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June 2, 2015

The Hon. Phil Mendelson
Chairman, Council of the District of Columbia
The Hon. Mary Cheh
Chair, Committee on Transportation and the Environment
The John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Chairman Mendelson and Councilmember Cheh:

Based on documents signed by District officials between 2010 and 2014 – spanning the Fenty and Gray administrations – the District received a sum totaling more than \$4 million from CSX Transportation (“CSXT”), spent those funds on the 11th Street Bridge project, and now has an outstanding and apparently open-ended obligation to the railroad to spend the same amount in District funds on a project to be negotiated with and approved by CSXT.

The existence of an unmet obligation on the part of the District government to a major transportation company is concerning, particularly when it would appear that the company’s funds were spent in support of the company’s own project. I share this information with you based on conversations earlier this year, based on subsequent discussions with the Office of the Inspector General, and in light of your oversight responsibilities for DDOT. I also share this information with Attorney General Karl Racine, Inspector General Daniel Lucas, and Darren Sobin, Director of Government Ethics, in case they see merit in their own additional review.

The origin of the \$4,171,044 payment by CSXT to the District remains unclear. According to a May 20, 2015, letter from Department of Transportation Director Leif Dormsjo:

The understanding by current DDOT staff is that CSXT contributed the money because CSXT failed to timely comment on DDOT’s design for 11th Street Bridge. However, CSXT disputes this and claims the delay was caused by DDOT’s contractor failing to provide the plans to CSXT for review.

Though the derivation remains unclear, documents indicate that the District initially agreed to provide the same amount in District funds toward the railroad’s Virginia Avenue Tunnel (VAT) project, then amended that agreement in 2014 to leave the final use of the District’s \$4 million open to further negotiation with CSXT. Mr. Dormsjo’s also wrote in his May 20, 2015, letter:

DDOT and CSXT also entered into an agreement to provide \$4,171,044 that would be contributed by DDOT to the VAT to replace streets, subject to federal approvals and appropriations. The Agreement was later modified to delete language providing for a DDOT contribution to CSXT's VAT project, and provided that DDOT and CSXT would work together to identify another eligible project for the use of the CSXT Credit Amount... To date, an eligible project has not been identified...

A further, detailed timeline follows concerning the District's receipt and use of the \$4 million from CSXT, based on information received from DDOT and other information, including documents that are part of current litigation:

- **August 23, 2010: DDOT and CSXT entered into agreement to use CSXT funds for bridge design.** A Memorandum of Agreement ("MOA") between CSXT and DDOT was signed August 23, 2010, by then-DDOT Director Gabe Klein and called the State-Railroad Agreement. The MOA was for the construction of Ramp A-1 of the 11th Street, SE Bridges over CSXT at mileposts CFP 112.90 (the "CSXT Railroad Tracks") in Washington, DC (p. 1). The MOA states that CSXT will pay DDOT \$4,171,044 for Redesign (design and construction) costs. (p. 4, paragraph 4.6.ii).
- **August 23, 2010: The District agrees to contribute an equal sum (\$4,171,044) to the VAT.** In a second MOA, also dated August 23, 2010, CSXT and the District of Columbia, acting through the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") and DDOT, agree that DDOT will credit CSXT \$4,171,044 "toward the restoration and/or resurfacing of Virginia Avenue upon the completion of the construction for the Virginia Avenue Tunnel Expansion project." (p. 2, Article III. A). In addition, the second August 23, 2010, MOA states that "DDOT shall obtain the CSXT Credit Amount of funds through traditional federal appropriations and obligations for resurfacing of Federal-Aid facilities." (p. 2, Article III. B).
- **February 11, 2011:** The District agrees that the CSXT funding will be used to re-design the 11th Street Bridge to be compatible with the CSXT tunnel project. An amendment of Solicitation/Modification of Contract (Number 008) was processed as a Change Order in the amount of \$4,171,044, increasing the Total Contract Value to \$265,075,044. This was approved by DDOT Contracting Officer Jerry M. Carter on May 16, 2011. The Scope of Services, contained in the Supporting Documentation for Amendment Number 008, states that the:
 - Contractor shall re-design the new proposed bridge structure (S-19) that carries I-695 over the existing CSX Rail line in the vicinity of 11th and M Streets in Southeast Washington, DC. This structure shall be re-designed in such a way as not to preclude the construction of a CSX temporary shoo-fly track . . . and the widening of the CSX Virginia Avenue Tunnel... The Contractor shall be solely responsible for design coordination and review with CSX representative and shall adhere to all standards, specifications, and design request of CSX...

- **June 21, 2011: A purchase order detailed the expenditure of CSXT funds on the 11th St. Bridge project.** Purchase Order No. PO365135 - KAO/IPMA/AWI/CSX, payment of \$4,171,000 to Skanska-Faccchina JV for “CSX work at 11 Street SE Bridges” was approved. The payment was made under three vouchers:

 - VO950593 -- \$2,592,648.00 -- December 11, 2012
 - VO967665 -- \$151,7344.18 -- February 15, 2013
 - VO 967788 -- \$61,007.82 -- February 15, 2013

- **December 12, 2012: State-Railroad Construction Agreement between CSXT and DDOT indicates there will be federal financing for the tunnel and bridge project.** Recital 5 states that “The Federal Highway Administration of the United States Department of Transportation (hereinafter called “FHWA”) has agreed to participate in financing the Project, and, as condition prerequisite to assistance in financing said Project, has required that an agreement be entered into between the District and CSXT for construction and maintenance of, and reimbursement of the costs associated with, the Project pursuant to 23 C.F.R. § 646.216(d) (2012) et. seq. In his letter of May 20, 2015, Mr. Dormsjo wrote, “After careful review and research, we could find no supporting documentation for Recital 5. As we now understand it, the purpose of the recital was to explain why the parties were entering into the State-Railroad Agreement dated December 21, 2012.” (p. 3, paragraph 5).

- **April 21, 2014: The August 2010 MOA is amended regarding identifying an eligible project for the CSXT credit.** CSXT and the District of Columbia, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (“DMPED”) and DDOT, entered into a new MOA amending the August 23, 2010, MOA as follows:

 - Section A of Article III is hereby amended by inserting the following new paragraph at the end thereof:
 - Notwithstanding anything to the contrary in Sections A and B of this Section III, none of the CSXT Credit Amount shall be used for the Virginia Avenue Tunnel Expansion Project. In exchange for the payments in the total amount of \$4,171,044 CSXT previously made to DDOT pursuant to Section IV. C below to assist DDOT with the 11th Street Bridge Project, DDOT and CSXT agree to work together to identify an eligible project for the use of the CSXT Credit Amount using traditional federal appropriations obligations for resurfacing of Federal Aid facilities within the next six (6) months, however, failure to identify an eligible project shall not constitute a default under the MOA, as amended. (p. 1).

Article VIII of the Memorandum is hereby deleted (p. 1). [Note: Article VIII of the August 23, 2010, Memorandum of Agreement between CSXT and DMPED/DDOT is entitled Virginia Avenue Resurfacing/Restoration and states, “In accordance with Article III, Sections A and B above, DDOT

will seek funding via the Transportation Improvement Program for the costs of restoration and/or resurfacing of Virginia Avenue, SE, up to the CSXT Credit Amount.”]

- **May 20, 2015: As of May 2015, no eligible project has been identified leaving the obligation open-ended.** With regard to the DDOT obligation/the CSXT Credit of \$4,171,044, in a letter to ODCA, Mr. Dormsjo writes, “to date an eligible project has not been identified.” (p. 2).

Among materials provided by DDOT in response by my inquiry is a list of current and former DDOT officials who may have information concerning these matters. In case you decide to hold an oversight hearing on the District’s financial obligation to CSXT, I note that several of those listed as “former” DDOT officials are currently working in the executive branch and it might prove useful to seek their testimony.

Sincerely yours,



Kathleen Patterson
District of Columbia Auditor

Enclosures:

- State-Railroad Agreement between CSXT and DDOT, dated August 23, 2010
- MOA between CSXT and the District of Columbia, acting through the Office of the Deputy Mayor and DDOT, dated August 23, 2010
- Amendment Number 008 to Contract Number PO365135 - DCKA-2008-R-0146, with Supporting Documentation, dated February 11, 2011
- Purchase Order No. KAO/IPMA/AWI/CSX for 11th Street SE Bridges, issued on June 21, 2011
- December 12, 2012, State-Railroad Construction Agreement between CSXT and DDOT
- Office of the Chief Financial Officer documentation, including list of three payments from CSX
- First Amendment to Memorandum of Agreement, dated April 21, 2014
- DDOT letter to ODCA dated May 20, 2015
- DDOT List of Personnel

cc: Phil Mendelson, Chairman
Karl Racine, Attorney General
Daniel Lucas, Inspector General
Darrin P. Sobin, Director of Government Ethics

Attachment C - Railroad Agreement
District Department of Transportation
11th Street Bridge Replacement

Federal-Aid Project: FAP IM-295-2 (185)
Contract Number: DCKA-2008-R-0146
Change Order Number: 008

Project: Washington, DC – Proposed construction of Ramp A-1 of the 11th Street, SE Bridges over CSXT, MP CFP 112.90

STATE-RAILROAD AGREEMENT

This State-Railroad Construction Agreement ("Agreement") is made effective as of 23 August, 2010, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida ("CSXT"), and the DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT" or "Agency"), an agency of the District of Columbia ("District" or "DC"), individually referred to as a "Party" or collectively as the "Parties."

RECITALS

1. Agency has proposed the construction of Ramp A-1 of the 11th Street, SE Bridges over CSXT at Mileposts CFP 112.90 (the "CSXT Railroad Tracks") in Washington, DC (collectively, the "Project").
2. Agency has obtained, or will obtain, all authorizations, permits and approvals from all local, state and federal agencies (including Agency), and their respective governing bodies and regulatory agencies, necessary to proceed with the Project and to appropriate all funds necessary to construct the Project.
3. Agency acknowledges that: (i) by entering into this Agreement, CSXT will provide services and accommodations for this Project, without profit or other economic inducement; (ii) neither CSXT nor its affiliates (including their respective directors, officers, employees or agents) will incur any costs or expenses in excess of payments made to CSXT by or on behalf of Agency or its contractors, except as otherwise provided in this Agreement; and (iii) CSXT retains the paramount right to regulate all activities affecting its property and operations.
4. The Federal Highway Administration of the United States Department of Transportation hereinafter called "FHWA," has agreed to participate in financing the Project, and, as a condition prerequisite to assistance in financing said Project, has required that an agreement be entered into between the District and CSXT for construction and maintenance of, and reimbursement of the costs associated with, the Project pursuant to 23 C.F.R. § 646.216(d) (2009) *et. seq.* The Federal Aid Project Number for the Project is IM-295-2(185).
5. It is the purpose of this Agreement to provide for the terms and conditions upon which the Project may proceed.

