

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

CONSTRUCTION AGREEMENT

This Construction Agreement (“**Agreement**”) is made as of _____, 2024, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida (“**CSXT**”), and the COUNTY OF ALBANY, a body corporate and political subdivision of the State of New York (“**Agency**”).

EXPLANATORY STATEMENT

1. Agency has proposed to construct, or to cause to be constructed, warning device upgrades at South Main Street & Voorheesville Avenue grade crossings, Voorheesville, Albany County, New York, DOT Numbers: 508700P, 976946B & 508701W, Mile Posts QG-22.24, QG-22.23 & QG-22.02, Northern Zone, Selkirk Sub-Division (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 to promote public interest in this Project, without profit or other economic inducement typical of other Agency contractors; (ii) neither CSXT nor its affiliates (including their respective directors, officers, employees or agents) will incur any costs, expenses, losses or liabilities in excess of payments made to CSXT, by or on behalf of Agency or its contractors, pursuant to this Agreement; and (iii) CSXT retains the paramount right to regulate all activities affecting its property and operations.
4. 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 Explanatory Statement 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 Approval.** Pursuant to **Exhibit A** of this Agreement, all plans, specifications, drawings and other documents necessary or appropriate to the design and construction of the Project shall be prepared, at Agency’s sole cost and expense, by Agency or CSXT or their respective contractors. Project plans, specifications and drawings prepared by or on behalf of Agency shall be subject, at CSXT’s election, to the review and approval of CSXT. Such plans, specifications and drawings, as prepared or approved by CSXT, are referred to as the “**Plans**”, and shall be

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

incorporated and deemed a part of this Agreement. Plans prepared or submitted to and approved by CSXT as of the date of this Agreement are set forth in Exhibit B to this Agreement.

1.2 Effect of CSXT Approval or Preparation of Plans. By its review, approval 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 constructed 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. Subject to timely payment of Reimbursable Expenses as provided by Section 4, CSXT shall provide, or cause to be provided, the services as set forth by Exhibit A to this Agreement. Agency agrees that CSXT shall provide all services that CSXT deems necessary or appropriate (whether or not specified by Exhibit A) to preserve and maintain its property and operations, without impairment or exposure to liability of any kind and 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 by Exhibit A, at Agency's sole cost and expense.

2.3 Conduct of Work. CSXT shall commence its work under this Agreement following: (i) delivery to CSXT of a notice to proceed from Agency; (ii) payment of Reimbursable Expenses (as provided by Section 4.1) as required by CSXT prior to the commencement of work by CSXT; (iii) issuance of all permits, approvals and authorizations necessary or appropriate for such work; and (iv) delivery of proof of insurance acceptable to CSXT, as required by Section 9. The initiation of any services 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 by CSXT or on CSXT property shall conclude no later than December 31, 2025, unless the parties mutually agree to extend such date.

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

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”). To the extent that Agency performs Project work itself, Agency shall be deemed a Contractor for purposes of this Agreement. 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. Pursuant to the December 16, 2021 letter agreement between CSXT and the Village of Voorheesville (the “CSXT-Village Agreement”), Agency shall reimburse CSXT for the Project at a cost equal to the order of magnitude cost estimate transmitted to the Village via letter dated August 10, 2016, which includes costs and expenses to be incurred by CSXT in connection with the Project, including, without limitation: (1) 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 in connection with the Project, 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**”).

 - 4.3 Payment Terms.
 - 4.3.1 Agency shall pay CSXT for Reimbursable Expenses in the amounts and on the dates set forth in the Payment Schedule as shown on Exhibit E (the “Payment Schedule”, as revised pursuant to Section 4.2). CSXT agrees to submit invoices to Agency for such amounts and Agency shall remit payment to CSXT at the later of thirty (30) days following delivery of each such invoice to Agency or, the payment date (if any) set forth in the Payment Schedule.

 - 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. Agency shall pay to CSXT the amount by which Reimbursable Expenses exceed total payments as shown by the final invoice, 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.

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

4.3.3 In the event that Agency fails to pay CSXT any sums due CSXT under this Agreement: (i) Agency shall pay CSXT interest at the lesser of 1.0% per month or the maximum rate of interest permitted by applicable law on the delinquent amount until paid in full; and (ii) CSXT may elect, by delivery of notice to Agency: (A) to immediately cease all further work on the Project, unless and until Agency pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate 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 certified 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 530192
Atlanta, GA 30353-0192

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

5. Appropriations Agency represents to CSXT that: (i) Agency has appropriated funds sufficient to reimburse CSXT for the Reimbursable Expenses encompassed by the Estimate attached as Exhibit D; (ii) Agency shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by Agency; and (iii) Agency 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 it has the right to do so, CSXT hereby grants Agency a nonexclusive license to access and cross CSXT's property, to the extent necessary for the construction of the Project (excluding ingress or egress over public grade crossings), along such routes and upon such terms as may be defined and imposed by CSXT and such temporary construction easements as may be designated on the Plans approved by CSXT.

