

Memorandum of Agreement

between

CSX Transportation, Inc.

and the

Department of Transportation,
Federal Highway Administration,
Eastern Federal Lands Highway Division

for the

The National Gateway Project

AGREEMENT No. DTFH71-11-X-30001

PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to establish the roles, responsibilities, funding, and procedures by which CSX Transportation, Inc. (the "Railroad") and the Federal Highway Administration ("FHWA"), Eastern Federal Lands Highway Division ("EFLHD"), (hereinafter referred to as the "Parties"), will jointly participate in the design and construction of the first phase of the National Gateway Project.

BACKGROUND

WHEREAS, Title XII of the American Recovery and Reinvestment Act of 2009 ("Recovery Act"), Pub. L. No. 111-5, provides that "...the Secretary of Transportation shall distribute funds provided...as discretionary grants to be awarded to State and local governments or transit agencies on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region." The Recovery Act also provides that "...projects eligible for funding provided under this heading shall include, but not be limited to, highway or bridge projects eligible under title 23, United States Code, including interstate rehabilitation, improvements to the rural collector road system, the reconstruction of overpasses and interchanges, bridge replacements, seismic retrofit projects for bridges, and road realignments; public transportation projects eligible under chapter 53 of title 49, United States Code, including investments in projects participating in the New Starts or Small Starts programs that will expedite the completion of those projects and their entry into revenue service; passenger and freight rail transportation projects; and port infrastructure investments, including projects that connect ports to other modes of transportation and improve the efficiency of freight movement."

WHEREAS, the Recovery Act provides that the authority to award a grant under the Transportation Investment Generating Economic Recovery (TIGER) Discretionary Grant Program and perform oversight may be transferred from the Secretary of Transportation to the Administrators of the Federal Highway Administration, the Federal Transit Administration, the Federal Railroad Administration and the Maritime Administration.

WHEREAS, pursuant to the Recovery Act, the Secretary of Transportation awarded a \$98 million TIGER grant ("TIGER funds" or "TIGER funding") to the State of Ohio to carry out the first phase of the National Gateway Project. The first phase of the National Gateway Project (hereinafter referred to as the "Project") consists of all work to allow double-stacked freight trains to run between Northwest Ohio through West Virginia and Maryland to Chambersburg, Pennsylvania. The Project consists of a series of clearance projects, including track lowering, bridge replacements, and tunnel improvements, within the States of Ohio, Pennsylvania, West Virginia, and Maryland;

WHEREAS, portions of the Project will also be funded with Recovery Act funds, state funds, and Railroad funds distinct from the TIGER funds;

WHEREAS, the States of Pennsylvania, West Virginia, Maryland and Ohio have authority to participate in the Project by the legislative authority given to their respective departments of

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transportation by State law and Title 23 of the United States Code;

WHEREAS, 23 U.S.C. § 308(a) authorizes the United States Secretary of Transportation to perform engineering or other services in connection with the survey, design, construction, and improvements of highways for other Federal or State cooperating agencies, and "highways" has been interpreted to include surface transportation projects such as this one;

WHEREAS, EFLHD will be responsible for coordinating and facilitating the overall schedule for the Project and managing federal funds transferred to EFLHD. Only certain portions of the work will be paid for with federal funds, as noted below.

WHEREAS, FHWA division offices and the Federal Railroad Administration (FRA) will lead the federal environmental review for the Project;

WHEREAS, the States of Pennsylvania, West Virginia, Maryland and Ohio (the "States") have executed a separate Memorandum of Agreement with EFLHD;

WHEREAS, the Railroad has authority to design and construct renovations to its rail corridor;

WHEREAS, the Railroad is not providing EFLHD any services or any property in exchange for such federal funds, but will abide by the terms of this agreement as a condition of receipt of the federal funds, and the Railroad will accept such funds from EFHLD as a capital contribution and not as payment for services or property provided, or to be provided by the Railroad to EFHLD or the participating members of the National Gateway Project; and

WHEREAS, the parties intend to be fully bound by the terms and conditions set forth herein.

