

**DRAFT**

**MEMORANDUM OF AGREEMENT  
AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION  
THE UNITED STATES MARINE CORPS  
THE NATIONAL PARK SERVICE  
THE DISTRICT DEPARTMENT OF TRANSPORTATION  
THE DISTRICT DEPARTMENT OF PARKS AND RECREATION THE DISTRICT OF  
COLUMBIA STATE HISTORIC PRESERVATION OFFICE  
AND  
CSX TRANSPORTATION, INC.,  
REGARDING  
THE RECONSTRUCTION OF THE VIRGINIA AVENUE TUNNEL**

**WHEREAS**, the Federal Highway Administration (FHWA), the United States Marine Corps (USMC), the National Park Service (NPS), the District Department of Transportation (DDOT), and the District Department of Parks and Recreation (DPR) propose to issue approvals (Undertakings) that will allow CSX Transportation Inc., (CSX) to reconstruct an existing tunnel beneath Virginia Avenue, SE in the District of Columbia (“The Virginia Avenue Reconstruction Project” or “the Project”) so that CSX may preserve, over the long-term, the continued ability to provide efficient freight transportation services in the District of Columbia, the Washington Metropolitan Area and the eastern seaboard; and

**WHEREAS**, the FHWA approval will be issued in response to a request by CSX, and will allow the temporary closure of the Interstate 695 ramp at 6<sup>th</sup> Street, SE and the temporary use of the air rights above so that the Project can be implemented; and

**WHEREAS**, the USMC approval will be issued in response to a request by CSX and will allow CSX temporary use of the USMC recreational facility located on Virginia Avenue, SE between 6<sup>th</sup> and 7<sup>th</sup> Streets, SE as an essential aspect of accomplishing the Project and

**WHEREAS**, the NPS proposes to act upon an application by CSX for the temporary use of NPS reservations along Virginia Avenue SE as an essential aspect of accomplishing the Project; and

**WHEREAS**, the issuance of the FHWA, USMC and NPS approvals are undertakings which are subject to Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC 470f) and its implementing regulations, 36 CFR Part 800, hereinafter collectively referred to as Section 106; and

**WHEREAS**, the DDOT proposes to provide approval of necessary permits to CSX to allow the temporary closure of certain portions of Virginia Avenue SE and other surface streets in the project area during construction of the project to use and occupy certain public right-of-way; and

**WHEREAS**, the DPR proposes to provide approval of necessary permits to CSX to allow the temporary use of Virginia Avenue Park for construction as an essential aspect of accomplishing the Project; and

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**WHEREAS**, FHWA, DDOT, and CSX have consulted with the District of Columbia State Historic Preservation Office (DCSHPO) and the Advisory Council on Historic Preservation (“Council”) pursuant to Section 106; and

**WHEREAS**, the USMC, the NPS, the National Capital Planning Commission, U.S. Commission of Fine Arts, Naval District Washington, Federal Railroad Administration, the DPR, DC Department of Housing and Community Development, Advisory Neighborhood Commissions 6B and 6D, Barracks Row Main Street, Capitol Hill Restoration Society, The Capitol Riverfront Business Improvement District, Capitol Quarter Home Owners’ Association, The Committee of 100 on the Federal City, DC Preservation League, Friends of Garfield Park, National Railway Historical Society, The Pennsylvania Railroad Technical & Historical Society, the pastor of St. Paul AUMP Church, Virginia Avenue Community Garden, Washington Area Metropolitan Transit Authority, and certain individuals with a demonstrated interest in the undertaking also participated in the consultation and are collectively referred to as the “Consulting Parties”; and

**WHEREAS**, FHWA, in consultation with DCSHPO and the Consulting Parties, has determined the area of potential effects (“APE”) for the Project (Attachment A); and

**WHEREAS**, FHWA, in consultation with DCSHPO and the Consulting Parties, have determined that eighteen (18) historic properties exist within the APE, including seventeen (17) built historic properties and one (1) archeological resource (Attachment B); and

**WHEREAS**, FHWA, in consultation with DCSHPO and the Consulting Parties, have determined that the Project will have adverse effects on five (5) historic properties including the Virginia Avenue Tunnel; the Capitol Hill Historic District; St. Paul AUMP Church; The Plan of the City of Washington (L’Enfant Plan); and Virginia Avenue Paving; and

**WHEREAS**, FHWA, DDOT, CSX, DCSHPO and the Consulting Parties have consulted pursuant to 36 CFR §800.6 to seek ways to avoid, minimize or mitigate adverse effects; and

**WHEREAS**, FHWA notified the Council of the adverse effect determination pursuant to 36 CFR 800.6(a)(1) and the Council elected not to participate in the consultation process ; and