6.3 Temporary Construction Easements. CSXT may grant without warranty to Agency, if required, a temporary non-exclusive easement for access to the extent necessary for the project on terms and conditions and at a price acceptable to the parties.

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

- 6.4 Maintenance Agreement. Contemporaneous with the execution of this Agreement, CSXT and Agency have executed that certain Maintenance Agreement providing for Agency's ongoing use, maintenance, repair, renewal and removal of the Project.
- 6.5 Permanent Easements. Insofar as it has the right to do so, CSXT shall grant, without warranty to Agency, easements for the use and maintenance (in accordance with the provisions of the Maintenance Agreement described in 6.4) of the Project wholly or partly on CSXT property as shown on the Plans approved by CSXT, if any, on terms and conditions and at a price acceptable to both parties. Upon request by CSXT, Agency shall furnish to CSXT descriptions and plat plans for the easements.
7. Permits At its sole cost and expense, 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, as its sole remedy, terminate this Agreement by delivery of notice to CSXT. Agency shall not be entitled to otherwise pursue claims for consequential, direct, indirect or incidental damages or lost profits as a consequence of CSXT's default or termination of this Agreement or Work on the Project by either party.
- 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 its 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 them to immediately stop the Work. Accordingly, they agree that, in such instance a party may continue to perform Work until it has reached a point where it may reasonably and safely suspend the Work. Agency shall reimburse CSXT pursuant to this Agreement for the Work performed, plus all costs reasonably incurred by CSXT to discontinue the Work and protect the Work upon full suspension of the same, the cost of returning CSXT's property to its former condition, and all other costs of CSXT incurred as a result of the Project up to the time of full suspension of the Work. Termination of this Agreement or Work on the Project, for any reason, shall not diminish or reduce Agency's obligation to pay CSXT for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Work for any reason, CSXT's only remaining obligation to Agency

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

shall be to refund to Agency payments made to CSXT in excess of Reimbursable Expenses in accordance with Section 4.

9. Insurance. In addition to the insurance that Agency requires of its Contractor, Agency shall acquire or require its Contractor to purchase and maintain insurance in compliance with CSXT's insurance requirements attached to this Agreement as Exhibit F. Neither Agency nor Contractor shall 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 maintain and repair, at its sole cost and expense, all parts comprising the permanent aspects of the Project, as shown by the Plans, consisting of roadway pavement up to the outer ends of the railroad cross ties, sidewalks, guardrails, and curbs, in good and safe condition to CSXT's satisfaction. In the event Agency fails to do so after reasonable notice from CSXT (unless an emergency condition exists or is imminent in the opinion of CSXT that requires immediate action), CSXT may perform such maintenance and repair, at Agency's sole cost and expense.

10.2 By CSXT. CSXT shall maintain and repair the crossing surface between the ends of its cross ties and its signal facilities at the crossing. Apportionment of costs and expenses related to crossing maintenance will be subject to a future cost-sharing agreement, to be negotiated by the Parties. For the avoidance of doubt, Agency shall bear no responsibility or liability for any Federal Rail Administration required signal maintenance.

10.3 Alterations. Agency shall not undertake any alteration, modification or expansion of the Project, without the prior written approval of CSXT, which may be withheld for any reason, and the execution of such agreements as CSXT may require. CSXT may undertake alterations of its property, track or facilities, and any reimbursement for the expenses incurred by CSXT with respect to the removal and restoration of the crossing in connection with such alteration will be apportioned pursuant to the cost-sharing agreement referenced in Section 10.2.

11. Indemnification

11.1 Generally. To the maximum extent permitted by applicable law, Agency and its Contractors shall indemnify, defend, and hold CSXT and its 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, its affiliates, Agency or its Contractors), for the loss of or damage to any property whatsoever (including but not

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

limited to property owned by or in the care, custody, or control of CSXT, its affiliates, Agency or its Contractors, and environmental damages and any related remediation brought or recovered against CSXT and its affiliates), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Contractors, Agency, and their respective agents, employees, invitees, contractors, or its contractors' 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. 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 Compliance with Laws. Agency shall comply, and shall require its Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the Project. Agency's Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.
- 11.3 "CSXT Affiliates". For the purpose of this Section 11, 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.
- 11.4 Notice of Incidents. Agency and its Contractor shall notify CSXT promptly of any loss, damage, injury or death arising out of or in connection with the Project work.
- 11.5 Survival. The provisions of this Section 11 shall survive the termination or expiration of this Agreement.
12. Independent Contractor The parties agree that neither Agency nor its 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 its Contractor to complete the Project. Notwithstanding the foregoing, this Section 12 shall in no way affect the absolute authority of CSXT to prohibit Agency or its Contractors or anyone from entering CSXT's property, or to require the removal of any person from its property, if it determines, in its 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.
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,

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

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 CSXT may assign this Agreement and all rights and obligations herein to a successor in interest, parent company, affiliate, or future affiliate. Upon assignment of this Agreement by CSXT and the assumption of CSXT's assignee of CSXT's obligations under this Agreement, CSXT shall have no further obligation under this Agreement. Agency shall not assign its rights or obligations under this Agreement without CSXT's prior consent, which consent may be withheld for any reason.
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: Director Project Management – Public Projects
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If to Agency:	County of Albany 112 State Street, Room 1200 Albany, New York 12207-2021 Attention: Michael Lalli
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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 This Agreement shall be governed by the laws of the State of New York, 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 U.S. District Court for the Northern District of New York, and the parties agree to submit to the personal jurisdiction of that Federal court.

