

IF A CORPORATION					
Name of Corporation					
Address					
City		State		ZIP	
Fed ID or SSN					
State Of Incorporation					
Signature					
Printed Name					
Title					
Date					
Witness Signature					
Witness Name					
Witness Title					
Date					

CONTACT FOR ADMINISTRATION	
Individual Name	
e-mail	
Telephone	
FAX	
EMERGENCY SERVICE (24hr.) PHONE	

REMITTANCE ADDRESS (if different than organizational address above)					
Address					
City		State		ZIP+4	

AFFIDAVIT OF QUALIFICATION TO CONTRACT WITH A PUBLIC BODY

Complete, Sign & Return with your bid.

I hereby affirm that: I am the _____ (insert title) and the duly authorized representative of _____ (insert organization name) whose address is _____

And, that I possess the legal authority to make this affidavit on behalf of myself and the firm for which I am acting. I affirm:

1. Except as described in Paragraph 2 below, neither I nor the above firm nor, to the best of my knowledge, any of its controlling stockholders, officers, directors, or partners, performing contracts with any public body (the State or any unit thereof, or any local governmental entity in the state, including any bi-county or multi-county entity), has:

- A. been convicted under the laws of the State of Maryland, any other state, or the United States of any of the following:
 - (1) bribery, attempted bribery, or conspiracy to bribe.
 - (2) a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract.
 - (3) fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property.
 - (4) a criminal violation of an anti-trust statute.
 - (5) a violation of the Racketeer Influenced and Corrupt Organization act, or the Mail Fraud Act, for acts in connection with the submission of bids or proposals for a public or private contract.
 - (6) a violation of Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland.
 - (7) conspiracy to commit any of the foregoing.

B. pled *nolo contendere* to, or received probation before verdict for, a charge of any offense set forth in subsection A of this paragraph.

C. been found civilly liable under an anti-trust statute of the State of Maryland, another state, or the United States for acts or omissions in connection with the submission of bids or proposals for a public or private contract.

D. during the course of an official investigation or other proceeding, admitted, in writing or under oath, an act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection A or C of this paragraph.

2. [State "none," or as appropriate, list any conviction, plea or admission as described in Paragraph 1 above, with the date, court, official or administrative body, the individuals involved and their position with the firm, and the sentence or disposition, if any]. _____

3. I further affirm that neither I nor the above firm shall knowingly enter into a contract with the Mayor and Council of Rockville under which a person or business debarred or suspended from contracting with a public body under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland, will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

I acknowledge that this Affidavit shall be furnished to the Mayor and Council of Rockville and, where appropriate, to the State Board of Public Works and to the Attorney General. I acknowledge that I am executing this Affidavit in compliance with the provisions of Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland which provides that persons who have engaged in certain prohibited activity may be disqualified, either by operation in law or after a hearing, from entering into contracts with the Mayor and Council of Rockville. I further acknowledge that if the representations set forth in this Affidavit are not true and correct, the Mayor and Council of Rockville may terminate any contract awarded, and take any other appropriate action.

Signature _____

Printed Name _____

Title _____

Date _____

NON—COLLUSION AFFIDAVIT

Complete, Sign & Return with your bid.

I hereby affirm that: I am the _____ (insert title) and the duly authorized representative of _____ (insert organization name) whose address is _____

And, that I possess the legal authority to make this affidavit on behalf of myself and the firm for which I am acting.

I affirm:

1. I am fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid;

2. Such bid is genuine and is not a collusive or sham bid

3. Neither the said bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other bidder, firm or person to submit a collusive or sham bid in connection with the Contract for which the attached bid has been submitted or to refrain from bidding in connection with Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the attached bid or of any other bidder, or to fix any overhead, profit or cost element of the bid price or the bid price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Mayor and Council of Rockville, Maryland (Local Public Agency) or any person interested in the proposed Contract; and

4. The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant. I do solemnly declare and affirm under the penalties of perjury that the contents of these affidavits are true and correct.

Signature

Printed Name


Title

Date

BIDDER'S QUESTIONNAIRE

THIS MUST BE COMPLETED AND SUBMITTED WITH YOUR BID PROPOSAL

In order to be considered for award, the Bidder must complete this questionnaire in its entirety and submit it to the Purchasing Manager within the time specified. The bidder must answer all questions. If additional space is required, attach continuation sheets and clearly indicate the question being answered. The City reserves the right to verify any information contained within this report and to request additional information or clarification. The City reserves the right to reject the bid of a bidder who has previously failed to perform properly or to complete in a timely manner contracts of a similar nature, or if investigation shows the bidder unable to perform the requirements of the Contract or if the bidder fails to complete and submit the Bidder's Questionnaire in its entirety. If additional sheets are necessary please attach to this form and reference the applicable number.

Bidder's Name			
Bidder's Address			
City		State / Zip	
Telephone		Fax Number	
Organized under the laws of State of:			
BIDDER'S AUTHORIZED REPRESENTATIVE'S SIGNATURE BELOW		DATE	
			
Print Name:			
Title:			

1. ORGANIZATION

1.1 How many years has your organization been in business as a Contractor?

1.2 How many years has your organization been in business under its present business name?

1.3 Under what **other** or former names has your organization operated?

1.4 If your organization is a corporation, answer the following:

Date of incorporation:

State of incorporation:

President's name:

Vice-president's name(s):

Secretary's name:

Treasurer's name:

1.5 If your organization is a partnership, answer the following:

Date of organization:

Type of partnership (if applicable):

Name(s) of general partner(s):

1.6 If your organization is individually owned, answer the following:

Date of organization:

Name of owner:

1.7 If the form of your organization is other than those listed above, describe it and name the principals:

2. LICENSING

2.1 List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.

3. EXPERIENCE

3.1 List the categories of work that your organization normally performs with its own forces.

3.2 Has your organization ever failed to complete any work awarded to it? If yes, provide details on a separate sheet. NO: _____ YES: _____

3.3 Are there any judgment, claims, arbitration, proceedings or suits pending or outstanding against your organization or its officers? If yes, provide details. NO: _____ YES: _____

3.4 Within the past five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? If yes, provide details. NO: _____ YES: _____

3.5 Within the last two years, has any owner of any project threatened to impose or imposed liquidated damages against your organization? If yes, provide details. NO: _____ YES: _____

3.6 Within the last two years, has your organization constructed any projects where the date of substantial completion was more than 30 days after the contract completion date as determined by the contract and any changes orders? If yes, provide details. NO: _____ YES: _____

3.7 Within the last 2 years, has your organization constructed any projects where the change orders exceeded 10% of the contract price? If yes, provide details. NO: _____ YES: _____

3.8 State the total worth of work in progress and under contract:

In Progress	\$
Under Contract	\$

3.9 State the average annual amount of construction work performed during the past five years:

\$

4. FINANCIAL

4.1 State that you will provide a copy of your firm's audited financial statements for the past two (2) years, if requested, by the City of Rockville. YES: _____ NO: _____

4.2 Is your firm currently for sale or involved in any transaction to expend or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms. NO: _____ YES: _____

4.3 Is your firm currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution. NO: _____ YES: _____

5. SAFETY

5.1 Has your organization been cited by OSHA (or State equivalent) in the past five years? If so, provide a copy of the citation(s). NO: _____ YES: _____

5.2 Has your organization experienced a work-related fatality in the past 10 years? If so, provide details. NO: _____ YES: _____

5.3 Provide copies of the last 3-years OSHA Form 300A or OSHA 300 Log. Please omit any personally identifiable or confidential information.

5.4 Provide a copy of your current Workers' Compensation Experience Rating from the NCCI.

5.5 Does your organization have a written safety program? NO: _____ YES: _____

5.5.1 Describe the safety training programs offered to all employees on the elements of the safety program.

5.6.2 When was the last year the written safety program was audited or updated?

5.6.3 Provide an overview of the elements of your written safety program (i.e., table of contents). (This may be returned to non-awarded bidders.)

5.7 Does your organization hire subcontractors? NO: _____ YES: _____

5.7.1 Does your organization conduct pre-contractor qualification of these subcontractors specifically focusing on their safety performance? NO: _____ YES: _____

5.7.2 Describe how your organization manages the safety performance of subcontractors on the jobsite.

5.7.3 Does your organization have a written policy addressing subcontractor's responsibility for complying with OSHA regulations on jobsites? (i.e., OSHA's multi-employer citation policy).

NO: _____ YES: _____

CERTIFICATION

The above statements are certified to be true and accurate.

BY: _____

Signature

Date

Print Signature/Title

STORM WATER MANAGEMENT RETROFIT CONSTRUCTION EXPERIENCE

Reference Form

THIS MUST BE COMPLETED AND SUBMITTED WITH YOUR BID PROPOSAL

The City of Rockville reserves the right to reject bids from any company not meeting the minimum qualifications. The Bidder shall be a competent and experienced contractor with an established reputation within the community. The bidder shall have performed similar work for a minimum period of three (3) years. He shall furnish a representative list of five (5) projects involving work as specified, two of which shall be the last jobs completed.

Bidder Name	
-------------	--

#1 Project Name			
Project Owner's Name			
Project Site Address			
Project Owner's Contact Name			
Project Owner's Contact Telephone			
Project Owner's Contact e-mail			
Contract Value	\$		
Scheduled completion date		Percent complete	
Description of Project Work			
Name of your project foreman			

#2 Project Name			
Project Owner's Name			
Project Site Address			
Project Owner's Contact Name			
Project Owner's Contact Telephone			
Project Owner's Contact e-mail			
Contract Value	\$		
Scheduled completion date		Percent complete	
Description of Project Work			
Name of your project foreman			

#3 Project Name			
Project Owner's Name			
Project Site Address			
Project Owner's Contact Name			
Project Owner's Contact Telephone			
Project Owner's Contact e-mail			
Contract Value	\$		
Scheduled completion date		Percent complete	
Description of Project Work			
Name of your project foreman			

BIDDER REFERENCE FORM

THIS MUST BE COMPLETED AND SUBMITTED WITH YOUR BID PROPOSAL

Be prepared to submit a listing of five recent projects completed by your firm that can substantiate past work performance and experience in the type of work required for this contract. The City may make such investigations as it deems necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the City all such information and data for this purpose as the City may request.

