agreement, and (ii) Section 12.2.3 of the Comprehensive Rail Agreement. However, nothing in this Section 5.6 (*Long Stop Date – Self-Performed Work*) shall be construed to relieve CSXT from its duty to continue to execute the Work and to achieve Final Completion with respect to any Project that is deemed complete hereunder.

6. PRIORITY OF WORK

CSXT shall use reasonable efforts to complete the Work in such order or time as shown by the Work Schedule for each Project, subject to the provisions of Section 5.2 (*Work Schedule*) and Section 5.3 (*Work Windows*), in coordination with the Work Schedules of all other Projects, as revised by the Parties from time to time. However, the Parties acknowledge and agree that the priority given to any Project and other circumstances affecting the Projects may change from time to time for a variety of reasons, and that such changes are likely to occur. CSXT shall submit a written request seeking approval from DRPT prior to implementing changes to the order of priority with respect to Projects being undertaken by CSXT (but excluding the priority of undertaking tasks within a single Project). The Parties will identify the priority of each Project in the applicable

Project Addendum. In the event CSXT anticipates a change in the priority of the Projects that will result in a change to the Contract Time, CSXT shall submit a Modification to DRPT using the procedures set forth in Section 4.5 (*Change in Scope – Additional Work*).

7. PROJECT REVIEWS

7.1 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.

7.2 Project Evaluation Reports. After commencement of each Project, CSXT's Designated Representative or its designee will provide DRPT's Designated Representative with a written Project evaluation report on a monthly basis, to be discussed at each Project review meeting described in Section 7.1 (*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) identify the use and amount of any Construction Contingency Reserve, (iv) identify any reductions to the Construction Contingency Reserve that can be made, (v) 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.

7.3 Costs. Costs incurred by CSXT in connection with Project reviews or Project evaluations reports under this Section 7 (*Project Reviews*) shall constitute Project Costs.

8. CONTINGENCIES

8.1 Availability of Construction Contingency Reserves.

(a) As part of the Maximum Not To Exceed Amount for each Project, the Parties will mutually agree to a contingency amount ("**Construction Contingency Reserve**"), such agreement shall not be unreasonably withheld, conditioned or delayed, that CSXT shall propose to DRPT at the same time that it provides to DRPT the applicable construction cost estimate under Section 9.1 (*Project Cost Estimates*) below. The purpose of the Construction Contingency Reserve is to preserve funding capacity if Project Costs exceed the EPC as set forth in the relevant Project Addendum.

(b) In the event CSXT anticipates that it will need to use the Construction Contingency Reserve to fund Work that is not the result of a change to the Scope of Work under Section 4.5 (*Change in Scope – Additional Work*), CSXT, subject to Section 8.1(c) (*Availability of Construction Contingency Reserves*), may freely apply the Construction Contingency Reserve to fund such Work, and CSXT shall provide notice to DRPT of such application as part of CSXT's Project evaluation report described in Section 7.2 (*Project Evaluation Reports*).

(c) Notwithstanding Section 8.1(b) (*Availability of Construction Contingency Reserves*), for any use of the Construction Contingency Reserve that is expected to exceed the Construction Contingency Threshold, CSXT shall seek prior approval from DRPT, which shall not be unreasonably withheld, conditioned or delayed. CSXT shall request such approval by providing written notice to DRPT. The notice shall include a written description and justification for the applicable Construction Contingency Reserve expenditure and shall include supporting documentation of the costs that require the Construction Contingency Reserve expenditure. DRPT shall have fourteen (14) Business Days to respond to CSXT's notice in writing to confirm such use of the Construction Contingency Reserve. Notification of the Construction Contingency Reserve expenditures shall be made electronically to DRPT's Designated Representatives established in accordance with Section 10.1 (*Designation of Representatives*). Failure of DRPT to timely respond shall be deemed a concurrence by DRPT. In the event DRPT determines the additional costs are due to a change in scope of Work, DRPT shall notify CSXT within fourteen (14) Business Days by electronic medium identifying the reasons DRPT believes such Work is an inappropriate use of the Construction Contingency Reserve. Upon such timely notice, the Parties shall proceed with the procedures set forth in Section 4.4 (*Change in Scope – Generally*) and Section 4.5 (*Change in Scope – Additional Work*), as needed.

