

PRELIMINARY ENGINEERING AGREEMENT

This Preliminary Engineering Agreement (“**Agreement**”) is made as of _____, 2006, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida (“CSXT”), and The Ohio Department of Transportation, (“Agency”).

EXPLANATORY STATEMENT

1. Agency wishes to facilitate the development of the proposed Route 23 bypass project near Portsmouth, OH., requiring two (2) new grade separation structures at the locations indicated above (the “**Project**”).
2. Agency has requested that CSXT proceed with certain necessary engineering and/or design services for the Project to facilitate the parties’ consideration of the Project.
3. Subject to the approval of CSXT, which approval may be withheld for any reason, the Project is to be constructed, if at all, at no cost to CSXT, under a separate construction agreement to be executed by the parties at a future date.

NOW, THEREFORE, for and in consideration of the foregoing Explanatory Statement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. Scope of Work

1.1 Generally. The work to be done by CSXT under this Agreement shall consist of: (1) the preparation or review and approval of preliminary and final engineering and design plans, specifications, drawings and other documents pertaining to the Project, (2) the preparation of cost estimates for CSXT's work in connection with the Project, and (3) the review of construction cost estimates, site surveys, assessments, studies and related construction documents submitted to CSXT by Agency for the Project (“**Engineering Work**”). Engineering Work may also include: (1) office reviews, (2) field reviews, (3) attendance at hearings and meetings, and (4) preparation of correspondence, reports, and other documentation in connection with the Project. Nothing contained in this Agreement shall oblige CSXT to perform work which, in CSXT’s opinion, is not relevant to CSXT’s participation in the Project.

1.2 Effect of CSXT Approval or Preparation of Documents. By its review, approval or preparation of plans, specifications, drawings or other documents pursuant to this Agreement (collectively, the “**Plans**”), CSXT signifies only that the Plans and improvements constructed in accordance with the Plans satisfy CSXT’s requirements. CSXT expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of Agency or any other persons of such Plans or improvements constructed in accordance with the Plans.

2. Reimbursement of CSXT Expenses.

2.1 Reimbursable Expenses. Agency shall reimburse CSXT for all costs and expenses incurred by CSXT in connection with the Engineering Work, including, without limitation: (1) all out of pocket expenses, (2) travel and lodging expenses, (3) telephone, facsimile, and mailing expenses, (4) costs for equipment, tools, materials and supplies, (5) sums paid to consultants and subcontractors by CSXT, and (6) CSXT labor, together with CSXT labor overhead percentages established by CSXT pursuant to applicable law, (collectively, “**Reimbursable Expenses**”).

2.2 Estimate. CSXT has estimated the total Reimbursable Expenses for the Project to be approximately \$ _____ (the “**Estimate**” as amended or revised). In the event CSXT anticipates that actual Reimbursable Expenses may exceed such Estimate, it shall provide Agency with the revised Estimate of total Reimbursable Expenses for Agency's approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses as reflected in the revised Estimate. CSXT may elect, by delivery of notice to Agency, to immediately cease all further Engineering Work, unless and until Agency provides such approval and confirmation.

2.3 Payment Terms.

2.3.1 Agency shall pay CSXT for Reimbursable Expenses in the amounts and on the dates set forth in the Payment Schedule attached to this Agreement as Exhibit A (the “**Payment Schedule**,” as revised from time to time pursuant to Section 2.2). CSXT agrees to submit invoices to Agency for Reimbursable Expenses. Agency shall remit payment to CSXT within thirty (30) days following delivery to Agency of such proper invoice or, if later, the payment date (if any) set forth in the Payment Schedule.

2.3.2 Following completion of all Engineering Work, CSXT shall submit to Agency a final invoice that reconciles the total Reimbursable Expenses incurred by CSXT against the total payments received from Agency. Agency shall pay to CSXT the amount by which actual Reimbursable Expenses exceed total payments, as shown by the final invoice, within thirty (30) days following delivery to Agency of the final invoice.

2.3.3 In the event that Agency fails to pay CSXT any sums due CSXT under this Agreement: (i) Agency shall pay CSXT interest as permitted by applicable law on the delinquent amount until paid in full; and (ii) CSXT may elect, by delivery of notice to Agency: (A) to immediately cease all further work on the Project, unless and until Agency pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.