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NOW THEREFORE, the Railroad and EFLHD do hereby mutually agree as follows:

ARTICLE I: SCOPE OF WORK (Obligations, Responsibilities, and Funding)

A. The Railroad agrees to:

1. Participate in the environmental process and cooperate in the efforts of FHWA and FRA to obtain the required environmental approvals.
2. Develop, in coordination with EFLHD, a Financial Management Plan, in order to clarify financial commitments and procedures.
3. Prepare monthly written status reports for the Project, including a detailed financial accounting, schedule update, contracting activities, and other status information requested by the EFLHD.
4. Prepare quarterly status reports for the Project, as specified in Section 6 and Attachment D of the TIGER Grant Agreement between the United States Department of Transportation and the State of Ohio, and provide those reports to the States and EFLHD.
5. Prepare reports related to TIGER performance measures, as specified in the TIGER Grant Agreement between the United States Department of Transportation and the State of Ohio, and provide those reports to the States and EFLHD.
6. Participate in and provide for field reviews when requested by the EFLHD. Allow employees of the States to have access to the Project throughout the design and construction process in order to participate in field reviews, onsite inspections, records reviews or project oversight activities.
7. Award and administer contracts for the design, construction, or contract administration of those portions of the Project that the Railroad does not normally perform with its own forces. The Railroad will be responsible for the administrative settlement or adjudication of any claims arising from contracts awarded by the Railroad. Reimbursement for any such costs will be subject to the availability of Project funds.
8. Prepare design and construction plans, specifications, and estimates ("Plans") for the Project. The Plans shall conform to all applicable federal and state regulatory standards. For projects utilizing TIGER funding, the Plans shall be submitted to EFLHD at 70%, 95%, and 100% for review. EFLHD will coordinate review of the Plans with the appropriate State. For projects utilizing TIGER funding, the Railroad shall also submit Final Plans to EFLHD for approval. When Final Plans are approved by EFLHD, the Railroad will submit the bid package for posting, as set forth in paragraph 11, below. For projects utilizing TIGER funding, the Railroad shall not proceed with construction advertisement until it receives written approval to proceed from EFLHD. Any work

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commenced prior to the receipt of written approval from the EFLHD shall be at the risk of the Railroad, including the risk of non-payment of Federal funds for unapproved work. The Plans may be amended by the Railroad upon request to and written approval from EFLHD.

9. Utility Relocation Costs. The Railroad shall be solely responsible for any utility relocation costs and such costs are not eligible for reimbursement with TIGER funds. EFLHD recognizes that the Railroad may require utilities to relocate facilities at their expense, or may be required to reimburse the Railroad for the cost of relocating these facilities, as required by law or as set forth in agreements that may exist between the Railroad and the utilities.
10. Grade Crossings. The Railroad certifies that it will conform to all applicable federal and state specifications, regulations, statutes, or policy in its work on any public grade crossings, to the satisfaction of EFLHD.
11. Certify that it has obtained, prior to the commencement of construction, any and all rights- of-way necessary for construction of the Project. The Railroad will be responsible to record any conveyance of right-of-way in the appropriate government office and be responsible for any recording fees and transfer taxes. Rights-of-way shall be acquired in accordance with all applicable federal and state specifications, regulations, statutes, or policy.
12. The Railroad shall obtain from the appropriate governmental agencies all necessary clearances, permits, licenses, and other approvals necessary to proceed with the construction phase of the Project prior to the commencement of the Project construction, except for any approvals that EFLHD agrees to obtain pursuant to Section B of this Article I.
13. In selecting construction contractors, the Railroad will ensure that:
 - a. contracting is done competitively in accordance with the Federal Acquisition Regulation (48 C.F.R. Part 1 et seq.);
 - b. the contracts contain no clauses related to local hiring or local hiring preferences;
 - c. bid packages are sent to EFLHD so that solicitations may be posted on State DOT websites and linked to a federal website as allowed;
 - d. contractors meet state licensing and insurance requirements to the extent such requirements can be met after bid opening but prior to award of the contract; and
 - e. the total cost of contracts awarded will not exceed the sum of Railroad's total capital improvement budget authorization for the Project, plus any reimbursement pursuant to this Agreement.
14. Construction Inspection. The Railroad, with its own forces or by contract, shall provide staff to adequately inspect and supervise all construction work for the Project. Proper supervision and construction inspection must be provided to ensure that all Project work

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is completed in accordance with the Plans and in compliance with applicable federal and state specifications, regulations, statutes, or policy.