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

I. Project Plans and Specifications

- 1.1 Preparation and Approval. All plans, specifications, drawings and other documents necessary or appropriate to the design and construction of the Project have been or shall be prepared by Agency or their respective contractors, and any change to the plans, specifications, drawings or other documents shall be designed to result in the least impact to the Project. CSXT and Agency shall coordinate the review of any subsequent Project plans, specifications and drawings prepared by or on behalf of Agency that affect the CSXT Railroad Tracks. Such plans, specifications and drawings, as prepared or reviewed by CSXT, are referred to as the "Plans," and are or shall be incorporated and deemed a part of this Agreement. Plans prepared

or submitted to and reviewed by CSXT as of the date of this Agreement are set forth in Exhibit A to this Agreement.

1.2 Effect of CSXT Review or Preparation of Plans. By its review or preparation of Plans pursuant to this Agreement, CSXT signifies only that such Plans and improvements constructed in accordance with such Plans satisfy CSXT's requirements. CSXT expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of Agency or any other persons of the Plans or improvements constructed in accordance with the Plans.

1.3 Compliance with Plans. The Project shall be performed in accordance with the Plans.

2. Allocation and Conduct of Work

Work in connection with the Project shall be allocated and conducted as follows:

2.1 CSXT Work. CSXT shall provide, or cause to be provided, the services as set forth in Section B of Exhibit B to this Agreement (the "CSXT Work"). Agency agrees that CSXT shall provide all services in connection with the CSXT Work that CSXT deems necessary or appropriate (whether or not specified by Exhibit B) to preserve and maintain its property and operations in compliance with all applicable federal, state and local regulations and CSXT's contractual obligations, including, but not limited to, CSXT's existing or proposed third party agreements and collective bargaining agreements.

2.2 Agency Work. Agency shall perform, or cause to be performed, all work as set forth in Section A of Exhibit B.

2.3 Conduct of Work. CSXT shall commence the CSXT Work under this Agreement following: (i) delivery to CSXT of a notice to proceed from Agency; (ii) issuance of all permits, approvals and authorizations necessary or appropriate for such work; and (iii) delivery of proof of insurance acceptable to CSXT, as required by Section 9. The initiation of any services in connection with the CSXT Work by CSXT pursuant to this Agreement, including, but not limited to, the issuance of purchase orders or bids for materials or services, shall constitute commencement of work for the purposes of this Section. The Parties intend that all work in connection with the Project by CSXT or on CSXT property shall conclude no later than December 2013, unless the Parties mutually agree to modify such date.

3. Special Provisions. Agency shall observe and abide by, and shall require its contractors ("Contractors") to observe and abide by the terms, conditions and provisions set forth in Exhibit C to this Agreement (the "Special Provisions"). Agency further agrees that, prior to the commencement of Project work by any third party Contractor, such Contractor shall execute and deliver to CSXT Schedule I to this Agreement to acknowledge Contractor's agreement to observe and abide by the terms and conditions of this Agreement.

4. Cost of Project and Reimbursement Procedures

4.1 Reimbursable Expenses. Agency shall reimburse CSXT up to \$443,680 for the costs and expenses incurred by CSXT in connection with the Project, as such costs are set forth in Exhibit D or as may be subsequently approved in accordance with Section 4.2 of this Agreement including: (1) all out of pocket expenses, (2) travel and lodging expenses, (3) telephone, facsimile, and mailing expenses, (4) costs for equipment, tools, materials and supplies, (5) sums

paid to CSXT's consultants and subcontractors, and (6) CSXT labor, together with CSXT labor overhead percentages established by CSXT pursuant to applicable law (collectively, "Reimbursable Expenses").

4.2 Estimate. CSXT has estimated the total Reimbursable Expenses for the Project as shown on Exhibit D (the "Estimate," as amended or revised). In the event CSXT anticipates that actual Reimbursable Expenses for the Project may exceed such Estimate, it shall provide Agency with the revised Estimate of the total Reimbursable Expenses, together with a revised Payment Schedule (as defined by Section 4.3.1). After review by the Agency of the revised Estimate of the total Reimbursable Expenses and revised Payment Schedule:

- i. Agency may reduce the scope of work for the Project such that the funding level set forth in Exhibit D is sufficient for the Reimbursable Expenses;
- ii. Exhibit D may be revised to reflect the new estimate for the Reimbursable Expenses upon the Agency's agreement to provide the additional estimated cost and expenses, subject to any necessary appropriations or approval;
- iii. CSXT may elect, by delivery of notice to Agency, to immediately cease all further CSXT Work on the Project, unless and until Agency provides approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses of the new Estimate; or
- iv. Any combination of (i), (ii), or (iii).

4.3 Payment Terms.

4.3.1 After review and approval of the applicable invoices by Agency, Agency shall pay CSXT for Reimbursable Expenses as set forth in the Payment Schedule as shown on Exhibit E (the "Payment Schedule," as may be revised pursuant to Section 4.2).

4.3.2 Following completion of the Project, CSXT shall submit to Agency a final invoice that reconciles the total Reimbursable Expenses incurred by CSXT against the total payments received from Agency. After review and approval of the final invoice by Agency, Agency shall pay to CSXT the amount by which Reimbursable Expenses exceed total payments as shown by the final invoice, if any, within thirty (30) days following delivery of such invoice to Agency. In the event that the payments received by CSXT from Agency exceed the Reimbursable Expenses, CSXT shall remit such excess to Agency within thirty (30) days following delivery of such final invoice to Agency.

4.3.3 In the event that Agency fails to pay CSXT any sums due CSXT under this Agreement, CSXT may:

- i. Immediately cease all further CSXT Work on the Project, unless and until Agency pays the entire delinquent sum, together with accrued interest;
- ii. Terminate this Agreement; or
- iii. Pursue the remedies set forth in Section 22 of this Agreement.

4.3.4 All invoices from CSXT shall be delivered to Agency in accordance with Section 16 of this Agreement. All payments by Agency to CSXT shall be made by official government check and mailed to the following address or such other address as designated by CSXT's notice to Agency:

CSX Transportation, Inc.
P. O. Box 116651
Atlanta, GA 30368-6651

4.4 Federal-aid Project. The Parties agree that the Project is subject to, and shall be completed in accordance with, the following titles of the Federal-Aid Program Guide which are incorporated by reference:

- i. 23 CFR 140 Subpart I: Reimbursement for Railroad Work.
- ii. 23 CFR 646 Subpart A: Railroad - Highway Insurance Protection.
- iii. 23 CFR 646 Subpart B: Railroad - Highway Projects
- iv. Amendments to parts (i), (ii), and (iii) hereinabove.

4.5 Effect of Termination. Agency's obligation to pay to CSXT Reimbursable Expenses in accordance with Section 4 shall survive termination of this Agreement.

4.6 CSXT's Share of Project Cost. In accordance with 23 CFR 646.212(d)(2)(v), CSXT's share of the Project cost shall be as follows:

- i. CSXT shall pay no more than \$100,000 for flagging services on the Project, which is reflected in the Estimate in Exhibit D; and
- ii. CSXT shall pay to the Agency (or Agency's authorized agent) \$4,171,044 for design and construction costs associated with adjustments to the Project required by CSXT ("Redesign Costs"). The Redesign Costs shall be paid in four (4) equal payments of \$1,042,761 in accordance with the following payment schedule:
 - a. The first payment shall be paid within thirty (30) days of the execution of this Agreement;
 - b. The second payment shall be paid in the 2nd quarter of calendar year 2011;
 - c. The third payment shall be paid in the 3rd quarter of calendar year 2011; and
 - d. The fourth payment shall be paid in the 1st quarter of calendar year 2012.

If the Redesign Costs cannot be paid according to this payment schedule, the Parties agree to work together to determine how the Redesign Costs can be remitted to the Agency (or Agency's authorized agent). Once determined, this Agreement shall be amended pursuant to Section 21 to reflect the Parties' decision regarding remittance of the Redesign Costs.

5. Appropriations. Agency shall comply with applicable rules and regulations regarding the appropriation of funding for the Project. Agency shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by

Agency, if any, and shall promptly notify CSXT in the event that Agency is unable to obtain such appropriations.

6. Easements and Licenses

6.1 Agency Obligation. Agency shall acquire all necessary licenses, permits and easements required for the Project.

6.2 Temporary Construction Licenses. Insofar as CSXT has the right to do so, CSXT hereby grants Agency, and Agency's Contractors, a nonexclusive license to access and cross CSXT's property, to the extent necessary for the pre-construction and construction of the Project (excluding ingress or egress over public grade crossings).

6.3 Permanent Easements. Insofar as CSXT has the right to do so, CSXT shall grant to Agency easements for the use and maintenance of the Project wholly or partly on CSXT property as shown on the Plans approved by CSXT, if any, on terms and conditions acceptable to the Parties. Upon request by CSXT, Agency shall furnish to CSXT descriptions and plat plans for the easements.

7. Permits. At no cost or expense to CSXT, Agency shall procure all permits and approvals required by any federal, state, or local governments or governmental agencies for the construction, maintenance and use of the Project, copies of which shall be provided to CSXT.

8. Termination

8.1 By Agency. For any reason, Agency may terminate this Agreement by delivery of notice to CSXT.

8.2 By CSXT. In addition to the other rights and remedies available to CSXT under this Agreement, CSXT may terminate this Agreement by delivery of notice to Agency in the event Agency or Agency's Contractors fail to observe the terms or conditions of this Agreement and such failure continues more than ten (10) business days following delivery of notice of such failure by CSXT to Agency.

8.3 Consequences of Termination. If the Agreement is terminated by either Party pursuant to this Section or any other provision of this Agreement, the Parties understand that it may be impractical for the Party to stop work immediately. Accordingly, the Parties agree that, in such instance a Party may continue to perform work until the Party has reached a point where the Party may reasonably and safely suspend the work. Agency shall reimburse CSXT pursuant to this Agreement for the CSXT Work performed up to, but not to exceed, the amount of Reimbursable Expenses after Agency review and approval of the applicable invoices, and CSXT may pursue the remedies set forth in Section 22 for any additional expenses CSXT incurs to stop the CSXT Work.

9. Insurance. In addition to the insurance that Agency requires of Agency's Contractor, Agency shall require Agency's Contractor to purchase and maintain insurance in compliance with CSXT's insurance requirements attached to this Agreement as Exhibit F. Contractor shall not commence work on the Project until such policy or policies have been submitted to and approved by CSXT's Risk Management Department.

10. Ownership and Maintenance

- 10.1 By Agency. Agency shall own and, without cost to CSXT, shall maintain, repair, replace and renew, or cause same to be done to Ramp A-1 of the 11th Street, SE Bridges. In the event that Agency fails to properly maintain Ramp A-1 of the 11th Street, SE Bridges and such failure jeopardizes the safe and efficient operation of CSXT's railroad or the CSXT Railroad Tracks, CSXT shall request that the Agency repair Ramp A-1 of the 11th Street, SE Bridges. If for any reason the Agency does not repair Ramp A-1 of the 11th Street, SE Bridges, CSXT may repair such bridges after providing reasonable notice to the Agency of the anticipated repairs and obtaining the necessary approvals from the Agency to perform such repairs; provided, however, if a situation exists that causes or may cause imminent harm or danger to CSXT operations, employees or property CSXT may take immediate action to make any necessary repairs and promptly provide notice of such action to Agency.
- 10.2 Alterations. Agency shall not undertake any alteration, modification or expansion of the Project affecting the CSXT Railroad Tracks without the coordination of CSXT.
- 10.3 The provisions of this Section shall survive the termination or expiration of this Agreement.

