

**Project: Design Build US 301 New Bridge
Orangeburg County, SC
Florence Division, Creston Subdivision, RRMP AKE-376.45
CSXT OP# SC0292
SCDOT File 38.036984**

This **AGREEMENT** made this _____ day of _____, 20____, by and between:

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "DEPARTMENT", and

CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida, hereinafter referred to as "CSXT".

RECITALS

Whereas, the DEPARTMENT proposes, through a design build contract, to construct a new overhead bridge carrying US 301 over and across the tracks and property of CSXT (hereinafter referred to as the "Project"). The Project crosses CSXT's tracks near Florence Division, Creston Subdivision railroad milepost AKE-376.45 in Orangeburg County, South Carolina;

Whereas, the Project requires CSXT to provide, or cause to be provided, services including construction engineering and inspection, flagging and other protective services, accounting and administrative services, for which DEPARTMENT shall reimburse CSXT for actual costs pursuant to this Agreement;

Whereas, DEPARTMENT acknowledges that CSXT retains the paramount right to regulate all activities affecting its property and operations; and

Whereas, for the purposes of carrying out the Project, the parties agree to the following provisions;

1. Recitals:

The above recitals are true and correct and are incorporated herein by this reference.

2. Approval of Plans and Specifications:

2.1 The DEPARTMENT's plans and specifications for construction of the Project, which are identified as Plan and Profile of US 301, Orangeburg County, File

**Project: Design Build US 301 New Bridge
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38.036984 shall become part of this Agreement by reference, upon CSXT's approval of such plans and specifications. The work on the Project shall not commence unless and until CSXT has approved such plans and specifications. Plans and specifications approved by CSXT in accordance with this Section 2 are referred to as the "Plans".

2.2 Any revisions to the Plans that would affect CSXT shall not be carried out until CSXT gives DEPARTMENT written approval of the revisions.

3. Division of Work:

Responsibility for the work associated with the Project shall be allocated in accordance with the "Scope of Work", which is attached to and incorporated in this Agreement as Exhibit A. Work not specifically provided for in this Agreement shall be performed as mutually agreed by the parties, and confirmed in writing, during progress of the work.

4. Contractor Provisions:

4.1 DEPARTMENT shall engage a third party contractor or contractors ("Contractor") to perform all or a portion of the work allocated to DEPARTMENT pursuant to the "Scope of Work" (Exhibit A).

4.2 DEPARTMENT shall require the Contractor to perform such work in accordance with the CSXT Special Provisions, a copy of which is attached hereto as Exhibit C and made a part hereof (the "CSXT Special Provisions").

4.3 Contractor shall not commence the work of the Project either on CSXT's property or right-of-way or within fifty (50) feet of any railroad property or so as to affect any CSXT railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing, unless and until the Contractor satisfies the following conditions: (1) Contractor shall have executed and delivered to CSXT the Contractor's Agreement, a copy of which is attached to this Agreement as Schedule I; (2) Contractor has provided CSXT with proof of insurance required by the Contractor's Agreement satisfactory to CSXT; and (3) Contractor has otherwise complied with the notice requirements of Section IV of the CSXT Special Provisions.

5. Work by DEPARTMENT:

In the event that DEPARTMENT performs any work associated with the Project, with its own employees or agents other than the Contractor, DEPARTMENT shall perform such work in accordance with and abide by the CSXT Special Provisions, excluding the Insurance Provisions. CSXT acknowledges that Department's liability for damages of

**Project: Design Build US 301 New Bridge
Orangeburg County, SC
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SCDOT File 38.036984**

any kind arising from its own tortious activity is limited by the S. C. Tort Claims Act (S. C. Code Section 15-78-10, et seq.); therefore, the Department's liability insurance policies covers liability only within the limits of the S. C. Tort Claims Act and nothing in this Agreement or the Special Provisions shall be construed to expand Department's liability for its actions performed on the CSXT right-of-way beyond the limits of the S. C. Tort Claims Act. SCDOT can provide certificates of insurance for its tort liability insurance and business automobile liability insurance if requested.