15. Buy American Act. The Railroad shall comply with Section 1605 of the Recovery Act (Buy American Requirements at 2 C.F.R. Part 176.140).
16. Davis Bacon Act. The Railroad shall comply with Section 1606 of the Recovery Act (Davis-Bacon Act Wage Rate Requirements at 2 C.F.R. Part 176.190).
17. The Railroad shall comply with section 902 of the Recovery Act, requiring that each contract awarded using Recovery Act funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to: 1) examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and 2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.
18. The Railroad shall comply with section 1515 of the Recovery Act, authorizing the Department of Transportation's Office of the Inspector General to: 1) examine any records of the contractor or Grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant or subgrant; and 2) interview any officer or employee of the contractor, Grantee, subgrantee, or agency regarding such transactions.
19. Small Business Participation. The Railroad shall ensure that construction contracts contain small business subcontracting provisions in compliance with the requirements of the Federal Acquisition Regulation (FAR), including the submission for approval of a small business and disadvantaged business subcontracting plan, as required by Part 19 of the FAR.
20. Maintenance Requirements. Assume all future maintenance and liability for improvements to Railroad-owned facilities and property, including structures carrying Railroad facilities, signalization (signals), crossing surfaces, and any other maintenance responsibilities as may be assigned in connection with utilities.
21. Records. The Railroad and its consultant and/or contractor shall maintain all books, documents, papers, records, supporting cost proposals, account records, electronic employee payroll records, and other evidence pertaining to the Project costs, and shall make such materials available to the Parties to this Agreement or their designees for inspection and audit at all reasonable times during the contract period and for three (3) years after the date of final payment to any contractor, whichever is later in time. For hourly employees of Railroad, a complete record shall also be kept for personnel assigned part-time to the Project, which record shall include such personnel's time dedicated to work outside of the Project. In addition, the computation of overhead costs will be supported by audit.

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B. EFLHD agrees to:

1. Coordinate the overall schedule for the entire Project and facilitate cooperation among the States and the Railroad.
2. Accept and manage Federal funding for the Project and reimburse Railroad for its eligible costs in accordance with Article II of this Agreement. It is recognized that Railroad's billing issued in compliance with the procedures set forth in the Billing Addendum, attached hereto, is appropriate accounting with regards to TIGER Funding and the FAR.
3. Issue the decision document required by the National Environmental Policy Act (NEPA) and other related statutes.
4. Select consulting services, as appropriate, using procurement procedures in accordance with the FAR and the Transportation Acquisition Regulation (TAR).
5. Provide a quarterly status report to the State DOTs on the overall management of the Project. The report will detail, at a minimum, the financial status, schedule, and current and upcoming contracting activities of the Project, as well as any specific issues that have arisen.
6. Provide a Special Project Manager to coordinate day-to-day administration, including technical issues, of the Project. Technical issues will be discussed between the Parties as they arise.
7. Review the Financial Plan to be prepared by the Railroad for the Project.
8. Serve as a representative, along with members of the State DOTs, on any consultant selection panel convened by the Railroad.
9. Ensure to the maximum extent possible that:
 - a. design and construction work will be contracted out, except work that is normally done by the Railroad's employees. It is recognized that decisions regarding whether to contract for construction engineering and inspection must be made by the Railroad.
 - b. contracting is done competitively and that the contracts contain no clauses related to local hiring or local hiring preferences.
 - c. solicitations are posted on State DOT websites and linked to a Federal website as allowed;
 - d. contractors meet state licensing and insurance requirements to the extent such requirements can be met after bid opening but prior to award of the contract;
 - e. contracts contain small business subcontracting provisions in compliance with the requirements of the FAR, including the submission for approval of a small business and disadvantaged business subcontracting plan, as required by Part 19 of the FAR.

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10. Receive from the Railroad and provide to the State DOTs for review as appropriate the plans, specifications, and estimates, along with other necessary design documents for review and comment at the normally scheduled milestone completion percentages.
11. Require its employees, contractors, and agents to comply with any job site safety training and safety requirements of the Railroad.

C. Responsibility of the Parties

1. Both Parties to this Agreement agree to cooperate with each other and with their respective contractor(s) so as to coordinate their respective schedules in an effort to not delay the completion of the Project.
2. Both Parties to this Agreement will be afforded the opportunity to inspect, review and comment on, at any time, work in progress, the financial records, and any other supporting documentation and will be afforded the opportunity to participate in all meetings and field reviews.

ARTICLE II. FUNDING AND REIMBURSEMENT

The respective financial obligations of the parties under this Agreement shall be as follows:

- A. The State of Ohio has been awarded \$98 million in funding under the TIGER Discretionary Grant Program. In addition, Ohio Rail Development Commission (ORDC) will provide \$ 1,125,000 dollars to FHWA to pay for EFLHD's project oversight costs. EFLHD, on behalf of the United States Department of Transportation, will provide to CSX TIGER funding up to \$98 million. Additionally, the States of Pennsylvania and Ohio will contribute a total of \$65 million (Pennsylvania and Ohio funds and Recovery Act funds apportioned to the State of Ohio) for the Project. The Railroad shall be responsible for the remaining total cost of the Project.
- B. The Railroad will contribute an estimated \$ 20 million towards the Project and is responsible for amounts beyond that necessary to complete the Project. To ensure that the total cost of the Project less the amount of actual Federal reimbursement is within its capital improvement budget authority, Railroad reserves the right to reject bids, re-bid the Project or portions thereof as appropriate, re-design the Project or portions thereof as appropriate, or take such further reasonable measures as may be appropriate under the circumstances.
- C. The Railroad agrees to make its invoices and supporting records available for federal audit.
- D. The Railroad may bill the EFLHD no more frequently than every thirty (30) days for actual and approved costs within the scope of the Project. The Railroad, for the purpose of reimbursement, shall submit to the EFLHD on a monthly basis:

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- a. Certified invoices, including proof of allowable costs, for work performed by the Railroad forces on the Project. The proof of allowable costs may include but not be limited to, time sheets, material invoices and equipment records of the Railroad. Invoices shall be deemed certified when they are signed and dated by an authorized representative of the Railroad.
 - b. Certified invoices already paid by the Railroad based on current estimates of the work performed on the Project by the Railroad's contractors and/or consultant. Copies of the estimates will be included with the invoices. Invoices shall be deemed certified when they are signed and dated by an authorized representative of the contractor or consultant.
 - c. Upon receipt of such invoices, the EFLHD will promptly make payment to the Railroad after review and approval of the invoice.
- E. Nothing in this Agreement shall preclude the Railroad from submitting bills for costs incurred by in-house forces necessary to accomplish the Project. Proof of costs incurred or payments by the Railroad must be submitted along with the request for reimbursement under this Agreement.
- F. The Railroad, by executing this Agreement, certifies that it has on hand sufficient funds to meet all of its obligations under the terms of this Agreement and that the Railroad, not the EFHLD or the States, will be responsible for providing all funds needed to pay any costs incurred in excess of those costs eligible for Federal participation. The Railroad shall be solely responsible for one hundred percent of any costs incurred in excess of those costs eligible for Federal participation. The Railroad may use any combination of funds from its own budget and/or outside sources, whether public or private, to meet its obligations under this Agreement.
- G. The EFLHD shall not reimburse any additional or extra work done or materials furnished that are not specifically provided for in the approved plans and the specifications, unless the EFLHD has first approved such additional or extra work or materials in writing. Any such work done or materials furnished without such written approval first having been given by the EFLHD shall be at the Railroad's own risk, cost and expense. In addition, EFLHD, on behalf of the United States Department of Transportation, will provide to CSX TIGER funding up to \$98 million; however, EFLHD will not reimburse any costs incurred by the Railroad prior to the execution of the TIGER Grant Agreement between the United States Department of Transportation and the State of Ohio in December 2010.

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H. The Railroad will own all of the improvements performed, constructed or completed pursuant to this Agreement, with the exception of improvements to existing nonrailroad-owned public structures that may be impacted by the Project. The Railroad and EFLHD agree and acknowledge that to the extent all or any portion of the TIGER Grants referred to in this Agreement funds improvements and capital additions on the Railroad's property, the funding will represent a capital contribution to the Railroad and not a payment for services or property provided, or to be provided, by the Railroad to the EFLHD or participating members of the National Gateway Project.

ARTICLE III: OTHER TERMS OF AGREEMENT

1. This Agreement and the authorizations granted in it shall be effective only after the full execution and approval by both Parties to this Agreement.
2. This Agreement shall be in force and effect and shall remain in effect until the work, including payment, has been completed to the mutual satisfaction of both Parties.
3. This Agreement may be modified by the written consent of both of the Parties.
4. This Agreement is governed by federal law, regulations, guidance, and policy.

ARTICLE IV: KEY OFFICIALS AND CONTACTS

Designated points of contact for the coordination of this project are as follows:

For the RAILROAD:

Mr. Louis Renjel
Vice President, Strategic Infrastructure
CSX Transportation, Inc.
500 Water Street C900
Jacksonville, FL 32202
Phone: (904) 359-3770
Fax: (904) 359-3597
Email: Louis_Renjel@CSX.com

Mr. Dale Ophardt
Assistant Vice President Engineering
CSX Transportation, Inc.
500 Water Street J350
Jacksonville, FL 32202
Phone: (904) 358-1338
Fax: (904) 359-2440
Email: Dale_Ophardt@CSX.com

For EFLHD:

Ms. Melisa Ridenour
Division Engineer
Department of Transportation
Federal Highway Administration
Eastern Federal Lands Highway Division
21400 Ridgetop Circle
Sterling, Virginia 20166

Mr. Robert Morris
Senior Project Manager
Department of Transportation
Federal Highway Administration
Eastern Federal Lands Highway Division
21400 Ridgetop Circle
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Phone: (703) 404-6201
Fax: (571) 434-1599
email: melisa.ridenour@dot.gov