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

BY SIGNING THIS AGREEMENT, I certify that there have been no changes made to the content of this Agreement since its approval by the CSXT Legal Department on **November 5, 2021**.

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.

COUNTY OF ALBANY

By: _____

Name: _____

Title: _____

CSX TRANSPORTATION, INC.

By: _____

Name: _____

Title: _____

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

EXHIBIT A
ALLOCATION OF WORK

Subject to Section 2.1, work to be performed in connection with the Project is allocated as follows:

- A. Agency shall let by contract to its Contractors:
 - 1. Means to perform traffic studies necessary for CSXT to complete signal design work.

- B. CSXT shall perform or cause to be performed:
 - 1. Preliminary engineering services.
 - 2. Signal work associated with warning device upgrades
 - 3. Track work associated with repair and renewal of crossing surfaces
 - 4. Construction engineering and inspection to protect the interests of CSXT.

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

EXHIBIT B

PLANS AND SPECIFICATIONS

Plans, Specifications and Drawings:

As of the date of this Agreement, the following plans, specifications and drawings have been submitted by Agency to CSXT for its review and approval:

<u>SHEET</u>	<u>DESCRIPTION</u>	<u>PREPARER</u>	<u>DATE</u>
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Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

EXHIBIT C

CSXT SPECIAL PROVISIONS

DEFINITIONS:

As used in these Special Provisions, all capitalized terms shall have the meanings ascribed to them by the Agreement, and the following terms shall have the meanings ascribed to them below:

“CSXT” shall mean CSX Transportation, Inc., its successors and assigns.

“CSXT Representative” shall mean the authorized representative of CSX Transportation, Inc.

“Agreement” shall mean the Agreement between CSXT and Agency dated as of _____, as amended from time to time.

“Agency” shall mean the County of Albany.

“Agency Representative” shall mean the authorized representative of County of Albany.

“Contractor” shall have the meaning ascribed to such term by the Agreement.

“Work” shall mean the Project as described in the Agreement.

I. AUTHORITY OF CSXT ENGINEER

The CSXT Representative shall have final authority in all matters affecting the safe maintenance of CSXT operations and CSXT property, and his or her approval shall be obtained by the Agency or its Contractor for methods of construction to avoid interference with CSXT operations and CSXT property and all other matters contemplated by the Agreement and these Special Provisions.

II. INTERFERENCE WITH CSXT OPERATIONS

- A. Agency or its Contractor shall arrange and conduct its work so that there will be no interference with CSXT operations, including train, signal, telephone and telegraphic services, or damage to CSXT’s property, or to poles, wires, and other facilities of tenants on CSXT’s Property or right-of-way. Agency or its Contractor shall store materials so as to prevent trespassers from causing damage to trains, or CSXT Property. Whenever Work is likely to affect the operations or safety of trains, the method of doing such Work shall first be submitted to the CSXT Representative for approval, but such approval shall not relieve Agency or

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

its Contractor from liability in connection with such Work.

- B. If conditions arising from or in connection with the Project require that immediate and unusual provisions be made to protect train operation or CSXT's property, Agency or its Contractor shall make such provision. If the CSXT Representative determines that such provision is insufficient, CSXT may, at the expense of Agency or its Contractor, require or provide such provision as may be deemed necessary, or cause the Work to cease immediately.
- III. NOTICE OF STARTING WORK. Agency or its Contractor shall not commence any work on CSXT Property or rights-of-way until it has complied with the following conditions:
- A. Notify CSXT in writing of the date that it intends to commence Work on the Project. Such notice must be received by CSXT at least ten business days in advance of the date Agency or its Contractor proposes to begin Work on CSXT property. The notice must refer to this Agreement by date. If flagging service is required, such notice shall be submitted at least thirty (30) business days in advance of the date scheduled to commence the Work.
 - B. Obtain authorization from the CSXT Representative to begin Work on CSXT property, such authorization to include an outline of specific conditions with which it must comply.
 - C. Obtain from CSXT the names, addresses and telephone numbers of CSXT's personnel who must receive notice under provisions in the Agreement. Where more than one individual is designated, the area of responsibility of each shall be specified.
- IV. WORK FOR THE BENEFIT OF THE CONTRACTOR
- A. No temporary or permanent changes to wire lines or other facilities (other than third party fiber optic cable transmission systems) on CSXT property that are considered necessary to the Work are anticipated or shown on the Plans. If any such changes are, or become, necessary in the opinion of CSXT or Agency, such changes will be covered by appropriate revisions to the Plans and by preparation of a force account estimate. Such force account estimate may be initiated by either CSXT or Agency, but must be approved by both CSXT and Agency. Agency or Contractor shall be responsible for arranging for the relocation of the third party fiber optic cable transmission systems, at no cost or expense to CSXT.