Bidder Name	
-------------	--

#1 Reference Organization Name			
Address			
Contact Name			
Contact's Telephone			
Contact's e-mail			
Contract Value	\$		
Scheduled completion date		Percent complete	
Percent of work performed by Bidder's own forces		Actual completion date	
Name of Bidder's project supervisor			
Description of Project Work			

#2 Reference Organization Name			
Address			
Contact Name			
Contact's Telephone			
Contact's e-mail			
Contract Value	\$		
Scheduled completion date		Percent complete	
Percent of work performed by Bidder's own forces		Actual completion date	
Name of Bidder's project supervisor			
Description of Project Work			

#3 Reference Organization Name			
Address			
Contact Name			
Contact's Telephone			
Contact's e-mail			
Contract Value	\$		
Scheduled completion date		Percent complete	
Percent of work performed by Bidder's own forces		Actual completion date	
Name of Bidder's project supervisor			
Description of Project Work			

#4 Reference Organization Name			
Address			
Contact Name			
Contact's Telephone			
Contact's e-mail			
Contract Value	\$		
Scheduled completion date		Percent complete	
Percent of work performed by Bidder's own forces		Actual completion date	
Name of Bidder's project supervisor			
Description of Project Work			

#5 Reference Organization Name			
Address			
Contact Name			
Contact's Telephone			
Contact's e-mail			
Contract Value	\$		
Scheduled completion date		Percent complete	
Percent of work performed by Bidder's own forces		Actual completion date	
Name of Bidder's project supervisor			
Description of Project Work			

SUB-CONTRACTOR REFERENCE FORM

THIS MUST BE COMPLETED AND SUBMITTED WITH YOUR BID PROPOSAL

Be prepared to submit a separate reference form for EACH proposed subcontractor.

Subcontractor's Name	
Address	
Telephone	
Subcontractor's Contact Name	
Description of Work to be Subcontracted	

#1 Reference Organization Name			
Address			
Contact Name			
Contact Name Telephone			
Contact Name e-mail			
Contract Value	\$		
Scheduled completion date		Percent complete	
Description of Project Work			

SUB-CONTRACTOR REFERENCE FORM

#2 Reference Organization Name			
Address			
Contact Name			
Contact Name Telephone			
Contact Name e-mail			
Contract Value	\$		
Scheduled completion date		Percent complete	
Description of Project Work			

#3 Reference Organization Name			
Address			
Contact Name			
Contact Name Telephone			
Contact Name e-mail			
Contract Value	\$		
Scheduled completion date		Percent complete	
Description of Project Work			



SAMPLE
Do Not Complete or Return

CONTRACT PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That we
(1) _____
_____ a (2) _____
hereinafter called "Principal" and
(3) _____
of _____, State of _____ hereinafter called the "Surety", are
held and firmly bound unto (4) The Mayor and Council of Rockville, Maryland, hereinafter called
"City", in the penal sum of *(100% of Contract Amount)* _____ (\$) in lawful money of the United
States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs,
executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a
certain contract with the City, dated the _____ day of _____, 2017, a copy of which
is hereto attached and made a part hereof for the construction of IFB 15-16 BRIDGE
IMPROVEMENTS: EDMONSTON DRIVE BRIDGE (MR-01) OVER CSX/WMATA RAIL

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the
undertakings, covenants, terms, conditions, and agreements of said contract during the original term
thereof, and any extensions thereof which may be granted by the City, with or without notice to the
Surety, and if he shall satisfy all claims and demands incurred under such contract, and shall fully
indemnify and save harmless the City from all costs and damages which it may suffer by reason of
failure to do so, and shall reimburse and repay the City all outlay and expense which the City may
incur in making good any default, then this obligation shall be void; otherwise to remain in full force
and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees
that no change, extension of time, alteration or addition to the terms of the contract or to the work to
be performed thereunder or the specifications accompanying the same shall in any way affect its
obligation on this bond, and it does hereby waive notice of any such change, extension of time,
alteration or addition to the terms of the contract or to the work or to the specifications.

CONTRACT PERFORMANCE BOND

PROVIDED, FURTHER, that no final settlement between the City and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in two (2) counterparts, each one of which shall be deemed an original, this the _____ day of _____, 2017.

ATTEST:

Corporate Secretary or Asst. Secretary

(Print or Type Name and Title)

(Address)

Principal
By _____ (Seal)
President or Vice President

(Print or Type Name and Title)

(Address)

ATTEST:

Witness as to Surety

(Print or Type Name and Title)

(Address)

Surety
By _____ (Seal)
Attorney-in-Fact

(Print or Type Name)

(Address)

NOTE: Date of Bond must not be prior to date of Contract.

- (1) Correct name of Contractor
- (2) A Corporation, a Partnership or an Individual
- (3) Name of Surety
- (4) Name of City
- (5) If Contract is Partnership, all partners should execute bond



SAMPLE
Do Not Complete or Return
CONTRACT PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That we (1) _____
_____ a (2) _____
hereinafter called "Principal" and (3) _____
of _____, State of _____ hereinafter called the
"Surety", are held and firmly bound unto (4) The Mayor and Council, of Rockville, Maryland, hereinafter
called "City", in the penal sum of (*100% of Contract Amount*) _____ (\$____) in lawful money of the United
States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors,
administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain
contract with the City, dated the _____ day of _____ 2017, a copy of which is hereto attached
and made a part hereof for the construction of: IFB 15-16 BRIDGE IMPROVEMENTS: EDMONSTON
DRIVE BRIDGE (MR-01) OVER CSX/WMATA RAIL.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms,
subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work
provided for in such contract, and any authorized extension or modification thereof, including all amounts
due for materials, lubricants, oil, gasoline, coal, repairs on machinery, equipment and tools, consumed or
used in connection with the construction of such work, and all insurance premiums on said work, and for
all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void;
otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no
change, extension of time, alteration or addition to the terms of the contact or to the work to be performed
thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond,
and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of
the contact or to the work or to the specifications.

CONTRACT PAYMENT BOND

PROVIDED, FURTHER, that no final settlement between the City and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in two (2) counterparts, each one of which shall be deemed an original, this the ____ day of _____ 2017.

ATTEST:	_____
	Principal
_____	By _____(Seal)
Corporate Secretary or Asst. Secretary	President or Vice President
_____	_____
(Print or Type Name and Title)	(Print or Type Name and Title)

	(Address)

ATTEST:	_____
	Surety
_____	By _____(Seal)
Witness as to Surety	Attorney-in-Fact
_____	_____
(Print or Type Name and Title)	(Print or Type Name)
_____	_____
(Address)	(Address)

- NOTE: Date of Bond must not be prior to date of Contract.
- (1) Correct name of Contractor
 - (2) A Corporation, a Partnership or an Individual
 - (3) Name of Surety
 - (4) Name of City
 - (5) If Contract is Partnership, all partners should execute bond.



SAMPLE ONLY
Do Not Complete Or Return

STANDARD FORM OF AGREEMENT BETWEEN THE CITY OF ROCKVILLE
AND CONTRACTOR

This Agreement, made this _____ day of _____, 2017, by and between

THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND, hereinafter referred to as the "COUNCIL" and

(A) _____ hereinafter referred to as the "CONTRACTOR".

WITNESSETH, that the CONTRACTOR and the COUNCIL for the consideration hereinafter named, agree as follows:

ARTICLE 1. The COUNCIL agrees to pay the CONTRACTOR for the performance of the contract the sum

of _____ dollars
(\$ _____)

ARTICLE 2. The CONTRACTOR agrees to furnish separate 100% performance and payment bonds in such form as shall be acceptable to the COUNCIL.

ARTICLE 3. The CONTRACTOR agrees to furnish all of the machines, equipment, material, and/or labor described in the specifications entitled Invitation For Bid #23-15 Bridge Improvements: Wootton Parkway Bridge (MR-04) over Watts Branch.

ARTICLE 4. The COUNCIL may make any alterations, deviations, additions or omissions from the aforesaid specifications, which it may deem proper, without affecting or making void this contract; and in such cases the COUNCIL shall value or appraise such alterations and recommend the amount added to or deducted from the amount herein agreed to be paid to the CONTRACTOR for the excess or deficiency occasioned by such alterations. In case any alterations or deviations are made, such further time may be allowed for completion of the work, caused by such alterations or deviations as the purchasing agent or an appropriate department head of the City of Rockville shall decide to be reasonable.

ARTICLE 5. If the CONTRACTOR shall be adjudged bankrupt or if he shall make a general assignment for the benefit of his creditors, or if a Receiver shall be appointed on account of his insolvency, or if he shall persistently or repeatedly refuse or shall fail, except in case where extension of time is provided, to supply enough properly skilled workmen or proper materials or if he should fail to make prompt payment to subcontractors for materials or labor, or disregard law, ordinances or the instructions of the COUNCIL or otherwise be guilty of substantial violation of any provision of this Agreement, then the COUNCIL may, without prejudice to any other right or remedy, and after giving the CONTRACTOR reasonable notice, terminate the employment of the CONTRACTOR and take possession of the machines, equipment and material already delivered or in process of delivery.

ARTICLE 6. The CONTRACTOR and the COUNCIL agree that this Agreement, the Invitation for Bid or the request for quotation and all of the specifications therewith and all modifications thereof constitute the Contract, and that they are fully a part of the Contract as if hereto attached or herein repeated and that for themselves and each of them, their successors, personal representatives and assigns hereby agree to the performance of the covenants herein contained.

ARTICLE 7. The CONTRACTOR, with the execution of this Contract, makes assurance that all materials necessary for the completion of this project are now available to him or will be available so as not to cause delay in the time specified for completion, nor will there be any further expense to the COUNCIL by reason of any special expense imposed by his supplier or fabricator after this Contract is executed.

