AGREEMENT NO. 22621 CON

Project: Design Build Carolina Crossroads Project
Improvements to Route I-20/I-26/I-126 Corridor
Lexington/Richland Counties, SC
CSX File: SC0424
SCDOT Project ID: P027662

This **AGREEMENT** made this 22nd day of September, 2022, 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, under separate agreement with a third-party, under the above referenced Project, to construct a new roadway bridge over the tracks of CSXT located at approximate CSXT Railroad Milepost C 3.62, proposed DOT Crossing No. 976955A in Lexington and Richland Counties, South Carolina. These improvements under Department's File P027662 shall be performed upon the terms and conditions hereinafter expressed and contained and shall be hereinafter together referred to as the "Project".

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 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, except that CSXT acknowledges that Department's liability for damages of 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.) and the Department's general liability insurance 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.

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. The estimated Reimbursable Costs under this Agreement are **$1,958,393.00**, 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.

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 within (180) days of Final Inspection and acceptance by CSXT for the actual Reimbursable Cost of all work performed by CSXT, and DEPARTMENT will pay such final invoice promptly upon receipt. Any invoices received by the Department after this time period shall be ineligible for payment.

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.

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

8.4 Permanent Easements. Insofar as it has the right to do so, CSXT shall grant, without warranty to the DEPARTMENT, 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, DEPARTMENT shall furnish to CSXT descriptions and plat plans for the easements.

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 pursuant to Sections 6.2 or 7.1, for a period of one hundred eighty (180) consecutive days.

9.2 DEPARTMENT shall reimburse CSXT for all Reimburseable 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 there may be unavoidable circumstances that could cause delay to the Project, including but not limited to delay incident to or necessary for safe maintenance of CSXT traffic, reallocation of CSXT's limited manpower for operational or emergency purposes, and compliance with the terms of CSXT's labor agreements. In consideration of CSXT's good faith efforts to diligently avoid such delays and to minimize their impact on the Project, the DEPARTMENT agrees that neither it nor its Contractor shall assert any claim against CSXT for damages arising from such delay and in

such circumstances, termination of this Agreement shall constitute the 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 4 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 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.

16. General Compliance with Laws.

The parties agree to observe and comply with all Federal, State and local laws, ordinances and regulations applicable to the Project.

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

WITNESS:

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

By: _____

Chris J. Gaskins, P.E.

Director of Alternative Delivery

WITNESS:

CSX TRANSPORTATION, INC.

By: _____

Edward D. Sparks II, PE

Chief Engineer - Bridges, Design and Construction

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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
4. Signal & Communications Work
5. Track Work

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EXHIBIT B

ACCT. CODE : 709 - SC0424 **Form Revision** 12/22/21

ESTIMATE SUBJECT TO REVISION AFTER: 8/1/2023 **DOT NO.:** TBD
CITY: Columbia **COUNTY:** Richland/Lexington **STATE:** SC
DESCRIPTION: Carolina Crossroads Project Design Build Phase 1 to include new bridge construction parallel to CSXT and overhead bridge at approximately C 3.62. Estimated two year duration.
ZONE: Carolinas **SUB-DIV:** CN&L **MILE POST:** ~ C 3.62
AGENCY PROJECT NUMBER: SCDOT P027662

	PRELIMINARY ENGINEERING:						
212	Contracted & Administrative Engineering Services					$	30,000
	Subtotal					$	**30,000**
	CONSTRUCTION ENGINEERING/INSPECTION:						
212	Contracted & Administrative Engineering Services					$	263,315
	Subtotal					$	**263,315**
	FLAGGING SERVICE: (Contract Labor)						
70	Labor (Conductor-Flagman)					$	-
50	Labor (Foreman/Inspector)		1030	Days @	$ 504.00	$	519,120
70	Additive	187.00% (Transportation Department)				$	-
50	Additive	223.00% (Engineering Department)				$	1,157,638
	Subtotal					$	**1,676,758**
	SIGNAL & COMMUNICATIONS WORK:					$	-
	TRACK WORK:					$	-
	PROJECT SUBTOTAL:					$	**1,976,073**
900	**CONTINGENCIES:**	0.00%				$	-
	PROJECT TOTAL:	**********				$	1,976,073
	CURRENT AUTHORIZED BUDGET:	**********				$	-
	TOTAL SUPPLEMENT REQUESTED:	**********				$	**1,976,073**

DIVISION OF COST:

Agency	100.00%	$ 1,976,073
Railroad	0.00%	$ -

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

Office of Chief Engineer Public Projects--Jacksonville, Florida
Estimated prepared by: Benesch - JT **Approved by:** *CTA* **CSXT Public Project Group**
DATE: 08/01/22 **REVISED:** **DATE:** 08/04/22

December 3, 2013

Project: Design Build Carolina Crossroads Project
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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.