11. Indemnification

- 11.1 Agency's Contractors. Agency's Contractors shall indemnify, defend, and hold CSXT and CSXT's affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of CSXT, CSXT's affiliates, Agency or Agency's Contractors), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of CSXT, CSXT's affiliates, Agency or Agency's Contractors, and environmental damages and any related remediation brought or recovered against CSXT and CSXT's affiliates), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Contractor and Contractor's respective agents, employees, invitees, subcontractors, or Agency's agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto, or from their presence on or about CSXT's property in connection with the Project. The foregoing indemnification obligation shall not be limited to the insurance coverage required by this Agreement, except to the extent required by law or otherwise expressly provided by this Agreement.
- 11.2 CSXT. CSXT shall indemnify, defend, and hold Agency harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of CSXT, CSXT's affiliates, Agency or Agency's Contractors), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of CSXT, CSXT's affiliates, Agency or Agency's Contractors, and environmental damages and any related remediation brought or recovered against Agency), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of CSXT and CSXT's respective agents, employees, invitees, contractors, subcontractors, or CSXT's affiliates' agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto, or from their presence on or about CSXT's or Agency's property in connection with the Project. The foregoing indemnification obligation shall not be limited to the insurance coverage required by this Agreement, except to the extent required by

law or otherwise expressly provided by this Agreement. CSXT's indemnification obligation does not limit or reduce any coverage or obligations required by the insurance as set forth in Exhibit F.

- 11.3 Compliance with Laws. Agency shall comply, and shall require Agency's Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to Agency's construction and maintenance of the Project. Agency's Contractors shall indemnify, defend, and hold CSXT and CSXT's affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches by Agency's Contractor of this Section.
- 11.4 "CSXT Affiliates." For the purpose of this Section, CSXT's affiliates include CSX Corporation and all entities, directly or indirectly, owned or controlled by or under common control of CSXT or CSX Corporation and their respective officers, directors, employees and agents.
- 11.5 Notice of Incidents. Agency and Agency's Contractor shall notify CSXT promptly of any loss, damage, injury or death arising out of or in connection with the Project work.
- 11.6 Survival. The provisions of this Section shall survive the termination or expiration of this Agreement.
12. Independent Contractor. The Parties agree that neither Agency nor Agency's Contractors shall be deemed either agents or independent contractors of CSXT. Except as otherwise provided by this Agreement, CSXT shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by Agency or Agency's Contractors, or the construction practices, procedures, and professional judgment employed by Agency or Agency's Contractors to complete the Project. Notwithstanding the foregoing, this Section shall in no way affect the absolute authority of CSXT to prohibit Agency or Agency's Contractors or anyone from entering CSXT's property, or to require the removal of any person from CSXT's property, if CSXT determines, in CSXT's sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the Project exist, to the extent that such actions or hazards are inconsistent with the work required for the Project.
13. "Entire Agreement." This Agreement embodies the entire understanding of the Parties, may not be waived or modified except in a writing signed by authorized representatives of both Parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.
14. Waiver. If either Party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other Party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.

15. Assignment. This agreement may not be assigned by either Party without the written consent of the non-assigning Party. All terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective legal representatives, successors and assigns. Notwithstanding the foregoing, CSXT and DDOT shall have the right to assign this Agreement and all of its rights and obligations hereunder only to a successor-in-interest or an entity related to or controlled by CSXT and DDOT, respectively, upon reasonable notice of the transaction or event that triggered the assignment to the other Party.
16. Notices. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the Parties at the addresses set forth below, or such other addresses as either Party may designate by delivery of prior notice to the other Party:

If to CSXT: CSX Transportation, Inc.
500 Water Street, J-301
Jacksonville, Florida 32202
Attention: Principal Engineer – Public Projects
Carl A. Roe, Jr., P.E.

If to Agency: District Department of Transportation
2000 14th Street, NW
6th Floor
Washington, D.C. 20009
Attention: Director

District of Columbia Department of Transportation
Infrastructure Project Management Administration
64 New York Avenue, N.E., 1st Floor
Washington, D.C. 20002
Attention: Chief Engineer

District Department of Transportation
2000 14th Street, NW
5th Floor
Washington, D.C. 20009
Attention: General Counsel

17. Severability. The Parties agree that if any part, term or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable.
18. Applicable Law. The Parties shall comply with all applicable laws, rules, and regulations whether now in force or hereafter enacted or promulgated. This Agreement shall be governed by the laws of the District of Columbia, exclusive of its choice of law rules. The Parties further agree that the venue of all legal and equitable proceedings related to disputes under this Agreement shall be situated in Washington, DC, and the Parties agree to submit to the personal jurisdiction of any State or Federal court situated in Washington, DC.
19. Anti-Deficiency Limitations.

- 19.1 The obligations of the District to fulfill financial obligations pursuant to this agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which the District is a Party), are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2004) (the "Federal ADA"), and D.C. Official Code §§ 1-206.03(c) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2004 Supp.) (the "D.C. ADA" and (i) and (ii) collectively, as amended from time to time, the "Anti-Deficiency Acts"); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of the District in anticipation of an appropriation by Congress for such purpose, and the District's legal liability for the payment of any charges under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.
- 19.2 The District agrees to exercise all lawful authority available to it to satisfy the financial obligations of the District that may arise under this Agreement. During the term of this Agreement, the Mayor of the District of Columbia or other appropriate official shall, for each fiscal period, include in the budget application submitted to the Council of the District of Columbia the amount necessary to fund the District's known potential financial obligations under this Agreement for such fiscal period. In the event that a request for such appropriations is excluded from the budget approved by the Council and submitted to Congress by the President for the applicable fiscal year or if no appropriation is made by Congress to pay such amounts under this Agreement for any period after the fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the District will not be liable to make any payment under this Agreement upon the expiration of any then-existing appropriation, the District shall promptly notify CSXT, and this Agreement shall immediately terminate upon the expiration of any then-existing appropriation.
- 19.3 Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a default by the District under this Agreement.
- 19.4 This Agreement shall not constitute an indebtedness of the District nor shall it constitute an obligation for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. No District of Columbia Official or employee is authorized to obligate or expend any amount under this Agreement unless such amount has been appropriated by Act of Congress and is lawfully available.
20. Authority for Agreement. 23 C.F.R. § 646.216(d) (2009) et seq.; D.C. Official Code §§ 50-921.04(1)(B) and 50-921.05(b).
21. Amendments and Modifications. No amendment, alteration or modification to this Agreement shall be effective unless agreed to in writing by both Parties.
22. Resolution of Disputes.
- 22.1 Any dispute between the Parties arising out of or relating to this Agreement first shall be submitted to the Executive Committee for review and decision. The Executive Committee shall consist of the Agency Director, Agency Chief Engineer, CSXT's Assistant Chief Engineer-Public Projects and the CSXT's Principal Engineer for the District of Columbia, or their authorized designees. Such dispute shall be deemed to be resolved by the Executive Committee if said Executive Committee unanimously arrives at a single determination.

Attachment C - Railroad Agreement
District Department of Transportation
11th Street Bridge Replacement

Federal-Aid Project: FAP IM-295-2 (185)
Contract Number: DCKA-2008-R-0146
Change Order Number: 008

- 22.2 Each Party retains the right, after making a good faith effort to expeditiously resolve the dispute pursuant to the terms of Section 22.1, to pursue such other actions and remedies otherwise permitted or authorized by law or equity. The Parties shall continue to perform their responsibilities under this Agreement for a period of thirty (30) days (unless otherwise agreed by the Executive Committee) pending the final resolution of the dispute unless a situation exists that causes or may cause imminent harm or damage to CSXT employees, operations, or property, or the employees, operations, or property of Agency or its contractors.
23. Term. The Agreement shall remain in effect until one (1) year after the CSXT Work is completed as discussed in Section 2.3, unless otherwise terminated or modified.
24. Recitals. The recitals are incorporated herein by reference.
25. Counterparts. This Agreement may be executed by the Parties in counterparts, which taken together shall constitute one written agreement by and between the Parties. The date upon which the last Party executes this Agreement shall be the effective date of this Agreement.

Signatures on Following Page

Attachment C - Railroad Agreement
District Department of Transportation
11th Street Bridge Replacement

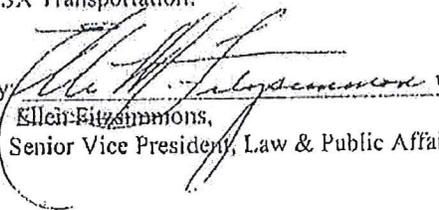
Federal-Aid Project: FAP IM-295-2 (185)
Contract Number: DCKA-2008-R-0146
Change Order Number: 008

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate, each by its duly authorized officers, as of the date of this Agreement.

DISTRICT OF COLUMBIA DEPARTMENT OF
TRANSPORTATION

By: _____
Name: Gabe Klein
Title: Director
Date: _____

CSX Transportation:

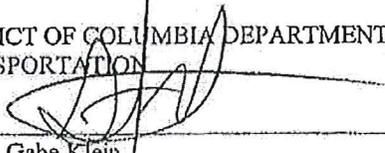
by 
Ellen Fitzsimmons,
Senior Vice President, Law & Public Affairs

Attachment C - Railroad Agreement
District Department of Transportation
11th Street Bridge Replacement

Federal-Aid Project: FAP IM-295-2 (185)
Contract Number: DCKA-2008-R-0146
Change Order Number: 008

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate, each by its duly authorized officers, as of the date of this Agreement.

DISTRICT OF COLUMBIA DEPARTMENT OF
TRANSPORTATION

By: 
Name: Gabe Klein
Title: Director
Date: 8/23/10

CSX TRANSPORTATION, INC.

By: _____
Name: Dale W. Ophardt
Title: Assistant Vice President - Engineering
Date: _____

**Memorandum of Agreement
Between
CSX Transportation, Inc.
And the
District of Columbia
Acting through and by the
District Office of the Deputy Mayor
And the
District Department of Transportation
Regarding
Transportation Projects within the District of Columbia**

This Memorandum of Agreement ("Agreement") is entered into as of the 23rd day of August, 2010, by and between CSX Transportation, Inc., a corporation organized and existing under the laws of the Commonwealth of Virginia with its principal place of business at 500 Water Street, Jacksonville, Florida 32202 ("CSXT"), and the District of Columbia ("DC" or District"), a municipal corporation, acting through the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") and the District Department of Transportation ("DDOT"), collectively referred to herein as the "Parties."

