

**EXHIBIT N-1**

**MASTER ENGINEERING AGREEMENT (CSXT)**

**BETWEEN**

**CSX TRANSPORTATION, INC.**

**AND**

**THE VIRGINIA DEPARTMENT OF RAIL**

**AND PUBLIC TRANSPORTATION**

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## MASTER ENGINEERING AGREEMENT (CSXT)

**THIS MASTER ENGINEERING 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

**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 CSXT and DRPT – this Agreement and the Master Engineering Agreement (DRPT), respectively; and

**WHEREAS**, DRPT and CSXT have agreed for CSXT 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 may proceed 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 CSXT or its Consultants. Included therein are the hourly rates of CSXT personnel and/or costs for Consultants and 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 CSXT 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 CSXT.

**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*) of the Comprehensive Rail Agreement.

**CSXT Design and Construction Standards** – The CSXT design and construction standards that CSXT uses when undertaking design and construction projects at its own cost, including the CSXT standards with respect to grades, degree of curvature, clearances or braking distances in effect as of the original execution date of the Term Sheet; *provided*, that CSXT may modify the CSXT Design and Construction Standards from time to time, 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.

**Designated Representative** – The persons appointed by DRPT and CSXT, respectively, to represent that Party in connection with Work for a given Project, pursuant to Section 9 (*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 a Project which provides and defines responsibilities for the preliminary study, assessment, planning, environmental planning, preliminary and final design, and cost estimates of a Project.

**Engineering Cost Estimate** – An estimate of the costs for performing the Work to be undertaken on a given Project, as set forth in the applicable Authorization Notice. Engineering Costs shall be based on the hourly rates of CSXT personnel engaged to perform Work and shall include all related Work Costs.

**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 DRPT notifies CSXT of final acceptance of the Work under the applicable Authorization Notice, in accordance with Section 12 (*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.

**Good Industry Practice** – The degree of skill and judgment prevailing on the effective date of the relevant Authorization Notice that is expected to be exercised by a prudent, skilled, and experienced designer, engineer, or other design professional 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.

**Law** – All laws, treaties, ordinances, judgments, decrees, Federal Requirements, 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 (DRPT)** – That certain agreement between CSXT and DRPT, executed contemporaneously with this Agreement, in which DRPT 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 (DRPT), the Construction Agreements, or any other agreements entered into intended to further the purpose of the Comprehensive Rail Agreement.

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

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

**Modification(s)** – All written and duly executed amendments to the Contract Documents (excluding the Comprehensive Rail Agreement), including amendments to the Authorization Notices, establishing, modifying, or adjusting an Engineering Cost Estimate, 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).

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

**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.

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

**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 Costs** – 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 Consultants and other contractors retained by CSXT in connection with a 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 13.1 (*Reimbursable Costs*), Section 13.2 (*Audit*) and Section 14 (*Insurance*). Overhead and indirect expenses shall be calculated using audited rates approved by the Federal Highway Administration and/or Federal Railroad Administration, as applicable.

**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 CSXT 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 CSXT in collaboration with DRPT 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 CSXT, and that the Master Engineering Agreement (DRPT) shall be used for any Projects to be completed by DRPT. Projects completed by CSXT 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 No Engineering Notice by CSXT.** Notwithstanding Exhibit E-1 of the Comprehensive Rail Agreement, for Projects on which CSXT has agreed to undertake the Work using its in-house staff pursuant to Section 20.1 (*In-House Staff*), CSXT may elect not to undertake such Work by providing written notice to DRPT (a “**No Engineering Notice**”) prior to execution of the Authorization Notice to the applicable Project. For Projects where CSXT has agreed to undertake the Work using Consultants in accordance with Section 8.2 (*Consultants*), CSXT may elect not to undertake such Work by providing a No Engineering Notice to DRPT prior to CSXT reaching agreement with a Consultant to perform the applicable Work.

#### **3.3 Submission of an Authorization Notice.**

(a) For each Project, CSXT shall work collaboratively with DRPT to prepare and submit an Authorization Notice to DRPT for its review and comment. Such Authorization Notice shall more specifically describe the Work to be performed by CSXT and include (i) an Engineering Cost Estimate, to include any advance payments required for mobilization; (ii) the Work Schedule; (iii) insurance requirements; and (iv) any other information necessary for the performance of the Work.

(b) Upon receipt of the Authorization Notice, DRPT shall have 30 days to review the Authorization Notice 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 Authorization Notice 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 17 (*Dispute Resolution*). Upon the satisfaction of DRPT and CSXT of the contents of the Authorization Notice, the Parties shall execute the Authorization Notice.

