

EXHIBIT B



DISTRICT DEPARTMENT OF TRANSPORTATION
PUBLIC RIGHT-OF-WAY OCCUPANCY PERMIT



Inspections/Enforcement: (202) 645-7050

Date: DECEMBER 21, 2012 Permit No. PA-LTO-_____

Permittee: CSX TRANSPORTATION, INC.

Address: UNDER VIRGINIA AVE SE GENERALLY BETWEEN 2ND ST SE AND 12TH ST SE, WASHINGTON, DC – AS MORE PARTICULARLY SHOWN ON EXHIBIT A OF THE TERMS AND CONDITIONS ATTACHED HERETO

Pursuant to the approval by the District Department of Transportation ("DDOT" or "Department") on December 21, 2012, permission is hereby granted to CSX TRANSPORTATION, INC. ("CSXT" or "Permittee"), subject to the terms of this Permit including, without limitation, the Terms and Conditions attached to this Permit, to use and occupy exclusively a portion of the Public Right of Way located under Virginia Avenue, SE generally from 2nd Street, SE to 12th Street, SE, the location and dimensions of which are more particularly shown in Exhibit A of the Terms and Conditions as shall be amended as described in the Terms and Conditions, hereunto annexed and made a part hereof (collectively, the "Virginia Avenue Tunnel ROW"), where Permittee will occupy the Virginia Avenue Tunnel ROW with a tunnel, railroad tracks and related appurtenances for railroad purposes.

Occupancy Times and Days: 24 hours a day, 7 days a week

Occupancy Period: The date hereof through the duration of the Virginia Avenue Tunnel Reconstruction Improvements (defined in the Terms and Conditions) in the Virginia Avenue Tunnel ROW being used for railroad purposes

Compensation: \$10.00 for exclusive occupancy of the Virginia Avenue Tunnel ROW during the Occupancy Period

- The Permittee and DDOT shall be bound by all terms listed herein, as well as the Terms and Conditions attached to this Permit.
- No deviation from the Terms and Conditions that supplement this Permit shall be allowed without prior permission from DDOT as provided for in the Terms and Conditions attached to this Permit.
- The Permittee agrees to occupy the public right-of-way only to the extent as set forth in this Permit and the Terms and Conditions attached to this Permit.
- Upon termination of this Permit, the Permittee shall suspend all occupancy of the public right-of-way and all activities authorized in the public right-of-way under this Permit except for that occupancy and those activities authorized under other permits, DCMR, the District of Columbia Code, or applicable federal laws.

NAME AND TITLE OF DDOT APPROVER: _____

SIGNATURE: _____ DATE: _____

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

**TERMS AND CONDITIONS
FOR THE
PUBLIC RIGHT OF WAY OCCUPANCY PERMIT
FOR
CSX TRANSPORTATION, INC.**

PREAMBLE

This Permit is being granted to **CSX TRANSPORTATION, INC.** (“CSXT” or “Permittee”).

RECITALS

WHEREAS, CSXT currently owns and operates certain railroad improvements, including without limitation, tracks and a tunnel running, in part, under Virginia Avenue, SE (“Existing Virginia Avenue Tunnel Improvements”) which were largely constructed in 1905 pursuant to the Acts (defined in Article IV.D below); and

WHEREAS, because of their age, condition and 21st Century infrastructure requirements, **CSXT needs to reconstruct the Existing Virginia Avenue Improvements running, in part, under Virginia Avenue, SE (“Virginia Avenue Tunnel Reconstruction Improvements”)**;

WHEREAS, the District Department of Transportation (“DDOT” or “Department”) and the United States Federal Highway Administration (“FHWA”) are currently preparing an Environmental Impact Statement (“EIS”) pursuant to the National Environmental Policy Act, 42 USCA § 4321 et seq. (“NEPA”) to determine which, if any, of three (3) build alternatives currently described in that Draft Environmental Impact Statement dated September 7, 2012 (“DEIS”), will be an acceptable alternative for the Virginia Avenue Tunnel Reconstruction Improvements, if any; and

WHEREAS, the NEPA process will conclude with the issuance of a record of decision (“Record of Decision”) which may select one of the build alternatives, if any, pursuant to which Permittee may construct the Virginia Avenue Tunnel Reconstruction Improvements or adopt the “No Build alternative” identified in the DEIS; and

WHEREAS, each of the build alternatives identified in the DEIS provides for the construction of the Virginia Avenue Tunnel Reconstruction Improvements just to the south of the Existing Virginia Avenue Tunnel Improvements; and

WHEREAS, **if the Record of Decision identifies a build alternative for the construction of the Virginia Avenue Tunnel Reconstruction Improvements, Permittee shall have the right to construct the Virginia Avenue Tunnel Reconstruction Improvements including a tunnel, railroad tracks and related improvements and appurtenances in a manner set forth in the Record of Decision;** and

WHEREAS, pursuant to D.C. Official Code §§ 9-101.01 et seq., the Government of the District of Columbia (“the District” or “DC”) has jurisdiction and control over the streets and public right of way of the District of Columbia; and

WHEREAS, D.C. Official Code §§ 10-1141.01 et seq., 50-921.05 and 50-921.06 authorizes the Department to establish the terms and conditions (“Terms and Conditions”) of a Permit for the Virginia Avenue Tunnel ROW (defined below).

