

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE COMMITTEE OF 100 ON THE)
FEDERAL CITY)

Plaintiff)

v.)

) Case No. 1:14-01903 CRC

ANTHONY FOXX, Secretary of)
Transportation, et al.)

Defendants)
)

EXHIBIT 2 TO PLAINTIFF'S FIRST SUBPOENA ON CSX TRANSPORTATION

**Memorandum of Agreement
Between
CSX Transportation, Inc.
And the
District of Columbia
Acting through and by the
District Office of the Deputy Mayor
And the
District Department of Transportation
Regarding
Transportation Projects within the District of Columbia**

This Memorandum of Agreement ("Agreement") is entered into as of the 23rd day of August, 2010, by and between CSX Transportation, Inc., a corporation organized and existing under the laws of the Commonwealth of Virginia with its principal place of business at 500 Water Street, Jacksonville, Florida 32202 ("CSXT"), and the District of Columbia ("DC" or District"), a municipal corporation, acting through the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") and the District Department of Transportation ("DDOT"), collectively referred to herein as the "Parties."

WHEREAS, the Parties seek to form a foundation to improve the effectiveness of the transportation network to better serve the District and surrounding region; and

WHEREAS, the Parties have identified various projects that will benefit CSXT rail operations and DDOT's transportation initiatives; and

WHEREAS, the Parties recognize that working together on projects that mutually benefit the transportation network within the District will result in a more livable community; and

WHEREAS, the Parties mutually agree the projects listed below are critical to rail transportation, vehicular transportation, and safe pedestrian walkways throughout the District; and

WHEREAS, the Parties mutually agree that time is of the essence to have this Agreement executed no later than August 23, 2010, due to construction and development timelines for the 11th Street Bridge Project and Virginia Avenue Tunnel Expansion Project; and

WHEREAS, the Parties will coordinate and work together as needed to negotiate and execute mutually acceptable definitive agreements to implement the terms of this Agreement as set forth herein; and

WHEREAS, CSXT and DDOT intend this Agreement to supersede and replace the letter agreement between CSXT and DDOT dated July 26, 2010; and

NOW THEREFORE, in consideration of the mutual promises contained herein, the Parties hereto agree as follows:

ARTICLE I. RECITALS

The above recitals are incorporated into this Agreement as if fully set forth herein.

ARTICLE II. NATIONAL GATEWAY INITIATIVE

A. DDOT and DMPED agree to provide support to CSXT in its efforts to develop the National Gateway Initiative ("NGI"). As such, DDOT agrees to send a letter by October 1, 2010 to the United States Department of Transportation ("USDOT") supporting the NGI. Further, DDOT and DMPED will support legislative efforts to secure federal funding for the NGI by supporting funding requests in the next federal surface transportation bill or other federal bills in which a funding mechanism could be applicable to the NGI freight program.

B. DDOT will submit the TIGER II grant application on behalf of the National Gateway Coalition for a planning grant that includes the CSXT Virginia Avenue Tunnel Expansion Project.

ARTICLE III. VIRGINIA AVENUE TUNNEL

A. DDOT agrees to credit CSXT up to Four Million, One Hundred Seventy One Thousand and Forty-Four Dollars (\$4,171,044) ("CSXT Credit Amount") toward the cost of the restoration and/or resurfacing of Virginia Avenue upon the completion of the construction for the Virginia Avenue Tunnel Expansion Project.

B. The CSXT Credit Amount shall be applied by DDOT, subject to required appropriations, toward CSXT's costs for the restoration and/or resurfacing of Virginia Avenue upon completion of the construction for the Virginia Avenue Tunnel Expansion Project. DDOT shall obtain the CSXT Credit Amount of funds through traditional federal appropriations and obligations for resurfacing of Federal-Aid facilities. To the extent that the total cost for the restoration and/or resurfacing of Virginia Avenue exceeds the remaining credit balance of the CSXT Credit Amount to be applied by DDOT, such costs shall be paid by CSXT.

C. DDOT agrees to provide a designated point of contact to assist CSXT in obtaining required public space permits for the Virginia Avenue Tunnel Expansion

Project and connection and greening proposals to improve the streetscape on Virginia Avenue, SE, as part of the tunnel expansion project.

D. The District agrees to coordinate with CSXT and to expedite approvals of the required public space permits for the Virginia Avenue Tunnel Expansion Project. Costs of the District's coordination efforts and review shall be funded by CSXT. Upon completion of the new tunnel, CSXT shall restore the construction area in accordance with the design specifications and plans approved by DDOT.