"Agreement" shall mean the Agreement between CSXT and DEPARTMENT.

"DEPARTMENT" shall mean the South Carolina Department of Transportation.

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

"Work" shall mean the Project as described in the Agreement.

I. WORK TO BE PERFORMED IN ACCORDANCE WITH SPECIAL PROVISIONS, DEPARTMENT/CSXT AGREEMENT AND APPROVED PLANS

Contractor shall perform all work upon or adjacent to CSXT'S property in accordance with these Special Provisions, the Agreement between DEPARTMENT and CSXT for this Project, and the approved Plans which are incorporated into the Agreement.

II. AUTHORITY OF CSXT ENGINEER

The authorized representative of CSXT ("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 DEPARTMENT 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.

III. INTERFERENCE WITH CSXT OPERATIONS

A. Contractor shall use reasonable care and diligence at all times and cooperate with CSXT officials in order to avoid accidents, damages, or delay to, or interference with, CSXT operations. Contractor shall not work on CSXT'S tracks or allow any of Contractor's equipment or material to encroach or to present a risk of encroachment, in the opinion of CSXT, within the following minimum construction clearances, without first obtaining authority from CSXT'S Chief Engineer or his authorized representative: (a) Horizontal – 25.0 feet, measured at a right angle to the centerline of the nearest track, and (b) Vertical – 23.0 feet above top of the highest rail of CSXT's track.

B. 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. 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 Contractor from liability in connection with such Work.

C. 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, Contractor shall make such provision. If the CSXT Representative determines that such provision is insufficient, CSXT may, at the expense of DEPARTMENT or its Contractor, require or provide such provision as may be deemed necessary, or cause the Work to cease immediately.

IV. NOTICE OF STARTING WORK. 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 (10) business days in advance of the date Contractor proposes to begin Work on or within fifty (50) feet of CSXT property or right of way. The notice must identify the Project by reference to the CSXT OP# and Railroad Milepost and SCDOT File No. and Project No., as set forth on the first page of the Agreement. If contract 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. (See also the provisions for additional notice regarding flagging set forth in Section XI (C) of these Special Provisions.)

B. Obtain authorization from the CSXT Representative to begin Work on CSXT property or right-of-way or within fifty (50) feet of railroad property or which affects a CSXT railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing, 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.

V. 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 DEPARTMENT, 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 DEPARTMENT, but must be approved by both CSXT and DEPARTMENT. DEPARTMENT 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 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 Contractor's expense.

VI. HAUL ACROSS CSXT

A. If Contractor desires access across CSXT property or tracks other than at an existing, open public road crossing, Contractor must first obtain the permission of CSXT and shall execute a license agreement or right of entry satisfactory to CSXT, wherein Contractor agrees to bear all costs and liabilities related to such access.

B. If at anytime Contractor desires to establish and use a temporary at-grade crossing of CSXT'S tracks, Contractor shall obtain written authority from CSXT and, if required by CSXT, to execute CSXT'S standard form of private grade crossing agreement with respect to the crossing desired.

C. 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.

VII. COOPERATION AND DELAYS

A. Contractor shall arrange a schedule with CSXT for accomplishing staged construction involving work by CSXT. In arranging its schedule, Contractor shall ascertain, from CSXT, the lead time required for assembling crews and materials and shall make due allowance therefor.

B. Contractor may not charge any costs or submit any claims against CSXT for hindrance or delay caused by CSXT traffic, work done by CSXT or other delay incident to or necessary for safe maintenance of CSXT traffic, or for any delays due to compliance with these Special Provisions.

C. 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. Contractor understands and agrees that CSXT does not assume any responsibility for work performed by others in connection the Project. Contractor further understands and agrees that it shall have no claim whatsoever against CSXT for any inconvenience, delay or additional cost incurred by DEPARTMENT or its Contractor on account of operations by others.

