

## PRELIMINARY ENGINEERING AGREEMENT

This Preliminary Engineering Agreement (this "Agreement") is made as of April 11, 2024 by and between THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY, a Virginia corporation with its principal place of business in Jacksonville, Florida ("B&OCT"), and the VILLAGE OF OAK PARK, ILLINOIS, a body corporate and political subdivision of the State of Illinois ("Agency").

### EXPLANATORY STATEMENT

1. Agency wishes to facilitate the development of the proposed overhead bridge rehabilitation work, which involves repairs to expansion joints, sidewalks, curb, fencing, deck concrete sealer, protective shielding and pavement patches above B&OCT and within the B&OCT right of way at five (5) locations within the Chicago Zone, Altenheim Subdivision, which includes one (1) location in Chicago, Cook County, Illinois at Austin Boulevard with Department of Transportation Crossing Inventory Number 163529V, Railroad Milepost Number DC 34.55, and four (4) locations in Oak Park, Cook County, Illinois which includes Lombard Avenue (FAU3794) with Department of Transportation Crossing Inventory Number 163530P, Railroad Milepost Number DC 34.81, East Avenue (FAU2779) with Department of Transportation Crossing Inventory Number 163532D, Railroad Milepost Number DC 35.28, Oak Park Avenue (FAU2775) with Department of Transportation Crossing Inventory Number 163533K, Railroad Milepost Number DC 35.55, and pedestrian bridge at Home Avenue (FAI290) with Department of Transportation Crossing Inventory Number 163534S, Railroad Milepost Number DC 35.84 (the "Project").
2. Agency has requested that B&OCT proceed with certain necessary engineering and/or design services for the Project to facilitate the parties' consideration of the Project.
3. Subject to the approval of B&OCT, which approval may be withheld for any reason directly or indirectly related to safety or B&OCT operations, property, or facilities, the Project is to be constructed, if at all, at no cost to B&OCT, under a separate construction agreement to be executed by the parties at a future date.

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

#### 1. Scope of Work

- 1.1. Generally. The work to be done by B&OCT under this Agreement shall consist of: (i) the preparation or review and approval of preliminary and final engineering and design plans, specifications, drawings, agreements and other documents pertaining to the Project, (ii) the preparation of cost estimates for B&OCT's work in connection with the Project, and (iii) the review of construction cost estimates, site surveys, plats, legal descriptions, assessments, studies, easements, agreements and related construction documents submitted to B&OCT by Agency for the Project (collectively, the "Engineering Work"). Engineering Work may also include office reviews, field reviews, attending hearings and meetings, and preparing correspondence, reports, and other documentation in connection with the Project. Nothing

contained in this Agreement shall oblige B&OCT to perform work which, in B&OCT's opinion, is not relevant to B&OCT's participation in the Project.

- 1.2. Effect of B&OCT Approval or Preparation of Documents. By its review, approval or preparation of plans, specifications, drawings or other documents pursuant to this Agreement (collectively, the "Plans"), B&OCT signifies only that the Plans and the Project proposed to be constructed in accordance with the Plans satisfy B&OCT's requirements. B&OCT expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of Agency or any other persons of such Plans or the Project constructed in accordance with the Plans.
2. Project Construction. Nothing contained in this Agreement shall be deemed to constitute B&OCT's approval of or consent to the construction of the Project, which approval or consent may be withheld for any reason directly or indirectly related to safety or B&OCT operations, property, or facilities. The Project if constructed is to be constructed, if at all, under a separate construction agreement to be executed by the parties at a future date. Furthermore, the PUBLIC AGENCY acknowledges and understands that any estimated cost to construct the Project shall only be good for a limited period of time and that any delays to move to construction, if B&OCT agrees to such construction, shall result in increased costs.
3. Reimbursement of B&OCT Expenses.
  - 3.1. Reimbursable Expenses. Agency shall reimburse B&OCT for all costs and expenses incurred by B&OCT in connection with the Engineering Work, including, without limitation: (i) all out of pocket expenses, (ii) travel and lodging expenses, (iii) telephone, facsimile, and mailing expenses, (iv) costs for equipment, tools, materials and supplies, (v) sums paid to consultants and subcontractors, and (vi) labor, together with labor overhead percentages established by B&OCT pursuant to applicable law (collectively, the "Reimbursable Expenses").
  - 3.2. Estimate. B&OCT has estimated the total Reimbursable Expenses for the Project to be approximately **twenty-two thousand dollars and zero cents (\$22,000.00)** (the "Estimate" as amended or revised). In the event B&OCT anticipates that actual Reimbursable Expenses may exceed such Estimate, it shall provide Agency with the revised Estimate of total Reimbursable Expenses for Agency's approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses as reflected in the revised Estimate. B&OCT may elect, by delivery of notice to Agency, to immediately cease all further Engineering Work, unless and until Agency provides such approval and confirmation.
  - 3.3. Payment Terms.
    - 3.3.1. Advance Payment in Full. Upon execution and delivery of this Agreement by Agency, Agency will deposit with B&OCT a sum equal to the Reimbursable Expenses, as shown by the Estimate. Agency shall submit advance deposit payment to B&OCT for Reimbursable Expenses in the amount set forth in Section 3.2 Estimate, with a copy of the B&OCT Schedule PA form attached to this agreement, to the address on the B&OCT Schedule PA form. If B&OCT anticipates that it may incur Reimbursable Expenses in excess of the deposited amount, B&OCT will request an additional deposit equal to the then remaining Reimbursable Expenses which B&OCT estimates that it will incur. B&OCT shall request such additional