8.2 Tracking. At regular intervals during performance of the Work, CSXT shall reassess in good faith in consultation with DRPT, taking into account all material information (including, without limitation, any net savings), whether the Construction Contingency Reserve amount established in the relevant EPC may be reduced. Within ninety (90) days of determining that the Construction Contingency Reserve may be reduced, DRPT shall notify CSXT and the EPC shall be adjusted accordingly to reflect the reduction in the Construction Contingency Reserve. CSXT shall maintain an account ledger for the Construction Contingency Reserve for each Project. The beginning balance in each Construction Contingency Reserve shall be the full amount established in the Project Addendum for the relevant Project. CSXT shall reduce the balance maintained with respect to a Construction Contingency Reserve to account for each approval by DRPT for the use of the Construction Contingency Reserve with respect to a Project. CSXT shall provide to DRPT as part of the Project evaluation reports pursuant to Section 7.2 (*Progress Evaluation Reports*) (in a form mutually agreed by the Parties) information identifying, for that month and cumulatively, the adjustments to the balances, and the cost incurred in performing the obligations under this Section 8.2 (*Tracking*) shall constitute Project Costs.

8.3 Exceeding the Construction Contingency Reserve. In the event CSXT expects the Project to incur unbudgeted Project Costs that exceed the Construction Contingency Reserve, that are not the result of a change to the scope of Work under Section 4.5 (*Change in Scope – Additional Work*), CSXT shall immediately provide written notice to DRPT and the Parties shall meet 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 Construction Contingency Reserve; or (iii) the Project should be suspended or terminated. If CSXT and DRPT agree to change the Work in the Project Addendum, they will execute a Modification. 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. In the event performance is suspended, DRPT shall provide evidence satisfactory to CSXT that additional funding has been acquired prior to CSXT resuming Work.

9. ESTIMATED PROJECT COST

9.1 Project Cost Estimates. After completion of engineering and design for a particular Project, and before executing a Project Addendum with respect to such Project, CSXT shall develop and deliver to DRPT a construction cost estimate for the applicable Project. Thereafter, DRPT will prepare an independent construction cost estimate to validate the estimate provided by CSXT. The Parties will work together in good faith to reconcile any disparities between the cost estimates prior to entering into the relevant Project Addendum.

9.2 EPC. The EPC for each Project shall be set forth in the applicable Project Addendum and will be established after 100% design in accordance with the construction cost estimate process set forth in Section 9.1 (*Project Cost Estimates*). Such EPC, individually, or when added to all other Projects, shall not exceed the Appropriated Amount for that fiscal year. For Projects that are funded by USDOT, FHWA, FTA or FRA, the Parties expressly recognize that the commitment of DRPT to fund the Project Costs is contingent upon a USDOT, FHWA, FTA or FRA authorization and/or legislative appropriation of the funds, and that CSXT's obligation to perform Work is contingent upon payment for that Work.

(a) DRPT's duty to fund a Project shall not exceed the corresponding Maximum Not To Exceed Amount, except as agreed by DRPT under an approved Modification. If the cost to complete a Project is expected to exceed the Maximum Not To Exceed Amount, the Parties shall follow the procedures set forth in Section 4.5(c) (*Change in Scope – Additional Work*) or Section 8.3 (*Exceeding the Construction Contingency Reserve*), as applicable.