Phone: (571) 434-1569
Fax: (703) 404-6217
email: robert.morris@dot.gov

ARTICLE V: TERMINATION

- A. This Agreement will terminate when all transfers of funds are completed and all work associated with this Agreement has been inspected and approved in writing by the Parties and the State DOTs. Approval by the State DOTs will be by written notification to the EFLHD and will be only with regard to facilities impacted by the Project that are owned and maintained by the respective State.
- B. While it is the intention of the Parties to complete this Project, it is recognized that not all future events can be anticipated. If it becomes apparent that the total cost of the Project, less the total amount of reimbursement from Federal funds that will be available under this Agreement, exceed the Railroad's approved capital budget authorization for the Project, the Railroad shall give notice to the EFLHD of the gap in funding. If, at the end of ninety (90) days (or such other period as Railroad and EFLHD may mutually agree) from the date Railroad gives notice, Railroad and EFLHD have failed to reach an agreement on how the gap in funding will be filled, the Railroad may terminate this Agreement by sending written notice to EFLHD. If Railroad exercises this termination right, it shall refund to EFLHD any of the Federal funds received by Railroad under this Agreement.
- C. In case of the failure on the part of either Party to observe any of the conditions of this Agreement, the affected Party may terminate this Agreement for default by giving written notice of default to the other Party, which will have thirty (30) days to cure said default (or, if the default cannot be cured in thirty days, such reasonable amount of time as may be necessary to cure the default). If the default is not cured within the applicable cure period, then this Agreement shall terminate effective at the end of the applicable cure period. The Parties agree to try to resolve any such disagreements or differences.

ARTICLE VI: ASSIGNMENT

No transfer or assignment of this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by the other Party, except that the Railroad may freely transfer or assign this Agreement to any of its parents, subsidiaries or affiliates as long as the Railroad's obligations under this agreement are fully assumed by the transferee/assignee.

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ARTICLE VII: LIABILITY

1. The Parties accept full responsibility for any property damage, injury, or death caused by the acts or omissions of their respective employees, acting within the scope of their employment, or their contractors' scope of work, to the fullest extent of the law. All claims shall be processed pursuant to applicable governing law.
2. Except as provided in Section 1 of this Article VII, the Railroad shall indemnify and save harmless and (if requested) defend the States and/or the United States, and all of their agents and employees from all suits, actions or claims of any character, name or description, including, but not limited to, those relating to title to real property, brought for or on account of any injuries or damages received or sustained by any person, persons or property, arising out of, resulting from or connected with the design, construction, occupancy, use and/or maintenance of the improvements and/or any other activities relating to the improvements by the Railroad and/or the Railroad contractor(s) or consultant(s) and their officers, agents and employees, whether the same be due to defective materials, defective workmanship, neglect in safeguarding the work, or by or on account of any act, omission, neglect or misconduct of the Railroad and/or Railroad consultant(s) and/or contractor(s), their officers, agents and employees, during the performance of the work or thereafter.

ARTICLE VIII: REQUIRED AND STANDARD CLAUSES

1. Nothing in this Agreement shall be construed as limiting or affecting the legal authorities of the Parties, or as requiring the Parties to perform beyond their respective authorities. Nothing in this Agreement shall be deemed to bind any party to expend funds in excess of available appropriations. This Agreement is subject to all laws governing federal and state procurement and to all regulations and rules promulgated thereunder, whether now in force or hereafter enacted or promulgated, except as specified in this Agreement. Nothing in this Agreement shall be construed as in any way impairing the general powers of the Parties for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.
2. **NON-DISCRIMINATION:** The Parties shall not discriminate in the selection of employees or participants for any employment or other activities undertaken pursuant to this Agreement on the grounds of race, creed, color, sex, or national origin, and shall observe all of the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. Section 2000(d), et seq.). The Parties shall take positive action to ensure that all applicants for employment or participation in any activities pursuant to this Agreement shall be employed or involved without regard to race, creed, color, sex, or national origin.
3. **ANTI-DEFICIENCY ACT:** Pursuant to the Anti-Deficiency Act, 31 U.S.C. Section 1341(a)(1) (1994), nothing contained in this Agreement shall be construed as binding the United States or any State to expend any sum in excess of appropriations made by Congress for the purposes of this Agreement, or as involving the United States or any

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State in any contract or other obligation for the further expenditure of money in excess of such appropriations.

4. **LOBBY PROHIBITION:** The Parties will abide by the provisions of 18 U.S.C. § 1913 (Lobbying with Appropriated Monies).