ARTICLE 8. The CONTRACTOR at all times shall observe and comply with all Federal and State Laws and local laws, ordinances and regulations in any manner affecting the conduct of the work; and all such other orders or decrees as exist at present and those which may be enacted later, of bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the Mayor and Council and all of its officers, agents, and servants against any claim or liability arising from or based on the violation of any such laws, by-laws, ordinances, regulations, orders or decrees whether by himself or his employees.

The CONTRACTOR shall indemnify and save harmless the Mayor and Council of Rockville, Maryland, and all its officers, agents and servants from all suits, actions and damages and costs, of every name and description to which the COUNCIL may be subjected or put by reason of injury to persons or property as a result of the work, whether caused by negligence or carelessness on the part of the CONTRACTOR, his servants or agents or to other cause.

IN WITNESS WHEREOF, the said

A) _____
_____ and the COUNCIL have
caused these presents to be signed and sealed.

For Corporations.

Corporation: _____

*By: _____ (Seal)

(Either president or vice-president. If other person is authorized, authorization in form of corporate resolution must be attached.)

Witness: _____

(Should be secretary or Asst. secretary.)

***Corporate seal must be impressed through name of person signing for corporation.**

For individuals or partnerships.

Name: _____ (Seal)

(Either owner or partner)

Witness: _____

MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND

By: _____ Date: _____
Robert DiSpirito, City Manager

ATTEST

By: _____ Date: _____
Kathleen A. Conway, City Clerk/Director of Council Operations

Approved as to form and legality:

_____ Date: _____
City Attorney

NOTE (A): The CONTRACTOR shall enter the exact name of the business. An individual trading as a company shall enter: John Doe dba Doe Masonry Company.

Chapter 31B – Noise Control

- § 31B-2. Definitions.
- § 31B-3. Regulations.
- § 31B-4. Noise control advisory board.
- § 31B-5. Noise level and noise disturbance violations.
- § 31B-6. Noise level and noise disturbance standards for construction.
- § 31B-7. Measurement of sound.
- § 31B-8. Noise sensitive areas.
- § 31B-9. Leafblowers.
- § 31B-10. Exemptions.
- § 31B-11. Waivers.
- § 31B-12. Enforcement and penalties.

Sec. 31B-1. Declaration of policy.

- (a) The County Council finds that excessive noise harms public health and welfare and impairs enjoyment of property. The intent of this Chapter is to control noise sources to protect public health and welfare and to allow the peaceful enjoyment of property. This Chapter must be liberally construed to carry out this intent.
- (b) The Department of Environmental Protection administers this Chapter.
 - (1) The Department must coordinate noise abatement programs of all County agencies, municipalities, and regional agencies.
 - (2) A County agency, municipality in which this Chapter applies, or regional authority subject to County law must not adopt a standard or regulation that is less stringent than this Chapter or any regulation adopted under this Chapter.
 - (3) The Director may form an Interagency Coordinating Committee to assist the Director in coordinating noise control policy. If the Director forms the Committee, the Director must designate an individual to chair the Committee. The members of the Committee should be designated by County, local, and regional agencies that the Director invites to participate.
 - (4) The Department must establish procedures to identify and reduce noise sources when the County plans and issues permits, variances, exemptions, or approvals.
 - (5) The Department should make recommendations to the County Executive, County Council, and Planning Board regarding noise control policy, regulations, enforcement, and noise sensitive areas. (1996 L.M.C., ch. 32, § 1.)

Editor's note—See County Attorney Opinion dated 3/16/92 explaining that the Washington Metropolitan Area Transportation Authority (esp. Metrorail) is subject to the County's noise control law, although an exemption may be obtained if it is in the public interest.

Sec. 31B-2. Definitions.

In this Chapter, the following words and phrases have the following meanings:

- (a) *Construction* means temporary activities directly associated with site preparation, assembly, erection, repair, alteration, or demolition of structures or roadways.
- (b) *dba* means decibels of sound, as determined by the A-weighting network of a sound level meter or by calculation from octave band or one-third octave band data.
- (c) *Daytime* means the hours from 7 a.m. to 9 p.m. on weekdays and 9 a.m. to 9 p.m. on weekends and holidays.

- (d) Decibel means a unit of measure equal to 10 times the logarithm to the base 10 of the ratio of a particular sound pressure squared to the standard reference pressure squared. For this Chapter, the standard reference pressure is 20 micropascals.
- (e) *Department* means the Department of Environmental Protection.
- (f) *Director* means the Director of the Department of Environmental Protection or the Director's authorized designee.
- (g) *Enforcement officer* means:
 - (1) for a noise originating from any source:
 - (A) an employee or agent of the Department designated by the Director to enforce this Chapter;
 - (B) a police officer; or
 - (C) a person authorized under Section 31B-12(a) to enforce this Chapter;
 - (D) a person authorized by a municipality to enforce this Chapter; or
 - (2) for a noise originating from an animal source, the Director of the Animal Services Division in the Police Department or the Director's authorized designee.
- (h) *Impulsive noise* means short bursts of a acoustical energy, measured at a receiving property line, characterized by a rapid rise to a maximum pressure followed by a somewhat slower decay, having a duration not greater than one second and a field crest factor of 10 dBA or more. Impulsive noise may include, for example, noise from weapons fire, pile drivers, or punch presses.
- (i) *Leaf blower* means any portable device designed or intended to blow, vacuum, or move leaves or any other type of unattached debris or material by generating a concentrated stream of air. Leafblower includes devices or machines that accept vacuum attachments.
- (j) *Nighttime* means the hours from 9 p.m. to 7 a.m. weekdays and 9 p.m. to 9 a.m. weekends and holidays.
- (k) *Noise* means sound, created or controlled by human activity, from one or more sources, heard by an individual.
- (l) *Noise area* means a residential or non-residential noise area:
 - (1) *Residential noise area* means land in a zone established under Section 59-C-1.1, Section 59-C-2.1, Division 59-C-3, Section 59-C-6.1, Section 59-C-7.0, Section 59-C-8.1, Section 59-C-9.1 for which the owner has not transferred the development rights, or Section 59-C-10.1, or land within similar zones established in the future or by a political subdivision where Chapter 59 does not apply.
 - (2) *Non-residential noise area* means land within a zone established under Section 59-C-4.1, Section 59-C-5.1, Section 59-C-9.1 for which the owner has transferred the development rights, or Division 59-C-12, or land in similar zones established in the future or by a political subdivision where Chapter 59 does not apply.
- (m) *Noise disturbance* means any noise that is:
 - (1) unpleasant, annoying, offensive, loud, or obnoxious;
 - (2) unusual for the time of day or location where it is produced or heard; or
 - (3) detrimental to the health, comfort, or safety of any individual or to the reasonable enjoyment of property or the lawful conduct of business because of the loudness, duration, or character of the noise.
- (n) *Noise sensitive area* means land designated by the County Executive as a noise sensitive area under Section 31B-8.

- (o) *Noise-suppression plan* means a written plan to use the most effective noise-suppression equipment, materials, and methods appropriate and reasonably available for a particular type of construction.
- (p) *Person* means an individual, group of individuals, corporation, firm, partnership, or voluntary association; or a department, bureau, agency, or instrument of the County or any municipality, or of any other government to the extent allowed by law.
- (q) *Prominent discrete tone* means a sound, often perceived as a whine or hum, that can be heard distinctly as a single pitch or a set of pitches. A prominent discrete tone exists if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the 2 contiguous one-third octave bands by:
 - (1) 5 dB for center frequencies of 500 Hz and above;
 - (2) 8 dB for center frequencies between 160 and 400 Hz; or
 - (3) 15 dB for center frequencies less than or equal to 125 Hz.
- (r) *Qualifying performing arts facility* means the outdoor area of a building, outdoor seasonal, temporary, or permanent stage, or other clearly defined outdoor area or space, which is:
 - (1) used for an outdoor arts and entertainment activity; and
 - (2) owned or operated by the County; and
 - (3) so designated by the County Executive in an Executive Order published in the County Register. The Executive may revoke a designation at any time by publishing an Executive Order revoking the designation in the County Register.
- (s) *Receiving property* means any real property where people live or work and where noise is heard, including an apartment, condominium unit, or cooperative building unit.
- (t) *Sound* means an auditory sensation evoked by the oscillation of air pressure.
- (u) *Source* means any person, installation, device, or animal causing or contributing to noise. (1996 L.M.C., ch. 32, § 1; 2001 L.M.C., ch. 2, § 1.)

Editor's note—See County Attorney Opinion dated 10/6/00 indicating that long-term parking on public streets is prohibited in certain circumstances, but not based on the size of the vehicle. See County Attorney Opinion dated 3/16/92 explaining that the Washington Metropolitan Area Transportation Authority (esp. Metrorail) is subject to the County's noise control law, although an exemption may be obtained if it is in the public interest.

Sec. 31B-3. Regulations.

The County Executive may establish noise control regulations and standards as necessary to accomplish the purposes and intent of this Chapter. Any regulation must be at least as stringent as this Chapter. The Executive by regulation may set fees that are sufficient to offset the costs of Department reviews or other actions required or authorized by this Chapter. (1996 L.M.C., ch. 32, § 1.)

Sec. 31B-4. Noise control advisory board.

- (a) A Noise Control Advisory Board must advise the County Executive, Director, County Council, and Planning Board on noise control issues, including administration and enforcement of this Chapter.
- (b) The Board consists of 11 members appointed by the Executive and confirmed by the Council.
- (c) The Board must elect one member as Chair and another member as Vice-Chair to serve at the pleasure of the Board. The Board must meet at the call of the chairperson as required to perform its duties, but not less than once each quarter. A majority of the members of the

Board constitutes a quorum for transacting business. The Board may act by a majority vote of those present.

- (d) At least every third year, the Board must evaluate the effectiveness of the County's noise control program and recommend any improvements to the Director, County Executive, County Council, and Planning Board.
- (e) No later than March 1 each year, the Chair of the Board must report to the Director, County Executive, County Council, and Planning Board on activities and actions the Noise Control Advisory Board took during the previous calendar year. (1996 L.M.C., ch. 32, § 1; 1999 L.M.C., ch. 2, § 1.)