(b) In the event CSXT anticipates the Project Costs to exceed the Maximum Not To Exceed Amount, or the Construction Contingency Reserve has already been used or has been allocated to be used in accordance with Section 8.1 (*Availability of Construction Contingency Reserves*), CSXT shall immediately notify DRPT and the Parties shall follow the procedures set forth in Section 4.5(c) (*Change in Scope – Additional Work*) or Section 8.3 (*Exceeding the Construction Contingency Reserve*), as applicable.

(c) Unless otherwise agreed by the Parties in a Project Addendum or amendment thereto, CSXT shall not be responsible for Project Costs that exceed the established Maximum Not To Exceed Amount, except to the extent such overruns are attributable to the gross negligence, intentional misconduct, or illegal acts or omissions of CSXT or its employees, in which case CSXT shall be responsible for such overruns.

9.3 Contractor Procurement.

(a) Subject to DRPT's representation of available funds, which is in turn subject to Section 13 (*Funding*), CSXT will purchase or provide the necessary materials and will perform all Work with its own forces or by Contractors in connection with said Project Addendum in accordance with the Federal Requirements and Law. CSXT will only use its own forces to perform CSXT Self-Performed Work. CSXT shall procure Contractors for all components of the Work other than CSXT Self-Performed Work.

(b) Subject to Law, the Parties agree that at least thirty (30) days prior to CSXT issuing any request for proposals for Work from Contractors, DRPT shall have the right to review

any procurement documents intended to be issued as part of any solicitation. The Parties shall agree to establish a Maximum Bid Amount for any Work to be performed by Contractors. Prior to selection of a Contractor, CSXT shall provide written notification to DRPT of its choice and the reasoning for selection. CSXT's selection of a Contractor shall reflect, in CSXT's reasonable opinion, the best value of all qualified bids received, and such determination will be made consistent with the methods and procedures by which CSXT makes such determinations for projects it performs at its own cost. CSXT shall include DRPT as a third party beneficiary in any contract for Work performed by Contractors.

(c) In the event the price bid by CSXT's Proposed Contractor exceeds the Maximum Bid Amount, CSXT shall choose the next best Contractor with a price that does not exceed the Maximum Bid Amount. In the event that no Contractor bid is below the Maximum Bid Amount, the Parties may: (i) agree to increase the Maximum Bid Amount, (ii) terminate the Project, or (iii) to the extent permitted by Law, enter into negotiations with one or more bidders to adjust the scope and/or price to a value within the Maximum Bid Amount.

9.4 Payment and Performance Security. For any Project in which Contractor's portion is expected to exceed five hundred thousand dollars (\$500,000), CSXT shall require its Contractor to obtain a payment and performance security in the amount of 100% of the Project Costs associated with the work to be performed by Contractor (or other amounts acceptable to DRPT) and in a form acceptable to DRPT that names DRPT as an additional obligee or beneficiary. Such payment and performance security shall permit the surety and obligees to access the Project to perform any Work in the event such security is enforced or drawn, however DRPT may only enforce or draw upon the payment and performance security strictly in accordance with the terms of the dual obligee rider or other such document that establishes DRPT as an obligee or beneficiary. Notwithstanding the foregoing, DRPT and CSXT will confer if either Party believes that the security should be enforced or drawn. CSXT may elect, in its discretion, to assign its rights under the payment and performance security to DRPT. The provision of the payment and performance security shall constitute a Project Cost.

10. DESIGNATED REPRESENTATIVES

10.1 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.

10.2 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.

10.3 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.

11. 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.