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

- B. Should Agency or Contractor desire any changes in addition to the above, then it shall make separate arrangements with CSXT for such changes to be accomplished at the Agency or Contractor's expense.

V. HAUL ACROSS RAILROAD

- A. If Agency or Contractor desires access across CSXT property or tracks at other than an existing and open public road crossing in or incident to construction of the Project, the Agency or Contractor must first obtain the permission of CSXT and shall execute a license agreement or right of entry satisfactory to CSXT, wherein Agency or Contractor agrees to bear all costs and liabilities related to such access.
- B. Agency and Contractor shall not cross CSXT's property and tracks with vehicles or equipment of any kind or character, except at such crossing or crossings as may be permitted pursuant to this section.

VI. COOPERATION AND DELAYS

- A. Agency or Contractor shall arrange a schedule with CSXT for accomplishing stage construction involving work by CSXT. In arranging its schedule, Agency or Contractor shall ascertain, from CSXT, the lead time required for assembling crews and materials and shall make due allowance therefore.
- B. Agency or Contractor may not charge any costs or submit any claims against CSXT for hindrance or delay caused by railroad traffic; work done by CSXT or other delay incident to or necessary for safe maintenance of railroad traffic; or for any delays due to compliance with these Special Provisions.
- C. Agency and Contractor shall cooperate with others participating in the construction of the Project to the end that all work may be carried on to the best advantage.
- D. Agency and Contractor understand and agree that CSXT does not assume any responsibility for work performed by others in connection the Project. Agency and Contractor further understand and agree that they shall have no claim whatsoever against CSXT for any inconvenience, delay or additional cost incurred by Agency or Contractor on account of operations by others.

VII. STORAGE OF MATERIALS AND EQUIPMENT

Agency and Contractor shall not store their materials or equipment on CSXT's property or where they may potentially interfere with CSXT's operations, unless Agency or Contractor has received CSXT Representative's prior written permission. Agency and

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

Contractor understand and agree that CSXT will not be liable for any damage to such materials and equipment from any cause and that CSXT may move, or require Agency or Contractor to move, such material and equipment at Agency's or Contractor's sole expense. To minimize the possibility of damage to the railroad tracks resulting from the unauthorized use of equipment, all grading or other construction equipment that is left parked near the tracks unattended by watchmen shall be immobilized to the extent feasible so that it cannot be moved by unauthorized persons.

VIII. CONSTRUCTION PROCEDURES

A. General

1. Construction work on CSXT property shall be subject to CSXT's inspection and approval.
2. Construction work on CSXT property shall be in accord with CSXT's written outline of specific conditions and with these Special Provisions.
3. Contractor shall observe the terms and rules of the CSXT Safe Way manual, which Agency and Contractor shall be required to obtain from CSXT, and in accord with any other instructions furnished by CSXT or CSXT's Representative.

B. Blasting

1. Agency or Contractor shall obtain CSXT Representative's and Agency Representative's prior written approval for use of explosives on or adjacent to CSXT property. If permission for use of explosives is granted, Agency or Contractor must comply with the following:
 - a. Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of Agency or Contractor.
 - b. Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way train radios.
 - c. No blasting shall be done without the presence of an authorized representative of CSXT. At least 10 days' advance notice to CSXT Representative is required to arrange for the presence of an authorized CSXT representative and any flagging that CSXT may require.
 - d. Agency or Contractor must have at the Project site adequate

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

equipment, labor and materials, and allow sufficient time, to (i) clean up (at Agency's expense) debris resulting from the blasting without any delay to trains; and (ii) correct (at Agency's expense) any track misalignment or other damage to CSXT's property resulting from the blasting, as directed by CSXT Representative, without delay to trains. If Agency's or Contractor's actions result in delay of any trains, including Amtrak passenger trains, Agency shall bear the entire cost thereof.

e. Agency and Contractor shall not store explosives on CSXT property.

2. CSXT Representative will:

a. Determine the approximate location of trains and advise Agency or Contractor of the approximate amount of time available for the blasting operation and clean-up.

b. Have the authority to order discontinuance of blasting if, in his or her opinion, blasting is too hazardous or is not in accord with these Special Provisions.

IX. MAINTENANCE OF DITCHES ADJACENT TO CSXT TRACKS

Agency or Contractor shall maintain all ditches and drainage structures free of silt or other obstructions that may result from their operations. Agency or Contractor shall provide erosion control measures during construction and use methods that accord with applicable state standard specifications for road and bridge construction, including either (1) silt fence; (2) hay or straw barrier; (3) berm or temporary ditches; (4) sediment basin; (5) aggregate checks; and (6) channel lining. All such maintenance and repair of damages due to Agency's or Contractor's operations shall be performed at Agency's expense.