Editor's note-1999 L.M.C., ch. 2, § 1, increased the number of Board members from 7 to 11. 1999 L.M.C., ch. 2, § 2, states:

Sec. 2. Transition.

- (a) The terms of the 4 members of the Noise Control Advisory Board added by this Act end:
 - (1) for 1 member, on September 30, 1999, and every third year thereafter;
 - (2) for 2 members, on September 30, 2000, and every third year thereafter; and
 - (3) for 1 member, on September 30, 2001, and every third year thereafter.
- (b) When appointing the first individual to serve in one of the 4 new positions, the County Executive must designate the term in subsection (a) for which the Executive is appointing the individual.
- (c) This Act does not affect the term of any current member of the Board.
Cross reference-Boards and commissions generally, § 2-141 et seq.

Sec. 31B-5. Noise level and noise disturbance violations.

- (a) *Maximum allowable noise levels.*
 - (1) Except as otherwise provided in Sections 31B-6(a) and 31B-8, a person must not cause or permit noise levels that exceed the following levels:

<i>Maximum Allowable Noise Levels (dBA) for Receiving Noise Areas</i>		
	<i>Daytime</i>	<i>Nighttime</i>
Non-residential noise area	67	62
Residential noise area	65	55

- (2) A person must not cause or permit the emission of a prominent discrete tone or impulsive noise that exceeds a level, at the location on a receiving property where noise from the source is greatest, that is 5 dBA lower than the level set in paragraph (1) for the applicable noise area and time.
 - (3) Sound that crosses between residential and non-residential noise areas must not exceed the levels set in paragraph (1) for residential noise areas.
- (b) *Noise disturbance.* A person must not cause or permit noise that creates a noise disturbance.
- (c) *Examples.* The following examples illustrate common noise-producing acts that violate this section if they exceed the noise level standards set in subsection (a) or create a noise

disturbance. The examples are illustrative only and do not limit or expand the noise level or noise disturbance standards of this section:

- (1) Sounding a horn or other signaling device on any motor vehicle on private property except:
 - (A) in an emergency; or
 - (B) as a danger warning signal during daytime hours if the device complies with noise level limits.
- (2) Operating a sound-producing device on public streets for commercial advertising or to attract public attention.
- (3) Selling anything by outcry.
- (4) Loading, unloading, opening, closing or otherwise handling containers, building materials, construction equipment, or similar objects.
- (5) Operating a device that produces, reproduces, or amplifies sound.
- (6) Allowing an animal to create a noise disturbance.
- (7) Operating power equipment mounted on a motor vehicle or operating other devices powered by a generator or a motor vehicle. (1996 L.M.C., ch. 32, § 1.)

Editor's note—See County Attorney Opinion dated 10/6/00 indicating that long-term parking on public streets is prohibited in certain circumstances, but not based on the size of the vehicle. See County Attorney Opinion dated 3/16/92 explaining that the Washington Metropolitan Area Transportation Authority (esp. Metrorail) is subject to the County's noise control law, although an exemption may be obtained if it is in the public interest.

Sec. 31B-6. Noise level and noise disturbance standards for construction.

- (a) *Maximum allowable noise levels for construction.*
 - (1) A person must not cause or permit noise levels from construction activity that exceed the following levels:
 - (A) From 7 a.m. to 5 p.m. weekdays:
 - (i) 75 dBA if the Department has not approved a noise-suppression plan for the activity; or
 - (ii) 85 dBA if the Department has approved a noise-suppression plan for the activity.
 - (B) The level specified in Section 31B-5 at all other times.
 - (2) Construction noise levels must be measured at the location, at least 50 feet from the source, on a receiving property where noise from the source is greatest.
 - (3) The Department must by regulation establish requirements for noise-suppression plans and adopt procedures for evaluating and approving plans. The regulations must provide that, at least 10 days before approving a noise-suppression plan, the Director must provide public notice reasonably calculated to reach at least a majority of households that might be affected by the construction activity noise levels above 75 dBA.
- (b) *Construction noise disturbance.* The prohibition on noise disturbance in Section 31B- 5(b) applies to construction activities, notwithstanding subsection (a).
- (c) *Examples.* The following examples illustrate common construction noise-producing acts that violate this section if they exceed the noise level standards set in subsection (a) or create a noise disturbance. The examples are illustrative only and do not limit or expand the construction noise level or noise disturbance standards of this section:
 - (1) Delivering materials or equipment, or loading or unloading during nighttime hours in a residential noise area.
 - (2) Operating construction equipment with audible back-up warning devices during nighttime hours. (1996 L.M.C., ch. 32, § 1.)

Sec. 31B-6A. Seasonal noise level standard for qualifying outdoor arts and entertainment activities.

- (a) Each outdoor arts and entertainment activity held at a qualifying performing arts facility must not exceed the following noise decibel limits:
 - (1) from 11 a.m. to 11 p.m. during April 1 through October 31, 75 dBA, as measured on the receiving property; and
 - (2) at all other times, the maximum allowable noise level set in Section 31B-5.
- (b) A qualifying performing arts facility which has complied with this Section must not cause or permit noise levels from an outdoor arts and entertainment activity to exceed the standards in subsection (a).
- (c) Any outdoor arts and entertainment activity conducted at a qualifying performing arts facility which has complied with this Section must not be cited as causing a noise disturbance.
- (d) The Department must annually advise the Executive and Council, and the operator of each qualifying performing arts facility, whether the noise levels specified in this Section remain appropriate for that facility and the extent of compliance with those levels. (2011 L.M.C., ch. 7, § 1)

Sec. 31B-7. Measurement of sound.

- (a) The Department must issue regulations establishing the equipment and techniques it will use to measure sound levels. The Department may rely on currently accepted standards of recognized organizations, including the American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), and the United States Environmental Protection Agency.
- (b) For multiple sources of sound, the Department may measure sound levels at any point to determine the source of a noise. (1996 L.M.C., ch. 32, § 1.)

Sec. 31B-8. Noise sensitive areas.

- (a) The County Executive may designate by regulation land within any geographical area as a noise sensitive area to protect public health, safety, and welfare. The regulation may prohibit certain noise producing activities in the noise sensitive area.
- (b) A regulation under subsection (a) must:
 - (1) describe the area by reference to named streets or other geographic features;
 - (2) explain the reasons for the designation;
 - (3) establish specific noise limits or requirements that apply in the noise sensitive area; and
 - (4) describe by example or enumeration activities or sources that violate the limits or requirements.
- (c) A regulation under subsection (a) may establish limits or requirements for a noise sensitive area that are more stringent than those that otherwise would apply to the area under this Chapter. (1996 L.M.C., ch. 32, § 1.)

Sec. 31B-9. Leafblowers.

- (a) Except as provided in this section, a person must not sell, buy, offer for sale, or use a leafblower at any time that has an average sound level exceeding 70 dBA at a distance of 50

feet. This requirement is in addition to any other noise level or noise disturbance standard that applies under this Chapter.

- (b) An individual who owns or occupies a residence in a residential noise area may use at the individual's residence a leafblower bought or manufactured before July 1, 1990, until July 1, 1998, even if it exceeds the standard in subsection (a). After July 1, 1998, a person must not use any leafblower that violates the standard in subsection (a).
- (c) The Department must apply the standard in subsection (a) in accordance with the most current leaf-blower testing standard of the American National Standards Institute (ANSI).
- (d) The Department may inspect, and on its request a person must produce, any leafblower that is sold, offered for sale, or used in the County, to determine whether the leafblower complies with this section. A person who relies in good faith on a manufacturer's written representation of the sound level of a leafblower that has not been modified is not subject to a penalty for violating this section. (1996 L.M.C., ch. 32, § 1.)

Sec. 31B-10. Exemptions.

- (a) This Chapter does not apply to:
 - (1) agricultural field machinery used and maintained in accordance with the manufacturer's specifications;
 - (2) emergency operations by fire and rescue services, police agencies, or public utilities and their contractors;
 - (3) a source or condition expressly subject to any State or federal noise-control law or regulation that is more stringent than this Chapter;
 - (4) sound, not electronically amplified, created between 7 a.m. and 11 p.m. by sports, amusements, or entertainment events or other public gatherings operating according to the requirements of the appropriate permit or licensing authority. This includes athletic contests, carnivals, fairgrounds, parades, band and orchestra activities, and public celebrations.
- (b) The County Executive may issue regulations exempting from Section 31B-5 sources associated with routine residential living during daytime hours, such as home workshops, power tools, and power lawn and garden equipment, when used in accordance with manufacturer specifications. This exception does not apply to repairs or maintenance on a motor vehicle that is not registered for use on public roads. (1996 L.M.C., ch. 32, § 1.)

Sec. 31B-11. Waivers.

- (a) *Temporary waiver.*
 - (1) The Director may waive any part of this Chapter for a temporary event if the noise the event will create or cause in excess of the limits established under this Chapter is offset by the benefits of the event to the public.
 - (2) When the Director receives an application under this subsection, the Director must provide public notice of the application reasonably calculated to reach at least a majority of households that might be affected by noise levels anticipated for the event. The Director must not approve an application under this subsection less than 10 days after the public notice.
- (b) *General waiver.*
 - (1) The Director may waive any part of this Chapter if the Director determines that compliance in a particular case is not practical and would impose undue hardship.
 - (2) When the Director receives an application under this subsection, the Director must schedule a hearing on the application within 60 days.
 - (3) At least 30 days before the hearing, the applicant must advertise the hearing by:

- (A) placing a display advertisement in a newspaper of general circulation in the community where the source that is the subject of the application is located; and
 - (B) posting a sign at the location of the source.
 - (4) Based on evidence presented at the hearing, the Director may grant a waiver for up to 3 years, under terms and conditions appropriate to reduce the impact of the exception.
 - (5) The Director may renew a waiver granted under this subsection if the applicant shows that the circumstances supporting the original waiver have not changed.
- (c) *Violation of waiver.* The Director may suspend, modify, or revoke a waiver granted under this section if a person violates the terms or conditions of the waiver.
- (d) *Regulations and fees.* The County Executive must issue regulations implementing this section that:
- (1) set the procedures and fees to apply for a waiver under subsections (a) or (b);
 - (2) require the applicant to use the best technology and strategy reasonably available to mitigate noise, as determined by the Director;
 - (3) allow temporary waivers under subsection (a) of no more than 30 days, renewable at the discretion of the Director no more than twice; and
 - (4) specify the requirements for the hearing advertisement and sign required under subsection (b)(3). (1996 L.M.C., ch. 32, § 1.)

