

RESOLUTION NO. 2016-19

AUTHORIZING AN AGREEMENT IN THE AMOUNT OF \$93,655.00 WITH CSX TRANSPORTATION, INC. TO PROVIDE RAILROAD FORCE ACCOUNT AND CONSTRUCTION SERVICES, AS NEEDED, FOR THE REHABILITATION OF THE TRANSIT TRACK BRIDGE OVER CSX AT E. 92ND ST. AND CSX TRANSPORTATION'S RIGHT-OF-WAY AT MILEPOST QDS-6.06 (PROJECT NO. 27W)

WHEREAS, the Greater Cleveland Regional Transit Authority (GCRTA) plans to rehabilitate the RTA bridge near E. 92nd St. over CSX tracks and the right-of-way at CSX's Milepost QDS-6.06 in Cleveland, Ohio; and

WHEREAS, CSX is the owner of the land and right-of-way identified above; and

WHEREAS, GCRTA has a need for force account and construction services from CSX to aid in the completion of the rehabilitation of the RTA bridge near E. 92nd St. over CSX; and

WHEREAS, GCRTA must obtain a construction agreement from CSX to perform this work, and CSX is willing to enter into a Railroad Force Account and Construction Agreement for a total price not to exceed \$93,655.00 and to allow construction activity above its property; and

WHEREAS, the Ohio Revised Code Section 306.43H(2) provides that competitive bidding is not required when the expenditure is for goods or services, or any combination thereof, and after reasonable inquiry the board or any officer or employee the board designates finds that only one source of supply is reasonably available; and

WHEREAS, CSX has been determined to be the only source for this force account work; and

WHEREAS, the General Manager/Secretary-Treasurer deems the offer of CSX to be in the best interest of GCRTA and recommends acceptance thereof by the Board of Trustees.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

Section 1. That the offer of CSX to provide force account and construction services for the rehabilitation of the RTA bridge near E. 92nd St. over CSX, as needed, is hereby accepted.

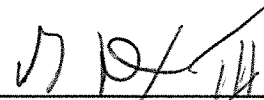
Section 2. That the General Manager/Secretary-Treasurer of GCRTA be and is hereby authorized to enter into an agreement with CSX to provide force account and construction services for the rehabilitation of the RTA bridge near E. 92nd St. over CSX, as needed.

Section 3. That said contract should be payable from the RTA Development Fund, Engineering & Project Development Department budget, including but not limited to Capital Grant OH-90-X823, in an amount not to exceed \$93,655.00 (\$74,924.00 in Federal funds which represents 80% of the total cost.)

Section 4. That said agreement shall be binding upon and an obligation of the Authority contingent upon appropriation of funds; compliance by the contractor to the Specifications and Addenda thereto, if any; the Affirmative Action Plan adopted by the Board of Trustees in Resolution 2015-76; bonding and insurance requirements, as applicable; and all applicable laws relating to contractual obligations of the Authority.

Section 5. That this resolution shall become effective immediately upon its adoption.

Adopted: March 22, 2016



President

Attest:



CEO, General Manager/Secretary-Treasurer



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION: CONTRACT: TO PROVIDE RAILROAD FORCE ACCOUNT AND CONSTRUCTION SERVICES AS NEEDED FOR THE REHABILITATION OF THE TRANSIT TRACK BRIDGE OVER CSX AT E. 92 ND ST. AND CSX TRANSPORTATION'S RIGHT-OF-WAY AT MILEPOST QDS-6.06 (PROJECT NO. 27W) VENDOR: CSX TRANSPORTATION, INC. (CSX) AMOUNT: NOT TO EXCEED \$93,655.00	Resolution No.: 2016-19
	Date: March 17, 2016
	Initiator: Engineering & Project Development
ACTION REQUEST: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____	

1.0 **PURPOSE/SCOPE:** Authorizing the CEO, General Manager/Secretary-Treasurer to enter into an Agreement with CSX Transportation, Inc. ("CSX") for force account and construction services, for rehabilitation of the RTA bridges at E. 92nd Street which spans CSX's tracks and right-of-way at Railway's Milepost QDS-6.06 in Cleveland, Ohio. (Project No. 27W)

2.0 **DESCRIPTION/JUSTIFICATION:** The Authority requires railroad force account and construction services, as project work needs to occur on CSX property. CSX requires and will provide certain safety, engineering, and construction procedures and services for work performed on its right of way. Services include construction engineering/inspection, flagging service, communication signal protection and changes, accounting and billing. Construction is anticipated to commence in June 2016.