X. FLAGGING / INSPECTION SERVICE

A. CSXT has sole authority to determine the need for flagging required to protect its operations and property. In general, flagging protection will be required whenever Agency or Contractor or their equipment are, or are likely to be, working within fifty (50) feet of live track or other track clearances specified by CSXT, or over tracks.

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

- B. Agency shall reimburse CSXT directly for all costs of flagging that is required on account of construction within CSXT property shown in the Plans, or that is covered by an approved plan revision, supplemental agreement or change order.
- C. Agency or Contractor shall give a minimum of 10 days' advance notice to CSXT Representative for anticipated need for flagging service. No work shall be undertaken until the flag person(s) is/are at the job site. If it is necessary for CSXT to advertise a flagging job for bid, it may take up to 90-days to obtain this service, and CSXT shall not be liable for the cost of delays attributable to obtaining such service.
- D. CSXT shall have the right to assign an individual to the site of the Project to perform inspection service whenever, in the opinion of CSXT Representative, such inspection may be necessary. Agency shall reimburse CSXT for the costs incurred by CSXT for such inspection service. Inspection service shall not relieve Agency or Contractor from liability for its Work.
- E. CSXT shall render invoices for, and Agency shall pay for, the actual pay rate of the flagpersons and inspectors used, plus standard additives, whether that amount is above or below the rate provided in the Estimate. If the rate of pay that is to be used for inspector or flagging service is changed before the work is started or during the progress of the work, whether by law or agreement between CSXT and its employees, or if the tax rates on labor are changed, bills will be rendered by CSXT and paid by Agency using the new rates. Agency and Contractor shall perform their operations that require flagging protection or inspection service in such a manner and sequence that the cost of such will be as economical as possible.

XI. UTILITY FACILITIES ON CSXT PROPERTY

Agency shall arrange, upon approval from CSXT, to have any utility facilities on or over CSXT Property changed as may be necessary to provide clearances for the proposed trackage.

XII. CLEAN-UP

Agency or Contractor, upon completion of the Project, shall remove from CSXT's Property any temporary grade crossings, any temporary erosion control measures used to control drainage, all machinery, equipment, surplus materials, falsework, rubbish, or temporary buildings belonging to Agency or Contractor. Agency or Contractor, upon completion of the Project, shall leave CSXT Property in neat condition, satisfactory to CSXT Representative.

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

XIII. FAILURE TO COMPLY

If Agency or Contractor violate or fail to comply with any of the requirements of these Special Provisions, (a) CSXT may require Agency and/or Contractor to vacate CSXT Property; and (b) CSXT may withhold monies due Agency and/or Contractor; (c) CSXT may require Agency to withhold monies due Contractor; and (d) CSXT may cure such failure and the Agency shall reimburse CSXT for the cost of curing such failure.

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

EXHIBIT D

ESTIMATE

Estimate is \$288,962 in accordance with the order-of-magnitude estimate provided by Bergmann Associates in its August 10, 2016 Unexecuted Preliminary Engineering Agreement Amendment Transmittal, attached.



August 10, 2016

Mr. Richard A. Straut, P.E.
Village of Voorheesville
29 Voorheesville Avenue
Voorheesville, NY 12186

Subject: Voorheesville, Albany County, New York; Railroad Quiet Zone project at South Main St. and Voorheesville Ave. grade crossing with CSXT; DOT# 508 700 P & 508 701 W, MP QG-22.24 & QG-22.02, Albany Division, Selkirk Subdivision, OP# NY0553
Unexecuted Preliminary Engineering Agreement Amendment Transmittal

Dear Mr. Straut;

Reference is made to the Bergmann Associates letter dated February 18, 2015 providing the Force Account Estimate in the amount of \$87,472. Reference is also made to the August 8, 2016 Bergmann Associates letter transmitting the fully executed Preliminary Engineering Agreement for the subject project. It is understood that the Village requested a reduced scope of work for the fully executed Preliminary Engineering Agreement which included the preparation of an order-of-magnitude accurate force account estimate for the construction costs. The costs of the preliminary engineering agreement for this reduced scope of work was \$27,500. The order-of-magnitude cost estimate has been prepared, and the costs are summarized below:

Construction Costs (Accuracy to order-of-magnitude)

Signal Work - \$231,704
2 weeks of flagging - \$15,448
Construction Engineering & Inspection - \$15,500
Contingency - \$26,269
Total - \$288,962

If the Village desires to move forward with the project based on these estimated construction costs, an Amendment to the Preliminary Engineering Agreement will need to be executed to complete the remaining Preliminary Engineering tasks and finalize design as outlined in the original Force Account Estimate provided in the February 18, 2015 letter. Once the final design is complete, the Force Account Estimate for construction activities will be completed and included within the Construction Agreement which will be provided to the Village.