Sec. 31B-12. Enforcement and penalties.

- (a) The Department must enforce this Chapter. The County Executive may delegate in writing the authority to enforce parts of this Chapter to the Police Department or any other Executive agency.
- (b) A violation of this Chapter is a Class A violation. Each day a violation continues is a separate offense. A violation of Section 31B-6 is a separate offense in addition to any other violation of this Chapter arising from the same act or occurrence.
- (c) The Department may seek injunctive or other appropriate judicial relief to stop or prevent continuing violations of this Chapter.
- (d) If the Director finds that a person has violated this Chapter, the Director may issue a notice of violation and corrective order to the person. The notice must contain the following information:
 - (1) the section of this Chapter that the person violated;
 - (2) the date, nature, and extent of the violation;
 - (3) the action required to correct the violation;
 - (4) if the Director requires a compliance plan, the deadline for submitting the plan to the Director; and
 - (5) the deadline for compliance.
- (e) The compliance plan referred to in subsection (d)(4) must establish a schedule for achieving compliance with this Chapter, as specified in the corrective order. A compliance plan, and amendments to a plan, are not effective until the Director approves the plan or amendment. An action allowed under an approved compliance plan does not violate this Chapter.
- (f) An enforcement officer may issue a civil citation for any violation of this Chapter if the enforcement officer:
 - (1) witnesses the violation; or

- (2) receives complaints from at least 2 witnesses of a noise disturbance. Complaints by 2 witnesses are required to issue a citation under paragraph (2), but are not required to prove that a person violated this Chapter.
- (g) The Director of the Animal Services Division may initiate administrative action before the Animal Matters Hearing Board instead of an enforcement officer issuing a citation under subsection (f) for a violation of this Chapter originating from an animal source.
- (h) A person aggrieved by any action or order of the Director under Sections 31B-9 and 31B-11 may seek reconsideration within 10 days after the date of the action or order. A request for reconsideration must be in writing to the Director, and must specify the date and nature of the action or order, the injury sustained, the remedy requested, and the legal basis for the remedy. If the Director finds that there are material facts in dispute, the Director may refer the matter to a hearing officer under the procedures specified in Chapter 2A. If the Director finds that there are no material facts in dispute, the Director must make a final decision on the request for reconsideration in writing within 45 days after receiving the request. The aggrieved person may appeal from the Director's final decision within 30 days after the Director issues the decision, as provided in Section 2A-11.
- (i) (1) A person responsible for a violation of Section 31B-6 and the person responsible for the management or supervision of the construction site where the source of the violation is located are jointly and severally liable for the violation.
 (2) For recurring violations of Section 31B-6 on the same construction site, in addition to any other penalty under this Chapter, the Director may issue a stop work order, as provided in Section 8-20, for up to:
 (A) 3 consecutive working days for a second violation within 30 days after the first violation;
 (B) 5 consecutive working days for a third violation within 60 days after the first violation; and
 (C) 7 working days per offense for the fourth and subsequent violations within a 120-day period.
 (3) This Chapter does not limit the Director's authority under Chapter 8 to revoke a permit or approval issued under that Chapter.
- (j) Any person aggrieved by a violation of this Chapter may file a civil action in any court with jurisdiction against a person responsible for the alleged violation. The aggrieved person must notify the alleged violator and the Director of the alleged violation at least 60 days before filing the action. A person must not file an action under this subsection if the County Attorney has filed a civil action against the same alleged violator regarding the same violation. (1996 L.M.C., ch. 32, § 1; 2001 L.M.C., ch. 2, § 1.)

Endnotes

Editor's note—In *Burrows v. United States*, 2004 U.S. Dist. LEXIS 1104 (2004), the Court interpreted Montgomery County Code Chapter 31B neither to permit a private cause of action for noise control, nor to permit suit against the federal government. Chapter 31B is discussed in *Miller v. Maloney Concrete Company*, 63 Md.App. 38, 491 A.2d 1218 (1985). *Cross references-Noise from quarries, § 38-14; radio, etc., without earphones prohibited in public transit facilities, § 54A-2; industrial area noise regulations, § 59-A-5.7.

[Note]

Project: Rockville, Montgomery County, Maryland – Proposed repairs to the Rockville Bridge carrying Edmonston Drive over CSXT, Milepost BA-15.75, DOT # 140496V, Baltimore Division, Metropolitan Subdivision, CSXT OP # MD0323

CONSTRUCTION AGREEMENT

This Construction Agreement (“**Agreement**”) is made as of February 23rd, 2017 by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida (“**CSXT**”), and the CITY OF ROCKVILLE, a body corporate and political subdivision of the State of Maryland (“**City**”).

EXPLANATORY STATEMENT

1. City has proposed to construct, or to cause to be constructed, repairs to the Rockville Bridge carrying Edmonston Drive over CSXT within the vicinity of Milepost BA-15.75 on the Metropolitan Subdivision of the Baltimore Division in Rockville, Montgomery County, Maryland (the “**Project**”).
2. City has obtained, or will obtain, all authorizations, permits and approvals from all local, state and federal agencies (including City), and their respective governing bodies and regulatory agencies, necessary to proceed with the Project and to appropriate all funds necessary to construct the Project.
3. City acknowledges that: (i) by entering into this Agreement, CSXT will provide services and accommodations to promote public interest in this Project, without profit or other economic inducement typical of other City contractors; (ii) neither CSXT nor its affiliates (including their respective directors, officers, employees or agents) will incur any costs, expenses, losses or liabilities in excess of payments made to CSXT, by or on behalf of City or its contractors, pursuant to this Agreement; and (iii) CSXT retains the paramount right to regulate all activities affecting its property and operations.

NOW, THEREFORE, 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. Project Plans and Specifications

- 1.1 Preparation and Approval. Pursuant to Exhibit A of this Agreement, all plans, specifications, drawings and other documents necessary or appropriate to the design and construction of the Project shall be prepared, at City’s sole cost and expense, by City or CSXT or their respective contractors. Project plans, specifications and drawings prepared by or on behalf of City shall be subject, at CSXT’s election, to the review and approval of CSXT. Such plans, specifications and drawings, as prepared or approved by CSXT, are referred to as the “**Plans**”, and shall be incorporated and deemed a part of this Agreement. Plans prepared or submitted to and approved by CSXT as of the date of this Agreement are set forth in Exhibit B to this Agreement.
- 1.2 Effect of CSXT Approval or Preparation of Plans. By its review, approval or preparation of Plans pursuant to this Agreement, CSXT signifies only that such Plans and improvements constructed in accordance with such 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 City or any other persons of the Plans or improvements constructed in accordance with the Plans.

1.3 Compliance with Plans. The Project shall be constructed in accordance with the Plans.

2. Allocation and Conduct of Work

Work in connection with the Project shall be allocated and conducted as follows:

2.1 CSXT Work. Subject to timely payment of Reimbursable Expenses as provided by Section 4, CSXT shall provide, or cause to be provided, the services as set forth by Exhibit A to this Agreement. City agrees that CSXT shall provide all services that CSXT deems necessary or appropriate (whether or not specified by Exhibit A) to preserve and maintain its property and operations, without impairment or exposure to liability of any kind and in compliance with all applicable federal, state and local regulations and CSXT's contractual obligations, including, but not limited to, CSXT's existing or proposed third party agreements and collective bargaining agreements.

2.2 City Work. City shall perform, or cause to be performed, all work as set forth by Exhibit A, at City's sole cost and expense.

2.3 Conduct of Work. CSXT shall commence its work under this Agreement following: (i) delivery to CSXT of a notice to proceed from City; (ii) payment of Reimbursable Expenses (as provided by Section 4.1) as required by CSXT prior to the commencement of work by CSXT; (iii) issuance of all permits, approvals and authorizations necessary or appropriate for such work; and (iv) delivery of proof of insurance acceptable to CSXT, as required by Section 9. The initiation of any services by CSXT pursuant to this Agreement, including, but not limited to, the issuance of purchase orders or bids for materials or services, shall constitute commencement of work for the purposes of this Section. The parties intend that all work by CSXT or on CSXT property shall conclude no later than **June 30, 2017** unless the parties mutually agree to extend such date.

3. Special Provisions. City shall observe and abide by, and shall require its contractors ("**Contractors**") to observe and abide by the terms, conditions and provisions set forth in Exhibit C to this Agreement (the "**Special Provisions**"). To the extent that City performs Project work itself, City shall be deemed a Contractor for purposes of this Agreement. City further agrees that, prior to the commencement of Project work by any third party Contractor, such Contractor shall execute and deliver to CSXT Schedule I to this Agreement to acknowledge Contractor's agreement to observe and abide by the terms and conditions of this Agreement.

4. Cost of Project and Reimbursement Procedures

4.1 Reimbursable Expenses. City shall reimburse CSXT for all costs and expenses incurred by CSXT in connection with the Project, 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 CSXT's consultants and subcontractors, and (6) CSXT labor in connection with the Project, together with CSXT labor overhead percentages established by CSXT pursuant to applicable law (collectively, "**Reimbursable Expenses**"). Reimbursable Expenses shall also include expenses incurred by CSXT prior to the date of this Agreement to the extent identified by the Estimate provided pursuant to Section 4.2.