12. WARRANTIES

12.1 Warranties. CSXT shall repair or replace any Work performed by CSXT or its Contractors which is found within twelve (12) months after the Project's Acceptance Date by either CSXT or DRPT to have been performed or constructed in a defective manner with respect to a Project. For purposes of this Section, Work will be deemed defective if it fails to comply with: (i) CSXT Design and Construction Standards in place at the time of the execution of the relevant Project Addendum or (ii) Law. Additionally, CSXT agrees to enforce any applicable manufacturer warranties or other warranties for the benefit of DRPT to the maximum extent of the Law, up to and including the commencement and prosecution of legal proceedings. The cost of repair or replacement shall constitute a Project Cost, except for those cases where such repair or replacement is the result of defective work by CSXT or its Contractors. To the extent CSXT obtains recovery from the manufacturer, Contractor, or subcontractor responsible for the defective Work, such recovery will be credited to DRPT. If, however, CSXT is unable to recover from any manufacturer, Contractor or subcontractor for such defects, the cost of remedying such defect shall be a Project Cost, *provided*, that to the extent defective work is caused by CSXT personnel performing such work in a defective manner, CSXT will remedy such defective Work and shall not be entitled to any additional Project Costs for such work. DRPT shall have no other recourse, right, or claim against CSXT to remedy defective Work discovered after the Acceptance Date.

12.2 Disclaimers. Except as set forth in Section 12.1 (*Warranties*) above, CSXT specifically disclaims any and all warranties, expressed or implied, including but not limited to the warranty of merchantability or fitness for a particular purpose, with respect to all Work.

13. FUNDING

13.1 Availability. The liability of DRPT to CSXT for reimbursement of Project Costs is subject to the appropriation and authorization of funds for such Project Costs. Said amounts shall be addressed in the applicable Project Addendum. No such amounts are provided for or otherwise included in this Agreement. DRPT is not responsible for any expenses or obligations incurred for the Projects except those specifically eligible under the terms of this Agreement and/or Project Addenda. However, at no time shall DRPT reimburse CSXT costs above the Maximum Not To Exceed Amount for any Projects except as adjusted by applicable Modifications.

13.2 Termination. In the event that funding is terminated for any reason during performance of this Agreement, or sufficient funds are not available for payment under this Agreement, DRPT shall promptly notify CSXT, and CSXT shall be entitled: (i) to immediately cease or suspend performance of Work for the affected Projects upon delivery of written notice to DRPT; or (ii) in accordance with Section 22.1 (*Termination by CSXT*), to terminate the Contract Documents for the affected Projects. DRPT shall not issue a notice to proceed for a Project to commence until all funds have been authorized. Nothing in this Section 13.2 (*Termination*) shall limit CSXT's right to be compensated for all Project Costs validly incurred pursuant to a Project Addendum and any applicable Modification to a Project.

14. PAYMENT

14.1 Monthly Payments. CSXT shall submit invoices to DRPT monthly. Such invoices shall include: (i) the actual Project Costs incurred by CSXT during the preceding month, (ii) a certification that the Project Costs incurred are correct and reflect the total amount expended for the month, and (iii) supporting documentation to substantiate a payment. CSXT agrees that it shall bear all Project Costs that it is unable to reasonably substantiate, provided that for any Project Costs for which DRPT is to receive reimbursement from a Funding Partner, DRPT shall provide evidence to CSXT that the Project Cost is subject to non-reimbursement by DRPT's Funding Partner due to insufficient substantiation, and provided further that DRPT gives CSXT reasonable notice and opportunity to provide supporting documentation or other means of substantiating the Project Cost. 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. With respect to Work that is not CSXT Self-Performed Work, DRPT may withhold retainage up to ten percent (10%), which will be released to CSXT upon Final Completion.

14.2 Final Payment. Upon Final Completion, CSXT shall submit notice to DRPT in accordance with Section 14.1 (*Monthly Payments*). DRPT shall conduct a review and issue a certificate of Final Completion using the procedures set forth in Section 15.1 (*Substantial Completion*), *mutatis mutandis*. Upon issuance of a certificate of Final Completion, DRPT shall remit payment to CSXT within a timely manner, subject to state or federal prompt payment requirements as applicable for delivery of such notice to DRPT. All payment under this Section 14 (*Payment*) shall be subject to correction at the time of any final audit.

