

EXHIBIT N-2

MASTER ENGINEERING AGREEMENT (DRPT)

BETWEEN

CSX TRANSPORTATION, INC.

AND

THE VIRGINIA DEPARTMENT OF RAIL

AND PUBLIC TRANSPORTATION

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MASTER ENGINEERING AGREEMENT (DRPT)

THIS MASTER ENGINEERING 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

WHEREAS, DRPT and CSXT (collectively referred to as the “**Parties**,” and individually as “**Party**”) desire to improve rail safety, capacity, passenger service, and transportation infrastructure within the Commonwealth of Virginia and the District of Columbia by completing certain projects as set forth herein; and

WHEREAS, the Parties created form construction agreements for work to be undertaken by CSXT and DRPT – the Master Construction Agreement (CSXT) and Master Construction Agreement (DRPT) (the “**Construction Agreements**”), respectively; and

WHEREAS, the Parties now desire to enter into engineering agreements for Work to be undertaken by DRPT and CSXT – this Agreement and the Master Engineering Agreement (CSXT), respectively; and

WHEREAS, CSXT and DRPT have agreed for DRPT to proceed with certain necessary engineering and/or design services which provide and define responsibilities for the preliminary study, assessment, planning, environmental planning, design, and cost estimates for each project to facilitate the consideration of proposed projects by the Parties; and

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

WHEREAS, all engineering or construction work performed by CSXT will be governed by the Master Construction Agreement (CSXT) and the Master Engineering Agreement (CSXT), respectively, even if such work relates to a Project being undertaken by DRPT under this Agreement.

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 mutually 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 – A written and duly executed notice whereby CSXT and DRPT establish, for each Project, the Work to be performed by DRPT or its Consultants. Included therein is the Work Schedule pursuant to Section 3 (*Work and/or Authorization Notice*) of this Agreement, as may be amended from time to time by Modification.

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.

Consultants – Third parties that may be engaged by DRPT to perform portions of the Work on a given Project. Consultants may include a construction manager, project manager, or providers of other program or administrative assistance, if deemed efficient by DRPT.

Contract Documents – The Comprehensive Rail Agreement, this Agreement and/or Authorization Notice for each Project, and any applicable Modifications as set forth in Section 2 (*Contract Documents*).

Contract Time – The anticipated period of time to complete a Project, as established by the Work Schedule for that 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*) to 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, 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 Work Cost – All reasonable and actual costs and expenses, internal and external, direct and incidental, that comply with all applicable standards, Laws and Funding Agreement terms and conditions, incurred by CSXT in performing its obligations or enforcing its rights 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 – Persons appointed by DRPT and CSXT, respectively, to represent that Party in connection with Work for a given Project, pursuant to Section 8 (*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.

Engineering – Work completed prior to construction of the Project which provides and defines responsibilities for the preliminary study, assessment, planning, environmental planning, preliminary and final design, and cost estimates of a Project.

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 – The point in time when CSXT notifies DRPT of final acceptance of the Work under the applicable Authorization Notice, in accordance with Section 9 (*Project 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 Consultant 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.

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 Projects, performance of the Work, or operation of the Projects, or the health, safety, or environmental condition of the Projects, 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 Engineering Agreement (CSXT) – That certain agreement between CSXT and DRPT, executed contemporaneously with this Agreement, in which CSXT has agreed to undertake the engineering work contemplated therein.

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

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

Modification(s) – A written and duly executed amendment to the Contract Documents (excluding the Comprehensive Rail Agreement), including amendments to the Authorization Notices, establishing, modifying, or adjusting the Work or a 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 – The set of tasks described within a specific Authorization Notice related to this Agreement. “Project” shall also include, collectively, CSXT Assets Projects and DRPT Assets Projects.

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

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 engineering and/or design services, tasks, duties, obligations, services, requirements, and activities, to be performed, and the administration related thereto, and all items to be provided by DRPT respecting Engineering for the Projects pursuant to this Agreement.

Work Product – All engineering and design documents, surveys, reports, drawings, specifications, or other Work produced as part of a Project, whether complete or incomplete.

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

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) Authorization Notice; 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 Authorization Notice;
- (c) this Agreement; and
- (d) the Comprehensive Rail Agreement.

3. WORK AND/OR AUTHORIZATION NOTICE

3.1 Projects. Projects have been or shall be assigned for Engineering 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 engineering 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 completed by DRPT, and that the Master Engineering Agreement (CSXT) shall be used for any Projects to be completed by CSXT. Projects completed by DRPT pursuant to this Agreement shall be in accordance with the Contract Documents applicable to each Project, unless otherwise specified in the relevant Authorization Notice.