- 4.2 Estimate. CSXT has estimated the total Reimbursable Expenses for the Project as shown on Exhibit D (the “Estimate”, as amended or revised). In the event CSXT anticipates that actual Reimbursable Expenses for the Project may exceed such Estimate, it shall provide City with the revised Estimate of the total Reimbursable Expenses, together with a revised Payment Schedule (as defined by Section 4.3.1), for City’s approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses of such revised Estimate. CSXT may elect, by delivery of notice to City, to immediately cease all further work on the Project, unless and until City provides such approval and confirmation.
- 4.3 Payment Terms.
- 4.3.1 City shall pay CSXT for Reimbursable Expenses as set forth in the Payment Schedule as shown on Exhibit E (the “Payment Schedule”, as revised pursuant to Section 4.2).
- 4.3.2 Following completion of the Project, CSXT shall submit to City a final invoice that reconciles the total Reimbursable Expenses incurred by CSXT against the total payments received from City. City shall pay to CSXT the amount by which Reimbursable Expenses exceed total payments as shown by the final invoice, within thirty (30) days following delivery of such invoice to City. In the event that the payments received by CSXT from City exceed the Reimbursable Expenses, CSXT shall remit such excess to City.
- 4.3.3 In the event that City fails to pay CSXT any sums due CSXT under this Agreement: (i) City shall pay CSXT interest at the lesser of 1.0% per month or the maximum rate of interest permitted by applicable law on the delinquent amount until paid in full; and (ii) CSXT may elect, by delivery of notice to City: (A) to immediately cease all further work on the Project, unless and until City pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.
- 4.3.4 All invoices from CSXT shall be delivered to City in accordance with Section 16 of this Agreement. All payments by City 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 City:
- CSX Transportation, Inc.
P. O. Box 116651
Atlanta, GA 30368-6651
- 4.4 Effect of Termination. City’s obligation to pay to CSXT Reimbursable Expenses in accordance with Section 4 shall survive termination of this Agreement for any reason.
5. Appropriations City represents to CSXT that: (i) City has appropriated funds sufficient to reimburse CSXT for the Reimbursable Expenses encompassed by the Estimate attached as Exhibit D; (ii) City shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by City; and (iii) City shall promptly notify CSXT in the event that City is unable to obtain such appropriations.
6. Easements and Licenses
- 6.1 City Obligation. City shall acquire all necessary licenses, permits and easements required for the Project.

7. Permits At its sole cost and expense, City shall procure all permits and approvals required by any federal, state, or local governments or governmental agencies for the construction, maintenance and use of the Project, copies of which shall be provided to CSXT.
8. Termination
- 8.1 By City. For any reason, City may, as its sole remedy, terminate this Agreement by delivery of notice to CSXT. City shall not be entitled to otherwise pursue claims for consequential, direct, indirect or incidental damages or lost profits as a consequence of CSXT's default or termination of this Agreement or Work on the Project by either party.
- 8.2 By CSXT. In addition to the other rights and remedies available to CSXT under this Agreement, CSXT may terminate this Agreement by delivery of notice to City in the event City or its Contractors fail to observe the terms or conditions of this Agreement and such failure continues more than ten (10) business days following delivery of notice of such failure by CSXT to City.
- 8.3 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 Work. Accordingly, they agree that, in such instance a party may continue to perform Work until it has reached a point where it may reasonably and safely suspend the Work. City shall reimburse CSXT pursuant to this Agreement for the Work performed, plus all costs reasonably incurred by CSXT to discontinue the Work and protect the Work upon full suspension of the same, the cost of returning CSXT's property to its former condition, and all other costs of CSXT incurred as a result of the Project up to the time of full suspension of the Work. Termination of this Agreement or Work on the Project, for any reason, shall not diminish or reduce City'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 Work for any reason, CSXT's only remaining obligation to City shall be to refund to City payments made to CSXT in excess of Reimbursable Expenses in accordance with Section 4.
9. Insurance In addition to the insurance that City requires of its Contractor, City shall acquire or require its Contractor to purchase and maintain insurance in compliance with CSXT's insurance requirements attached to this Agreement as Exhibit F. Neither City nor Contractor shall commence work on the Project until such policy or policies have been submitted to and approved by CSXT's Risk Management Department.
10. Ownership and Maintenance
- 10.1 By City. City shall own and, without cost to CSXT, maintain, repair, replace and renew, or cause same to be done, in good condition and repair to CSXT's satisfaction, the highway overpass structure, the roadway surfacing, the roadway slopes, the retaining walls, and the highway drainage facilities. In the event that City fails to properly maintain such structures and improvements and such failure, in the opinion of CSXT, jeopardizes the safe and efficient operation of its property, CSXT shall be entitled to remedy such failure and recover from City the costs incurred by CSXT in doing so. Upon the cessation of use of the Project by City, City shall remove the bridge structure and restore CSXT's property to its original condition, at City's sole cost and expense, to CSXT's satisfaction.

- 10.2 Alterations. City shall not undertake any alteration, modification or expansion of the Project, without the prior approval of CSXT, which may be withheld for any reason, and the execution of such agreements as CSXT may require.
11. Indemnification
- 11.1 Generally. To the maximum extent permitted by applicable law, City and its Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of CSXT, its affiliates, City or its Contractors), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of CSXT, its affiliates, City or its Contractors, and environmental damages and any related remediation brought or recovered against CSXT and its affiliates), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Contractors, City, and their respective agents, employees, invitees, contractors, or its contractors' agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto, or from their presence on or about CSXT's property. The foregoing indemnification obligation shall not be limited to the insurance coverage required by this Agreement, except to the extent required by law or otherwise expressly provided by this Agreement.
- 11.2 Compliance with Laws. City shall comply, and shall require its Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the Project.
- 11.3 "CSXT Affiliates". For the purpose of this Section 11, 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.
- 11.4 Notice of Incidents. City and its Contractor shall notify CSXT promptly of any loss, damage, injury or death arising out of or in connection with the Project work.
- 11.5 Survival. The provisions of this Section 11 shall survive the termination or expiration of this Agreement.
12. Independent Contractor The parties agree that neither City nor its Contractors shall be deemed either agents or independent contractors of CSXT. Except as otherwise provided by this Agreement, CSXT shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by City or City's Contractors, or the construction practices, procedures, and professional judgment employed by City or its Contractor to complete the Project. Notwithstanding the foregoing, this Section 12 shall in no way affect the absolute authority of CSXT to prohibit City or its Contractors or anyone from entering CSXT's property, or to require the removal of any person from its property, if it determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the Project exist.
13. "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.

14. 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.
15. Assignment CSXT may assign this Agreement and all rights and obligations herein to a successor in interest, parent company, affiliate, or future affiliate. Upon assignment of this Agreement by CSXT and the assumption of CSXT's assignee of CSXT's obligations under this Agreement, CSXT shall have no further obligation under this Agreement. City shall not assign its rights or obligations under this Agreement without CSXT's prior consent, which consent may be withheld for any reason.
16. 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: Director Project Management – Public Projects

If to City: City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850
Attention: Director of Public Works

17. 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.
18. Applicable Law This Agreement shall be governed by the laws of the State of Maryland 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 Montgomery County, Maryland, and the parties agree to submit to the personal jurisdiction of any State or Federal court situated in Montgomery County, Maryland.

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.

CITY OF ROCKVILLE

By: 
Print Name: Robert DiSpirito
Title: CITY MANAGER

CSX TRANSPORTATION, INC.

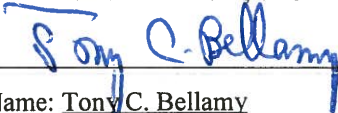
By: 
Print Name: Tony C. Bellamy
Title: Director Project Management – Public Projects

EXHIBIT A**ALLOCATION OF WORK**

Subject to Section 2.1, work to be performed in connection with the Project is allocated as follows:

- A. City shall let by contract to its Contractors:
 - 1. Repair to the Rockville Bridge carrying Edmonston Drive over CSXT and all associated work

- B. CSXT shall perform or cause to be performed:
 - 1. Preliminary Engineering Services
 - 2. Construction Engineering and Inspection Services
 - 3. Flagging Services

EXHIBIT B**PLANS AND SPECIFICATIONS**Plans, Specifications and Drawings:

As of the date of this Agreement, the following plans, specifications and drawings have been submitted by City to CSXT for its review and approval:

City of Rockville Department of Public Works Miscellaneous Bridge Repair – Rockville Bridge No. MR-01 – Edmonston Drive over WMATA and CSX Railroads. Sheets 1 through 4 and 6 through 18. Drawing prepared October, 2015 by EBA Engineering, Inc. for the City of Rockville and received by AECOM December, 2015.

City of Rockville Department of Public Works Miscellaneous Bridge Repair – Rockville Bridge No. MR-01 – Edmonston Drive over WMATA and CSX Railroads. Sheets 5 of 18. Drawing prepared February, 2016 by EBA Engineering, Inc. for the City of Rockville and received by AECOM February, 2016.

Category 400 Structures Specifications - Section 484 - Ornamental Fence. Pages 1 through 3. Specification prepared by EBA Engineering, Inc. and received by AECOM February, 2016

NOTE: In the event subsequent plan submissions are made by City to CSXT for review and approval, once approved, said plans shall be considered to be incorporated into this Exhibit B as of the date of CSXT's written approval.

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.

“CSXT Representative” shall mean the authorized representative of CSX Transportation, Inc.

"Agreement" shall mean the Agreement to which this Exhibit C is made a part thereof and as may be amended from time to time.

“City” shall mean the City of Rockville.

“City Representative” shall mean the authorized representative of the City of Rockville.

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

“Work” shall mean the Project as described in the Agreement.

I. AUTHORITY OF CSXT ENGINEER

The 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 City 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.

II. INTERFERENCE WITH CSXT OPERATIONS

- A. City or its 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. City or its 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 City or its Contractor from liability in connection with such Work.
- B. 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, City or its Contractor shall make such provision. If the CSXT Representative determines that such provision is insufficient, CSXT may, at the expense of City or its Contractor, require or provide such provision as may be deemed necessary, or cause the Work to cease immediately.