3.0 **PROCUREMENT BACKGROUND:** This agreement is exempt from competitive bidding, pursuant to Ohio Revised Code Section 306.43(H)(2). CSX is the only source authorized to provide these railroad force account and construction services. CSX will continue to maintain daily rail service for its trains during this construction project.

The Authority requested a proposal for force account and construction services from CSX. GCRTA's project office reviewed the proposal for compliance and determined the price to be fair and reasonable to the Authority.

4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** Does not apply.

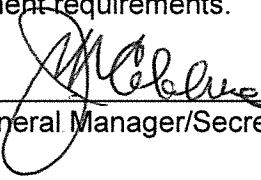
5.0 **POLICY IMPACT:** Does not apply.

6.0 **ECONOMIC IMPACT:** That said contract should be payable from the RTA Development Fund, Engineering & Project Development Department budget, including but not limited to Capital Grant OH-90-X823, in an amount not to exceed \$93,655.00 (\$74,924.00 in Federal funds which represents 80% of the total cost).

7.0 **ALTERNATIVES:** Reject this offer. Rejection of this offer would prevent commencement of the rehabilitation of the RTA bridges at E. 92nd St. over CSX tracks.

- 8.0 RECOMMENDATION: Staff recommends that the Board of Trustees approve the resolution to authorize entering into this Force Account and Construction Agreement with CSX.
- 9.0 ATTACHMENT: Proposed Construction Agreement between CSX and GCRTA, which includes the Force Account agreement.

Recommended and certified as appropriate to the availability of funds, legal form and conformance with the Procurement requirements.

A handwritten signature in black ink, appearing to read 'M. Cleve', is written over a horizontal line.

CEO, General Manager/Secretary-Treasurer

**PROPOSED BRIDGE REHABILITATION
GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY OVER CSXT
CLEVELAND, CUYAHOGA COUNTY, OHIO
IN VICINITY OF RAILROAD MILEPOST QDS-6.06
CSXT OP NUMBER OH1076**

CONSTRUCTION AGREEMENT

This Construction Agreement (“**Agreement**”) is made as of _____, 201__, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida (“**CSXT**”), and THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, a body corporate and political subdivision of the State of Ohio (“**Agency**”).

EXPLANATORY STATEMENT

1. Agency has proposed to construct, or to cause to be constructed, the rehabilitation of the Cleveland RTA railroad bridge over CSXT within the vicinity of Milepost QDS-6.06 on the Cleveland Short Line Subdivision of the Great Lakes Division in Cleveland, Cuyahoga County, Ohio (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 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, 2017, unless the parties mutually agree to extend such date.

3. Special Provisions. Agency shall observe and abide by, and shall require its contractors ("Contractors") to observe and abide by the terms, conditions and provisions set forth in Exhibit C to this Agreement (the "Special Provisions"). 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. Agency shall reimburse CSXT for all costs and expenses incurred by CSXT in connection with the Project, including, without limitation: (1) all out of pocket expenses, (2) travel and lodging expenses, (3) telephone, facsimile, and mailing expenses, (4) costs for equipment, tools, materials and supplies, (5) sums paid to CSXT's consultants and subcontractors, and (6) CSXT labor in connection with the Project, together with CSXT labor overhead percentages established by CSXT pursuant to applicable law (collectively,

“**Reimbursable Expenses**”). Reimbursable Expenses shall also include expenses incurred by CSXT prior to the date of this Agreement to the extent identified by the Estimate provided pursuant to Section 4.2.