3.2 Submission of an Authorization Notice.

(a) For each Project, DRPT shall work collaboratively with CSXT to prepare and submit an Authorization Notice to CSXT for its review and comment. Such Authorization Notice shall more specifically describe the Work to be performed by DRPT and include the Work Schedule, and any other information necessary for the performance of the Work in accordance with Applicable Project Standards.

(b) Upon receipt of the Authorization Notice, CSXT shall have 30 days to review the Authorization Notice and provide comments. Within 30 days of receipt of CSXT's comments, DRPT shall prepare and resubmit a revised Authorization Notice 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 11 (*Dispute Resolution*). Upon

the satisfaction of CSXT and DRPT of the contents of the Authorization Notice, the Parties shall execute the Authorization Notice.

(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 will perform, or cause to be performed, Work referenced in the Authorization Notice for each Project. Such Work shall be performed in accordance with Applicable Project Standards.

4.2 General Provision. The Work to be performed by DRPT shall consist of one or more of the following: (a) preparation of preliminary engineering and final design plans, specifications, drawings, and other documents pertaining to the Projects; (b) preparation of construction cost estimates for Work in connection with the Projects; and (c) review of construction cost estimates, site surveys, assessments, studies, and related construction documents for the Projects. Work may also include: (i) office reviews, (ii) field reviews, (iii) attendance at hearings and meetings, and (iv) preparation of correspondence, reports, and other documentation in connection with the Projects.

4.3 Changes in Scope – Generally.

(a) Each Authorization Notice will establish a fixed scope of the Work to be accomplished by CSXT under such Authorization Notice for compensation not in excess of the Maximum Not To Exceed Amount established under the same Authorization Notice. However, either Party may request a change in the scope of Work by submitting a written request to the other Party for a Modification using the procedures set forth in Section 4.4 (*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, CSXT shall have the right to refuse to accept any request that would (i) cause the relevant Work to 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 the Applicable Project Standards (any conflict with Law shall be deemed material).

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

(d) In the event of a disagreement between the Parties, either Party may submit such dispute for resolution in accordance with Section 11 (*Dispute Resolution*).

4.4 Change in Scope – Additional Work.

(a) If DRPT requires additional Work which is not specifically provided for in the applicable Authorization Notice, 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 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 (i) would cause the relevant Work to materially conflict with the Applicable Project Standards, (ii) would materially adversely affect freight and/or passenger rail operations, or (iii) would materially adversely affect any other rights of CSXT with respect to the applicable Project or the Retained RF&P Corridor.

(b) Promptly (and in any event within 10 days) after receiving DRPT'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. Within 20 days after the meeting, CSXT shall 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 the 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 applicable Project or the Retained RF&P Corridor.

(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 4.4(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.

4.5 Entry.

(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 Five Million Dollars (\$5,000,000) per occurrence.

(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.

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 Consultant, shall make commercially reasonable efforts to complete the Work as addressed under the scope of Work within the time set forth in the applicable Authorization Notice.

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

5.2 Changes to Work Schedule.

(a) In the event either Party requires changes to the Work Schedule, the requesting Party may submit a written Modification request to the other Party. Such Modification request shall include a description of the modification to the Work Schedule, which shall be based on the baseline Work Schedule submitted as part of the Authorization Notice.

(b) Promptly (and in any event within 30 days) after delivery and receipt of such Modification request, the Parties shall meet to discuss the matters referred to in it. During such discussions, the Parties may propose changes to the Modification request. 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) CSXT shall be obligated to accept any Modification to the Work Schedule requested by DRPT that does not (a) materially adversely affect freight and/or passenger rail operations, (b) materially adversely affect any other rights of CSXT with respect to the Project, or (c) materially conflict with Applicable Project Standards (any conflict with Law shall be deemed material). DRPT shall have the right to refuse to accept any Modification to the Work Schedule requested by CSXT, unless a failure to accept the Modification would (a) materially adversely affect freight and/or passenger rail operations, (b) materially adversely affect any other rights of CSXT with respect to the Project, or (c) materially conflict with Applicable Project Standards (any conflict with Law shall be deemed material).