14.3 Default Remedies.

(a) In the event that DRPT fails to pay to CSXT undisputed sums due to it under this Agreement: (i) DRPT shall also 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; and (ii) CSXT may elect: (A) to immediately cease or suspend all further Work on the Project upon delivery of written notice to DRPT, unless and until DRPT pays the entire delinquent sum, together with accrued interest; and/or (B) in accordance with Section 22.1 (*Termination by CSXT*), to terminate the Contract Documents as it relates to the Project. Interest would begin accruing upon one-hundred twenty (120) days after due date of the specific approved invoice.

(b) All invoices from CSXT shall be delivered to DRPT in accordance with Section 26 (*Notices*). 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

(c) **Federal Funding Accountability and Transparency Act Requirements.**

All Parties to this Agreement, and their Contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall, to the extent applicable, provide reports as required based on the particular funding source for each Project by the Federal Funding Accountability and Transparency Act for the Projects. Reimbursement to CSXT shall also be subject to the guidance contained in 2 CFR § 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) “Federal Funding Accountability and Transparency Act (FFATA).”

15. PROJECT COMPLETION

15.1 Substantial Completion.

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

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

(c) CSXT shall provide written notice to DRPT once it has satisfied all conditions to Substantial Completion. Within fifteen (15) Business Days of receiving CSXT’s notice, DRPT shall inspect design and construction documents and any other documents and conduct such investigation as DRPT deems necessary to evaluate whether CSXT has achieved Substantial Completion. DRPT shall: (i) if all applicable conditions to Substantial Completion have been satisfied, issue a written certificate that certifies that CSXT has achieved Substantial Completion, or (ii) if any applicable conditions to Substantial Completion have not been satisfied, notify CSXT in writing of the reasons why Substantial Completion has not been achieved. Upon and following Substantial Completion, CSXT 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 has not been satisfied, CSXT may resubmit a notice in accordance with Section 15.1(a) (*Substantial Completion*) once the relevant condition has been satisfied and Section 15.1(c) (*Substantial Completion*) shall apply. Such process will be repeated until DRPT issues a written certificate that certifies that CSXT has achieved Substantial Completion.

(e) If CSXT does not agree with DRPT's determination as to whether a condition to Substantial Completion has been achieved, CSXT may submit such dispute for resolution in accordance with Section 20 (*Dispute Resolution*).

16. PROJECT COSTS

DRPT shall pay to CSXT any and all reasonable Project Costs, in addition to other costs detailed in the provisions of this Agreement, in accordance with and subject to the following conditions:

16.1 General and Administrative Costs. In order to properly charge each Project for CSXT's related indirect costs, CSXT's labor costs incurred in performing the Work shall be multiplied by the applicable percentages established by CSXT for its labor additives. These applicable percentages are subject to approval by DRPT and the Florida Department of Rail and Public Transportation per agreed upon multi-state audits through AASHTO, as may be amended from time to time. The products of these multiplication processes will be added to CSXT's labor cost as Project Costs.

16.2 Travel Expenses. The direct cost of travel incurred by the personnel of CSXT and Contractor(s) related to each Project shall be reimbursed in accordance with Commonwealth travel policies.

16.3 Rental Rates of CSXT-Owned Equipment. Equipment rates for equipment owned by CSXT or its affiliates shall be billed on an hourly or daily basis. Hourly rates for equipment being operated or on standby shall be established by dividing the Blue Book monthly rate by 176. The result of this calculation yields the "Ownership Hourly Rate." Reimbursement for the equipment being operated shall be at 100 percent of the Blue Book hourly operating costs. Reimbursement for equipment required to be idled and on standby shall be at 50% of the "Ownership Hourly Rate" only. No more than 10 hours of standby will be paid on a single day nor more than 40 hours per week. The cost of fuels, lubricants, repairs, parts, electrical power consumed by the equipment and all similar operating costs shall be included in the rental rates. For the purposes of this Section 16 (*Project Costs*), CSXT's affiliates consist of all entities owned by CSXT.