WHEREAS, the Parties seek to form a foundation to improve the effectiveness of the transportation network to better serve the District and surrounding region; and

WHEREAS, the Parties have identified various projects that will benefit CSXT rail operations and DDOT's transportation initiatives; and

WHEREAS, the Parties recognize that working together on projects that mutually benefit the transportation network within the District will result in a more livable community; and

WHEREAS, the Parties mutually agree the projects listed below are critical to rail transportation, vehicular transportation, and safe pedestrian walkways throughout the District; and

WHEREAS, the Parties mutually agree that time is of the essence to have this Agreement executed no later than August 23, 2010, due to construction and development timelines for the 11th Street Bridge Project and Virginia Avenue Tunnel Expansion Project; and

WHEREAS, the Parties will coordinate and work together as needed to negotiate and execute mutually acceptable definitive agreements to implement the terms of this Agreement as set forth herein; and

WHEREAS, CSXT and DDOT intend this Agreement to supersede and replace the letter agreement between CSXT and DDOT dated July 26, 2010; and

NOW THEREFORE, in consideration of the mutual promises contained herein, the Parties hereto agree as follows:

ARTICLE I. RECITALS

The above recitals are incorporated into this Agreement as if fully set forth herein.

ARTICLE II. NATIONAL GATEWAY INITIATIVE

A. DDOT and DMPED agree to provide support to CSXT in its efforts to develop the National Gateway Initiative ("NGI"). As such, DDOT agrees to send a letter by October 1, 2010 to the United States Department of Transportation ("USDOT") supporting the NGI. Further, DDOT and DMPED will support legislative efforts to secure federal funding for the NGI by supporting funding requests in the next federal surface transportation bill or other federal bills in which a funding mechanism could be applicable to the NGI freight program.

B. DDOT will submit the TIGER II grant application on behalf of the National Gateway Coalition for a planning grant that includes the CSXT Virginia Avenue Tunnel Expansion Project.

ARTICLE III. VIRGINIA AVENUE TUNNEL

A. DDOT agrees to credit CSXT up to Four Million, One Hundred Seventy One Thousand and Forty-Four Dollars (\$4,171,044) ("CSXT Credit Amount") toward the cost of the restoration and/or resurfacing of Virginia Avenue upon the completion of the construction for the Virginia Avenue Tunnel Expansion Project.

B. The CSXT Credit Amount shall be applied by DDOT, subject to required appropriations, toward CSXT's costs for the restoration and/or resurfacing of Virginia Avenue upon completion of the construction for the Virginia Avenue Tunnel Expansion Project. DDOT shall obtain the CSXT Credit Amount of funds through traditional federal appropriations and obligations for resurfacing of Federal-Aid facilities. To the extent that the total cost for the restoration and/or resurfacing of Virginia Avenue exceeds the remaining credit balance of the CSXT Credit Amount to be applied by DDOT, such costs shall be paid by CSXT.

C. DDOT agrees to provide a designated point of contact to assist CSXT in obtaining required public space permits for the Virginia Avenue Tunnel Expansion

Project and connection and greening proposals to improve the streetscape on Virginia Avenue, SE, as part of the tunnel expansion project.

D. The District agrees to coordinate with CSXT and to expedite approvals of the required public space permits for the Virginia Avenue Tunnel Expansion Project. Costs of the District's coordination efforts and review shall be funded by CSXT. Upon completion of the new tunnel, CSXT shall restore the construction area in accordance with the design specifications and plans approved by DDOT.

E. DDOT will provide a list of permits, licenses, and easements that may be needed for the construction on or before October 1, 2010. CSXT acknowledges that such list shall be subject to change based on changes in applicable laws, rules and regulations in effect at the time of construction.

F. DDOT agrees to send a letter by October 1, 2010 to USDOT requesting expedient assistance on the National Environmental Policy Act requirements for the Virginia Avenue Tunnel Expansion Project.

G. CSXT agrees to enter into a First Source Agreement with District of Columbia Office of Employment Services that shall, among other things, require CSXT to: (i) use diligent efforts to hire and use diligent efforts to require its architects, engineers, consultants, contractors, and subcontractors to hire at least fifty one percent (51%) District residents for all new jobs created by the Virginia Avenue Tunnel Expansion Project, all in accordance with such First Source Agreement and (ii) use diligent efforts to ensure that at least fifty one percent (51%) of apprentices and trainees employed are residents of the District and are registered in apprenticeship programs approved by the D.C. Apprenticeship Council. The Parties acknowledge and agree that the any First Source Agreement will be subject to CSXT's existing collective bargaining agreements and nothing under this First Source Agreement will supersede existing CSXT labor agreements.

H. CSXT agrees to enter into an agreement with the District of Columbia Department of Small and Local Business Development governing certain obligations of CSXT regarding contracting participation of Certified Business Entities in the CSXT Virginia Avenue Tunnel Expansion Project in accordance with the Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended (D.C. Law 16-33; D.C. Official Code §§ 2-218.01 et seq.). However, CSXT shall not be required to take on an equity and development participant as stated in DC Code § 18-249.49a, as part of the agreement discussed in this paragraph.

ARTICLE IV. 11th STREET BRIDGE PROJECT

A. DDOT will coordinate with CSXT to minimize, where possible, conflicts between the proposed temporary runaround trench for the CSXT temporary rail track and

the 11th Street Bridge construction during all phases of the construction of the Virginia Avenue Tunnel.

B. CSXT shall remove and relocate a communication tower currently located on DDOT property that interferes with the proposed 11th Street ramp in Phase I, at no cost or expense to DDOT.

C. CSXT shall pay to DDOT (or DDOT's authorized agent) Four Million, One Hundred Seventy-One Thousand, and Forty-Four Dollars (\$4,171,044) for design and construction costs associated with adjustments to the 11th Street Bridge Project required by CSXT ("Redesign Costs"). The Redesign Costs shall be paid in four (4) equal payments of One Million, Forty-Two Thousand, Seven Hundred Sixty-One Dollars (\$1,042,761) in accordance with the following payment schedule:

1. The first payment shall be paid within thirty (30) days of the execution of the State-Railroad agreement between DDOT and CSXT for Ramp A-1;
2. The second payment shall be paid in the 2nd quarter of calendar year 2011;
3. The third payment shall be paid in the 3rd quarter of calendar year 2011; and
4. The fourth payment shall be paid in the 1st quarter of calendar year 2012.

If the Redesign Costs cannot be paid according to this payment schedule, the Parties agree to work together to determine how the Redesign Costs can be remitted to the Agency (or Agency's authorized agent). Once determined, the payment schedule shall be amended to reflect the Parties' decision regarding remittance of the Redesign Costs.

D. CSXT and DDOT shall enter into the necessary State-Railroad agreement for the construction of Ramp A-1 of the 11th Street Bridge Project. In accordance with that agreement, CSXT shall provide up to One Hundred Thousand Dollars (\$100,000.00) in flagging services to the project. The State-Railroad agreement is attached as Exhibit A.

E. Upon the payments set forth in the State- Railroad Agreement, CSXT shall have no further obligations to the District for the construction of Ramp A-1 of the 11th Street Bridge Project.

ARTICLE V. PROJECT COORDINATION

CSXT and DDOT agree that future projects near the CSXT right of way and DDOT public right of way will be coordinated to ensure any design and construction will accommodate the requirements of both CSXT and DDOT.

ARTICLE VI. ACCESS and EASEMENTS

A. **H Street Access:** DDOT shall grant to CSXT a temporary easement for a term of ninety (90) days over a portion of the public right of way located in Lot 801 or Square N-737. The temporary easement area will run from the western edge of H Street, SE, (just east of New Jersey Avenue) to the railroad track. DDOT and CSXT shall negotiate in good faith the terms and conditions of the grant of a permanent easement and required releases. In the event that the subject property is transferred from DDOT's property inventory to DMPED's property inventory, DMPED and CSXT shall negotiate in good faith the terms and conditions of such permanent easement and required releases.

B. **Rhode Island Ave Access:** CSXT conveyed to DDOT certain property rights between Rhode Island Avenue and Franklin Street on which the District constructed a bike trail and a fence to separate the public from the adjacent active railroad tracks. DDOT will provide to CSXT a temporary easement for a term of ninety (90) days over the District right of way near the Franklin Avenue Bridge. This easement will allow CSXT to access its signal equipment located within the railroad right of way south of Rhode Island Ave. DDOT and CSXT shall negotiate in good faith the terms and conditions of DDOT's grant of a permanent easement.

C. **Anacostia Pedestrian Walkway/Trail:** CSXT shall grant to the District two (2) temporary easements for a term of ninety (90) days over CSXT property near the Anacostia River for the Anacostia Riverwalk Trail. CSXT and DDOT shall negotiate in good faith the terms and conditions of CSXT's grant of a permanent easement. CSXT and DDOT shall negotiate in good faith and enter into a State-Railroad agreement for the construction of the Anacostia Pedestrian Walkway/Trail.

D. **Rhode Island Avenue Pedestrian/Bicycle Bridge** ("RI Ave. Ped/Bike Bridge"): CSXT shall grant a temporary easement for a term of ninety (90) days to the District over CSXT property near Rhode Island Avenue. CSXT shall also grant to the District access as needed for construction of the RI Ave. Ped/Bike Bridge; provided, however that the fees for the access for construction shall not exceed Ten Dollars (\$10). CSXT and DDOT shall negotiate in good faith the terms and conditions of CSXT's grant of a permanent easement. Additionally, CSXT and DDOT shall negotiate in good faith and enter into a State-Railroad agreement for the construction of the RI Ave. Ped/Bike Bridge.

E. **Virginia Avenue Easements:** DDOT and CSXT shall negotiate in good faith the terms and conditions of DDOT's grant of a temporary easement for the use of the public right of way adjacent to the Virginia Avenue Tunnel for a temporary track throughout the construction period of the Virginia Avenue Tunnel Expansion Project.

ARTICLE VII. CSXT's SHEPPARD's BRANCH

CSXT and DDOT shall negotiate in good faith the terms and conditions for DDOT's use and development of CSXT's Shepherd's Branch property.

ARTICLE VIII. VIRGINIA AVENUE RESURFACING/RESTORATION

In accordance with Article III, Sections A and B above, DDOT will seek funding via the Transportation Improvement Program for the costs of restoration and/or resurfacing of Virginia Avenue, SE, up to the CSXT Credit Amount.

ARTICLE IX. NOTICE

All notices, requests or demands to a party hereunder shall be in writing and shall be effective (i) when received by overnight courier service or facsimile telecommunication (provided that a copy of such notice, request or demand is deposited into the United States mail within one (1) business day of the facsimile transmission), or (ii) three (3) days after being deposited into the United States mail (sent certified or registered, return receipt requested), in each case addressed as follows (or to such other address as either party may designate in writing to the other party in accordance with this Section):

To District:

Office of the Deputy Mayor for Planning and Economic
Development
John A. Wilson Building
1350 Pennsylvania Ave., N.W., Suite 317
Washington, D.C. 20004
Attn: Deputy Mayor for Planning and Economic Development

District Department of Transportation
2000 14th Street, NW
6th Floor
Washington, D.C. 20009
Attention: Director

District Department of Transportation
Infrastructure Project Management Administration
64 New York Avenue, N.E., 1st Floor
Washington, D.C. 20002
Attention: Chief Engineer

District Department of Transportation
2000 14th Street, NW
5th Floor
Washington, D.C. 20009
Attention: General Counsel

To CSX:

CSX Transportation, Inc.
500 Water Street C900
Jacksonville, Florida 32202
Attention: Louis Renjel

ARTICLE X. EXECUTION IN COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Execution and delivery of this Agreement by facsimile shall be sufficient for all purposes and shall be binding on any party to the Agreement.