(c) Among other rights articulated in this Agreement, 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, Work referenced in the Authorization Notice for each Project. Such Work performed by CSXT shall be performed in accordance with Applicable Project Standards and Good Industry Practice, and CSXT shall contractually require its Consultants to perform the Work it performs in accordance with the Applicable Project Standards and Good Industry Practice.

**4.2 General Provision.** The Work to be performed by CSXT 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, DRPT shall have the right to refuse to accept any request that (i) would materially change the scope of the Work, Engineering Cost Estimate, Work Costs, or Work Schedule; (ii) which may otherwise be deemed unreasonable; or (iii) 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 (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 17 (*Dispute Resolution*).

### 4.4 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 Authorization Notice, 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 Engineering Cost Estimate 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 4.4(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. In the event performance is suspended, DRPT shall provide evidence satisfactory to CSXT that additional funding has been acquired prior to CSXT resuming Work.

## **5. PROJECT TIME FRAME**

**5.1 Commencement Date.** Unless otherwise specified by the relevant Authorization Notice, CSXT shall commence Work on a given Project within thirty (30) calendar 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 an Authorization Notice for such Project; (b) CSXT has received advance payment for that portion of the Project required for mobilization; and (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.

### **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) 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.

(c) Plans for Work that are prepared by CSXT shall be submitted to DRPT for review prior to finalizing said plans. Written review comments from DRPT shall be received by CSXT within thirty (30) calendar days of submittal. CSXT shall incorporate DRPT's comments into its plans unless such comments, in CSXT's reasonable opinion, would materially adversely affect the Work Schedule. In the event that DRPT does not agree with CSXT's determination as to whether its comments would materially adversely affect the Work Schedule, DRPT may submit such dispute for resolution in accordance with Section 17 (*Dispute Resolution*). All sites selected for improvement, all plans for improvements, and all contracts with CSXT will be subject to the approval of DRPT prior to CSXT performing any Work.

(d) 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 Authorization Notice in accordance with the Contract Time and Work Schedule. For Projects in which Work will be performed by a Consultant of CSXT, CSXT shall require that the Consultant complete such Work in accordance with the Work Schedule. If CSXT or its Consultants fail to prosecute the Work in a timely manner such that the Work falls ninety (90) days or more behind the applicable Work Schedule, which may be modified from time to time in accordance with the terms of this Agreement, such delay shall constitute a material breach by CSXT, giving DRPT the right to terminate the applicable Authorization Notice and Project for CSXT's default in accordance with Section 19.2 (*Termination by DRPT*) and 19.4 (*CSXT Recovery*) and assume responsibility for the Project as a DRPT-led project, subject to the Master Engineering Agreement (DRPT). For the avoidance of doubt, delays not due to CSXT or its Contractors shall not constitute a material breach by CSXT.

### **5.3 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 the Modification.

(c) CSXT shall be obligated to accept any Modification to the Work Schedule requested by DRPT; *provided*, that: (i) CSXT may refuse such Modification if it 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 the Retained RF&P Corridor; or (c)

materially conflict with Applicable Project Standards (any conflict with Law shall be deemed material); (ii) any increase in costs incurred by CSXT as a result of the Modification to the Work Schedule shall constitute reimbursable Work Costs; and (iii) if CSXT's then-existing resources cannot reasonably accommodate the Modification then CSXT may condition its acceptance of a Modification to the Work Schedule on the Modification incorporating reasonable additional time for CSXT to accomplish any additional Work associated with the Modification.

(d) DRPT shall have the right to refuse to accept any Modification to the Work Schedule requested by CSXT that affects the critical path of the Work Schedule or Master Work Schedule, unless such refusal would materially adversely affect freight and/or passenger rail operations or 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 17 (*Dispute Resolution*).

(f) Notwithstanding the foregoing, CSXT may amend the Work Schedule without DRPT approval, if such amendment does not impact the critical path of the Work Schedule or Master Work Schedule, *provided*, that such amendment shall only be effective following delivery of written notice to DRPT.

## **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 Section 5 (*Project Time Frame*), 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 Authorization Notice. In the event CSXT anticipates a change in the priority of the Projects will result in a change to the Work Schedule, CSXT shall submit a Modification to DRPT using the procedures set forth in Section 5.3 (*Changes to Work Schedule*).