16.4 Rental Rates of Rented Equipment. If CSXT rents or leases equipment for a Project from an entity other than an affiliate of CSXT, DRPT will reimburse CSXT for full leased cost, insurance, fuel, lubricants, electrical power and all similar operating costs. CSXT will endeavor to control these costs, utilizing purchasing strategies such as competitive bidding and annual contracts. CSXT may use existing contracts for engineering services, warehousing, logistics services, equipment rental or lease, and material purchase without separately obtaining bids for individual projects, *provided* that CSXT shall provide and make available all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate contracted costs incurred under this Agreement.

16.5 Materials and Supplies. Reimbursement by DRPT to CSXT for materials and supplies purchased new shall be made in an amount equal to the invoice price of such materials and supplies. Reimbursement for materials and supplies currently on hand and used by CSXT,

shall be in the amount equal to CSXT's stock (inventory) prices. In addition, CSXT shall be entitled to payment of the lesser of: (i) all actual direct costs of both handling and loading out materials and supplies from CSXT's stock or (ii) 5% of the amounts billed for such materials and supplies. Used materials released from service shall be credited against the Project Cost in an amount equal to the scrap value less 5% for both handling and transportation of same. The only used materials for which such a credit will be given shall be: rail, joint bars, ties, tie plates, signal materials and turnout materials. All other materials shall be considered disposable for the purposes of this Agreement.

16.6 Sales Use and Other Taxes. Any and all sales, use and other taxes applicable to the purchase or use of materials and supplies utilized in a Project shall be a Project Cost.

16.7 Cost of Mobilization. All costs reasonably incurred by CSXT and Contractors in mobilizing to perform work will be reimbursed at the full cost of same.

16.8 Demobilization Costs. All costs reasonably incurred in ceasing performance of the Work (including but not limited to costs associated with continued safe rail operations) shall constitute reimbursable Project Costs.

16.9 Audit. Subject to any additional requirements that may be imposed by Funding Partners or Federal Requirements that are disclosed to CSXT and agreed to before execution of this Agreement, all cost records and accounts for each Project shall be subject to audit by DRPT for a period of five (5) years following CSXT's receipt of final payment for the Project. CSXT shall maintain/make all books, documents, papers, accounting records, and such other evidence either in hard copy or electronic form as may be appropriate to substantiate costs incurred under this Agreement. Further, CSXT shall make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of final payment under this Agreement, for inspection and audit by DRPT. Representatives of DRPT shall have such access to the books and accounts of CSXT as may be required to audit said bill. After the bill has been audited by DRPT, DRPT will pay to CSXT any amount remaining due to CSXT in addition to the amount previously paid within thirty (30) days following the audit, *provided*, however, in the event of overpayment, CSXT shall remit such overpayment to DRPT within thirty (30) days following receipt of written notice of such overpayment if CSXT agrees with the audit finding. If CSXT disagrees with a finding of overpayment, the finding will be subject to dispute resolution.

17. OFFSET OR REDUCTION

CSXT recognizes and agrees, for bills tendered by CSXT, that DRPT maintains the right to make partial payments of or "short pay" invoices if costs are unsubstantiated or in dispute. DRPT shall not offset against payments due with respect to a given Project for amounts due with respect to any other Project. In addition, DRPT shall not withhold any amount otherwise due CSXT, which it does not dispute. In any case, DRPT shall promptly advise CSXT of any such dispute and the nature and basis of such dispute, and the Parties shall endeavor to promptly resolve such dispute in accordance with Section 20 (*Dispute Resolution*), without adversely affecting CSXT's other rights and remedies under this Agreement.