5. 31 U.S.C. § 1352 prohibits the recipient or any lower tier sub-recipients of a Federal contract, grant, loan or cooperative agreement from expending federal funds to pay any person for influencing or attempting to influence a Federal Agency or Congress in connection with the awarding of any Federal contract, the making of any federal grant or loan or the entering into of any cooperative agreement.

ARTICLE IX. ENTIRE AGREEMENT

This Agreement and its attachments constitute the entire Agreement and understanding of the Parties with respect to the National Gateway Project. 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.

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IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

CSX TRANSPORTATION, INC.

Michael Ward

12/16/10

Michael J. Ward

Date

President, Chief Executive Officer and Chairman of the Board

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**DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION**

for Donald W. Miller 12/12/10
Melisa Ridenour, P.E. Date
Division Engineer
Eastern Federal Lands Highway Division

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BILLING ADDENDUM

This Billing Addendum forms an integral part of the Memorandum of Agreement (“Agreement”) between the Federal Highway Administration, Eastern Federal Lands Highway Division (EFLHD or Department) and the Railroad.

DESCRIPTION OF THE BILLING ADDENDUM

This Billing Addendum establishes agreed-upon billing procedures for all projects to be carried out by the Railroad and described in the Agreement. The Department acknowledges that a substantial portion of Railroad’s employees are covered by collective bargaining agreements that govern the terms and conditions of their employment, including, without limitation, rates of pay and scope of work (each a “CBA” and, collectively, the “CBAs”). While this Billing Addendum addresses, among other issues, specific categories of costs and expenses to be incurred by the Railroad for the Project described in the Agreement, the Railroad acknowledges that all costs and expenses to be reimbursed with TIGER funds must be contained in the plans, specifications, and estimates (“Plans”) approved in advance by EFLHD. EFLHD will not reimburse any cost or expense incurred by the Railroad that is not specifically provided for in the approved Plans. Additionally, all costs and expenses to be reimbursed with TIGER funds must be authorized in and consistent with the requirements of 48 C.F.R. Subpart 31.2.

A. FLAGGING COSTS

1. Flagging Requirements: The Railroad shall work with Railroad employees, consultants, contractors and others to protect public safety and the safety of persons who need to work in close proximity to or need access to Railroad property in order to perform work. Pursuant to federal regulations and the Railroad’s operating rules, flagging services are required at all times, including weekends, whenever projects are within close proximity to active rail lines; when work off Railroad property could impact Railroad property or operations; when off-highway construction equipment is crossing the Railroad at a private or public crossing; or, when necessary, in the Railroad’s sole discretion and judgment, to protect Railroad property or facilities. Pursuant to then current CSX Operating Rules, the flagman may be required to post signs at least two (2) but not more than two and one-half (2 1/2) miles from the beginning of the working limits on each end. Also, the flagman may need to install or remove these signs on “overtime,” as defined in section A.4.

2. Personnel: Flagging can only be performed by qualified personnel, pursuant to then current CSX Operating Rules, as applicable, and CBAs between the Railroad and its union employees. In various circumstances, the flagman may be a Train and Engine (“T&E”) employee, Signalman, or Maintenance of Way (“MOW”) employee. A MOW employee shall be designated as the employee-in-charge if the project/work has potential to undermine any structure or appurtenance associated with the operation of the railroad, roadbed or track.

3. Costs and Expenses: Examples of reimbursable expenses associated with flagging include, but are not limited to, transportation to and from the project site; mileage; lodging and subsistence; and charges for business calls on Railroad-provided cell phones or using Railroad-provided business calling cards. This amount is based on either actual expenses

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or a per diem rate and cannot exceed the maximum per diem rates in effect at the time of travel as set forth in the Federal Travel Regulation (41 C.F.R. §§ 301-1 – 301-30.5).

4. Overtime: A flagman may be required to perform flagging services beyond a regularly assigned work period to support work performed by contractors, signal construction teams or as necessary due to train operations, including, but not limited to adjustments required due to loss of meals. A regularly assigned work period will depend on the employee and the applicable CBA, but generally refers to eight hours per day, if an employee works five days per week (Monday through Friday), or ten hours per day if an employee works four days per week (Monday through Thursday), exclusive of meal periods. Charges for providing flagging services outside of the employee's regularly assigned hours, or beyond a typical forty-hour workweek, are calculated and billed at the time and one-half rate (overtime rate). If a non-T&E flagmen provides more than 16 hours of continuous service, computed from the assigned starting time, rates are calculated and billed at a double time rate in accordance with any applicable CBA.