ARTICLE XI. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement and understanding of the Parties with respect to the projects list above. No oral or other written provisions shall have any force or effect except those contained in a written amendment to this Agreement executed by the Parties or as specifically provided for in this Agreement.

ARTICLE XII. MODIFICATION OF AGREEMENT

No amendment, alteration or modification to this Agreement shall be effective unless agreed to in writing by the Parties.

ARTICLE XIII. ANTI-DEFICIENCY LIMITATIONS

A. The obligations of the District to fulfill financial obligations pursuant to this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which the District is a party), are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2004) (the "**Federal ADA**"), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2004 Supp.) (the "**D.C. ADA**" and (i) and (ii) collectively, as amended from time to time, the "**Anti-Deficiency Acts**"); and (iii) Section 446 of the District of

Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of the District in anticipation of an appropriation by Congress for such purpose, and the District's legal liability for the payment of any charges under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

B. This Agreement shall not constitute an indebtedness of the District nor shall it constitute an obligation for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. No District of Columbia Official or employee is authorized to obligate or expend any amount under this Agreement unless such amount has been appropriated by Act of Congress and is lawfully available.

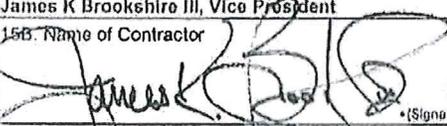
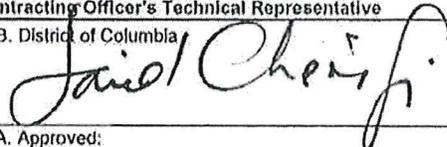
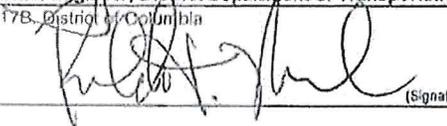
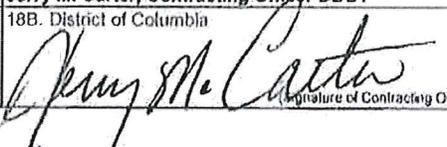
ARTICLE XIV. SEVERABILITY

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

ARTICLE XV. APPLICABLE LAW

The Parties shall comply with all applicable laws, rules, and regulations whether now in force or hereafter enacted or promulgated that pertain to this Agreement. This Agreement shall be governed by the laws of the District of Columbia, exclusive of its choice of law rules. The Parties further agree that the venue of all legal and equitable proceedings related to disputes under this Agreement shall be situated in Washington, DC, and the Parties agree to submit to the personal jurisdiction of any state or federal court situated in Washington, DC.

REST OF PAGE INTENTIONALLY BLANK

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. Contract Number DCKA-2008-R-0146	Page of Pages 1 31
2. Amendment/Modification Number 008	3. Effective Date See Block 18C	4. Requisition/Purchase Request No.		5. Solicitation Caption
6. Issued By: Office of Contracting and Procurement District Department of Transportation 2000 14th Street, NW; 6th Floor Washington, DC 20009		7. Administered By (If other than line 6) D.C. Department of Transportation Transportation Operations Administration 2000 - 14th Street, N.W., 7th Floor Washington, D.C. 20009		
8. Name and Address of Contractor (No. Street, city, country, state and ZIP Code) Skanska/Facchina a Joint Venture 295 Bendix Road, Suite 400 Virginia Beach, VA 23452		9A. Amendment of Solicitation No.		
		9B. Dated (See Item 11)		
		10A. Modification of Contract/Order No. DCKA-2008-R-0146		
		10B. Dated (See Item 13) February 11, 2011		
Code	Facility			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or fax which includes a reference to the solicitation and amendment number. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or fax, provided each letter or telegram makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. Accounting and Appropriation Data (If Required)				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14				
<input checked="" type="checkbox"/>	A. This change order is issued pursuant to: (Specify Authority) The changes set forth in Item 14 are made in the contract/order no. in Item 10A.			Book 1, Section O
	B. The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation date, etc.) set forth in Item 14, pursuant to the authority of 27 DCMR, Chapter 36, Section 3601.2.			
	C. This supplemental agreement is entered into pursuant to authority of:			
	D. Other (Specify type of modification and authority)			
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> copies to the issuing office.				
14. Description of amendment/modification (Organized by UCF Section headings, including solicitation/contract subject matter where feasible.)				
Total Amount of Change Order		\$4,171,044		
Total Contract Value (including this Change Order)		\$265,075,044		
Fixed Date Time Limit For This Contract Prior to Approval of this Work		July 10, 2013		
Fixed Date Time Limit For This Contract upon Approval of this Work		July 10, 2013		
(Refer to attached documents for additional information)				
Except as provided herein, all terms and conditions of the document referenced in Item (9A or 10A) remain unchanged and in full force and effect				
15A. Name and Title of Signer (Type or print) James K Brookshire III, Vice President		16A. Recommended: Contracting Officer's Technical Representative		
15B. Name of Contractor  3/9/11 (Signature of person authorized to sign)		16B. District of Columbia  (Signature)		
17A. Recommended Chief Engineer, District Department of Transportation		18A. Approved: Jerry M. Carter, Contracting Officer DDOT		18C. Date Signed
17B. District of Columbia  3/25/2011 (Signature of person authorized to sign)		18B. District of Columbia  (Signature of Contracting Officer)		5/14/11

SUPPORTING DOCUMENTATION

SCOPE OF SERVICES

The basis of the Scope of Services outlined in this document is to modify the design of proposed Bridge S-19 to accommodate the proposed construction along the current CSX rail line adjacent to I-695 (Southeast/Southwest Freeway) in Southeast Washington, DC. This is an additional Item of Work to be added to the executed Contract; however, in no way shall the additional item of Work be excluded from any contractual requirements set forth in the initial contract or previously executed Change Orders to the Contract. In particular, the Scope of Services to be provided in Change Order 008 shall include the following:

Re-design of Bridge S-19 over the CSX Rail line

The Contractor shall re-design the new proposed bridge structure (S-19) that carries I-695 over the existing CSX Rail line in the vicinity of 11th and M Streets in Southeast Washington, DC. This structure shall be re-designed in such a way as to not preclude the construction of a CSX temporary shoo-fly track (included as Attachment B) and the widening of the CSX Virginia Avenue Tunnel (included in the Request for Proposal documents supplied prior to award). All costs associated, directly or indirectly, with the re-design of Bridge S-19 are included in this Change Order.

The Contractor shall be solely responsible for design coordination and review with CSX representatives, and shall adhere to all standards, specifications, and design request of CSX. Under no circumstances shall this Change Order modify, change, or circumvent any requirements previously outlined by CSX, or any requirements provided or listed in the Conformed Contract.

In addition, the Contractor shall indemnify and hold the District harmless against all claims, losses or delays caused by CSX during the design coordination and review process since the execution of the agreement between CSX Railroad and the District Department of Transportation dated August 23, 2010. Both parties agree that the Scope of Services outlined for Change Order 10 do not address the time prior to the execution of the agreement nor preclude the Contractor from seeking other CSX related utility delays pursuant to the Conformed Contract.

SUPPORTING DOCUMENTATION

In accordance to Book 1, Section O of the Conformed Contract for the 11th Street Bridge Replacement Project, the following is a list of documents to substantiate the proposed Change Order, and are included as reference material for the Change Order:

Attachment B	CSX Temporary Shoo-fly and Diagram of Proposed Bridge Abutment to Accommodate Design
Attachment C	Railroad Agreement between CSX and DDOT

Total Amount of this Change Order

Detail cost breakdown as submitted on C: \$ 4,171,044

DBE Goal

For the additional item of Work described in this Change Order, the DBE goal shall be 15% for design and 6% for construction.

Impact Delay Analysis

Completion Dates:	Project Substantial Completion	May 23, 2013
	Project Final Completion	July 10, 2013



Order No : PO365135 -KA0/IPMA/AWI/CSX for 11th Street SE Bridges

Issued on Tue, 21 Jun, 2011

Supplier:

SKANSKA-FACCHINA JV
 295 Bendix Rd
 Ste# 400
 Virginia Beach, VA 23452
 Phone: 757.420.4140
 Fax:
 Contact: ROBERT WALKER

Ship To:

INFRASTRUCTURE PROJECT
 ADMINISTRATION ADMIN.
 55 M STREET, SE, 4TH FLOOR
 Washington, DC 20003
 United States

Bill To:

Office of the Associate Chief Financial Officer -
 Government Services Cluster
 2000 14th Street, NW, 6th Floor
 Washington, DC 20009
 United States

Deliver To:

Said Cherifi

Item	Description	Part Number	Unit	Qty	Need By	Unit Price	Extended Amount
1	CSX work at 11th Street SE Bridges.		each	4,171,000	Thu, 21 Apr, 2011	\$1.00USD	\$4,171,000.00USD

CSX work at 11th Street SE Bridges.

If used in conjunction with a contract award, purchase order is placed in accordance with all provisions of

Contract Number: DCKA-2008-R-0146
 Bill To Contact: Sheila Wallace
 Requester: Said Cherifi
 Form:
 Delivery Date: Thu, 21 Apr, 2011
 PR No.: RQ733891

Total \$4,171,000.00USD

Comments

- COMMENT by aribasystem on Tuesday, June 21, 2011 at 7:55 AM
 ALL INVOICES SHALL BE SUBMITTED TO THE 'BILL TO' ADDRESS INDICATED ON THIS PURCHASE ORDER. INVOICES SHALL INCLUDE THE PURCHASE ORDER NUMBER, CONTRACT NUMBER (IF APPLICABLE), CONTRACTOR'S NAME AND ADDRESS,

INVOICE DATE, QUANTITY AND DESCRIPTION OF GOOD(S) OR SERVICE(S) FOR WHICH PAYMENT IS BEING REQUESTED, REMITTANCE ADDRESS, AND CONTACT PERSON NAME AND PHONE NUMBER IF THERE IS A PROBLEM WITH THE INVOICE. INVOICES FOR QUANTITIES OR AMOUNTS GREATER THAN WHAT IS STATED ON THE PURCHASE ORDER WILL BE REJECTED. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RESULT IN DELAYS IN PAYMENT. (aribasystem, Tue, 21 Jun, 2011)

- COMMENT by **aribasystem** on *Tuesday, June 21, 2011 at 7:55 AM*
FOB is Destination unless specified otherwise (aribasystem, Tue, 21 Jun, 2011)
- COMMENT by **aribasystem** on *Tuesday, June 21, 2011 at 7:55 AM*
****GOVERNMENT OF THE DISTRICT OF COLUMBIA STANDARD CONTRACT PROVISIONS FOR USE WITH THE DISTRICT OF COLUMBIA GOVERNMENT SUPPLY AND SERVICES CONTRACTS (July 2010) ARE HEREBY INCORPORATED BY REFERENCE. WWW.OCP.DC.GOV**** (aribasystem, Tue, 21 Jun, 2011)
- COMMENT by **aribasystem** on *Tuesday, June 21, 2011 at 7:55 AM*
The Commodity Group Manager for this purchase is Carter, Jerry (aribasystem, Tue, 21 Jun, 2011)

Project: Washington, DC – Proposed construction of the remainder of the 11th Street, SE Bridges over CSXT, MP CFP 112.90 to 113.6 of the RF&P Subdivision within the Baltimore Division in Washington, DC

STATE-RAILROAD AGREEMENT

This State-Railroad Construction Agreement (“Agreement”) is made effective as of December 21, 2012, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida (“CSXT”), and the DISTRICT DEPARTMENT OF TRANSPORTATION (“DDOT” or “Agency”), an agency of the District of Columbia (“District” or “DC”), individually referred to as a “Party” or collectively as the “Parties.”