(d) For the avoidance of doubt, DRPT may amend the Work Schedule without CSXT approval, *provided*, that DRPT shall provide notice to CSXT of any change to the Work Schedule and provided further that the change does not (a) materially adversely affect freight and/or passenger rail operations; (b) materially adversely affect any other rights of CSXT with respect to the Project, or (c) materially conflict with Applicable Project Standards (any conflict with Law shall be deemed material).

(e) In the event of a disagreement between the Parties, either Party may submit such dispute for resolution in accordance with Section 11 (*Dispute Resolution*).

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 Progress Reports. After commencement of each Project, the DRPT Designated Representative or its designee will provide the CSXT 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 Authorization Notice, 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 as specified in the Authorization Notice, (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. ENGINEERING COST AND CONSULTANTS

7.1 Consultants.

(a) The Parties recognize and agree that DRPT Consultants and/or subcontractors may perform all or any portion of the Work.

(b) Subject to Law, the Parties agree that at least thirty (30) days prior to DRPT issuing any request for proposals for Work from Consultants, CSXT shall have the right to review any procurement documents intended to be issued as part of any solicitation. Prior to selection of a Consultant, DRPT shall provide to CSXT a written justification for selection.

8. DESIGNATED REPRESENTATIVES

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

8.2 DRPT 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.

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

9. PROJECT COMPLETION

9.1 Final Completion.

(a) Upon receipt of a written notice from DRPT of completion of the Work provided under the applicable Authorization Notice, CSXT shall make a review to determine if all of the Work specified in the Authorization Notice has been satisfactorily completed in accordance with Applicable Project Standards. DRPT shall provide all documentation reasonably requested by CSXT for CSXT to determine whether DRPT has completed the Work required under the applicable Authorization Notice in accordance with Applicable Project Standards. If all Work has been satisfactorily completed in accordance with Applicable Project Standards, CSXT shall make final acceptance by notifying DRPT of final acceptance in writing.

(b) If the review discloses that any Work, in whole or in part, has not been completed in accordance with Applicable Project Standards, DRPT shall immediately correct the deficiency at its sole cost. Upon completion or correction of the Work, DRPT may request another review by CSXT to determine if all Work specified in the Authorization Notice has been completed in accordance with Applicable Project Standards. In such event, provided the Work meets the Applicable Project Standards, CSXT will make the final acceptance and will notify DRPT of final acceptance in writing.

(c) If DRPT does not agree with CSXT's determination as to whether all Work specified in the Authorization Notice has been satisfactorily completed, DRPT may submit such dispute for resolution in accordance with Section 11 (*Dispute Resolution*).

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; Interest.

(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. DISPUTE RESOLUTION

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

12. PROVISIONS REQUIRED BY FUNDING PARTNERS

The Parties agree to add to any Authorization Notice those provisions required by one or more Funding Partners for the corresponding Projects, exclusive, as to CSXT, of any service outcome requirement. The Funding Partner requirements must be communicated and included in the Authorization Notice prior to execution by of the Authorization Notice by CSXT.

13. TERMINATION OF AGREEMENT

13.1 Termination by CSXT. In addition to any other rights and remedies of CSXT pursuant to the Contract Documents or as may be available under Law, including Section 4.4(c) (*Change in Scope – Additional Work*), 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.

13.2 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; (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.

13.3 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. ENGINEERING SERVICES

14.1 In-House Staff. It is anticipated that DRPT may undertake the Engineering services required for the Projects by using in-house staff. In the event in-house staff is not used, DRPT shall follow the procurement procedures required by Law.

15. INDEMNIFICATION

DRPT shall require its third-party consultants to defend, indemnify, and hold harmless CSXT, its respective officers, directors, principals, employees, agents, successors, and assigns from and against liability for damage arising out of the consultants' negligent acts, errors or omissions, recklessness or intentionally wrongful conduct in performing the Work.

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, Authorization Notices, Amendments, and/or Modifications, embodies the complete understanding of the Parties with respect to the Work of the Projects and supersedes other prior or contemporaneous written or oral agreements, understandings, and negotiations with respect to the Work or 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 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 10 (*Costs and Payment*), Section 11 (*Dispute Resolution*), 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. For the avoidance of doubt, NEPA compliance shall be the sole responsibility of DRPT.

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 Jacksonville, Florida 32202 Attention: Assistant Vice President – 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 Jacksonville, FL 32202 Attention: Assistant General Counsel	With a copy to	Office of the Attorney General 202 N. 9 th St. Richmond, VA 23219 Attention: Transportation Section Chief

(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: _____

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: _____