**WHEREAS**, FHWA, USMC, NPS, DDOT, DPR, DCSHPO and CSX are entering into this Memorandum of Agreement (MOA) pursuant to 36 CFR 800.6 (b)(1)(iv); and

**WHEREAS**, pursuant to 36 CFR 800.6(c)(2)(i), USMC, NPS, DPR and CSX are being invited to sign this MOA as an invited signatory because they have responsibilities under this MOA; and

**WHEREAS**, FHWA, USMC, NPS, DDOT, DPR, DCSHPO and CSX are hereafter referred to as “the Signatories” to this MOA; and

**WHEREAS**, the Signatories acknowledge that Project modifications or implementation may have unanticipated adverse effects on historic properties and, therefore, this MOA sets forth the measures that will be implemented to identify and consider these potential effects on historic properties should they occur; and

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**WHEREAS**, during the implementation of this MOA, the Signatories may identify other interested parties and invite them to participate as consulting parties in the consultation process specified in this MOA; and

**WHEREAS**, FHWA and DDOT sought and considered the views of the public on the Project through the public involvement process described in the Project's Final Environmental Impact Statement which included a website, mass mailings, public meetings, and opportunities to provide public comment, including five (5) Consulting Parties meetings which resulted in this MOA being developed with appropriate public participation during the Section 106 process; and

**WHEREAS**, FHWA, DDOT and CSX will notify the Consulting Parties and the public of the execution and effective dates of this MOA; AND

**WHEREAS**, CSX has agreed to issue a final report to the signatories upon meeting or completing all the stipulations in accordance with this MOA.

**NOW, THEREFORE**, the Signatories agree that upon taking their actions to issue the approvals needed by CSX to proceed with the Project, the following stipulations will be implemented in order to address the effects of the Undertaking on historic properties, and that these stipulations shall govern the Project and all of its parts until this MOA is fulfilled, expires or is terminated.

### **STIPULATIONS**

**CSX and the FHWA shall ensure that the following stipulations are carried out:**

#### **I. HISTORIC BUILT ENVIRONMENT STIPULATIONS**

##### **A. Identification of Additional Historic Built Environment Properties and Assessment of Project Effects**

If any previously unidenfied historic built environment properties are discovered within the APE during final design or construction of the Project, or if CSX proposes to modify the Project in a manner that has the potential to result in previously unevaluated effects on the historic built environment, CSX will notify the Signatories as expeditiously as possible and consult with the Signatories to evaluate the National Register eligibility of the newly discovered properties and/or the previously unevaluated effects, as applicable, pursuant to the process outlined in Stipulation IV of this MOA and in accordance with relevant sections of 36 CFR Part 800.

##### **B. Construction Protection Plan**

1. Prior to the commencement of any construction activities associated with the Project, CSX shall develop a Construction Protection Plan (CPP) based upon standard measures and best practice techniques for similar projects. The CPP will be developed in consultation with the Signatories and will be used to assist CSX and its contractors to avoid and minimize adverse effects on known historic properties. CSX shall prepare and revise

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the draft CPP until it is approved by the Signatories pursuant to the process outlined in Stipulation IV of this MOA.

2. At a minimum, the CPP shall include the St. Paul AUMP Church at 401 I Street, SE, the other older structures located near Virginia Avenue SE between 2<sup>nd</sup> and 9<sup>th</sup> Streets SE, such as the building at 809 Virginia Avenue SE; shall require monitoring the condition of the potentially affected properties; and shall include information regarding the baseline conditions of the properties prior to the commencement of construction activities; the type of monitoring equipment that will be used; the frequency with which the equipment will be monitored; and a description of how CSX shall evaluate and repair any damage that may result from construction of the Project.
3. CSX agrees that no construction activities may begin until the CPP has been finalized and approved by the Signatories.

### **C. Historic American Engineering Record (HAER) Recordation of the Virginia Avenue Tunnel**

1. Prior to any alteration or demolition of the Virginia Avenue Tunnel, CSX will arrange for documentation and photographic recordation of the historic structure in accordance with the guidelines set forth in “HABS/HAER Photographs: Specifications and Guidelines” (U.S. Department of the Interior, 2001); “HABS/HAER Standards” (U.S. Department of the Interior, 1990); and “HABS Historical Reports” (U.S. Department of the Interior, 2000). A Level II HAER standard will be used.
2. Prior to completion of the recordation package, CSX shall consult with the National Park Service HAER Office (NPS) to determine if the NPS will agree to serve as the repository for the documentation. If the NPS agrees, CSX shall revise the recordation package in accordance with any NPS recommendations, if any, and submit the final package for accessioning into the HAER collections. If the NPS declines to accept the documentation, CSX shall notify the DCSHPO as expeditiously as possible and submit the recordation package to the other repositories identified by the DCSHPO.
3. Alteration and demolition of the Virginia Avenue Tunnel may commence only after the recordation package has been approved and submitted to the NPS, or to the other repositories identified by the DCSHPO, and CSX has notified the Signatories that it has fulfilled this recordation requirement in writing.