RECITALS

1. Agency previously constructed Ramp A-1 of the 11th Street Bridge project and now desires to complete construction of the entire 11th Street Bridge project (collectively referred to herein as the “Project”).
2. Agency desires to construct a portion of the Project over improvements owned and operated by CSXT at Milepost CFP-112.9 to 113.6 of the RF&P Subdivision within the Baltimore Division in Washington, DC (collectively, the “CSXT Railroad Improvements”).
3. Agency has obtained, or will obtain, all authorizations, permits and approvals from all local, state and federal agencies (including Agency), and their respective governing bodies and regulatory agencies, necessary to proceed with the Project and to appropriate all funds necessary to construct the Project.
4. Agency acknowledges that: (i) by entering into this Agreement, CSXT will provide services and accommodations for this Project, without profit or other economic inducement; (ii) neither CSXT nor its affiliates (including their respective directors, officers, employees or agents) will incur any costs or expenses in excess of payments made to CSXT by or on behalf of Agency or its contractors, except as otherwise provided in this Agreement; and (iii) CSXT retains the paramount right to regulate all activities affecting its property and operations.
5. The Federal Highway Administration of the United States Department of Transportation (hereinafter called “FHWA”), has agreed to participate in financing the Project, and, as a condition prerequisite to assistance in financing said Project, has required that an agreement be entered into between the District and CSXT for construction and maintenance of, and reimbursement of the costs associated with, the Project pursuant to 23 C.F.R. § 646.216(d) (2012) et. seq.
6. As of the date of this Agreement Agency has, or shall have obtained, appropriations to fund the CSXT Work (defined below) as set forth in Section 4.1.
7. It is the purpose of this Agreement to provide for the terms and conditions upon which the Project may proceed.

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

1. Project Plans and Specifications

- 1.1 Preparation and Review. All plans, specifications, drawings and other documents necessary or appropriate to the design and construction of the Project have been or shall be prepared by Agency or their respective contractors. CSXT and Agency shall coordinate the review of those

plans and of any subsequent Project plans, specifications and drawings prepared by or on behalf of Agency that affect the CSXT Railroad Improvements as described in that certain Preliminary Engineering Agreement between CSXT and the Agency dated as of October 2, 2012, so that CSXT shall have an opportunity to review and approve the same. Such plans, specifications and drawings, as have been or may be reviewed by CSXT, are referred to as the "Plans," and are or shall be incorporated and deemed a part of this Agreement. Plans prepared or submitted to and reviewed by CSXT as of the date of this Agreement are set forth in Exhibit A to this Agreement. Any change to any Plans shall be designed by the Agency to result in the least impact to CSXT and any of its existing improvements or planned improvements which CSXT has shared with the Agency.

1.2 Effect of CSXT Review or Preparation of Plans. By its review of Plans pursuant to this Agreement, CSXT signifies only that such Plans and improvements constructed in accordance with such Plans satisfy CSXT's requirements. CSXT expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of Agency or any other persons of the Plans or improvements constructed in accordance with the Plans.

1.3 Compliance with Plans. The Project shall be performed in accordance with the Plans.

2. Allocation and Conduct of Work

Work in connection with the Project shall be allocated and conducted as follows:

2.1 CSXT Work. CSXT shall provide, or cause to be provided, only the services set forth in Section B of Exhibit B to this Agreement (the "CSXT Work"). Agency agrees that CSXT shall provide all services in connection with the CSXT Work that CSXT deems necessary or appropriate (whether or not specified by Exhibit B) to preserve and maintain its property and operations in compliance with all applicable federal, state and local regulations and CSXT's contractual obligations, including, but not limited to, CSXT's existing or proposed third party agreements and collective bargaining agreements. The CSXT Work shall include CSXT's monitoring of Agency's construction of the Project and inspecting the Project work to confirm that the Project work has been completed in accordance with the Plans and will not affect the CSXT Railroad Improvements. No such monitoring or inspections shall make CSXT in any way responsible for the Project work or the Project.

2.2 Agency Work. Agency shall perform, or cause to be performed, all work as set forth in Section A of Exhibit B.

2.3 Conduct of Work. CSXT shall commence the CSXT Work under this Agreement following: (i) delivery to CSXT of a notice to proceed from Agency; (ii) issuance of all permits, approvals and authorizations necessary or appropriate for such work; and (iii) delivery of proof of insurance acceptable to CSXT, as required by Section 9. The initiation of any services in connection with the CSXT Work by CSXT pursuant to this Agreement, including, but not limited to, the issuance of purchase orders or bids for materials or services, shall constitute commencement of work for the purposes of this Section. The Parties anticipate that all work in connection with the Project by CSXT or on CSXT property will conclude no later than November 1, 2015, nonetheless, the Agreement shall terminate as described in Section 23.

3. Special Provisions. Agency shall observe and abide by, and shall require its contractors ("Contractors") to observe and abide by the terms, conditions and provisions set forth in Exhibit C

to this Agreement (the "Special Provisions"). Agency further agrees that, prior to the commencement of Project work by any third party Contractor, such Contractor shall execute and deliver to CSXT Schedule I to this Agreement to acknowledge Contractor's agreement to observe and abide by the terms and conditions of this Agreement.

4. Cost of Project and Reimbursement Procedures

4.1 Reimbursable Expenses. Agency shall reimburse CSXT up to \$861,102 for the costs and expenses incurred by CSXT in connection with the Project and for the CSXT Work, as such costs are set forth in Exhibit D or as may be subsequently approved in accordance with Section 4.2 of this Agreement including, without limitation: (1) all out of pocket expenses, (2) travel and lodging expenses, (3) telephone, facsimile, and mailing expenses, (4) costs for equipment, tools, materials and supplies, (5) sums paid to CSXT's consultants and subcontractors, and (6) CSXT labor, together with CSXT labor overhead percentages established by CSXT pursuant to applicable law (collectively, "Reimbursable Expenses").

4.2 Estimate. CSXT has estimated the total Reimbursable Expenses for the Project as shown on Exhibit D (as amended or revised in writing by both parties hereto, the "Estimate"). In the event CSXT anticipates that actual Reimbursable Expenses for the Project may exceed such Estimate, it shall provide Agency with the revised Estimate of the total Reimbursable Expenses, together with a revised Payment Schedule (as defined by Section 4.3.1). After review by the Agency of the revised Estimate of the total Reimbursable Expenses and revised Payment Schedule:

- i. Agency may reduce the scope of work for the Project such that the funding level set forth in Exhibit D is sufficient for the Reimbursable Expenses;
- ii. Exhibit D may be revised to reflect the new estimate for the Reimbursable Expenses upon the Agency's agreement to provide the additional estimated cost and expenses, subject to any necessary appropriations or approval;
- iii. CSXT may elect, by delivery of notice to Agency, to immediately cease all further CSXT Work on the Project, unless and until Agency provides approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses of the new Estimate; or
- iv. Any combination of (i), (ii), or (iii).

4.3 Payment Terms.

4.3.1 After review and approval of the applicable invoices by Agency, Agency shall pay CSXT for Reimbursable Expenses as set forth in the Payment Schedule as shown on Exhibit E (the "Payment Schedule," as may be revised pursuant to Section 4.2).

4.3.2 Following completion of the Project, CSXT shall submit to Agency a final invoice that reconciles the total Reimbursable Expenses incurred by CSXT against the total payments received from Agency. After review and approval of the final invoice by Agency, Agency shall pay to CSXT the amount by which Reimbursable Expenses exceed total payments as shown by the final invoice, if any, within thirty (30) days following delivery of such invoice to Agency. In the event that the payments received by CSXT from

Agency exceed the Reimbursable Expenses, CSXT shall remit such excess to Agency within thirty (30) days following delivery of such final invoice to Agency.

4.3.3 In the event that Agency fails to pay CSXT any sums due CSXT under this Agreement, CSXT may, in CSXT's sole discretion:

- i. Immediately cease all further CSXT Work on the Project, unless and until Agency pays the entire delinquent sum, together with accrued interest;
- ii. Terminate this Agreement; or
- iii. Pursue the remedies set forth in Section 22 of this Agreement or otherwise available to CSXT at equity or in law.

4.3.4 All invoices from CSXT shall be delivered to Agency in accordance with Section 16 of this Agreement. All payments by Agency to CSXT shall be made by official government check and mailed to the following address or such other address as designated by CSXT's notice to Agency:

CSX Transportation, Inc.
P. O. Box 116651
Atlanta, GA 30368-6651

4.4 Federal-aid Project. The Parties agree that the Project is subject to, and shall be completed in accordance with, the following titles of the Federal-Aid Program Guide which are incorporated by reference:

- i. 23 CFR 140 Subpart I: Reimbursement for Railroad Work.
- ii. 23 CFR 646 Subpart A: Railroad – Highway Insurance Protection.
- iii. 23 CFR 646 Subpart B: Railroad – Highway Projects
- iv. Amendments to parts (i), (ii), and (iii) hereinabove.

4.5 Effect of Termination. Agency's obligation to pay to CSXT Reimbursable Expenses in accordance with Section 4 shall survive termination of this Agreement.

5. Appropriations. Agency shall comply with applicable rules and regulations regarding the appropriation of funding for the Project. Agency shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by Agency, if any, and shall promptly notify CSXT in the event that Agency is unable to obtain such appropriations.

6. Easements and Licenses

6.1 Agency Obligation. Agency shall acquire all necessary licenses, permits and easements required for the Project.

6.2 Temporary Construction Licenses. Insofar as CSXT has the right to do so, CSXT hereby grants to Agency and Agency's Contractors a nonexclusive license to access and cross CSXT's

property, to the extent necessary for the pre-construction and construction of the Project (excluding ingress or egress over public grade crossings).

6.3 Permanent Easements. Insofar as CSXT has the right to do so, CSXT shall grant to Agency easements for the use and maintenance of the Project wholly or partly on CSXT property as shown on the Plans approved by CSXT, if any, on terms and conditions acceptable to the Parties. Upon request by CSXT, Agency shall furnish to CSXT descriptions and plat plans for the easements.

7. Permits. At no cost or expense to CSXT, Agency shall procure all permits and approvals required by any federal, state, or local governments or governmental agencies for the construction, maintenance and use of the Project, copies of which shall be provided to CSXT.