## **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 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.

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

## **8. WORK COST AND CONSULTANTS**

### **8.1 Work Costs.**

(a) Work Costs reimbursed by DRPT shall not be in excess of the Maximum Not To Exceed Amount set forth in the applicable Authorization Notice. If the estimated Work Costs are projected 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 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 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.

### **8.2 Consultants.**

(a) The Parties recognize and agree that CSXT 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 CSXT issuing any request for proposals for Work from Consultants, 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 Proposal Amount for any Work to be performed by Consultants. Prior to selection of a Consultant, CSXT shall provide written notification to DRPT of its choice and its reasoning for selection. CSXT's selection of a Consultant shall reflect, in CSXT's reasonable opinion, the best value of all qualified proposals received. CSXT shall include DRPT as a third party beneficiary in any contract for Work performed by Consultants. To the extent permitted by applicable Law, without precluding anticipated Funding Partners, CSXT may select a Consultant through its existing general-engineering-consultant process.

(c) In the event the price proposal by CSXT's Proposed Consultant exceeds the Maximum Proposal Amount, CSXT shall choose the next best Consultant with a price that does not exceed the Maximum Proposal Amount. In the event that no Consultant proposal is below the Maximum Proposal Amount, the Parties may: (i) agree to increase the Maximum Proposal

Amount, (ii) terminate the Project, or (iii) to the extent permitted by Law, enter into negotiations with one or more offerors to adjust the scope and/or price to a value within the Maximum Proposal Amount.

## **9. DESIGNATED REPRESENTATIVES**

**9.1 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 such Project. The Parties may also identify secondary representatives who will receive copies of all correspondence on such Project.

**9.2 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.

**9.3 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.

## **10. FUNDING**

**10.1 Availability.** The liability of DRPT to CSXT for reimbursement of Work Costs is subject to the appropriation and authorization of funds for such Work Costs. Said amounts shall be addressed in the applicable Authorization Notice. 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 Authorization Notices. 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.

**10.2 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 19.1 (*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 10.2 (*Termination*) shall limit CSXT's right to be compensated for all Work Costs validly incurred pursuant to an Authorization Notice and any applicable Modification to a Project.

## **11. PAYMENT**

**11.1 Payments.** 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 (such rates to be set forth in the applicable Authorization Notice), (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. CSXT agrees that it shall bear all Work Costs that it is unable to reasonably substantiate; *provided*, that for any Work Costs for which DRPT is to receive reimbursement from a Funding Partner, DRPT shall provide evidence to CSXT that the Work 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 Work 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. 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.

## **11.2 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 the 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 19.1 (*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 23 (*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

**11.3 Federal Funding Accountability and Transparency Act Requirements.** All Parties to this Agreement, and their Consultants, 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)."

## **12. PROJECT COMPLETION**

### **12.1 Final Completion.**

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

(b) If the review discloses that any Work, in whole or in part, is incomplete, CSXT shall use reasonable efforts to complete the Work, as a Work Cost. If the review discloses that any Work, in whole or in part, is unacceptable, CSXT shall use reasonable efforts to correct the Work, as a Work Cost, unless the unacceptable portion was due to an error or omission, attributable solely to CSXT or its Consultant, in which case the cost to correct the work shall not be treated as a Work Cost, and shall be corrected by CSXT or its Consultant at no additional cost to DRPT. Upon completion or correction of the Work, CSXT may request another review by DRPT to determine if all Work specified in the Authorization Notice has been satisfactorily completed. In such event, provided the Work is complete and acceptable, DRPT will make the final acceptance and will notify CSXT of final acceptance in writing.

(c) If CSXT does not agree with DRPT's determination as to whether all Work specified in the Authorization Notice has been satisfactorily completed, CSXT may submit such dispute for resolution in accordance with Section 17 (*Dispute Resolution*).

(d) When written final acceptance has been delivered to CSXT by DRPT, CSXT shall submit an invoice for final payment in accordance with Section 11.1 (*Payments*). Upon review and approval of the final invoice by DRPT pursuant to Section 11.1 (*Payments*), CSXT shall be paid the entire sum due in accordance with Section 11.1 (*Payments*). Payments shall be subject to correction at the time of any final audit.

## **13. WORK COSTS**

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

**13.1 Reimbursable Costs.** DRPT shall reimburse CSXT for all reasonable costs and expenses incurred by CSXT in connection with the Work, including, without limitation: (a) out-of-pocket expenses; (b) travel and lodging expenses in accordance with Commonwealth travel policies; (c) telephone, facsimile, and mailing expenses; (d) costs for equipment, tools, materials and supplies; (e) sums paid to Consultants and subcontractors; and (f) CSXT labor.