4.2 Estimate. CSXT has estimated the total Reimbursable Expenses for the Project as shown on Exhibit D (the “**Estimate**”, as amended or revised). In the event CSXT anticipates that actual Reimbursable Expenses for the Project may exceed such Estimate, it shall provide Agency with the revised Estimate of the total Reimbursable Expenses, together with a revised Payment Schedule (as defined by Section 4.3.1), for Agency’s approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses of such revised Estimate. CSXT may elect, by delivery of notice to Agency, to immediately cease all further work on the Project, unless and until Agency provides such approval and confirmation.

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.

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 116651
Atlanta, GA 30368-6651

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 Permanent Easements. Insofar as it has the right to do so, CSXT shall grant, without warranty to Agency, easements for the use and maintenance of the Project wholly or partly on CSXT property as shown on the Plans approved by CSXT, if any, on terms and conditions and at a price acceptable to the 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 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 own and, without cost to CSXT, maintain, repair, replace and renew, or cause same to be done, in good condition and repair to CSXT's satisfaction, the railway overpass structure, the supports thereof, the track and the drainage facilities. In the event that Agency fails to properly maintain such structures and improvements and such failure, in the opinion of CSXT, jeopardizes the safe and efficient operation of its property, CSXT shall be entitled to remedy such failure and recover from Agency the costs incurred by CSXT in doing so. Upon the cessation of use of the Project by Agency, Agency shall remove the bridge structure and restore CSXT's property to its original condition, at Agency's sole cost and expense, to CSXT's satisfaction.

10.2 Alterations. Agency shall not undertake any alteration, modification or expansion of the Project, without the prior approval of CSXT, which may be withheld for any reason, and the execution of such agreements as CSXT may require.

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 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, 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

If to Agency: Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 441133
Attention: Engineering Project Manager – James Stock

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 Ohio, 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 Cuyahoga County, Ohio, and the parties agree to submit to the personal jurisdiction of any State or Federal court situated in Cuyahoga County, Ohio.

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.

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

By: _____
Name: _____
Title: _____

CSX TRANSPORTATION, INC.

By: _____
J. Tod Echler
Assistant Vice President - Engineering

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. Rehabilitation of the railway bridge over CSXT
 - 2. Restoration of CSXT right-of-way

- B. CSXT shall perform or cause to be performed:
 - 1. Preliminary engineering services
 - 2. Communication and signal facility adjustments, if and as necessary
 - 3. Track facility adjustments, if and as necessary
 - 4. Flagging services and other protective services and devices as may be necessary
 - 5. Construction engineering and inspection to protect the interests of CSXT

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:

SHEET	DESCRIPTION	PREPARER	RECEIVED
1 of 19	Title Sheet and Index	TranSystems	01/27/16
2 of 19	Site Plan and Profile	TranSystems	01/27/16
3 of 19	Structure General Notes	TranSystems	01/27/16
4 of 19	Estimated Quantities	TranSystems	01/27/16
5 of 19	GCRTA Standard Clearance Diagram	TranSystems	01/27/16
6 of 19	Suggested Construction Sequence	TranSystems	01/27/16
7 of 19	General Elevation & Geometric Layout	TranSystems	01/27/16
8 of 19	Typical Transverse Sections	TranSystems	01/27/16
9-11 of 19	Concrete Patching Details	TranSystems	01/27/16
12 of 19	Framing Plan-Proposed Steel Repair Locations	TranSystems	01/27/16
13-14 of 19	Steel Plate Replacement Details	TranSystems	01/27/16
15 of 19	Roller Bearing Replacement Details	TranSystems	01/27/16
16 of 19	Rear Abutment Stringer Bearing Retrofit Details	TranSystems	01/27/16
17 of 19	Rear Abutment Bearing Jacking Details	TranSystems	01/27/16
18 of 19	Forward Abutment Stringer Bearing Retrofit Details	TranSystems	01/27/16
19 of 19	Reinforcement Schedule	TranSystems	01/27/16

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 _____, 201__, as amended from time to time.

“Agency” shall mean the Greater Cleveland Regional Transit Authority.

“Agency Representative” shall mean the authorized representative of the Greater Regional Cleveland Transit Authority.

“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 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.
- 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 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 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.
- 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.