NOW, THEREFORE, based upon the above recitals, Permittee hereby agrees to the Terms and Conditions of this Permit as follows:

ARTICLE I **Responsibilities and Rights of DDOT and Location of Virginia Avenue Tunnel ROW**

- A. Department hereby grants unto Permittee from the date hereof through the duration of the Virginia Avenue Tunnel Reconstruction Improvements the right to occupy and use exclusively the Virginia Avenue Tunnel Right of Way, the location and dimensions of which are substantially as shown in Exhibit A (“Virginia Avenue Tunnel ROW”), for the Virginia Avenue Tunnel Reconstruction Improvements for railroad purposes.
- B. As of the date hereof, Exhibit A generally identifies the Virginia Avenue Tunnel ROW as the area covered by all three build alternatives identified in the DEIS. CSXT shall only be allowed to construct the Virginia Avenue Tunnel Reconstruction Improvements in the location identified in the Record of Decision, if any. Therefore, upon completion of the Virginia Avenue Tunnel Reconstruction Improvements in accordance with the Record of Decision, this Permit shall be automatically and without further action amended to reduce the Virginia Avenue Tunnel ROW shown on Exhibit A to reflect the as-built location of the Virginia Avenue Tunnel Reconstruction Improvements. Within thirty (30) days of the Virginia Avenue Tunnel Reconstruction Improvements being constructed, CSXT shall submit to DDOT an amendment to this Permit to replace Exhibit A with a revised Exhibit A that identifies the revised Virginia Avenue Tunnel ROW based on the actual location of the Virginia Avenue Tunnel Reconstruction Improvements consistent with the Record of Decision and the foregoing provisions of this Article I.B.
- C. Department and CSXT shall cooperate to coordinate CSXT’s access to public right of way outside of the Virginia Avenue Tunnel ROW for the operation, maintenance, and safety of the Virginia Avenue Tunnel. Department and CSXT shall cooperate to coordinate Department’s activities in the portion of the public right of way proximate to the Virginia Avenue Tunnel ROW to avoid adverse impact on the operation, maintenance, and safety of the Virginia Avenue Tunnel.

ARTICLE II Responsibilities and Rights of CSXT

- A. Permittee shall occupy the Virginia Avenue Tunnel ROW with the Virginia Avenue Tunnel Reconstruction Improvements for railroad purposes. Permittee shall use the Virginia Avenue Tunnel ROW for the purposes aforesaid and for no other purpose.
- B. Permittee shall pay \$10 for this Permit.
- C. Nothing in this Permit shall relieve Permittee of its obligation to obtain any and all other required permits and licenses from other agencies of the District of Columbia, if any, to operate the Railroad Improvements, in the Virginia Avenue Tunnel ROW, or to comply with federal and local laws applicable to Permittee's operations in the Virginia Avenue Tunnel ROW during the term of this Permit.
- D. Permittee shall be solely responsible for and bear all costs related to Permittee's use of and operations in the Virginia Avenue Tunnel ROW.
- E. If any provision of this Permit, or the application thereof to any person or circumstances, shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Permit and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforceable to the fullest extent permitted by law.
- F. Notwithstanding anything contained in this Permit to the contrary, Permittee shall assume sole responsibility for and shall indemnify, save harmless, and defend the District from and against all claims, actions, or legal proceedings arising, in part or in whole, by Permittee's use and occupation of the Virginia Avenue Tunnel ROW.
- G. Permittee shall maintain at all times commercial general liability insurance policies in commercially reasonable amounts for the Virginia Avenue Tunnel ROW and shall name the District as an additional insured thereunder. Notwithstanding the foregoing, DDOT recognizes that CSXT self-insures and need not obtain separate insurance or otherwise satisfy the previous sentence so long as CSXT continues to self-insure.