VIII. STORAGE OF MATERIALS AND EQUIPMENT

Contractor shall not store its materials or equipment on CSXT's property or where they may potentially interfere with CSXT's operations, unless Contractor has received CSXT Representative's prior written permission. Contractor understands and agrees that CSXT will not be liable for any damage to such materials and equipment from any cause except the negligence, recklessness or intentional wrongdoing of CSXT, or its agents or employees. CSXT may move, or require Contractor to move, such material and equipment, at Contractor's sole expense. To minimize the possibility of damage to the

CSXT 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.

IX. 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 these Special Provisions.

3. Contractor shall observe the terms and rules of the CSXT Safe Way manual, which DEPARTMENT 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. Contractor shall obtain the prior written approval of CSXT Representative's and DEPARTMENT for use of explosives on or adjacent to CSXT property. If permission for use of explosives is granted, 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 the 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 72 hours' 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. Contractor must have at the Project site adequate equipment, labor and materials, and allow sufficient time, to (i) clean up (at Contractor's expense) debris resulting from the blasting without any delay to trains; and (ii) correct (at Contractor'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.

e. DEPARTMENT and its Contractor shall not store explosives on CSXT property.

2. CSXT Representative will:

a. Determine the approximate location of trains and advise 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.

X. MAINTENANCE OF DITCHES ADJACENT TO CSXT TRACKS

Contractor shall maintain all ditches and drainage structures free of silt or other obstructions that may result from their operations. 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 Contractor's operations shall be performed at Contractor's expense.

XI. FLAGGING / INSPECTION SERVICE

A. Contractor shall utilize CSXT flagmen, watchmen, or other protective measures that are required, in the sole opinion of CSXT, to promote safety and/or continuity of CSXT traffic. 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 the Contractor or its 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. DEPARTMENT 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. Contractor shall give a minimum of ten (10) days advance notice to CSXT Representative of anticipated need for flagging service. No work for which flagging service is required shall be undertaken until the flag person(s) is/are at the job site. [The estimated number and classifications of flag-persons are shown in the Estimate.] If it is necessary for CSXT to advertise a flagging job for bid, it may take up to ninety (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. DEPARTMENT shall reimburse CSXT for the costs incurred by CSXT for such inspection service. Inspection service shall not relieve DEPARTMENT or its Contractor from liability for its Work.

E. CSXT shall render invoices for, and DEPARTMENT 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 DEPARTMENT using the new rates. Contractor shall perform Work that requires flagging protection or inspection service in such a manner and sequence that the cost of such will be as economical as possible.

XII. UTILITY FACILITIES ON CSXT PROPERTY

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

XIII. CLEAN-UP

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 Contractor. Contractor, upon completion of the Project, shall leave CSXT Property in neat condition, satisfactory to CSXT Representative.

XIV. FAILURE TO COMPLY

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

XV. INSURANCE PROVISIONS

A. Insurance Policies:

Contractor shall procure and maintain the following insurance policies:

1. Commercial General Liability (CGL) 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 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 insured.

4. Railroad Protective Liability (RPL) 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 Liability 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 Liability Insurance Policy. The named insured's address should be listed as:

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

c. The Name and Address of the Contractor and of the Project Sponsor/Involved Governmental Agency must be shown on the Declarations page.

d. A description of operations and location must appear on the Declarations page and must match the Project description.

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) 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 with a copy to CSXT's Engineering Consultant (Contact Information will be provided at the Project's Preconstruction Meeting)

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

XVI. CONTRACTOR'S AGREEMENT

Prior to commencement of Work on CSXT's property or right-of-way or within fifty (50) feet of railroad property or which affects a CSXT railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing, Contractor shall execute and deliver to CSXT the Contractor's Agreement (Schedule I to the Agreement).

INSURANCE APPROVAL REQUEST - To be sent with required evidence of insurance.