### **D. Establishment of a Preservation Fund**

1. Within one (1) year of the date of the last signature on this MOA, CSX shall establish a preservation fund in the amount of \$200,000.00 for the

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purpose of carrying out historic preservation-related projects directly related to properties within the District of Columbia which are listed in or may be determined eligible for listing in the National Register of Historic Places and/or the DC Inventory of Historic Sites by the DCSHPO.

2. The preservation fund will be administered by a third party entity selected by the DCSHPO and CSX shall establish the preservation fund by providing a check for the amount specified above to the entity selected by the DCSHPO.
3. The DCSHPO will identify the appropriate method(s) to notify the public about the fund, and will also develop an appropriate protocol/process by which the third-party entity may award these funds.
4. Eligible projects may include “bricks and mortar” work, survey, evaluation, historical research, archaeological investigations, public outreach, interpretation, or other closely related topic.
5. All work accomplished by the fund shall meet *The Secretary of the Interior’s Standards for the Treatment of Historic Properties* and each project so funded shall have a public benefit.

### **E. Restoration of Virginia Avenue SE**

1. Within one (1) year of the completion of the Project, CSX shall carry out the restoration of those portions of Virginia Avenue SE that were closed during and affected by construction of the Project.
2. The restoration shall be carried out under the supervision of DDOT and in the manner described in the Final Environmental Impact Statement prepared for the Project.
3. The DCSHPO and NPS will be afforded an opportunity to review and comment on the draft plans for the restoration of Virginia Avenue SE, pursuant to the process outlined in Stipulation IV of this MOA.

### **F. Restoration of Virginia Avenue Park**

1. As soon as possible, but prior to any alteration of Virginia Avenue Park, CSX shall photographically record the existing conditions of the park, provide electronic copies of the recordation to the Signatories and retain a copy for its records. Since the photographs will be used for general reference only, they can be accomplished using any commercially available digital camera and do not have to meet any particular standards.
2. Within one (1) year of the completion of the Project, CSX will restore the portions of Virginia Avenue Park that were affected by construction of the

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Project to a condition that is at least as good as the conditions documented in the pre-construction photographs.

3. Upon completion of the restoration, CSX shall photographically record the restored conditions of the park and provide copies of the recordation to the Signatories in order to document fulfillment of this stipulation.

### **G. Interpretive Signage for the Virginia Avenue Tunnel**

1. Within one (1) year of the date of the last signature on this MOA, CSX shall consult with the DCSHPO to develop plans for an interpretive sign that will describe the history of the Virginia Avenue Tunnel and related historical topics.
2. The interpretive sign shall be installed at a publically accessible site near the historic tunnel's original location.
3. The design, general dimensions, images narrative content and location of the interpretive sign shall be reviewed and approved by the DCSHPO pursuant to the process outlined in Stipulation IV of this MOA.
4. Once approved, CSX and DCSHPO shall consult further to identify an appropriate date for installation of the sign, taking into account any physical constraints that may be imposed by construction of the Project.
5. CSX and DCSHPO shall also consult with the DPR Department of Parks and Recreation (DPR) regarding the proposed installation of any interpretive signs or paving stones within park areas under DPR jurisdiction.

### **H. Interpretive Signage for the L'Enfant Plan and Reuse of Virginia Avenue Paving**

1. Within one (1) year of the date of the last signature on this MOA, CSX shall consult with the DCSHPO to develop plans for an interpretive sign that will describe the history of the L'Enfant Plan and Virginia Avenue, SE, in particular.
2. The interpretive sign shall be installed at a publically accessible site within or near Virginia Avenue Park.
3. As an additional component of the interpretation, CSX shall also consult with the DCSHPO to identify the appropriate manner in which some of the salvaged Virginia Avenue Paving Stones referenced in Stipulation II.A of this MOA should be removed from their existing site and relocated as an additional educational element near the interpretive sign. A high priority will be given to reusing the paving stones somewhere within the original right of way of Virginia Avenue, SE.

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3. The design, general dimensions, images narrative content and location of the interpretive sign/ salvaged paving stones shall be reviewed and approved by the DCSHPO pursuant to the process outlined in Stipulation IV of this MOA.
4. Once approved, CSX and DCSHPO shall consult further to identify an appropriate date for installation of the sign, taking into account any constraints that may be imposed by construction of the Project.
3. CSX and DCSHPO agree to consult with the DPR regarding the proposed installation of any interpretive signs or paving stones within park areas under DPR jurisdiction.