8. Termination

8.1 By Agency. For any reason, Agency may terminate this Agreement by delivery of notice to CSXT.

8.2 By CSXT. In addition to the other rights and remedies available to CSXT under this Agreement, CSXT may terminate this Agreement by delivery of notice to Agency in the event Agency or Agency's Contractors fail to observe the terms or conditions of this Agreement and such failure continues more than ten (10) business days following delivery of notice of such failure by CSXT to Agency.

8.3 Consequences of Termination. If this Agreement is terminated by either Party pursuant to this Section or any other provision of this Agreement, the Parties understand that it may be impractical for the Party to stop work immediately. Accordingly, the Parties agree that, in such instance a Party may continue to perform work until the Party has reached a point where the Party may reasonably and safely suspend the work. Agency shall reimburse CSXT pursuant to this Agreement for the CSXT Work performed up to, but not to exceed, the amount of Reimbursable Expenses after Agency review and approval of the applicable invoices, and CSXT may pursue the remedies set forth in Section 22 for any additional expenses CSXT incurs to stop the CSXT Work (or pursue such other remedies available to CSXT at equity or in law). The provisions of this Section 8.3 shall survive the termination of this Agreement.

9. Insurance. In addition to the insurance that Agency requires of Agency's Contractor, Agency shall require Agency's Contractor to purchase and maintain insurance in compliance with CSXT's insurance requirements attached to this Agreement as Exhibit F. Contractor shall not commence work on the Project until such policy or policies have been submitted to and approved by CSXT's Risk Management Department. The provisions of this Section 9 shall survive the termination or expiration of this Agreement.

10. Ownership and Maintenance

10.1 By Agency. Agency shall own and, without cost to CSXT, shall maintain and repair the improvements constructed by Agency as part of the Project, including without limitation, the 11th Street, SE Bridges (collectively, "Agency Improvements"). In no event shall the Agency Improvements include any railroad infrastructure. In the event that Agency fails to properly maintain any portion of the Agency Improvements, and such failure jeopardizes the safe and efficient operation of CSXT's railroad and the CSXT Railroad Improvements, CSXT shall request that the Agency repair the Agency Improvements. If for any reason the Agency does

not repair the Agency Improvements, CSXT may repair the Agency Improvements after providing reasonable notice to the Agency of the anticipated repairs and obtaining the necessary approvals from the Agency to perform such repairs; provided, however, if a situation exists that causes or may cause imminent harm or danger to CSXT operations, employees or property, CSXT may take immediate action to make any necessary repairs and promptly provide notice of such action to Agency.

10.2 Alterations. Agency shall not undertake any alteration, modification or expansion of the Project that may affect the CSXT Railroad Improvements without the coordination of CSXT.

10.3 Survival. The provisions of this Section shall survive the termination or expiration of this Agreement.

11. Indemnification

11.1 Agency's Contractors. Agency's Contractors shall indemnify, defend, and hold CSXT, CSXT's affiliates and their agents, employees, officers and directors, harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of CSXT, CSXT's affiliates, Agency or Agency's Contractors), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of CSXT, CSXT's affiliates, Agency or Agency's Contractors, and environmental damages and any related remediation brought or recovered against CSXT and CSXT's affiliates), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Contractor and Contractor's respective agents, employees, invitees, subcontractors, or Agency's agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto, or from their presence on or about CSXT's property in connection with the Project. The foregoing indemnification obligation shall not be limited to the insurance coverage required by this Agreement, except to the extent required by law or otherwise expressly provided by this Agreement.

11.2 CSXT. CSXT shall indemnify, defend, and hold Agency harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind for any injury to or death to any person(s) for the loss of or damage to any property whatsoever, arising directly from the negligence, recklessness or intentional wrongful misconduct of CSXT and CSXT's respective agents, employees, invitees, contractors, subcontractors, or CSXT's affiliates' agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto, or from their presence on or about CSXT's or Agency's property in connection with the Project. The foregoing indemnification obligation shall not be limited to the insurance coverage required by this Agreement, except to the extent required by law or otherwise expressly provided by this Agreement. CSXT's indemnification obligation does not limit or reduce any coverage or obligations required by the insurance as set forth in Exhibit F.

11.3 Compliance with Laws. Agency shall comply, and shall require Agency's Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to Agency's construction and maintenance of the Project. Agency's Contractors shall indemnify, defend, and hold CSXT and CSXT's affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches by Agency's Contractor of this Section.

- 11.4 "CSXT Affiliates." For the purpose of this Section, CSXT's affiliates include CSX Corporation and all entities, directly or indirectly, owned or controlled by or under common control of CSXT or CSX Corporation and their respective officers, directors, employees and agents.
- 11.5 Notice of Incidents. Agency and Agency's Contractor shall notify CSXT promptly of any loss, damage, injury or death arising out of or in connection with the Project work.
- 11.6 Survival. The provisions of this Section shall survive the termination or expiration of this Agreement.
12. Independent Contractor. The Parties agree that neither Agency nor Agency's Contractors shall be deemed either agents or independent contractors of CSXT. Except as otherwise provided by this Agreement, CSXT shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by Agency or Agency's Contractors, or the construction practices, procedures, and professional judgment employed by Agency or Agency's Contractors to complete the Project. Notwithstanding the foregoing, this Section shall in no way affect the absolute authority of CSXT to prohibit Agency or Agency's Contractors or anyone from entering CSXT's property, or to require the removal of any person from CSXT's property, if CSXT determines, in CSXT's sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the Project exist, to the extent that such actions or hazards are inconsistent with the work required for the Project.
13. Entire Agreement. This Agreement embodies the entire understanding of the Parties, may not be waived or modified except in a writing signed by authorized representatives of both Parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.
14. Waiver. If either Party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other Party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
15. Assignment. This agreement may not be assigned by either Party without the written consent of the non-assigning Party. All terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective legal representatives, successors and assigns. Notwithstanding the foregoing, CSXT and DDOT shall have the right to assign this Agreement and all of its rights and obligations hereunder only to a successor-in-interest or an entity related to or controlled by CSXT or DDOT, respectively, upon reasonable notice of the transaction or event that triggered the assignment to the other Party.
16. Notices. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the Parties at the addresses set forth below, or such other addresses as either Party may designate by delivery of prior notice to the other Party:

If to CSXT: CSX Transportation, Inc.
500 Water Street, J-301
Jacksonville, Florida 32202
Attention: Assistant Chief Engineer - Project Management

If to Agency: District Department of Transportation
55 M Street, SE
5th Floor
Washington, D.C. 20003
Attention: Director

District Department of Transportation
Infrastructure Project Management Administration
55 M Street, SE
4th Floor
Washington, D.C. 20003
Attention: Chief Engineer

District Department of Transportation
55 M Street, SE
7th Floor
Washington, D.C. 20003
Attention: General Counsel

17. Severability. The Parties agree that if any part, term or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of this Agreement remaining valid and enforceable.
18. Applicable Law. The Parties shall comply with all applicable laws, rules, and regulations whether now in force or hereafter enacted or promulgated. This Agreement shall be governed by the laws of the District of Columbia, exclusive of its choice of law rules. The Parties further agree that the venue of all legal and equitable proceedings related to disputes under this Agreement shall be situated in Washington, DC, and the Parties agree to submit to the personal jurisdiction of any State or Federal court situated in Washington, DC.
19. Anti-Deficiency Limitations.
 - 19.1 The obligations of the District to fulfill financial obligations pursuant to this agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which the District is a Party), are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2004) (the "Federal ADA"), and D.C. Official Code §§ 1-206.03(c) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2004 Supp.) (the "D.C. ADA" and (i) and (ii) collectively, as amended from time to time, the "Anti-Deficiency Acts"); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of the District in anticipation of an appropriation by Congress for such purpose, and the District's legal liability for the payment of any charges under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

- 19.2 The District agrees to exercise all lawful authority available to it to satisfy the financial obligations of the District that may arise under this Agreement. During the term of this Agreement, the Mayor of the District of Columbia or other appropriate official shall, for each fiscal period, include in the budget application submitted to the Council of the District of Columbia the amount necessary to fund the District's known potential financial obligations under this Agreement for such fiscal period. In the event that a request for such appropriations is excluded from the budget approved by the Council and submitted to Congress by the President for the applicable fiscal year or if no appropriation is made by Congress to pay such amounts under this Agreement for any period after the fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the District will not be liable to make any payment under this Agreement upon the expiration of any then-existing appropriation, the District shall promptly notify CSXT, and this Agreement shall immediately terminate upon the expiration of any then-existing appropriation.
- 19.3 Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a default by the District under this Agreement.
- 19.4 This Agreement shall not constitute an indebtedness of the District nor shall it constitute an obligation for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. No District of Columbia Official or employee is authorized to obligate or expend any amount under this Agreement unless such amount has been appropriated by Act of Congress and is lawfully available.
20. Authority for Agreement. 23 C.F.R. § 646.216(d) (2012) et seq.; D.C. Official Code §§ 50-921.04(1)(B) and 50-921.05(b).
21. Amendments and Modifications. No amendment, alteration or modification to this Agreement shall be effective unless agreed to in writing by both Parties.
22. Resolution of Disputes.
- 22.1 Any dispute between the Parties arising out of or relating to this Agreement first shall be submitted to the Executive Committee for review and decision. The Executive Committee shall consist of the Agency Director, Agency Chief Engineer, CSXT's Assistant Chief Engineer-Public Projects and the CSXT's Principal Engineer for the District of Columbia, or their authorized designees. Such dispute shall be deemed to be resolved by the Executive Committee if said Executive Committee unanimously arrives at a single determination.
- 22.2 Each Party retains the right, after making a good faith effort to expeditiously resolve the dispute pursuant to the terms of Section 22.1, to pursue such other actions and remedies otherwise permitted or authorized by law or equity. The Parties shall continue to perform their responsibilities under this Agreement for a period of thirty (30) days (unless otherwise agreed by the Executive Committee) pending the final resolution of the dispute unless a situation exists that causes or may cause imminent harm or damage to CSXT employees, operations, or property, or the employees, operations, or property of Agency or its contractors.
23. Term. This Agreement shall remain in effect until one (1) year after the CSXT Work is completed as discussed in Section 2.3, unless otherwise terminated or modified.
24. Recitals. The recitals are incorporated herein by reference.

25. Counterparts. This Agreement may be executed by the Parties in counterparts, which taken together shall constitute one written agreement by and between the Parties.

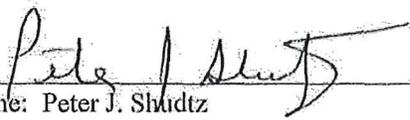
Signatures on Following Page

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate, each by its duly authorized officers, as of the date of this Agreement.

DISTRICT OF COLUMBIA DEPARTMENT OF
TRANSPORTATION

By: 
Name: Tofry Bellamy
Title: Director

CSX TRANSPORTATION, INC.