TO:
Risk Management/Insurance
CSX Transportation, Inc.
500 Water Street, C-907
Jacksonville, Florida 32202

Date _____

CSXT Agreement With: _____
(Name of Public Authority, Private Entity, Etc.) (Date)

AGREEMENT NO. 22621 CON

Project: Design Build Carolina Crossroads Project
Improvements to Route I-20/I-26/I-126 Corridor
Lexington/Richland Counties, SC
CSX File: SC0424
SCDOT Project ID: P027662

Name of Contractor: Archer United Joint Venture

Project Description: construct a new roadway bridge over the tracks of CSXT located at approximate CSXT Railroad Milepost C 3.62, proposed DOT Crossing No. 976955A

Project involves either passenger rail service or rail shipment of hazardous materials:
] YES] NO

Anticipated Starting Date: _____ Completion Date: _____
City: Columbia County: Richland / Lexington State: SC

Zone: Carolinas Sub-Division: CN&L M. P.: C 3.62

Attached are Original Railroad Protective Insurance Policy, in duplicate, required to be furnished to CSXT. Please advise if the attached evidence of insurance is satisfactory and complies with the insurance requirements of the agreement.

(Public Authority, Private Entity or Contractor must show address below and attach self-addressed, stamped envelope)

TO:

Date: _____
File: _____

☐ Approved - this is not authority to proceed with work, entry arrangements must be made with our Division Manager.
☐ **Not Approved.** Reason:
- ☐ General Liability limits inadequate ($_____ required).
- ☐ **No** evidence of Contractual Liability Insurance.
- ☐ **No** unconditional 30-day notice of cancellation.
- ☐ Other:

☐ Returned for your further handling.
☐ Insufficient information provided
Returned without approval. CSX Transportation, Inc.

cc: Division Manager -Division

_____
Risk Management

Project: Design Build Carolina Crossroads Project
Improvements to Route I-20/I-26/I-126 Corridor
Lexington/Richland Counties, SC
CSX File: SC0424
SCDOT Project ID: P027662

SCHEDULE I

SCDOT Project No. : P027662
CSXT OP No.: SC0424

CONTRACTOR'S AGREEMENT

This CONTRACTOR'S AGREEMENT is made as of _____, 2010, by _____ [Insert Name of Contractor] ("Contractor"), 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 connection with the above referenced project for South Carolina Department of Transportation.

In consideration of CSXT's consent to permit Contractor on or about CSXT's property for such purposes, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Contractor, Contractor hereby agrees as follows:

1. CSXT Special Provisions. Contractor agrees to abide by and observe the terms and conditions of the CSXT Special Provisions (which is incorporated by reference into this Agreement).

2. Insurance Requirements. Contractor shall acquire and maintain the insurance described by the Special Provisions, and shall submit proof of insurance to CSXT in accordance with the Special Provisions, satisfactory to CSXT, prior to commencement of work on or about CSXT's property.

3. Indemnification.

Contractor further specifically agrees as follows:

(a) Contractor shall indemnify, defend and save harmless CSXT and its affiliates from all suits or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property, in whole or in part, on account of the operations of Contractor or any subcontractor or sub-subcontractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of

unacceptable materials or workmanship in constructing the work; or because of any act or omission, neglect, or misconduct of Contractor or any subcontractor or sub-subcontractor; or because of any claims or amounts recovered from any infringements of patent, trademark or copyright; or for failing to pay, when and as due, all bills and other legitimate charges, including lawful claims for labor performed or materials, equipment and supplies furnished for use in and about the construction of the work under contract; or from any claims or amounts arising or recovered under the Worker's Compensation Act, or any other law, ordinance or decree. The foregoing indemnification obligation shall not be limited to the insurance coverage required by this Agreement.

(b) Contractor shall comply with any federal, state or local laws, statutes, codes ordinances, rules, and regulations applicable to its construction and maintenance of the Project. Contractor 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 Agreement.

(c) For the purpose of this Agreement, 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.

(d) Contractor shall notify CSXT promptly of any loss, damage, injury or death arising out of or in connection with the Project work.

(e) The provisions of this Agreement shall survive the termination or expiration of the Agreement.

IN WITNESS WHEREOF, Contractor has executed and delivered this Agreement as of the date set forth below.

AGREEMENT NO. 22621 CON

Project: Design Build Carolina Crossroads Project
Improvements to Route I-20/I-26/I-126 Corridor
Lexington/Richland Counties, SC
CSX File: SC0424
SCDOT Project ID: P027662

CONTRACTOR

_____

By: _____
Print: _____
Title: _____

Date: _____

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