As such, enclosed are two (2) Amendments to the Preliminary Engineering Agreement with the revised Force Account Estimate in the amount of \$87,472. If acceptable to the Village, please arrange for each original to be executed and return both with a copy of the necessary advance payment to Bergmann Associates at the following address:

Six Tower Bridge
181 Washington Street, Suite 430
Conshohocken, PA 19428

Advance payment for the balance of the Force Account Estimate should be provided to "CSX Transportation" and sent with CSXT Schedule PA directly to CSXT at the following address:

P. O. Box 116651
Atlanta, GA 30368-6651





Please note that no work may begin on, over, or adjacent to the CSXT right-of-way, or that could potentially impact CSXT operations, until the following has occurred:

- The plans have been reviewed and no exceptions taken
- A fully executed Construction Agreement is in place with the appropriate parties
- CSXT's Notice to proceed with force account work has been received by this office
- The contractor's insurance has been approved in writing by CSXT
- The necessary construction submissions have been submitted with no exceptions taken by CSXT or its representative
- A pre-construction meeting has been held with CSXT personnel present
- A flagman is scheduled and on site

Please do not hesitate to contact Erin McCloskey or me at (610) 834-4080 with any questions regarding the above matters.

Sincerely,

Joshua Davis

Joshua Davis, PE
Preliminary Engineering – CSXT GEC

cc: BA file 9361.98





February 18, 2015

Mr. Richard A. Straut, P.E.
Village of Voorheesville
29 Voorheesville Avenue
Voorheesville, NY 12186

SUBJECT: Voorheesville, Albany County, New York; Railroad Quiet Zone project at South Main St and Voorheesville Ave grade crossing with CSXT; DOT# 508 700 P & 508 701 W, MP QG-22.24 & QG-22.02, Albany Division, Selkirk Subdivision, OP# NY0553
Unexecuted Preliminary Engineering Agreement and Force Account Estimate Transmittal

Dear Mr. Straut;

Reference is made to the Village of Voorheesville letter dated January 15, 2015 providing authorization to incur costs and requesting a cost estimate for complete engineering design for the subject project. In order for CSXT to be reimbursed for its costs to support the project, CSXT requires the Preliminary Engineering Agreements to be fully executed between the Village and CSXT. Two (2) original agreements are enclosed. The railroad Force Account Estimate covering an allowance for Preliminary Engineering services is included in the agreement. This estimate does not include the cost of construction engineering/inspection, flagging service, signal and communications work and other costs to be incurred during construction.

Please arrange for each original to be executed and return both along with a copy of the necessary advance payment to Bergmann Associates at the following address:

Six Tower Bridge
181 Washington Street, Suite 430
Conshohocken, PA 19428

Per Section 3.3 of the Agreement, the Village shall provide the advance payment in the amount of \$87,472 along with the signed Agreements. These funds are to cover the anticipated project costs for Preliminary Engineering only. Please be advised that the advance payment is not a fee, but an advance deposit held in an account against which actual CSXT costs are assessed. If the actual costs are less than the deposit, a refund will be returned, and if the actual costs are more than the deposit, an additional deposit will be requested.

The advance payments should be made payable to "CSX Transportation" and sent with attached Payment Submission Form directly to CSXT at the following address:

P. O. Box 116651
Atlanta, GA 30368-6651

When returning the signed Preliminary Engineering Agreements, please also include a letter from the Village providing CSXT with its notice to proceed for the CSXT force account work.

Please note that no work may begin on, over, or adjacent to the CSXT right-of-way, or that could potentially impact CSXT operations, until the following has occurred:

- The plans have been reviewed and no exceptions taken
- A fully executed Right of Entry Agreement is in place with the appropriate parties
- The advanced payment has been received by CSXT
- CSXT's Notice to proceed with force account work has been received by this office
- The contractor's insurance has been approved in writing by CSXT





- The necessary construction submissions have been submitted with no exceptions taken by CSXT or its representative
- A pre-construction meeting has been held with CSXT personnel present
- A flagman is scheduled and on site
- The contractor signs Schedule I of the Construction Agreement

Please do not hesitate to contact Tucker Faherty or me at (610) 834-4080 with any questions regarding the above matters.

Sincerely,

Joshua Davis, PE
Preliminary Engineering – CSXT GEC

CC: BA file 9361.98





August 9, 2016

Mr. Richard A. Straut, P.E.
Village of Voorheesville
29 Voorheesville Avenue
Voorheesville, NY 12186

Subject: Voorheesville, Albany County, New York; Railroad Quiet Zone project at South Main St. and Voorheesville Ave. grade crossing with CSXT; DOT# 508 700 P & 508 701 W, MP QG-22.24 & QG-22.02, Albany Division, Selkirk Subdivision, OP# NY0553
Fully Executed Preliminary Engineering Agreement Transmittal

Dear Mr. Straut;

Reference is made to the June 29, 2016 Village of Voorheesville letter transmitting the partially executed Preliminary Engineering Agreements for the subject project. Enclosed, please find one (1) Agreement fully executed by CSXT. The appropriate CSXT representatives will be notified by copy of this letter.

Please note that no work may begin on, over, or adjacent to the CSXT right-of-way, or that could potentially impact CSXT operations, until the following has occurred:

- The plans have been reviewed and no exceptions taken
- A fully executed Construction Agreement is in place with the appropriate parties
- CSXT's Notice to proceed with force account work has been received by this office
- The contractor's insurance has been approved in writing by CSXT
- The necessary construction submissions have been submitted with no exceptions taken by CSXT or its representative
- A pre-construction meeting has been held with CSXT personnel present
- A flagman is scheduled and on site

Please do not hesitate to contact Erin McCloskey or me at (610) 834-4080 with any questions regarding the above matters.