By: 
Name: Peter J. Shultz
Title: Vice-President and General Counsel

Crane, Margaret (DDOT)

From: Skinner, Calvin (OCFO)
Sent: Tuesday, May 12, 2015 2:39 PM
To: Crane, Margaret (DDOT)
Cc: Valentine, Kathryn (DDOT)
Subject: District6 of Columbia Inquiry - Virginia Avenue Tunnel

The \$4,171,044 was used by DDOT to pay the following vouchers:

- VO967665
- VO967788
- VO950593

S1 - OS12Secure - A - OS12 Production - UPPS/SOAR/ITAS - BlueZone Mainframe Display

File Edit Session Options Transfer View Script Help

Connections: A - OS12 Production - UPPS / SOAR / Attention PA1 PA2 PA3 Reset PF01

S011 V2.1 PRD DISTRICT OF COLUMBIA R*STARS 2.1 05/12/15
LINK TO: ACTIVE DOCUMENT SUMMARY INQUIRY

AGENCY: KA0 FISCAL YR: 15 MO: 08 DAY: 31 BT: 18 ENCUMB OUT
BT AMT: .00

FUND PROJECT PH
KEY: 0331 EW002C 01

EFFECTIVE DATE	DOC	AGY	DOC NUMBER	REFERENCE	DOC	BALANCE/A
20130211		KA4	VO967665	PO365135		-15173
20130211		KA4	VO967788	PO365135		-610
20121205		KA4	VO950593	PO365135		-25926
20110621		KA0	PO365135	RQ733891		41710

Z06 RECORD SUCCESSFULLY RECALLED

F1-HELP F2-TRANS INQ F3-PRIOR INQ F7-PRIOR F8-NEXT F9-INTERRUPT ENTE

S1 Ready (2) 10.27.12.1 T12TN314 14:34:06 5/12/2015 NUM 00:

Calvin R. Skinner

Agency Fiscal Officer
Office of the Chief Financial Officer
District Department of Transportation
(P) 202-671-1374
Calvin.Skinner@dc.gov

FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT

THIS FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT (“Amendment”) is entered into as of this 21st day of April, 2014 by and between CSX Transportation, Inc., (“CSXT”) a corporation organized and existing under the laws of the Commonwealth of Virginia, the District of Columbia, a municipal corporation (“District”) and the District of Columbia, acting through by and through the Office of the Deputy Mayor for Planning and Economic Development (“DMPED”) and the District Department of Transportation (“DDOT”).

WHEREAS, the parties hereto are parties to that certain Memorandum of Agreement dated as of August 23, 2010 (“MOA”); and

WHEREAS, the parties desire to amend the Memorandum as provided herein;

NOW, THEREFORE, for good and valuable consideration, the parties hereto hereby agree as follows:

1. Section A of Article III is hereby amended by inserting the following new paragraph at the end thereof :

“Notwithstanding anything to the contrary in Sections A and B of this Section III, none of the CSXT Credit Amount shall be used for the Virginia Avenue Tunnel Expansion Project. In exchange for the payments in the total amount of \$4,171,044 CSXT previously made to DDOT pursuant to Section IV.C below to assist DDOT with the 11th Street Bridge Project, DDOT and CSXT agree to work together to identify an eligible project for the use of the CSXT Credit Amount using traditional federal appropriations and obligations for resurfacing of Federal-Aid facilities within the next six (6) months, however, failure to identify an eligible project shall not constitute a default under the MOA, as amended.”

2. Article VIII of the Memorandum is hereby deleted.
3. This Amendment may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.
4. All provisions, terms and conditions contained in the MOA not expressly modified by this First Amendment, shall remain in full force and effect.

(Balance of Page Intentionally Blank)

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above.

CSX Transportation, Inc.

By: Louis E. Renzel
Name: Louis E. Renzel
Title: Vice President - Strategic Infrastructure

District of Columbia, by and through the District
Department of Transportation

By: _____
Name:
Title:

District of Columbia, by and through the Office of
the Deputy Mayor of Planning and Economic
Development

By: _____
Name:
Title:

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above.

CSX Transportation, Inc.

By: _____
Name:
Title:

District of Columbia, by and through the District
Department of Transportation

By: 
Name:
Title:

District of Columbia, by and through the Office of
the Deputy Mayor of Planning and Economic
Development

By: _____
Name:
Title:

Government of the District of Columbia
Department of Transportation



May 20, 2015

Ms. Kathleen Patterson
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, N.W.
Suite 900
Washington, D.C. 20005

RE: Virginia Avenue Tunnel Project

Dear Ms. Patterson:

Please accept this correspondence as the formal response by the District Department of Transportation (“DDOT” or “Agency”) to your letter dated March 20, 2015 (“Audit”). The inquiry focuses on the payment of \$4,171,044 from CSX Transportation, Inc. (“CSXT”) to the District of Columbia government pursuant to a Memorandum of Agreement (“MOA”) dated August 23, 2010. Please know that DDOT takes this matter seriously and is committed to assisting your office’s efforts to investigate it thoroughly such that corrective actions may be identified and implemented. To this end, the Agency is providing all available information responsive to the questions contained in the Audit. However, it is important to note that this information may not be as comprehensive and conclusive as we desire due to the fact that many of the DDOT staff that worked on the 11th Street Bridge project are no longer with the Agency. Nonetheless, we have prepared this comprehensive response to the inquiry you made.

You requested a detailed written explanation on the following questions:

1. Why the MOA required CSXT to pay the District of Columbia \$4,171,044 for redesign costs?

In 1901, the United States Congress granted certain rights to CSXT’s predecessor, the Baltimore and Potomac Railroad Company (“BPR”) under the 1901 Act of Congress Act of Congress, 31 Stat. 767 (Feb. 12, 1901) (the “1901 Act”) (included as Attachment A). The 1901 Act “empowered, authorized, and required to revise, change and improve the alignment and grade of its railroad and to relocate parts thereof within the city of Washington,” 31 Stat. at 767. Pursuant to this authority, BPR constructed a tunnel under portions of Virginia Avenue.

The 11th Street Bridge Project replaced two bridges built in the 1960s with three new bridges that separate local and freeway traffic ("11th Street Bridge Project" or "Project"). The design process for the Project began in 2007, and it was procured as a design-build project. Notice to Proceed on the design was issued in 2009. Prior to issuing Notice to Proceed, DDOT's contractor coordinated with all of the stakeholders on the proposed design for the Project. CSXT was a stakeholder by virtue of its tunnel under portions of Virginia Avenue.

The understanding by current DDOT staff is that CSXT contributed the money because CSXT failed to timely comment on DDOT's proposed design for 11th Street Bridge. However, CSXT disputes this and claims the delay was caused by DDOT's contractor failing to provide the plans to CSXT for review. Because of timing considerations for the Project, CSXT agreed to contribute the money needed for the speedy redesign of the bridge columns and allow for the possible future expansion of its Virginia Avenue Tunnel (VAT). DDOT and CSXT also entered into an agreement to provide \$4,171,044 that would be contributed by DDOT to the VAT to repave streets, subject to federal approvals and appropriations. The Agreement was later modified to delete language providing for a DDOT contribution to CSXT's VAT project, and provided that DDOT and CSXT would work together to identify another eligible project for the use of the CSXT Credit Amount. It also preserved the limitation that DDOT's proposed contribution remained subject to all the requirements associated with federal appropriations and related approvals (see Attachment B). To date, an eligible project has not been identified. The redesign of the 11th Street Bridge project was, and remains, consistent with Federal Highway Administration practice to require the State Department of Transportation take into account stakeholder's future projects into the design of transportation infrastructure.

2. For what did the District intend to use the \$4,171,044 for once the payments were received?

The District of Columbia intended to use the \$4,171,044 to redesign the 11th Street Bridge Project because the original design at that time included an onramp that would not be compatible with any future reconstruction of the VAT. The redesigned onramp had to serve the independent purpose of preserving flexibility for the VAT reconstruction, while being compatible with the Project's Environmental Impact Statements' no-build alternative as the scenario that ultimately received environmental approvals in accordance with the National Environmental Policy Act of 1969, as amended.

3. What did the District actually use the \$4,171,044 for?

The District used the \$4,171,044 to pay for the costs associated with Amendment Number 8 to Contract Number DCKA-2008-R-0146 (see Attachment C). The specific purposes of the Amendment 8 can be found on page two, and specifically for the

"re-design of the new proposed bridge structure (S-19) that carries I-695 over the existing CSX Rail line in the vicinity of the 11th and M Streets, in Southeast."

The District paid three (3) vouchers submitted under the authority of Amendment Number 8 as shown in the documentation provided by the Office of the Chief Financial Officer (See Attachment Number D):

- V0967665
- V0967688
- V0950593

4. Provide a list of any other payments CSXT was required to make to the District of Columbia in connection with 11th Street Bridge Project and the Virginia Avenue Tunnel Expansion Project.

CSXT was required to make payments to the District under two other agreements, namely:

- The State-Railroad Agreement dated August 23, 2010, between DDOT and CSXT. Pursuant to Section 4.6, CSXT's share of the Project cost was \$100,000 (see Attachment Number E). This payment was CSXT's contribution to the flagging costs associated with the 11th Street Bridge Project.
- The State-Railroad Agreement dated September, 2014, between DDOT and CSXT. Pursuant to Section 4, CSXT's share of the Project cost was \$458,653.33. This Project was for the replacement of the lining of a 60" combined sewer overflow and a 54" storm sewer pipe that run under CSXT tracks (see Attachment Number F).

5. All supporting documentation relating to "Recital 5" of the State-Railroad Agreement between CSXT and DDOT, dated December 21, 2012.

After careful review and research, we could find no supporting documentation for Recital 5. As we now understand it, the purpose of the recital was to explain why the parties were entering into the State-Railroad Agreement dated December 21, 2012.

6. A list of all personnel, both current and former, from your agency with knowledge of the answers to the above-listed questions.

The requested list of all personnel, both current and former with knowledge of the answers to the above-listed questions is included as Attachment G.

Thank you for providing DDOT with an opportunity to respond to these important concerns. Moving forward, DDOT is committed to understanding the history of all of its transportation projects undertaken by the Agency, including the Project discussed herein. DDOT's goal is to operate as responsibly as possible with the maximum transparency permitted under the law. To that end, DDOT is committed to cooperating fully with this Audit and to providing all available information about this project. Feel free to contact me or Frank Seales, Jr., General Counsel, at (202) 673-6794, if you have any questions about the information provided or if you have additional questions as the Audit progresses.

Sincerely,

A handwritten signature in black ink, appearing to read 'Leif A. Dormsjo', written in a cursive style.

Leif A. Dormsjo
Director

Enclosures
WD 3407

ATTACHMENT G
DDOT List of Personnel

The following is a list of all the personnel, both current and former from DDOT that were involved in the project and may have knowledge of the answers to the questions addressed in the forgoing response:

Current DDOT Employees	Former DDOT Employees
Ravindra Ganvir	Faisal Hameed
Eulois Cleckley	Lezlie Rupert
Sam Zimbabwe	Ronaldo Nicholson
Jamie Henson	Sanjay Kumar
E.J Simie	Terry Bellamy
Saadat Khan	Matthew Brown
Konjit Eskender	Barry Kreiswirth
Matthew Marcou	Gabe Klein
Muhammed Khalid	Said Cherifi
Greer Gillis	Kathleen Penney
Jeffrey Powell	Bart Clark
Clarence Dickerson	Karina Ricks