E. DDOT will provide a list of permits, licenses, and easements that may be needed for the construction on or before October 1, 2010. CSXT acknowledges that such list shall be subject to change based on changes in applicable laws, rules and regulations in effect at the time of construction.

F. DDOT agrees to send a letter by October 1, 2010 to USDOT requesting expedient assistance on the National Environmental Policy Act requirements for the Virginia Avenue Tunnel Expansion Project.

G. CSXT agrees to enter into a First Source Agreement with District of Columbia Office of Employment Services that shall, among other things, require CSXT to: (i) use diligent efforts to hire and use diligent efforts to require its architects, engineers, consultants, contractors, and subcontractors to hire at least fifty one percent (51%) District residents for all new jobs created by the Virginia Avenue Tunnel Expansion Project, all in accordance with such First Source Agreement and (ii) use diligent efforts to ensure that at least fifty one percent (51%) of apprentices and trainees employed are residents of the District and are registered in apprenticeship programs approved by the D.C. Apprenticeship Council. The Parties acknowledge and agree that the any First Source Agreement will be subject to CSXT's existing collective bargaining agreements and nothing under this First Source Agreement will supersede existing CSXT labor agreements.

H. CSXT agrees to enter into an agreement with the District of Columbia Department of Small and Local Business Development governing certain obligations of CSXT regarding contracting participation of Certified Business Entities in the CSXT Virginia Avenue Tunnel Expansion Project in accordance with the Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended (D.C. Law 16-33; D.C. Official Code §§ 2-218.01 et seq.). However, CSXT shall not be required to take on an equity and development participant as stated in DC Code § 18-249.49a, as part of the agreement discussed in this paragraph.

ARTICLE IV. 11th STREET BRIDGE PROJECT

A. DDOT will coordinate with CSXT to minimize, where possible, conflicts between the proposed temporary runaround trench for the CSXT temporary rail track and

the 11th Street Bridge construction during all phases of the construction of the Virginia Avenue Tunnel.

B. CSXT shall remove and relocate a communication tower currently located on DDOT property that interferes with the proposed 11th Street ramp in Phase I, at no cost or expense to DDOT.

C. CSXT shall pay to DDOT (or DDOT's authorized agent) Four Million, One Hundred Seventy-One Thousand, and Forty-Four Dollars (\$4,171,044) for design and construction costs associated with adjustments to the 11th Street Bridge Project required by CSXT ("Redesign Costs"). The Redesign Costs shall be paid in four (4) equal payments of One Million, Forty-Two Thousand, Seven Hundred Sixty-One Dollars (\$1,042,761) in accordance with the following payment schedule:

1. The first payment shall be paid within thirty (30) days of the execution of the State-Railroad agreement between DDOT and CSXT for Ramp A-1;
2. The second payment shall be paid in the 2nd quarter of calendar year 2011;
3. The third payment shall be paid in the 3rd quarter of calendar year 2011; and
4. The fourth payment shall be paid in the 1st quarter of calendar year 2012.

If the Redesign Costs cannot be paid according to this payment schedule, the Parties agree to work together to determine how the Redesign Costs can be remitted to the Agency (or Agency's authorized agent). Once determined, the payment schedule shall be amended to reflect the Parties' decision regarding remittance of the Redesign Costs.

D. CSXT and DDOT shall enter into the necessary State-Railroad agreement for the construction of Ramp A-1 of the 11th Street Bridge Project. In accordance with that agreement, CSXT shall provide up to One Hundred Thousand Dollars (\$100,000.00) in flagging services to the project. The State-Railroad agreement is attached as Exhibit A.

E. Upon the payments set forth in the State- Railroad Agreement, CSXT shall have no further obligations to the District for the construction of Ramp A-1 of the 11th Street Bridge Project.

ARTICLE V. PROJECT COORDINATION

CSXT and DDOT agree that future projects near the CSXT right of way and DDOT public right of way will be coordinated to ensure any design and construction will accommodate the requirements of both CSXT and DDOT.

ARTICLE VI. ACCESS and EASEMENTS

A. **H Street Access:** DDOT shall grant to CSXT a temporary easement for a term of ninety (90) days over a portion of the public right of way located in Lot 801 or Square N-737. The temporary easement area will run from the western edge of H Street, SE, (just east of New Jersey Avenue) to the railroad track. DDOT and CSXT shall negotiate in good faith the terms and conditions of the grant of a permanent easement and required releases. In the event that the subject property is transferred from DDOT's property inventory to DMPED's property inventory, DMPED and CSXT shall negotiate in good faith the terms and conditions of such permanent easement and required releases.