Sincerely,

Joshua Davis, PE
Preliminary Engineering – CSXT GEC

cc: BA file 9361.98



Project: Voorheesville, Albany County, New York – Railroad Quiet Zone project at South Main St. and Voorheesville Ave. grade crossing with CSXT, MP QG-22.24 and QG-22.02, DOT # 508 700 P and 508 701 W, Albany Division, Selkirk Subdivision, CSXT OP # NY0553

AMENDMENT NO. 1

**To Railroad Quiet Zone Preliminary Engineering Agreement
Dated August 2, 2016**

CSX Transportation, Inc., a Virginia corporation with its principal place of business in Jacksonville, Florida (“**CSXT**”), and the Village of Voorheesville, a body corporate and political subdivision of the State of New York (“**VILLAGE**”), hereby agree to amend the Preliminary Engineering Agreement between VILLAGE and CSXT dated August 2, 2016 (the “**Agreement**”) in accordance with the terms of this Amendment No. 1, which shall be effective as of the date the last signature is affixed hereto.

Pursuant to Section 8 of the Agreement, CSXT and VILLAGE desire to amend the Agreement as follows:

A. Amend the first sentence of Section 3.2 to read:

“CSXT has estimated the total Reimbursable Expenses for the Project to be approximately \$87,472 (the “**Estimate**” as amended or revised.)”

B. The Estimate attached to the Agreement is hereby deleted and replaced with the Estimate attached to this Amendment No. 1 as Attachment 1.

C. Capitalized terms used but not defined in this Amendment No. 1 shall have the same meaning as defined in the Agreement.

D. Except as amended by this Amendment No. 1, the Agreement remains in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 1 to be executed, each by its duly authorized officers.

Village of Voorheesville

By: _____
Name: _____
Title: _____
Date: _____

CSX TRANSPORTATION, INC.

By: _____
Name: _____
Title: _____
Date: _____

ATTACHMENT 1

ESTIMATE SUBJECT TO REVISION AFTER:	7/26/2015	508700P & DOT NO.: 508701W
CITY: Voorheesville	COUNTY: Albany	STATE: NY
DESCRIPTION: Quiet Zone Improvements at South Main Street (DOT#508700P) and Voorheesville Ave/County Road 306 (DOT#508701W)		
DIVISION: Albany	SUB-DIV: Selkirk	QG-22.24 & MILE POST: 22.02
AGENCY PROJECT NUMBER: _____		

PRELIMINARY ENGINEERING:

212 Contracted & Administrative Engineering Services	\$	47,300
Subtotal	\$	47,300

CONSTRUCTION ENGINEERING/INSPECTION:

212 Contracted & Administrative Engineering Services	\$	-
Subtotal	\$	-

FLAGGING SERVICE: (Contract Labor)

070 Labor (Conductor-Flagman)	\$	-
050 Labor (Foreman/Inspector)	\$	-
070 Additive 153.13% (Transportation Department)	\$	-
050 Additive 163.09% (Engineering Department)	\$	-
230 Per Diem (Engineering Department)	\$	-
230 Expenses	\$	-
Subtotal	\$	-

<u>SIGNAL & COMMUNICATIONS WORK:</u> (Details Attached)	\$	32,220
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<u>TRACK WORK:</u> (Details Attached)	\$	-
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<u>PROJECT SUBTOTAL</u>	\$	79,520
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900 <u>CONTINGENCIES:</u> 10.00%	\$	7,952
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GRAND TOTAL *****	\$	87,472
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DIVISION OF COST:

Agency	100.00%	\$	87,472
Railroad		\$	-

TOTAL *****	\$	87,472
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NOTE: Estimate is based on FULL CROSSING CLOSURE during work by Railroad Forces.

This estimate has been prepared based on site conditions, anticipated work duration periods, material prices, labor rates, manpower and resource availability, and other factors known as of the date prepared. The actual cost for CSXT work may differ based upon the agency's requirements, their contractor's work procedures, and/or other conditions that become apparent once construction commences or during the progress of the work

Office of Assistant Chief Engineer Public Projects--Jacksonville, Florida

Estimated prepared by: Bergmann	Approved by: DSM CSXT Public Project Group
DATE: <u>1/27/2015</u>	DATE: 02/17/15

508700P
&

ESTIMATE SUBJECT TO REVISION AFTER:

7/26/15

DOT NO.: 508701W

CITY: Voorheesville

COUNTY: Albany

STATE: NY

DESCRIPTION: Quiet Zone Improvements at South Main Street (DOT#508700P) and Voorheesville Ave/County Road 306