ARTICLE III Key Officials and Contact Persons

All notices, requests, modifications, and other communications shall be in writing and shall be personally delivered or mailed via first class mail, delivered by overnight courier, or emailed to the addresses below:

A. For DDOT

B. For CSXT

KEY OFFICIAL

Terry Bellamy
Director
DDOT
55 M St SE – 5th Floor
Washington DC 20003
202-671-2740 (office)
Terry.Bellamy@dc.gov

CONTACT PERSON

Matthew Marcou
Deputy Associate Director
DDOT/PSRA
55 M St SE – 5th Floor
Washington DC 20003
202-478-1448 (office)
Matthew.Marcou@dc.gov

KEY OFFICIAL

Louis Renjel
VP Strategic Infrastructure
CSXT Transportation, Inc.
500 Water Street
Jacksonville FL 32202
Phone (904) 359-3770
Louis_Renjel@csx.com

CONTACT PERSON

Stephen Flippin
CSXT Transportation, Inc.
1331 Pennsylvania Ave NW # 560
Washington DC 20004
Phone (202) 626-4931
Stephen_Flippin@csx.com

CSXT and DDOT may change the persons, addresses, and numbers for receipt of notices, requests, modifications and other communications by providing written notice to the applicable Key Official and Contact Person at the last noticed address.

ARTICLE IV Term of Permit, Modification, Termination

- A. **The Permit shall be effective on December 21, 2012, and shall remain in effect for the duration of the Virginia Avenue Tunnel Reconstruction Improvements in the Virginia Avenue Tunnel ROW being used for railroad purposes.**
- B. Notwithstanding the foregoing Article IV.A or any other provision in this Permit to the contrary, if the Record of Decision (defined above) selects the “no build alternative” for the Virginia Avenue Tunnel Reconstruction Improvements, this Permit shall terminate and be of no further force and effect.
- C. The following shall be the process for the termination of the Permit:
 - 1. The Permit shall terminate only upon written consent executed by Permittee and Department; or
 - 2. Department shall have the right to terminate and revoke the Permit in the event of a major casualty to the Virginia Avenue Tunnel Reconstruction Improvements which damages the Virginia Avenue Tunnel Reconstruction Improvements and materially and adversely impacts (a) the physical structure and stability of the Virginia Avenue Tunnel ROW or, (b) the immediate health, safety, or welfare of the

public using Virginia Avenue, SE. Such right to terminate is subject to the right of the Permittee to cure and may be exercised by Department only if Permittee fails to remove or correct the condition that created the impact on the health, safety, or welfare of the public using Virginia Avenue, SE within a reasonable time or to commence to rebuild the Virginia Avenue Tunnel Reconstruction Improvements as approved by this Permit or as permitted by law, which shall be evidenced by the submission of an application for a building permit within one (1) year after the occurrence of the major casualty, subject to further extension due to force majeure and the application of District or federal law. If Permittee fails to comply with the requirements of this Article IV.C.2, Department may give notice of termination and revoke the Permit by the giving of thirty (30) days prior notice thereof to Permittee.

- D. DDOT and CSXT shall retain each of their respective rights under and expressly reserve and do not waive any rights or remedies under applicable federal laws and acts including Ch. 29, 78 Acts of Congress (February 5, 1867) (the "1867 Act"), 16 Stat 3 (March 18, 1869) (the "1869 Act"), 16 Stat 78 (March 25, 1870) (the "1870 Act"), 31 Stat 767 (February 12, 1901) (the "1901 Act" and collectively with the 1867 Act, 1869 Act and 1870 Act, the "Acts"), Section 10501(b) of the federal Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10501(b) and Section 20106 of the Federal Railroad Safety Act, 49 U.S.C. § 20106, all of which are expressly preserved and not waived. In furtherance of the foregoing, the parties hereto recognize that the Virginia Avenue Tunnel Reconstruction Improvements are integrally related to interstate rail commerce and railroad operations. This Permit shall not affect either of DDOT or CSXT's rights pursuant to the foregoing nor is this Permit intended to convey title or provide proof of ownership of the public right of way by Permittee.

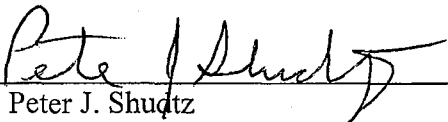
ARTICLE V Required and Standard Clauses

- A. **Assignment.** CSXT may transfer or assign the Permit in connection with a transfer or assignment of the railroad operations conducted in the Virginia Avenue Tunnel ROW.
- B. **Confidential Information.** Department and Permittee will use, restrict, safeguard and dispose of all information related to the Permit and these Terms and Conditions, in accordance with all relevant federal and local statutes, regulations, and policies.
- C. **Recitals.** The Recitals are incorporated by reference.

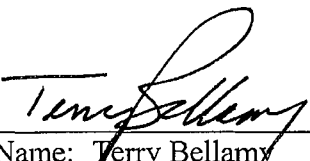
Signatures on Following Page

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on the date specified below.

CSX TRANSPORTATION, INC.

By: 
Name: Peter J. Shutz
Title: Vice-President and General Counsel

**DISTRICT OF COLUMBIA,
by the District Department of Transportation**

By: 
Name: Terry Bellamy
Title: Director