B. **Rhode Island Ave Access:** CSXT conveyed to DDOT certain property rights between Rhode Island Avenue and Franklin Street on which the District constructed a bike trail and a fence to separate the public from the adjacent active railroad tracks. DDOT will provide to CSXT a temporary easement for a term of ninety (90) days over the District right of way near the Franklin Avenue Bridge. This easement will allow CSXT to access its signal equipment located within the railroad right of way south of Rhode Island Ave. DDOT and CSXT shall negotiate in good faith the terms and conditions of DDOT's grant of a permanent easement.

C. **Anacostia Pedestrian Walkway/Trail:** CSXT shall grant to the District two (2) temporary easements for a term of ninety (90) days over CSXT property near the Anacostia River for the Anacostia Riverwalk Trail. CSXT and DDOT shall negotiate in good faith the terms and conditions of CSXT's grant of a permanent easement. CSXT and DDOT shall negotiate in good faith and enter into a State-Railroad agreement for the construction of the Anacostia Pedestrian Walkway/Trail.

D. **Rhode Island Avenue Pedestrian/Bicycle Bridge** ("RI Ave. Ped/Bike Bridge"): CSXT shall grant a temporary easement for a term of ninety (90) days to the District over CSXT property near Rhode Island Avenue. CSXT shall also grant to the District access as needed for construction of the RI Ave. Ped/Bike Bridge; provided, however that the fees for the access for construction shall not exceed Ten Dollars (\$10). CSXT and DDOT shall negotiate in good faith the terms and conditions of CSXT's grant of a permanent easement. Additionally, CSXT and DDOT shall negotiate in good faith and enter into a State-Railroad agreement for the construction of the RI Ave. Ped/Bike Bridge.

E. **Virginia Avenue Easements:** DDOT and CSXT shall negotiate in good faith the terms and conditions of DDOT's grant of a temporary easement for the use of the public right of way adjacent to the Virginia Avenue Tunnel for a temporary track throughout the construction period of the Virginia Avenue Tunnel Expansion Project.

ARTICLE VII. CSXT's SHEPPARD's BRANCH

CSXT and DDOT shall negotiate in good faith the terms and conditions for DDOT's use and development of CSXT's Shepherd's Branch property.

ARTICLE VIII. VIRGINIA AVENUE RESURFACING/RESTORATION

In accordance with Article III, Sections A and B above, DDOT will seek funding via the Transportation Improvement Program for the costs of restoration and/or resurfacing of Virginia Avenue, SE, up to the CSXT Credit Amount.

ARTICLE IX. NOTICE

All notices, requests or demands to a party hereunder shall be in writing and shall be effective (i) when received by overnight courier service or facsimile telecommunication (provided that a copy of such notice, request or demand is deposited into the United States mail within one (1) business day of the facsimile transmission), or (ii) three (3) days after being deposited into the United States mail (sent certified or registered, return receipt requested), in each case addressed as follows (or to such other address as either party may designate in writing to the other party in accordance with this Section):

To District:

Office of the Deputy Mayor for Planning and Economic
Development
John A. Wilson Building
1350 Pennsylvania Ave., N.W., Suite 317
Washington, D.C. 20004
Attn: Deputy Mayor for Planning and Economic Development

District Department of Transportation
2000 14th Street, NW
6th Floor
Washington, D.C. 20009
Attention: Director

District Department of Transportation
Infrastructure Project Management Administration
64 New York Avenue, N.E., 1st Floor
Washington, D.C. 20002
Attention: Chief Engineer

District Department of Transportation
2000 14th Street, NW
5th Floor
Washington, D.C. 20009
Attention: General Counsel

To CSX:

CSX Transportation, Inc.
500 Water Street C900
Jacksonville, Florida 32202
Attention: Louis Renjel

ARTICLE X. EXECUTION IN COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Execution and delivery of this Agreement by facsimile shall be sufficient for all purposes and shall be binding on any party to the Agreement.

ARTICLE XI. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement and understanding of the Parties with respect to the projects list above. No oral or other written provisions shall have any force or effect except those contained in a written amendment to this Agreement executed by the Parties or as specifically provided for in this Agreement.

ARTICLE XII. MODIFICATION OF AGREEMENT

No amendment, alteration or modification to this Agreement shall be effective unless agreed to in writing by the Parties.