6. Cost of Project:

- 6.1 DEPARTMENT shall pay for all work allocated to the DEPARTMENT in the "Scope of Work" (Exhibit A to this Agreement).
- 6.2 DEPARTMENT shall reimburse CSXT for the costs (hereinafter "Reimbursable Costs") of all work allocated to CSXT in the "Scope of Work" (Exhibit A) and actually performed by or on behalf of CSXT, including work performed prior to the execution and delivery of this Agreement. The estimated Reimbursable Costs under this Agreement are \$ _____, detailed estimates of which are attached and incorporated in this Agreement as Exhibit B. The parties understand and agree that the estimate attached in Exhibit B and subsequent revised estimates are estimates only, and the DEPARTMENT shall reimburse CSXT for actual costs of the work performed. If CSXT anticipates that it will incur actual Reimbursable Costs in excess of the estimate attached in Exhibit B, or revised estimates subsequently approved by DEPARTMENT pursuant to this Section 6.2, CSXT shall provide DEPARTMENT with a copy of its revised estimate of Reimbursable Costs, for DEPARTMENT's approval and DEPARTMENT's confirmation of the availability of funds necessary to pay Reimbursable Costs encompassed by the revised estimate. Upon DEPARTMENT's approval of a revised estimate and confirmation of the availability of necessary funds, the revised estimate shall constitute the approved estimate of Reimbursable Costs for the purposes of this Agreement. DEPARTMENT understands that CSXT anticipates that it will revise the estimate at least annually. CSXT shall not be required to incur Reimbursable Costs in excess of the approved estimate of Reimbursable Costs.
- 6.3 DEPARTMENT acknowledges that it has available all funds necessary to reimburse CSXT for Reimbursable Costs, as set forth in the initial estimate (Exhibit B). DEPARTMENT further agrees that it shall endeavor to obtain additional funds necessary to reimburse CSXT for Reimbursable Costs encompassed by revised estimates that DEPARTMENT approves pursuant to Section 6.2, and it shall notify CSXT if it is unable to do so.

**Project: Design Build US 301 New Bridge
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CSXT OP# SC0292
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6.4 DEPARTMENT and CSXT agree that Reimbursable Costs shall be calculated in accordance with the criteria set forth in the Federal Highway Administration procedures set forth in 23 CFR Section 140I, et seq., and 23 CFR Section 646B, et seq., with the understanding that terms or conditions which are not relevant to this Project shall not otherwise apply to this Agreement.

7. Invoices:

7.1 CSXT may submit to the DEPARTMENT progress billings of incurred costs at intervals not to exceed monthly intervals and in amounts of no less than \$5,000.00 per billing; however, total progress billing payments shall not exceed 90% of the total Reimbursable Costs as shown on the then current estimate. In the event that DEPARTMENT fails to pay any invoice rendered by CSXT within ninety (90) days of delivery of such invoice, CSXT shall be entitled to suspend its work on the Project, unless and until DEPARTMENT makes such payment.

7.2 Upon completion of the Project, CSXT will render a final invoice to DEPARTMENT for the actual Reimbursable Cost of all work performed by CSXT, and DEPARTMENT will pay such final invoice promptly upon receipt.

7.3 CSXT and its subcontractors shall keep and preserve all books, documents, papers, accounting records and other evidence pertaining to Reimbursable Costs incurred and shall make such available at their respective offices, at reasonable times, from the date of this Agreement and continuing until the expiration of three (3) years from the date of final payment by DEPARTMENT to CSXT pursuant to this Agreement, for inspection by the DEPARTMENT, Federal Highway Administration or any authorized representative of the Federal Government, and copies thereof shall be furnished if requested.

8. Easements and Licenses:

8.1 DEPARTMENT Obligation. DEPARTMENT shall acquire all necessary licenses, permits and easements required for the Project.

8.2 Temporary Construction Licenses. Insofar as CSXT has the right to do so, CSXT hereby grants DEPARTMENT a nonexclusive license to access CSXT's property, to the extent necessary for the construction of the Project, subject to the applicable terms, conditions and limitations of the Special Provisions: (1) to the area and for the purposes described by temporary construction easements expressly delineated by the Plans, excluding ingress or egress over tracks; and (2) to ingress or egress over tracks as permitted by CSXT pursuant to the Special Provisions.