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.

GCRTA OVER CSXT
RAILROAD MILEPOST QDS-6.06
CSXT OP NUMBER OH1076

EXHIBIT D

INITIAL ESTIMATE
ATTACHED

**CSX TRANSPORTATION, INC.
FORCE ACCOUNT ESTIMATE**

ACCT. CODE : 709 - OH1076

ESTIMATE SUBJECT TO REVISION AFTER:	8/14/2016	DOT NO.: Not Applicable
CITY: Cleveland	COUNTY: Cuyahoga	STATE: OH
DESCRIPTION: Bridge Rehabilitation - Cleveland RTA railroad bridge over CSXT - near East 92nd Street (PE, CE&I and flagging)		
DIVISION: Great Lakes	SUB-DIV: Cleveland Short Line	MILE POST: QDS-6.06
AGENCY PROJECT NUMBER: 27W		

PRELIMINARY ENGINEERING:

212 Contracted & Administrative Engineering Services	\$ 9,500
Subtotal	\$ 9,500

CONSTRUCTION ENGINEERING/INSPECTION:

212 Contracted & Administrative Engineering Services	\$ 50,980
Subtotal	\$ 50,980

FLAGGING SERVICE: (Contract Labor)

070 Labor (Conductor-Flagman)	\$ 4,200
050 Labor (Foreman/Inspector)	\$ 9,408
070 Additive 117.39% (Transportation Department)	\$ 4,930
050 Additive 118.86% (Engineering Department)	\$ 11,182
230 Per Diem (Engineering Department)	\$ 1,800
230 Expenses	\$ 540
Subtotal	\$ 32,061

SIGNAL & COMMUNICATIONS WORK:

\$ -

TRACK WORK:

\$ -

PROJECT SUBTOTAL

\$ 92,541

900 <u>CONTINGENCIES:</u> 10.00%	\$ 9,254
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GRAND TOTAL *****	\$ 101,795
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DIVISION OF COST:

Agency	<u>100.00%</u>	\$ 101,795
Railroad		\$ -
TOTAL *****		\$ 101,795

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

Prepared by: Benesch
DATE: 2/16/2016

REVISED:

Approved by: AJD
DATE: 2/16/2016

CSXT Public Project Group

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.

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.
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.
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. The named insured's address should be listed as:

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

- c. Name and Address of Contractor and Agency must be shown on the Declarations page.
- d. Description of operations must appear on the Declarations page and must match the Project description, including project or contract identification numbers.
- e. Terrorism Risk Insurance Act (TRIA) coverage must be included.
- f. Authorized endorsements must include:
 - (i) Pollution Exclusion Amendment - CG 28 31, unless using form CG 00 35 version 96 and later.
- g. 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

h. Authorized endorsements may not include:

- (i) A Pollution Exclusion Endorsement except CG 28 31
- (ii) An Endorsement that excludes TRIA coverage
- (iii) An Endorsement that limits or excludes Professional Liability coverage
- (iv) A Non-Cumulation of Liability or Pyramiding of Limits Endorsement
- (v) A Known Injury Endorsement
- (vi) A Sole Agent Endorsement
- (vii) A Punitive or Exemplary Damages Exclusion
- (viii) A "Common Policy Conditions" Endorsement
- (ix) Policies that contain any type of deductible
- (x) Any endorsement that is not named in Section 4 (f) or (g) above that CSXT deems unacceptable

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

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

II. Additional Terms

1. Contractor must submit the complete Railroad Protective Liability policy, Certificates of Insurance and all notices and correspondence regarding the insurance policies in an electronic format to:

insurancedocuments@csx.com

2. Neither Agency nor Contractor may begin work on or about CSXT property written approval of the required insurance has been received from CSXT or CSXT's Insurance Compliance vendor, Ebix.

**PROPOSED BRIDGE REHABILITATION
GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY OVER CSXT
CLEVELAND, CUYAHOGA COUNTY, OHIO
IN VICINITY OF RAILROAD MILEPOST QDS-6.06
CSXT OP NUMBER OH1076**

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 _____, 201__, between GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY 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: _____

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