- III. NOTICE OF STARTING WORK. City or its Contractor shall not commence any work on CSXT Property or right-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 City or its Contractor proposes to begin Work on CSXT property. The notice must refer to this Agreement by date. If 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.
 - B. Obtain authorization from the CSXT Representative to begin Work on CSXT property, 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.
- IV. 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 City, 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 City, but must be approved by both CSXT and City. City 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 City or 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 City or Contractor's expense.
- V. HAUL ACROSS RAILROAD
- A. If City or Contractor desires access across CSXT property or tracks at other than an existing and open public road crossing in or incident to construction of the Project, the City or Contractor must first obtain the permission of CSXT and shall execute a license agreement or right of entry satisfactory to CSXT, wherein City or Contractor agrees to bear all costs and liabilities related to such access.
 - B. City and 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. COOPERATION AND DELAYS
- A. City or Contractor shall arrange a schedule with CSXT for accomplishing stage construction involving work by CSXT. In arranging its schedule, City or Contractor shall ascertain, from CSXT, the lead time required for assembling crews and materials and shall make due allowance therefor
 - B. City or Contractor may not charge any costs or submit any claims against CSXT for

hindrance or delay caused by railroad traffic; work done by CSXT or other delay incident to or necessary for safe maintenance of railroad traffic; or for any delays due to compliance with these Special Provisions.

- C. City and 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. City and Contractor understand and agree that CSXT does not assume any responsibility for work performed by others in connection with the Project. City and Contractor further understand and agree that they shall have no claim whatsoever against CSXT for any inconvenience, delay or additional cost incurred by City or Contractor on account of operations by others.

VII. STORAGE OF MATERIALS AND EQUIPMENT

City and Contractor shall not store their materials or equipment on CSXT's property or where they may potentially interfere with CSXT's operations, unless City or Contractor has received CSXT Representative's prior written permission. City and Contractor understand and agree that CSXT will not be liable for any damage to such materials and equipment from any cause and that CSXT may move, or require City or Contractor to move, such material and equipment at City's or Contractor's sole expense. To minimize the possibility of damage to the railroad 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.

VIII. 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 CSXT's written outline of specific conditions and with these Special Provisions.
- 3. Contractor shall observe the terms and rules of the CSXT Safe Way manual, which City 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. City or Contractor shall obtain CSXT Representative's and City Representative's prior written approval for use of explosives on or adjacent to CSXT property. If permission for use of explosives is granted, City or 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 City or 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 thirty (30) days 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. City or Contractor must have at the Project site adequate equipment, labor and materials, and allow sufficient time, to (i) clean up (at City's expense) debris resulting from the blasting without any delay to trains; and (ii) correct (at City'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. If City's or Contractor's actions result in delay of any trains, including Amtrak passenger trains, City shall bear the entire cost thereof.
 - e. City and Contractor shall not store explosives on CSXT property.
2. CSXT Representative will:
- a. Determine the approximate location of trains and advise City or 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.

IX. MAINTENANCE OF DITCHES ADJACENT TO CSXT TRACKS

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

X. FLAGGING / INSPECTION SERVICE

- A. 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 City or Contractor or their 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. City 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. City or Contractor shall give a minimum of thirty (30) days advance notice to CSXT Representative for anticipated need for flagging service. No work shall be undertaken until the flag person(s) is/are at the job site. 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. City shall reimburse CSXT for the costs incurred by CSXT for such inspection service. Inspection service shall not relieve City or Contractor from liability for its Work.
- E. CSXT shall render invoices for, and City 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 City using the new rates. City and Contractor shall perform their operations that require flagging protection or inspection service in such a manner and sequence that the cost of such will be as economical as possible.

XI. UTILITY FACILITIES ON CSXT PROPERTY

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

XII. CLEAN-UP

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

XIII. FAILURE TO COMPLY

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

EXHIBIT D

INITIAL ESTIMATE
ATTACHED

**CSX TRANSPORTATION, INC.
FORCE ACCOUNT ESTIMATE**

ACCT. CODE : 709 - MD0323

ESTIMATE SUBJECT TO REVISION AFTER: 8/23/2016 **DOT NO.:** 140496V
CITY: Rockville **COUNTY:** Montgomery **STATE:** MD
DESCRIPTION: Repairs to the Rockville Bridge carrying Edmonston Drive over CSXT
DIVISION: Baltimore **SUB-DIV:** Metropolitan **MILE POST:** BA-15.75
AGENCY PROJECT NUMBER:

PRELIMINARY ENGINEERING:

212 Contracted & Administrative Engineering Services	\$ 5,000
Subtotal	\$ 5,000

CONSTRUCTION ENGINEERING/INSPECTION:

212 Contracted & Administrative Engineering Services	\$ 34,800
Subtotal	\$ 34,800

FLAGGING SERVICE: (Contract Labor)

070 Labor (Conductor-Flagman)	\$ -
050 Labor (Foreman/Inspector)	\$ 50,960
070 Additive 153.13% (Transportation Department)	\$ -
050 Additive 163.09% (Engineering Department)	\$ 83,111
230 Per Diem (Engineering Department)	\$ 9,750
230 Expenses	\$ -
Subtotal	\$ 143,821

SIGNAL & COMMUNICATIONS WORK:

\$ -

TRACK WORK:

\$ -

PROJECT SUBTOTAL

\$ 183,621

900 <u>CONTINGENCIES:</u> 10.00%	\$ 18,362
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GRAND TOTAL *****	\$ 201,983
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DIVISION OF COST:

Agency	<u>100.00%</u>	\$ 201,983
Railroad		\$ -
TOTAL *****		\$ 201,983

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 Assistant Chief Engineer Public Projects--Jacksonville, Florida

Estimated prepared by: AECOM
DATE: 2/25/2016

REVISID:

Approved by: *DSM*
DATE: 3/18/16

CSXT Public Project Group

EXHIBIT E**PAYMENT SCHEDULE**

Upon execution and delivery of the fully executed Construction Agreement, City will deposit with CSXT a sum equal to the Reimbursable Expenses, as shown by the Estimate. If CSXT anticipates that it may incur Reimbursable Expenses in excess of the deposited amount, CSXT will request an additional deposit equal to the then remaining Reimbursable Expenses which CSXT estimates that it will incur. CSXT shall request such additional deposit by delivery of invoices to City. City shall make such additional deposit within thirty (30) days following delivery of such invoice to City.

EXHIBIT F**INSURANCE REQUIREMENTS****I. Insurance Policies:**

City and Contractor, if and to the extent that either is performing work on or about CSXT's property, 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 City 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

2. Neither City 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.

Project: Rockville, Montgomery County, Maryland – Proposed repairs to the Rockville Bridge carrying Edmonston Drive over CSXT, Milepost BA-15.75, DOT # 140496V, Baltimore Division, Metropolitan Subdivision, CSXT OP # MD0323

SCHEDULE I

CONTRACTOR'S ACCEPTANCE

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 accordance with the Agreement dated February 23, 2017, between the City of Rockville and CSXT, Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to Exhibits C and F to the Agreement, and Sections 3, 9 and 11 of the Agreement.

Contractor: _____

By: _____

Name: _____

Title: _____

Date: _____

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
("WMATA")**

**Steps for Issuance of a Permit for
Temporary or Permanent Use of WMATA Property/Easement Areas
Revised November 2016**

Parties requesting to use WMATA property must work with two different WMATA offices, the Office of Joint Development and Adjacent Construction ("JDAC") and the Office of Real Estate and Station Planning ("LAND"). **This request cannot be processed without the application being sent to both JDAC and LAND as directed below.**

Step 1: Permit Application is on the Internet

To obtain a copy of the Real Estate Permit Application and the boilerplate Permit (for review purposes only since the boilerplate Permit is subject to change and may be customized for a specific project), go to www.wmata.com and click on Business with WMATA, click on Joint Development and Real Estate, click on Real Estate.

Step 2: Permit Application

The completed Permit Application must include the following information:

- Who (legal company name) will be using WMATA property?
- What is the Applicant's project and address of the property?
- What work will be done on WMATA property and why?
- Where is the WMATA property located (include Metrorail line, cross streets and street address of Applicant's adjacent property)?
- When will the Applicant need entry onto WMATA property?
- How long will the WMATA property be needed – is it a permanent use?
- What equipment will be used for the project?
- All other information required by the Permit Application.

Step 3: Plans to be submitted with Permit Application (include color Google Earth map of location as well as other plans requested below)

The Permit Application must include plans for the work to be performed on WMATA property. Plans must show: (1) WMATA's property lines in relation to Applicant's property; and (2) all of the WMATA property to be used (including the total square footage of WMATA property to be used for both permanent and temporary use).

Please note:

- If both temporary and permanent use of WMATA property is being requested, the plans must denote separately the property required for temporary use and the property required for permanent use.
- If **permanent use** of WMATA property is being requested, a signed and sealed plat of survey, together with a metes and bounds/legal description prepared by a surveyor registered in the jurisdiction where the property is located, will be required and **must be submitted with the Permit Application** (legal document for permanent use of property cannot be issued without plat and metes and bounds description). The plat of

survey must show distances and bearings of the proposed property to be used, distance and bearing to the nearest WMATA right-of-way monument or property corner from a corner of the WMATA property for which the Applicant is requesting use, the centerline stationing of the WMATA outbound track, WMATA right-of-way line and/or property line, the distances and bearings of any existing easements, square footage, date, north arrow, existing streets and name of proposed Permittee. Distances and bearings shall be based upon the local meridian. Plat should include a written description of the type of property right WMATA is requested to convey.

- Deficient plans which do not include the required information set forth above may delay issuance of the Permit.