**Project: Design Build US 301 New Bridge
Orangeburg County, SC
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CSXT OP# SC0292
SCDOT File 38.036984**

8.3 Permanent Easements:

Insofar as RAILROAD has the right to do so, CSXT hereby grants and conveys, without warranty to DEPARTMENT, a non-exclusive license for the use and maintenance of the Project wholly or partly on CSXT property as shown on the Plans approved by CSXT, provided that CSXT is notified prior to any work being undertaken and such work is approved by CSXT. After the Project is complete, this license shall survive the termination of this Agreement

9. Cancellation of Project; Termination of Agreement; Remedies:

- 9.1 If DEPARTMENT determines it is necessary to cancel the Project for any reason, DEPARTMENT may terminate this Agreement by delivery of written notice to CSXT. Upon CSXT's receipt of such notice, CSXT shall proceed to stop work. CSXT may terminate this Agreement by delivery of notice to DEPARTMENT, in the event that CSXT has suspended CSXT's work on the Project or has suspended the Contractor's work on the Project pursuant to the terms and conditions of this Agreement, for a period of one hundred eighty (180) consecutive days.
- 9.2 DEPARTMENT shall reimburse CSXT for all Reimbursable Costs incurred by CSXT prior to the notice of termination and for reasonable costs incurred in stopping work and returning CSXT property to its original condition to CSXT's reasonable satisfaction.
- 9.3 DEPARTMENT acknowledges and agrees that, in the event of the termination of this Agreement or any actual or purported delay or failure of CSXT to perform services or work pursuant to this Agreement, neither DEPARTMENT nor its Contractor shall assert any claim against CSXT or CSXT's contractors for damages of any kind, and that termination of this Agreement shall constitute DEPARTMENT's sole remedy.

10. Insurance:

- 10.1 DEPARTMENT shall require its Contractor to purchase and maintain insurance as set forth in Special Provisions. In the event that DEPARTMENT performs work associated with the Project, DEPARTMENT shall purchase and maintain such insurance as provided by Section 5 of this Agreement.
- 10.2 A resident agent of the State of South Carolina in accordance with applicable State of South Carolina law shall countersign the insurance required by this Section to be provided by DEPARTMENT or its Contractor. Policies for such insurance shall be submitted to and approved by CSXT in accordance with the

**Project: Design Build US 301 New Bridge
Orangeburg County, SC
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Special Provisions before the commencement of work on or within fifty (50) feet of CSXT's property or right-of-way.

11. Maintenance:

Upon completion of the Project, DEPARTMENT shall maintain, repair, and renew, at its sole cost and expense, all permanent improvements constructed by or for DEPARTMENT under the Project, except to the extent otherwise provided by applicable law or other agreements between CSXT and DEPARTMENT, as in effect as of the date of this Agreement.

12. Complete Understanding:

The parties agree that this Agreement embodies the complete understanding of the parties with respect to this Project and supersedes all other agreements, verbal or otherwise.

13. Amendment:

This Agreement may be amended only by a written instrument signed by the parties. If any party fails to enforce their respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations under this Agreement, such failure shall not be construed as a permanent waiver of any rights or obligations as stated in this Agreement.

14. Severability:

The parties agree that if any part, term or provision of this Agreement is held to be illegal or in conflict with any law of the State of South Carolina or with any federal law or regulation, such provision shall be severable, with all other provisions remaining valid and enforceable, to the extent the parties might otherwise perform their obligations, without materially undermining the overall interest and purpose of this Agreement.

15. Controlling Law:

This Agreement shall be construed under the laws of the State of South Carolina.

AGREEMENT NO. _____

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Orangeburg County, SC
Florence Division, Creston Subdivision, RRMP AKE-376.45
CSXT OP# SC0292
SCDOT File 38.036984**

IN WITNESS WHEREOF, DEPARTMENT and CSXT have caused their duly authorized representatives to execute this Agreement.

WITNESS:

**SOUTH CAROLINA DEPARTMENT
OF TRANSPORTATION**

By: _____
Print: Ladd Gibson, PE
Title: Director of Preconstruction

WITNESS:

CSX TRANSPORTATION, INC.

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

SAMPLE

EXHIBIT A

SCOPE OF WORK

Pursuant to Section 3, work to be performed or caused to be performed in connection with the Project is allocated as follows:

- A. DEPARTMENT shall perform or cause to be performed the following work:
 - 1. Furnishing plans and specifications for CSXT's approval.
 - 2. All other work on the Project as shown on the Plans, except work allocated to CSXT below.

- B. CSXT shall perform or cause to be performed the following work:
 - 1. CSXT Construction Engineering and Inspection
 - 2. Flagging and Protection Services
 - 3. Accounting and Administrative Services related to the foregoing

EXHIBIT B

INITIAL ESTIMATE