5. CBA Requirements: The Railroad is a party to certain CBAs that impose requirements pertaining to flagging services and charges. All work performed by Railroad employees shall be performed in accordance with all applicable CBAs. These requirements include, but are not limited to, the following:

a) Additional Charges Related to Flagging: There may be instances where the hours invoiced for flagging services exceed the level of activity at the project site or beyond the period that the flagman is present at a specific project location. Existing CBAs require that flagging charges billed reflect the time spent by an employee in the following circumstances, which is in addition to time charged for work on-site:

(i) Flagging charges shall be based on the time the flagman arrives at and returns to the on-duty location. Flagman are required to report to the on-duty location to obtain train orders before reporting to the project/worksite, and return to the on-duty location after their work at the project/worksite ends;

(ii) Installing and removing advanced warning and stop signs within the working limits, or requesting additional working limits from the Railroad Dispatcher, or obtaining a copy of the Railroad Dispatcher Bulletin. Working limits refers to a defined segment of track on which trains and engines may move only when authorized by the flagman; and

(iii) Completing required paperwork at the project/work site or on duty location.

(iv) Existing CBAs also prescribe certain allowances that are considered billable expenses associated with flagging. These allowances depend on the location and applicable CBA. These allowances may include, but are not limited to, mileage reimbursement for use of personal vehicle; charges for use of personal vehicle as a shelter at a flagging site; credits for working when weather conditions prevent work; credits for working when notified or called to perform services

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outside of regularly assigned working hours; meal and lodging charges; and other specified allowances.

B. LABOR CHARGES AND RELATED EXPENSES

1. Direct Costs and Expenses: All direct labor costs for Railroad employees in connection with performance of a project are reimbursable by the Department. In addition, related direct expenses incurred by the Railroad in connection with performance of a project, such as transportation, lodging, meals, per diems for meals, travel allowance and mileage, are reimbursable by the Department. The Department recognizes and agrees that labor rates and additives may be changed by the Railroad during the course of the project due to inflation (Cost of Living Adjustments), changes to the applicable CBAs, or applicable regulations.

2. General and Administrative, Additives and Overhead Rates: General and administrative ("G&A"), additives and overhead rates, including indirect costs of the Railroad allocated as a percentage rate based on the cost of Railroad employees covered by CBAs, are reimbursable by the Department. The Railroad's overhead rates are audited and approved by the Department and the FWHA. The Department recognizes and agrees that these G&A and overhead rates shall be added to the direct labor costs as project costs, and that the G&A and overhead rates may change during the course of the project due to an updated audit by a state agency or the federal government.

3. Travel Time and Expenses: The Department agrees to pay travel time expenses associated with travel by Railroad employees covered by CBAs to and from the project site and the on-duty location. The Department agrees to pay travel, subsistence, hotel and lodging charges, labor agreed per diem for meals and labor agreed travel allowance, incurred by the Railroad employees covered by CBAs while traveling in connection with the project; however, all travel expenses reimbursed with TIGER funds must be authorized in and consistent with the Federal Travel Regulation (41 C.F.R. §§ 301-1 – 301-30.5). Examples of reimbursable subsistence, hotel and lodging costs include, but are not limited to, the following:

(a) A Railroad employee travels on Sunday to the project site for work on Monday morning, and incurs hotel and lodging costs associated with the Sunday night. The Department agrees to pay the hotel and lodging costs associated with the Sunday night stay, provided that the employee reports for work on the project site on the following day (Monday).

(b) A Railroad employee works two days on-site (e.g., Monday and Wednesday), but incurs hotel and lodging costs associated with three days, including an intervening day during which the employee did not report for work (e.g., Tuesday). The parties agree to allocate the hotel and lodging costs with the Department agreeing to pay hotel and lodging costs associated with the days on which the employee reports for work on the project site.

4. Project Construction Meetings: The Department agrees to reimburse the Railroad for all costs associated with project construction scoping meetings; morning tailgate meetings;

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job briefings; monthly reviews of processes and scheduling; project equipment training meetings; and project personnel meetings, in accordance with the Railroad's standard operating practices and procedures, described in the then current General Safety Rules of CSX Safe Way and the then current CSX Operating Rules. Reimbursable costs may include the costs for travel to the meeting, the time during the meeting and for the off-site facilities. These meetings shall be held within reasonable proximity of the project.

C. MATERIAL CHARGES

1. Direct Material and Supplies: Charges for materials and supplies purchased by third party vendors specifically for and identifiable solely with performance on the project shall be based on the Railroad-negotiated rates with such vendors, plus the third party's material handling fee, and shall be reimbursed by the Department as project costs.

2. Material Handling Fees: There is a material handling fee on direct material and supplies charges to cover storage expense, inspection, accounting and inventory purchasing. The material handling fee shall be the greater of the actual costs or 5% of the invoice. Material handling fees may include, but are not limited to, third party fees.