2.3.4 All invoices from CSXT shall be delivered to Agency in accordance with Section 6 of this Agreement. All payments by Agency to CSXT shall be made by certified check and mailed to the following address or such other address as designated by CSXT's notice to Agency:

CSX Transportation, Inc.
P.O. Box 116651
Atlanta, GA 30368-6651

3. Appropriations. Agency represents to CSXT that: (i) Agency has obtained appropriations sufficient to reimburse CSXT for the Reimbursable Expenses encompassed by the initial Estimate; (ii) Agency shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by Agency; and (iii) Agency shall promptly notify CSXT in the event that Agency is unable to obtain such additional appropriations. It is agreed and understood by both parties that the obligations described in this agreement are subject to Section 126.07 of the Ohio Revised Code.

4. Termination.
 - 4.1 By Agency. Agency may terminate this Agreement, for any reason, by delivery of notice to CSXT. Such termination shall become effective upon the expiration of fifteen (15) calendar days following delivery of notice to CSXT or such later date designated by the notice.

 - 4.2 By CSXT. CSXT may terminate this Agreement as provided pursuant to Section 2.3.3.

 - 4.3 Consequences of Termination. If the Agreement is terminated by either party pursuant to this Section or any other provision of this Agreement, the parties understand that it may be impractical for them to immediately stop the Engineering Work. Accordingly, they agree that, in such instance a party may continue to perform Engineering Work until it has reached a point where it may reasonably and safely suspend the Engineering Work. Agency shall reimburse CSXT pursuant to this Agreement for the Engineering Work performed, plus all costs reasonably incurred by CSXT to discontinue the Engineering Work and all other costs of CSXT incurred as a result of the Project up to the time of full suspension of the Engineering Work. Termination of this Agreement or Engineering Work on the Project, for any reason, shall not diminish or reduce Agency's obligation to pay CSXT for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Engineering Work for any reason, CSXT's only remaining obligation to Agency shall be to refund to Agency payments made to CSXT in excess of Reimbursable Expenses in accordance with Section 2.

5. Subcontracts. CSXT shall be permitted to engage consultants and subcontractors to perform all or any portion of the Engineering Work.

6. Notices. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the parties at the addresses set forth below, or such other addresses as either party may designate by delivery of prior notice to the other party:

If to CSXT:	CSX Transportation, Inc. 500 Water Street, J-301 Jacksonville, Florida 32202 Attention: Mel McNichols <u>Principal Engineer</u>
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If to Agency:	Ohio Department of Transportation 1980 W. Broad Street Columbus, OH. 43223 Attn: Richard Behrendt Program Mgr./ State Rail Coordinator
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7. Project Construction. Nothing contained in this Agreement shall be deemed to constitute CSXT's approval of or consent to the construction of the Project.
8. Entire Agreement. This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.
9. Waiver. If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
10. Assignment. CSXT may assign this Agreement and all rights and obligations herein to a successor in interest, parent company, affiliate, or future affiliate. CSXT shall consult with the Agency prior to assignment. Upon assignment of this Agreement by CSXT and the assumption by CSXT's assignee of CSXT's obligations under this Agreement, CSXT shall have no further obligations under this Agreement. Agency shall not assign its rights or obligations under this Agreement without CSXT's prior written consent, which consent may be withheld for any reason.
11. Applicable Law. This Agreement shall be governed by the laws of the State of Ohio.
12. Termination by Operation of Law. This agreement shall terminate at the end of the current fiscal biennium, June 30, 2007. This agreement will automatically re-new unless terminated by the parties in accordance with Section 4.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, each by its duly authorized officers, as of the date of this Agreement.

Ohio Department of Transportation:

By: _____
 Print Name: _____
 Title: _____

CSX TRANSPORTATION, INC.

By: _____
 Print Name: _____
 Title: _____

EXHIBIT A

PAYMENT SCHEDULE

Progress Payments

Notwithstanding anything to the contrary set forth in this Agreement, Agency shall pay CSXT in arrears for its Reimbursable Expenses, rather than in advance, with only such exceptions, such as purchasing materials and equipment, as the parties mutually agree. Accordingly, Agency shall remit full payment to CSXT, with no retainage, for its Reimbursable Expenses within thirty (30) days following delivery to Agency of an invoice.