QG-22.24

DIVISION: Albany

SUB-DIV: Selkirk

MILEPOST: & 22.02

DRAWING NO.: ___

DRAWING DATE: ___

AGENCY PROJECT NUMBER: ___

Amount		
Task	Task Desc	Total
50	Labor Roadway	
60	Labor Signal	
65	Labor Signal1	
70	Labor Transportation	
200	Labor NonContract	\$32,220
210	Invoice Material	
	Material - Field & Consu	
211	Invoice Freight	
212	Invoice Contract Eng	\$47,300
215	Invoice Misc	
216	Invoice Utilities	
220	Material New	
	Material - Shop	
228	Scrap Credit	
230	ExpenseRpts	
241	Invoice Rental	
900	Other	
900	Contingencies	\$7,952
	Material New	
Grand Total		\$87,472

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

EXHIBIT E

PAYMENT SCHEDULE

Advance Payment in Full

Upon execution and delivery of notice to proceed with the Project, Agency will deposit with CSXT a sum equal to the Reimbursable Expenses, as shown by the Estimate. If CSXT anticipates that it may incur Reimbursable Expenses in excess of the deposited amount, CSXT will request an additional deposit equal to the then remaining Reimbursable Expenses which CSXT estimates that it will incur. CSXT shall request such additional deposit by delivery of invoices to Agency. Agency shall make such additional deposit within 30 days following delivery of such invoice to Agency.

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

EXHIBIT F

INSURANCE REQUIREMENTS

I. Insurance Policies:

Agency and Contractor, if and to the extent that either is performing work on or about CSXT's property, shall procure and maintain the following insurance policies:

1. Commercial General Liability coverage at their sole cost and expense with limits of not less than \$5,000,000 in combined single limits for bodily injury and/or property damage per occurrence, and such policies shall name CSXT as an additional named insured. The policy shall include endorsement ISO CG 24 17 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsement is not included, railroad protective liability insurance must be provided as described in item 4 below.
2. Statutory Worker's Compensation and Employers Liability Insurance with limits of not less than \$1,000,000, which insurance must contain a waiver of subrogation against CSXT and its affiliates (if permitted by state law).
3. Commercial automobile liability insurance with limits of not less than \$1,000,000 combined single limit for bodily injury and/or property damage per occurrence, and such policies shall name CSXT as an additional named insured. The policy shall include endorsement ISO CA 20 70 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsement is not included, railroad protective liability insurance must be provided as described in item 4 below.
4. Railroad protective liability insurance with limits of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate annual limit of \$10,000,000, which insurance shall satisfy the following additional requirements:
 - a. The Railroad Protective Insurance Policy must be on the ISO/RIMA Form of Railroad Protective Insurance - Insurance Services Office (ISO) Form CG 00 35.
 - b. CSX Transportation must be the named insured on the Railroad Protective Insurance Policy.
 - c. Name and Address of Contractor and Agency must appear on the Declarations page.
 - d. Description of operations must appear on the Declarations page and must match the Project description.

Voorheesville, Albany County, New York
Warning device upgrades at South Main Street & Voorheesville Avenue grade crossings with CSXT
Northern Zone, Selkirk Subdivision
DOT# 508700P, 976946B & 508701W; MP QG-22.24, QG-22.23 & QG-22.02
CSXT OP NY0694

2

e. Authorized endorsements must include the Pollution Exclusion Amendment - CG 28 31, unless using form CG 00 35 version 96 and later.

f. Authorized endorsements may include:

- (i). Broad Form Nuclear Exclusion - IL 00 21
 - (ii) 30-day Advance Notice of Non-renewal or cancellation
 - (iii) Required State Cancellation Endorsement
 - (iv) Quick Reference or Index - CL/IL 240

g. Authorized endorsements may not include:

- (i) A Pollution Exclusion Endorsement except CG 28 31
- (ii) A Punitive or Exemplary Damages Exclusion
- (iii) A "Common Policy Conditions" Endorsement
- (iv) Any endorsement that is not named in Section 4 (e) or (f) above.
- (v) Policies that contain any type of deductible

5. All insurance companies must be A. M. Best rated A- and Class VII or better.

6. The CSX OP number or CSX contract number, as applicable, must appear on each Declarations page and/or certificates of insurance.

7. Such additional or different insurance as CSXT may require.

II. Additional Terms

1. Contractor must submit the original Railroad Protective Liability policy, Certificates of Insurance and all notices and correspondence regarding the insurance policies to:

2.

Insurance Department
CSX Transportation, Inc.
500 Water Street, C-907
Jacksonville, FL 32202

OR

insurancedocuments@csx.com

2. Neither Agency nor Contractor may begin work on the Project until it has received CSXT's written approval of the required insurance.

SCHEDULE I

CONTRACTOR'S ACCEPTANCE

To and for the benefit of CSX Transportation, Inc. ("CSXT") and to induce CSXT to permit Contractor on or about CSXT's property for the purposes of performing work in accordance with the Agreement dated _____, 20____, between the County of Albany and CSXT, Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to Exhibits C and F to the Agreement, and Sections 3, 9 and 11 of the Agreement.

Contractor: _____

By: _____

Name: _____

Title: _____

Date: _____