deposit by delivery of invoices to Agency. Agency shall make such additional deposit within thirty (30) days following delivery of such invoice to Agency.

- 3.3.2. Following completion of all Engineering Work, B&OCT shall reconcile the total Reimbursable Expenses incurred by B&OCT against the total payments received from Agency and shall submit to Agency a final invoice if required. Agency shall pay to B&OCT the amount by which actual Reimbursable Expenses exceed total payments, as shown by the final invoice, within thirty (30) days following delivery to Agency of the final invoice. B&OCT will provide a refund of any unused deposits if the deposit exceeds the incurred Reimbursable Expenses for the Project.
- 3.3.3. In the event that Agency fails to pay B&OCT any sums due B&OCT under this Agreement: (i) Agency shall pay B&OCT 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) B&OCT may elect, by delivery of notice to Agency: (A) to immediately cease all further work on the Project, unless and until Agency pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.
- 3.4. Effect of Termination. Agency's obligation to pay B&OCT Reimbursable Expenses in accordance with this Section shall survive termination of this Agreement for any reason.
4. Appropriations. Agency represents to B&OCT that: (i) Agency has obtained appropriations sufficient to reimburse B&OCT for the Reimbursable Expenses encompassed by the initial Estimate; (ii) Agency shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by Agency; and (iii) Agency shall promptly notify B&OCT in the event that Agency is unable to obtain such additional appropriations.
5. Termination.
- 5.1. By Agency. Agency may terminate this Agreement, for any reason, by delivery of notice to B&OCT. Such termination shall become effective upon the expiration of fifteen (15) calendar days following delivery of notice to B&OCT or such later date designated by the notice.
- 5.2. By B&OCT. B&OCT may terminate this Agreement (i) as provided pursuant to Section 3.3.3., or (ii) upon Agency's breach of any of the terms of, or its obligations under, this Agreement and such breach continues without cure for a period of ninety (90) days after written notification from B&OCT to Agency of such breach.
- 5.3. 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 to immediately stop the Engineering Work. Accordingly, both parties agree that, in such instance a party may continue to perform Engineering Work until it has reached a point where it may reasonably and/or safely suspend the Engineering Work. Agency shall reimburse B&OCT pursuant to this Agreement for the Engineering Work performed, plus all costs reasonably incurred by B&OCT to discontinue the Engineering Work and all other costs of B&OCT incurred as a result of the Project up to the time of full suspension of the Engineering Work. Termination of this Agreement or Engineering Work on the Project, for

any reason, shall not diminish or reduce Agency's obligation to pay B&OCT for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Engineering Work for any reason, B&OCT's only remaining obligation to Agency shall be to refund to Agency payments made to B&OCT in excess of Reimbursable Expenses in accordance with Section 3.

6. Subcontracts. B&OCT shall be permitted to engage outside consultants, counsel and subcontractors to perform all or any portion of the Engineering Work.
7. Notices. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered (i) on the expiration of three (3) days following mailing by first class U.S. mail, (ii) on the next business day following mailing by a nationally recognized overnight carrier, or (iii) on the date of transmission, as evidenced by written confirmation of successful transmission, if by facsimile or other electronic transmission if sent on a business day (or if not sent on a business day, then on the next business day after the date sent), 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 B&OCT:                   The Baltimore and Ohio Chicago Terminal Railroad Company  
500 Water Street, J301  
Jacksonville, Florida 32202  
Attention: Assistant General Counsel

If to Agency:                 Village of Oak Park, Illinois  
201 South Boulevard  
Oak Park, Illinois 60302  
Attention: Bill McKenna, Village Engineer

8. Entire Agreement. This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.
9. Waiver. If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
10. Assignment. B&OCT 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 B&OCT and the assumption by B&OCT's assignee of B&OCT's obligations under this Agreement, B&OCT shall have no further obligations under this Agreement. Agency shall not assign its rights or obligations under this Agreement without B&OCT's prior written consent, which consent may be withheld for any reason.
11. Applicable Law. This Agreement shall be governed by the laws of the State of Florida, 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 Duval County,


Chicago (Oak Park), Cook County, IL  
OHB Rehabilitation at Austin Blvd  
163529V; Chicago Zone  
Altenheim Subdivision; DC 34.55  
OP No. IL0669

Florida, and the parties agree to submit to the personal jurisdiction of any State or Federal court situated in Duval County, Florida.