18. INSURANCE

CSXT or its Contractor as applicable shall procure and maintain, as a Project Cost, 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 CSXT property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing. Execution of the Project Addendum shall constitute DRPT's approval of the form and substance of the insurance for the Project. To the extent the cost of such insurance increases or decreases between the time of the execution of the Project Addendum and the date when CSXT commences Work, DRPT will execute a Modification to cover the reasonable increased or decreased cost of the insurance.

19. AVAILABILITY OF FUNDS FOR DRPT'S PERFORMANCE

The obligation of DRPT to make payment of amounts due and owing by DRPT pursuant to, and accruing from, this Agreement shall be subject to and dependent upon appropriation being made from time to time by the Virginia General Assembly and allocation by the Commonwealth Transportation Board. Because such appropriation is outside of the control of DRPT, any failure to appropriate funds by the Virginia General Assembly, in and of itself, will not constitute a default by DRPT under this Agreement, but CSXT shall be entitled to all rights and remedies available to it under this Agreement at Law or in equity for the non-payment of amounts due and accruing from this Agreement as if the failure to make such payments were a default.

20. 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.

21. 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, exclusive, as to CSXT, of any service outcome requirement. The Funding Partner requirements must be communicated and included in the Project Addendum prior to execution of the Project Addendum by CSXT.

22. TERMINATION OF AGREEMENT

22.1 Termination by CSXT. In addition to the rights and remedies of CSXT pursuant to Section 4.5(c) (*Change in Scope – Additional Work*), Section 9.3(c) (*Contractor Procurement*), Section 13.2 (*Termination*) and Section 14.3 (*Default Remedies*), CSXT may suspend the Work on a Project or exercise such other remedies other than termination immediately upon written notice to DRPT, only if: (a) through no fault of CSXT or act or omission of CSXT, the Work on a Project is stopped for a period of forty-five (45) consecutive calendar days by DRPT without cause, or stopped by CSXT on account of an act or omission of DRPT, including, for example, due to non-payment by DRPT; or (b) DRPT shall materially breach or default with respect to the Contract Documents for that certain Project. Any costs incurred by CSXT on account of any suspension,

or in connection with resuming Work on the Project, will be added to the Project as a Project Cost. If such stoppage, material breach, or default remains uncured for a period of 365 days following receipt of CSXT's written notice, CSXT may terminate the Contract Documents as it relates to that Project. For avoidance of doubt, CSXT may not terminate a Project for which Work has stopped or a material breach or default has occurred with respect to a different Project.

22.2 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.

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

22.4 CSXT Recovery. When a Project or associated Contract Documents are terminated or canceled by either Party, DRPT understands and agrees that it may be impractical for CSXT to immediately stop the Work. Accordingly, DRPT agrees that, in such instance, CSXT may continue to perform the Work until it has reached a point where it may reasonably and safely suspend the Work as reasonably determined by CSXT. Subject to Section 13.2 (*Termination*), DRPT shall continue to reimburse CSXT as per the terms of the Contract Documents for the Work performed, plus all costs reasonably incurred by CSXT to discontinue the Work and protect the Work upon full suspension of the same, and all other costs of CSXT incurred as a result of the Project up to the time of full suspension of the Work. If DRPT terminates a Project or Contract Documents as the result of a CSXT default, any amounts due to CSXT in accordance with this Section 22.4 (*CSXT Recovery*) shall be offset against any costs incurred by DRPT in the procurement for any Work then not completed by CSXT under the relevant Contract Documents. CSXT shall have no obligation to perform additional Work if this Agreement is terminated. If necessary in the opinion of CSXT, the Parties shall enter into an agreement for reimbursement of all such costs and expenses incurred by CSXT to so discontinue the Work.