3. Inventory Charges: Inventory charges are for materials and supplies issued from inventory owned and held by third party vendors until it is ordered by the Railroad for use on the project. Materials and supplies in inventory, such as track and signal components, are purchased in bulk quantities. Reimbursement for materials and supplies currently in inventory and used by the Railroad on the project shall be made in an amount based on average weighted cost on the day the materials and supplies are released from inventory. The Railroad calculates the average weighted cost on a rolling basis, which means the average weighted cost will be recalculated every time an item is added to or removed from the Railroad's inventory.

4. Scrap Charges: Used materials released from service shall be credited against the project cost in an amount equal to the scrap value.

5. Purchases: Purchases made outside the geographic area of construction for the use on the project are reimbursable. These purchases may be required due to emergencies, unavailability within the proximity of the project or made at the convenience of the employee to save travel time to/from the job site.

D. EQUIPMENT

1. Rates of Railroad-Owned Equipment: The rental of equipment, other than small tools, actually owned by the Railroad and used in the performance of Railroad work shall be charged pursuant to the current overhead rate approved by the Department for railroad-owned equipment.

2. Rates of Rented Equipment: In the event that the Railroad rents or leases vehicles/equipment for use on this project, including but not limited to, rentals from third parties,

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the Railroad shall be entitled to reimbursement as project costs for the full leased cost of the equipment, including, but not limited to insurance coverage, fuel, lubricants, electrical power, maintenance, repair and replacement of parts, and any other additional costs incurred due to the operation or maintenance of the equipment.

E. OTHER COSTS

1. Field Office and Related Expenses: Field office and related expenses that are attributable to a dedicated, project field office, are reimbursable by the Department, including but not limited to:

(a) Field office local telephone service, all project-related toll and long distance calls, telegrams, postage, and messenger services;

(b) Progress photographs, blueprinting or reproduction expenses, surveys, rental deposits, load and material tests required by the project, reports, research and other incidental expenses whether the foregoing is performed by the Railroad or others;

(c) Other direct costs and expenses necessary for the operation of the project site field offices, such as stationery, furniture, fixtures, and office equipment;

(d) Temporary heat, light, power, water, sanitation and utility costs; and

2. Third Party Service Charges: The Department shall be responsible for the cost associated with third party service costs, such as telecommunications charges, cell phone charges and third party project management software services, that are allocable to the project and supported by vendor invoices. The Department shall be responsible for the costs associated with the project as indicated by the Railroad on the applicable third party invoice.

3. Other Material Costs: The Department agrees to reimburse the cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and tools not owned by the workers, which are reasonably and prudently consumed in the actual performance of the Railroad's work by the Railroad's own forces.

F. MISCELLANEOUS COSTS

1. Sales, Use and Other Taxes: Any and all sales, use and other taxes applicable to the purchase or use of materials and supplies utilized in the project shall be reimbursed by the Department as project costs.

2. Mobilization: All costs incurred by the Railroad in mobilizing to perform work, including the moving of equipment and personnel to and from the project site and all other transportation costs associated with the project, shall be reimbursed by the Department as project costs.

G. BILLING PROCEDURES

1. Electronic Billing: The Railroad shall utilize an electronic billing process, which

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includes electronic signatures on all invoices.

2. Invoice Format: Invoices submitted by the Railroad shall follow a mutually agreed upon format similar to prior billings found to be acceptable by the Department and shall identify the specific project being billed. A sample invoice will be provided by the Railroad upon request. Any special cover sheets required to be submitted with the invoices must be programmed into the Railroad's automated billing/printing process. The charges for the special programming shall be a separate cost to the Department and not considered project costs.

3. Electronic Data Interchanges ("EDI"): The Department agrees that invoices that are processed and confirmed using EDI are not required to be submitted in hard copy. Prior to payment, the Railroad authenticates, verifies and approves invoices electronically in the same manner as invoices processed manually. Accounts payable electronically compares the Railroad's purchase order with the vendor's invoice that is submitted using EDI and approves the payment. Vendors listed on the Project Invoice Detail Report (the "PIDR") will not have an invoice if the information is exchanged electronically.

4. Supporting Documentation: Invoices submitted by the Railroad are required to include the following supporting documentation:

(a) Invoice cover sheet with summary description, including the PIDR, which may include information related to labor, travel allowances, vehicles/equipment, materials, corporate lodging, and other project costs;

(b) The EDI Support Report;

(c) Accounts payable invoices for those vendors that do not use EDI;

(d) Summary reports for those vendors whose charges must be allocated among various projects. Such vendors may include, but are not limited to, telecommunications servicers, cell phone service providers, and third party project management software vendors; and

(e) Oracle Expense Reports, if applicable.