**BY SIGNING THIS AGREEMENT**, I certify that there have been no changes made to the content of this Agreement since its approval by the B&OCT Legal Department on **January 19, 2024**.

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.

**VILLAGE OF OAK PARK, ILLINOIS**

By:   
Print Name: Kevin J. Jackson  
Title: Village Manager

**THE BALTIMORE AND OHIO CHICAGO TERMINAL  
RAILROAD COMPANY**

By:   
Steven Armbrust  
Assistant General Counsel

**REVIEWED AND APPROVED  
AS TO FORM**

  
FEB 06 2024  
**LAW DEPARTMENT**

**FORCE ACCOUNT ESTIMATE**

ACCT. CODE : 709 - IL0669

Form Revision  
 04/21/23

**ESTIMATE SUBJECT TO REVISION AFTER:** 1/7/2025 **DOT NO.:** Various  
**CITY:** Chicago (Oak Park) **COUNTY:** Cook **STATE:** IL  
**DESCRIPTION:** Preliminary Engineering for OHB rehabilitation at Austin Blvd Avenue (163529V, DC 34.55), Lombard Avenue (163530P, DC 34.81), East Avenue (163532D, DC 35.28), Oak Park Avenue (163533K, DC 35.55), and Home Avenue pedestrian bridge (163534S, DC 35.84), over CSXT/B&OCT by the Village of Oak Park, IL.  
**ZONE:** Chicago **SUB-DIV:** Altenheim **MILE POST:** Various  
**AGENCY PROJECT NUMBER:** Village of Oak Park, IL #24-14

**PRELIMINARY ENGINEERING:**

212 Contracted & Administrative Engineering Services \$22,000  
 Subtotal \$22,000

**CONSTRUCTION ENGINEERING/INSPECTION:**

212 Contracted & Administrative Engineering Services  
 Subtotal

**FLAGGING SERVICE: (Contract Labor)**

70 Labor (Conductor-Flagman)  
 50 Labor (Foreman/Inspector)  
 70 Additive (Transportation Department)  
 50 Additive (Engineering Department)  
 Subtotal

**SIGNAL & COMMUNICATIONS WORK:**

**TRACK WORK:**

**PROJECT SUBTOTAL:** \$22,000

900 **CONTINGENCIES:** 0.00%

**PROJECT TOTAL:** ..... \$22,000

**CURRENT AUTHORIZED BUDGET:** ..... \$22,000

**TOTAL SUPPLEMENT REQUESTED:** ..... \$22,000

**DIVISION OF COST:**

Agency 100.00% \$22,000  
 Railroad 0.00%

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

Office of Chief Engineer Public Projects--Jacksonville, Florida

Estimated prepared by: Benesch

Approved by: BWA CSXT Public Project Group

DATE: 01/08/24 REVISED:

DATE: 01/16/24

**B&OCT Schedule PA**

**PAYMENT SUBMISSION FORM**

Project Description: Chicago (Oak Park), Cook Co., IL; OHB Rehabilitation at Austin Blvd and Four Other Locations; 163529W; Chicago Zone; Altenheim Subdivision; DC 34.55

B&OCT OP# **IL0669** (To be filled in by B&OCT)

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Payment may be made via paper check or ACH/EFT payment as detailed below.  
Payment due prior to work commencing.

\*\*\*\*\*Mail a Check\*\*\*\*\*

Mail this form (via USPS only),  
along with your paper check (do not  
send the Agreement) to the following  
address:

**CSX Transportation, Inc.  
P.O. Box 530192  
Atlanta, GA 30353-0192**

**OR**

\*\*\*\*\*ACH/EFT Payment\*\*\*\*\*

Submit Payment to:

**B&OCT Govt. Billing  
P.O. Box 530192  
Atlanta, GA 30353-0192**

**Acct # 1219082172  
ACH ABA# 267084199**

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When submitting payment VIA EITHER CHECK OR ACH/EFT, send a photocopy of the check or associated ACH/EFT payment info, along with this form via email/mail to:

**Bradley W. Armstrong  
Project Manager II - Public Projects  
4802 Decoursey Pike  
Taylor Mill, KY 41015  
brad\_armstrong@csx.com  
nicole\_henning@csx.com**

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(All information below to be completed by Agency providing Payment)

<u>Sponsor Name</u>	<u>Payment Date</u>	<u>Check #</u>	<u>Amount</u>
<u>Village of Oak Park</u>	<u>03/07/2024</u>	<u>157287</u>	<u>\$22,000.00</u>