ARTICLE XIII. ANTI-DEFICIENCY LIMITATIONS

A. The obligations of the District to fulfill financial obligations pursuant to this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which the District is a party), are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2004) (the "**Federal ADA**"), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2004 Supp.) (the "**D.C. ADA**" and (i) and (ii) collectively, as amended from time to time, the "**Anti-Deficiency Acts**"); and (iii) Section 446 of the District of

Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of the District in anticipation of an appropriation by Congress for such purpose, and the District's legal liability for the payment of any charges under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

B. This Agreement shall not constitute an indebtedness of the District nor shall it constitute an obligation for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. No District of Columbia Official or employee is authorized to obligate or expend any amount under this Agreement unless such amount has been appropriated by Act of Congress and is lawfully available.

ARTICLE XIV. 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.

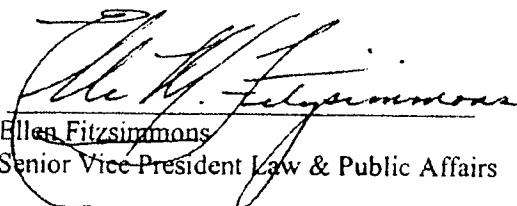
ARTICLE XV. APPLICABLE LAW

The Parties shall comply with all applicable laws, rules, and regulations whether now in force or hereafter enacted or promulgated that pertain to this Agreement. This Agreement shall be governed by the laws of the District of Columbia, 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 Washington, DC, and the Parties agree to submit to the personal jurisdiction of any state or federal court situated in Washington, DC.

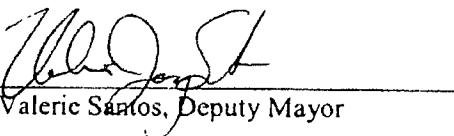
REST OF PAGE INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties hereto, through their authorized representatives, have executed this Memorandum of Agreement between CSXT Transportation, Inc., and the District of Columbia Office of the Deputy Mayor for Planning and Economic Development and the District Department of Transportation regarding the projects listed as of the date written first written above.

CSX Transportation, Inc.

by: 
Ellen Fitzsimmons
Senior Vice President Law & Public Affairs

District of Columbia Office of the Deputy Mayor
for Planning and Economic Development

by: 
Valeric Santos, Deputy Mayor

District Department of Transportation

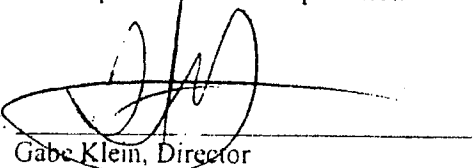
by: 
Gabe Klein, Director

EXHIBIT A
STATE-RAILROAD AGREEMENT

FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT

THIS FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT (“**Amendment**”) is entered into as of this 21st day of April, 2014 by and between CSX Transportation, Inc., (“**CSXT**”) a corporation organized and existing under the laws of the Commonwealth of Virginia, the District of Columbia, a municipal corporation (“**District**”) and the District of Columbia, acting through by and through the Office of the Deputy Mayor for Planning and Economic Development (“**DMPED**”) and the District Department of Transportation (“**DDOT**”).

WHEREAS, the parties hereto are parties to that certain Memorandum of Agreement dated as of August 23, 2010 (“**MOA**”); and

WHEREAS, the parties desire to amend the Memorandum as provided herein;

NOW, THEREFORE, for good and valuable consideration, the parties hereto hereby agree as follows:

1. Section A of Article III is hereby amended by inserting the following new paragraph at the end thereof :

“Notwithstanding anything to the contrary in Sections A and B of this Section III, none of the CSXT Credit Amount shall be used for the Virginia Avenue Tunnel Expansion Project. In exchange for the payments in the total amount of \$4,171,044 CSXT previously made to DDOT pursuant to Section IV.C below to assist DDOT with the 11th Street Bridge Project, DDOT and CSXT agree to work together to identify an eligible project for the use of the CSXT Credit Amount using traditional federal appropriations and obligations for resurfacing of Federal-Aid facilities within the next six (6) months, however, failure to identify an eligible project shall not constitute a default under the MOA, as amended.”

2. Article VIII of the Memorandum is hereby deleted.
3. This Amendment may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.
4. All provisions, terms and conditions contained in the MOA not expressly modified by this First Amendment, shall remain in full force and effect.

(Balance of Page Intentionally Blank)