**13.2 Audit.** Subject to any additional requirements that may be imposed by Funding Partners or Federal Requirements, 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 incurred costs 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.

#### **14. INSURANCE**

CSXT or its Consultant as applicable, shall procure and maintain, as a Work Cost, insurance, in form and substance acceptable to CSXT and DRPT, during the performance of the Work, as more particularly described in the Authorization Notice for each Project. The Parties agree all such insurance, to include specifically professional liability insurance, will include coverage liabilities or claims arising out of the activities conducted pursuant to this Agreement. Execution of the Authorization Notice 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 Authorization Notice and the date when CSXT commences Work, DRPT will execute a Modification to cover the reasonable increased or decreased cost of the insurance.

#### **15. 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 17 (*Dispute Resolution*), without adversely affecting CSXT's other rights and remedies under this Agreement.

#### **16. 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.

## **17. 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.

## **18. 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 Project, 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 of the Authorization Notice by CSXT.

## **19. TERMINATION OF AGREEMENT**

**19.1 Termination by CSXT.** In addition to the rights and remedies of CSXT pursuant to Section 4.4(c) (*Change in Scope – Additional Work*), Section 8.2(c) (*Consultants*), Section 10.2 (*Termination*), and Section 11.2 (*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 Work 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.

**19.2 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.

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

**19.4 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, or, if requested by DRPT, until such time as determined by DRPT; *provided*, that DRPT shall provide advance payment to CSXT for the Work performed at DRPT's request. Subject to Section 10.2 (*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 CSXT-incurred costs 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 19.4 (*CSXT Recovery*) shall be offset against any costs incurred by DRPT in the re-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 except as requested by DRPT in accordance with this Section 19.4 (*CSXT Recovery*). 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.

**19.5 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 Work 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 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 (*Payment*), Section 15 (*Offset or Reduction*), Section 17 (*Dispute Resolution*), Section 19.4 (*CSXT Recovery*), Section 19.5 (*Consequences of Termination*), Section 21 (*Indemnification and Debarment*), and Section 22.13 (*Controlling Law*) shall survive. Upon early termination of a Project, CSXT shall provide all Work Product generated up through the date of termination to DRPT.

**19.6 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.

## **20. ENGINEERING SERVICES**

**20.1 In-House Staff.** CSXT may use qualified in-house staff based on DRPT's approval of a scope of Work, which details work to be performed, staff qualifications, staff time, and wage rates. It is not anticipated that CSXT will undertake much if any of the Work required for the Projects by using in-house staff. When in-house staff is not used, CSXT shall follow the procurement procedures set out in Section 8.2 (*Consultants*).

## **21. INDEMNIFICATION AND DEBARMENT**

**21.1 Indemnification.** CSXT shall indemnify, and shall contractually require its Consultants to indemnify, DRPT for any liability for damage arising out of the negligent acts, errors, or omissions, recklessness or intentionally wrongful conduct of the design professionals performing the Work. To support such indemnification, CSXT shall (and/or shall contractually

require its Consultants to) obtain and maintain professional liability insurance pursuant to Section 14 (*Insurance*).

**21.2 CSXT 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.

**21.3 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 Consultants 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.

## **22. MISCELLANEOUS**

**22.1 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.

**22.2 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*.

**22.3 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.

**22.4 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.

**22.5 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.

**22.6 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.

**22.7 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.

**22.8 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.

**22.9 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; and (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.

**22.10 Expiration.** This Agreement, with the exception of Section 11 (*Payment*), Section 15 (*Offset or Reduction*), Section 17 (*Dispute Resolution*), Section 19.4 (*CSXT Recovery*), Section 19.5 (*Consequences of Termination*), Section 21 (*Indemnification and Debarment*), and Section 22.13 (*Controlling Law*) shall expire at the conclusion or termination of all Work on the Projects.

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

**22.12 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.

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

**22.14 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.

## 23. 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 <sup>st</sup> Floor Richmond, VA 23219 Attention: Director
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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<sup>th</sup> 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: \_\_\_\_\_

(CSXT SIGNATURE PAGE)

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

**ATTEST**

**VIRGINIA DEPARTMENT OF RAIL AND  
PUBLIC TRANSPORTATION**

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

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

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

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

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

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

(DRPT SIGNATURE PAGE)