Step 4: Submission of Permit Application and Plans

Submission should consist of:

- One (1) copy of the complete Permit Application and a minimum three (3) copies of Plans (half-size/11x17) sent directly to JDAC addressed to:

Manager, Adjacent Construction
WMATA Office of Joint Development and Adjacent
Construction
3500 Pennsy Drive, Room C-108
Landover, MD 20785

- One (1) copy of the complete Permit Application and one (1) copy of the Plans (half-size/11x17) and survey together with a check in the amount of \$3,500, made payable to WMATA for the non-refundable base permit fee (fee may be more than \$3,500 depending on the proposed used of WMATA property) sent directly to LAND addressed to:

Ms. Anabela Talaia
Program Manager, Real Estate
Office of Real Estate and Station Planning
WMATA
600 Fifth Street, NW, Room 5B
Washington, DC 20001

Step 5: Insurance Requirements

Compliance with WMATA's insurance requirements is mandatory. WMATA requires Applicant to submit Certificates of Insurance (COI) and all applicable endorsements. Additionally WMATA may request copies of **complete insurance policies**. Please note that if WMATA requires Railroad Protective Liability and/or Builder's Risk insurance, complete insurance policies will always be required. LAND will provide Applicant with the specific insurance requirements for its project. Permits will not be executed by WMATA until all insurance requirements have been satisfied. To avoid delay, it is recommended that the insurance provisions in the boilerplate Permit (posted on wmata.com) be reviewed and forwarded timely to Applicant's insurance company.

Step 6: WMATA's Review of Permit Application

1. JDAC circulates plans to pertinent WMATA offices and branches for review and comment.
2. JDAC approves the project and its plans, and transmits a certification memorandum to LAND.
3. Upon LAND's receipt of the JDAC approval and certification memorandum of the Applicant's project, LAND requires a minimum of thirty (30) calendar days to prepare a Permit. Additional time may be required if an appraisal of the property must be ordered. LAND's preference, where feasible is to issue one (1) Permit for both temporary and permanent use of WMATA property. Therefore, the Applicant is encouraged to submit all project requirements, including if the project is to be built/constructed in stages, to WMATA in the first Permit Application submission.
4. LAND issues a fully-executed Permit when all fees are paid and all insurance requirements have been satisfied in accordance with the terms of the Permit.
5. LAND provides JDAC with copies of the fully-executed Permit.

If you have any questions on how to complete the enclosed Permit Application, commencing on the next page, please contact Cynthia Jachles at 202-962-1586.

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
Application for Real Estate Permit**

(PLEASE SUBMIT PAGES 4 THROUGH PAGE 7, NOT INSTRUCTION PAGES 1-3 ABOVE)

1. Project Name:
2. Project Location:
3. JDAC Project Control Number: PCN_____

WMATA Location: [Describe Metrorail Station or Line] If possible, please state cross streets between which the area requested is located

4. Date Submitted:
5. Property Description: [Enter street address of applicant's property where work will be performed.]

*Will work be performed within fifty (50) feet or blasting within one hundred (100) feet of (on, above, adjacent to or underneath) WMATA's railroad facilities (including elevators and escalators)? If yes, what is the total dollar cost of Applicant's project? \$_____

What is the dollar cost of that portion of Applicant's project which is within fifty (50) feet of WMATA's property? \$_____

6. Legal Name of Permittee: [Enter legal name of the company that will sign the permit and provide insurance coverage]
Company Name:
Contact Name:
Address of Principal Place of Business:
Telephone:
E-Mail:
7. Plans: [List plans within application.]
Plans shall be drawn to scale and show in plan view the proposed facility/work in relationship to existing WMATA property and/or facility. Details to be shown on the plan view must include:
 - a. WMATA right-of-way and property lines.
 - b. WMATA structure and/or security fencing.
 - c. All existing utilities.
 - d. WMATA communication, signal and power lines.
 [WMATA JDAC staff will assist Permittee in e. through g., which are in surveying format.

e. Operations Stationing of Outbound Track:

From STA ± to STA ±

Or Operations Stationing of Inbound Track:

From STA ± to STA ±

f. Construction Stationing of Outbound Track:

From STA ± to STA ±

Or Construction Stationing of Inbound Track:

From STA ± to STA ±

g. Plans should contain, as applicable, a section or profile along 'the centerline of the project in order to show the project in relation to WMATA facilities, using actual ground elevations.

h. Plat of survey signed and sealed by a registered surveyor, suitable for recording, shall be submitted for all permanent easement/property requests. Plats shall show all distances and bearings of the proposed easement, the distance and bearing to the nearest WMATA right-of-way monument or property corner from a corner of the proposed easement, the centerline stationing of the WMATA outbound track, WMATA right-of-way line and/or property line, the distances and bearings of any existing easements, the proposed easement area, date, north arrow, existing streets and the name of proposed grantee. All distances and bearings shall be based upon the local meridian. A written description of the proposed easement shall be provided.

i. If open cut construction is necessary, details of the support of excavation shall be shown. When applicable, tunnel construction shall also be shown.

8. What is Permittee doing on its (Permittee's) property?

9. What is Permittee doing on WMATA property? Is the use of WMATA property to be temporary, permanent or both? Please describe below in words *full* work that will occur on WMATA property (do not refer to plans attached. please state in narrative form all work in that is shown on those plans:

a. Temporary Use

- Square footage of area to be occupied:_____
- Description of all temporary work to be performed on WMATA property_____
- Length of time property is required for temporary use_____
- Is it within 50' of WMATA's right-of-way (above, under or adjacent to) ?_____
- Will equipment be stored on WMATA property?_____

List all Equipment to be used on WMATA Property_____

b. Permanent Use Requested:

-Square footage of area to be conveyed to requester:_____

(A signed, sealed plat of survey and metes and bounds description and total square

footage stated will be required before a Permit can be issued.) _____

-Will it be surface, underground or aerial area(s)? _____

-Will it be an aerial or underground utility line? _____

-Will it be within 50' of WMATA's property (above, under or adjacent to)? _____

10. Date Entry Required:

11. Length of Term of Agreement Required:

12. Is proposed use of WMATA property exclusively beneficial to Applicant or will it benefit WMATA? Please explain:

13. Factors for Insurance Requirements:

Applicant must submit the following information for each contractor working on the project so WMATA can determine the appropriate insurance coverage:

Contractor	Contact Name	Telephone	E-mail	Work to be done* Time frame for each
1.				
2.				
3.				
4.				
5.				

*If work is to be done within 50 feet of Metrorail property, please indicate which contractor will be within 50 feet. Indicate the start time and duration for each contractor.

Other information pertinent to this request:

**WMATA BLANKET RAILROAD PROTECTIVE
APPENDIX C
LIABILITY INSURANCE PROGRAM APPLICATION FORM**

IFB # 15-16
SECTION VI

Contractor/Permittee shall complete this form, sign and return to RISK, Attn: Joy Forrest jforrest@wmata.com (202-962-1221). Applicant will be advised if project can be covered under the WMATA RRPL program and the cost. If coverage is desired under the WMATA program, an invoice will be sent to the applicant. (If application is for a LAND PERMIT, please attach a copy to the permit application).

1) Contractor/Permittee and Address	
2) Job Description	
3) Unique Job Characteristics (e.g., tunneling, blasting)	
4) Est. # Days/Months/Years on Metro Property	
5) Total Project Term	
6) Project Solely for the Benefit of Metro? (Yes/No)	
7) Joint Development Project? (Yes/No)	
8) Adjacent Construction Project (i.e., no benefit to Metro)? (Yes/No)	
9) Are WMATA Employees other than flagmen/supervisors and/or protective type personnel doing any work on this project? (Yes/No)	
10) If Yes to #9 above: <ul style="list-style-type: none"> a. Advise # of RR employees b. Who are these RR employees (job title, role, etc.) c. Provide a description of the work being performed by these RR employees d. Advise the dollar value of the work being performed by these RR employees (labor/mat'ls/equip.) 	
11) Contract/PR/PO/PCN Number (If already assigned)	
12) Job Location (i.e., address, station name, mile markers)	
13) Total Contract Value	
14) RRPL Limit Required (to be completed by RISK)	
15) Dollar value of work within 50' of WMATA Railroad Property	
16) WMATA Dept. Contact/Phone Number	
17) RRPL Waiver Fee (to be completed by RISK)	

Signature of authorized Contractor/ Permittee representative: _____

Date _____

Printed Name/Title _____

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
REAL ESTATE PERMIT**

PERMIT PCN xxxxxx

THIS REAL ESTATE PERMIT (hereinafter “**Permit**”) is made and entered into this _____ day of _____, 2016 (hereinafter “**Effective Date**”), by and between the **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**, a body corporate and politic with principal offices at 600 Fifth Street, NW, Washington, DC 20001 (hereinafter “**WMATA**”) and _____ with principal offices at _____ (hereinafter “**Permittee**”). Permittee and WMATA are sometimes referred to herein jointly as the “**Parties**” or individually as a “**Party**.”

WITNESSETH:

RECITAL 1: Narrative _____ (hereinafter “**Project**”).

RECITAL 2: Permittee has requested permission from WMATA to enter upon and use portions of _____ and will be performing Project work within WMATA’s Zone of Influence as defined in WMATA’s *Adjacent Construction Project Manual* (see Section 5.2 below), as revised from time to time by WMATA’s Office of Joint Development and Adjacent Construction (hereinafter “**JDAC**”) (hereinafter “**Permitted Premises**”).

RECITAL 3: WMATA has agreed to allow Permittee and its contractor(s), subcontractor(s) and consultant(s) (hereinafter “**Contractor**” and collectively with the Permittee, the “**Permitted Parties**” or individually a “**Permitted Party**”) the right and privilege to enter upon and use the Permitted Premises to perform the work described in Section 3 below upon the terms and conditions specifically set forth in this Permit.

NOW, THEREFORE, in consideration of the sum of Three Thousand Five Hundred Dollars (\$3,500.00) and the mutual covenants and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. WMATA Staff

All references in this Permit to the assigned WMATA Construction Engineer or Construction Inspection Facilitator refer to:

Construction Engineer: _____

Construction Inspection Facilitator: Tom Majestic

2. Description of Permitted Premises.

The Permitted Premises are located in **Section _____** between Station Markers _____ ± and _____ ± as more fully shown on **Exhibit A**, attached hereto and made a part hereof.

3. Use of Permitted Premises.

In the event the terms and conditions of this Section 3 conflict with any terms and conditions