22.5 Consequences of Termination. Termination of this Agreement, other associated Contract Documents, or the Work on any Project, for any reason, shall not diminish or reduce DRPT's obligation to pay CSXT for Project Costs incurred in accordance with this Agreement. 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 (or deemed completed under Section 5.6 (*Long Stop Date – Self-Performed Work*) hereof) in order for additional passenger trains to be added to the Service Plan. Notwithstanding the termination of any or all Projects or the associated Contract Documents, the provisions of Section 11 (*Operations and Maintenance After Acceptance*), Section 14 (*Payment*), Section 17 (*Offset or Reduction*), Section 20 (*Dispute Resolution*), Section 22.4 (*CSXT Recovery*), Section 22.5 (*Consequences of Termination*), Section 24.2 (*Debarment*), and Section 25.13 (*Controlling Law*) shall survive.

22.6 Consequential Damages. Neither CSXT nor DRPT shall be entitled to pursue claims for consequential, indirect or incidental damages or lost profits as a consequence of either Party's default or termination of this Agreement or Work on any given Project.

23. STEP-IN

23.1 CSXT Step-In. In the event: (i) a Construction Emergency has arisen or (ii) CSXT's Contractor has failed to perform its obligations in accordance with the Contract Documents, CSXT shall promptly take commercially reasonable action, including, if warranted, enforcing its payment and performance security to mitigate or contain such Construction Emergency or cure its Contractor's failure to perform.

24. INDEMNIFICATION AND DEBARMENT

24.1 Indemnification. Indemnification by CSXT for the benefit of DRPT shall be governed by the Comprehensive Rail Agreement. In addition, CSXT shall require its Contractors to defend, indemnify, and hold harmless DRPT and the Commonwealth, their 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. DRPT acknowledges that the amount and scope of indemnity required to be provided by Contractor may impact the cost for the services performed by Contractor, and limit the pool of Contractors willing and able to perform the Work.

24.2 Debarment. Per OMB Circular A-133, CSXT is prohibited from contracting with or making sub-awards under transactions covered by this Agreement to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (*e.g., sub-awards to subrecipients*). Contractors receiving individual awards for \$25,000 or more and all subrecipients must certify that the organization and its principals are not suspended or debarred. CSXT may rely upon the certification unless it knows that the certification is erroneous. CSXT agrees that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

24.3 DRPT Debarment. It is the policy of DRPT not to enter into any agreement with parties that have been debarred by any government agency federal or state. By execution of this Agreement, CSXT certifies that neither it nor its Contractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction.

25. MISCELLANEOUS

25.1 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.

25.2 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*.

25.3 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.

25.4 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.

25.5 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.

25.6 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.

25.7 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.

25.8 Disadvantaged Business Enterprises (DBE) (Federal Funded).

(a) In compliance with federal policy, CSXT, and/or its agent, including all Contractors, subcontractors, or sub-recipients shall have a Conflict of Interest Policy and adhere to the Disadvantaged Business Enterprises (DBEs) policy which requires goals to be set and participation to be reported.

(b) Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 Part 26 of the Code of Federal Regulations.

(c) CSXT shall not advertise nor enter into a contract for services performed as part of this Agreement, unless DRPT provides written approval of the advertisement or the contents of the contract.

(d) If CSXT fails to comply with these requirements, DRPT will withhold funding until these requirements are met..

25.9 • Discrimination in Employment. During the performance of this Agreement, CSXT agrees as follows: (a) CSXT will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by Law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of CSXT; CSXT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, (b) CSXT, in all solicitations or advertisements for employees placed by or on behalf of CSXT, will state that CSXT is an equal opportunity employer, (c) Notices, advertisements and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

25.10 Expiration. This Agreement, with the exception of Section 11 (*Operations and Maintenance After Acceptance*), Section 14 (*Payment*), Section 17 (*Offset or Reduction*), Section 20 (*Dispute Resolution*), Section 22.4 (*CSXT Recovery*), Section 22.5 (*Consequences of Termination*), Section 24 (*Indemnification and Debarment*), and Section 25.13 (*Controlling Law*), shall expire at the conclusion or termination of all Work on the Projects.

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

25.12 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.

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

25.14 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.

26. 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, in duplicate, 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, in duplicate, 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)