### **I. Donation and Relocation of the Virginia Avenue Tunnel Portals Stones**

1. After recordation of the Virginia Avenue Tunnel and its portals has been completed pursuant to Stipulation I.C. of this MOA, CSX may carefully remove the original stones which form the eastern and western portals of the Virginia Avenue Tunnel (near 2<sup>nd</sup> Street and Virginia Avenue, SE and 11<sup>th</sup> Street and Virginia Avenue, SE, respectively) and store them in a safe location while it makes any or all of the stones available to the Friends of Garfield Park, the National Park Service – National Capital Parks East, and/or DPR, hereinafter collectively referred to as the Eligible Entities.
2. CSX will provide at least thirty (30) days advanced notice in writing to the Eligible Entities and to the DCSHPO before removing the stones, and shall provide an additional thirty (30) days for the Eligible Entities to respond after the stones have been removed.
3. The Eligible Entities must agree to consult with and obtain the approval of the DCSHPO on their planned use of the stones as a condition of receiving the stones.
4. After the DCSHPO approves of the planned use of the stones, CSX shall transport any or all of the portal stones to any location within the District of Columbia selected by any or all of the Eligible Entities provided that the plans are approved within ninety (90) days of the date of the initial CSX notification letter referenced in Stipulation I.I.2., above.
5. If none of the Eligible Entities elect to take the stones, CSX shall notify the DCSHPO as expeditiously as possible and consult further with the Signatories to identify the appropriate disposition of the stones.

### **J. Designation of Control Point Virginia Tower**

1. Within one (1) year of the date of the last signature on this MOA, CSX shall complete a National Register of Historic Places nomination package and a DC Inventory of Historic Sites nomination package (the latter

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consists of the National Register Nomination and a DC Inventory cover sheet) for the historic railroad switching tower located near 2<sup>nd</sup> Street and Virginia Avenue, SW and referred to by CSX as “Control Point Virginia” (CP Virginia). Photographs of CP Virginia and map which indicates its location are attached in Appendix #.

2. The nomination packages shall be prepared by an individual or individuals who meet the applicable *Secretary of the Interior’s Qualifications Standards* and shall be developed in consultation with the DCSHPO and revised to the DCSHPO’s satisfaction.
3. Once approved by the DCSHPO, the nomination packages will be submitted by CSX to the DCSHPO for formal nomination to the DC Inventory of Historic Sites and the National Register of Historic Places.

### **K. Rehabilitation of Control Point Virginia Tower**

1. As soon as practicable, but no later than one (1) year of the date of the last signature on this MOA, CSX shall develop and implement rehabilitation plans for CP Virginia.
2. CSX shall develop the rehabilitation plans in consultation with the DCSHPO to ensure that they meet *The Secretary of the Interior’s Standards for Rehabilitation of Historic Properties*.
3. At a minimum, the rehabilitation work shall include installing a new roof using a material that can be determined by historical photographs or records (most likely slate), cleaning and repointing the masonry elements, restoring or replacing the windows with appropriate replacements, scraping/repairing/repainting the metal bay and trim, and any other work that is necessary to ensure long-term preservation of the historic resource.
4. CSX shall submit the draft plans to the DCSHPO in accordance with Stipulation IV of this MOA and revise them in accordance with any DCSHPO comments until approved.

## **II. ARCHAEOLOGICAL STIPULATIONS**

### **A. Virginia Avenue Site (52SE062)**

1. The project APE contains a previously identified archeological site that will require mitigation treatment associated with the current project. The Virginia Avenue Site (51SE062) represented intact portion of the cut stone block paving along the original alignment of Virginia Avenue, and is considered eligible under criteria A and B due to its association with the National Register listed L’Enfant Plan. As this archeological site falls within the Limits of Disturbance (LOD) of the current project, it has been determined that this archeological resources will be adversely affected and



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that the mitigation measures outlined in this Stipulation will be carried out in consultation with the DCSHPO.

2. CSX shall arrange for development of a Determination of Eligibility for the Virginia Avenue Paving (51SE062) by a qualified archaeologist.
3. Removal of the paving stones shall be undertaken following preparation of a work plan submitted to the DCSHPO for review and approval pursuant to the process outlined in Stipulation IV of this MOA. A qualified archaeologist must be present during the removal operation. Only limited testing occurred beneath the paving stones when the site was initially indentified so it is possible that archaeological depostis may be present beneath the stones. If any archaeological resources are idnetfited during removal of the paving stones, they will be treated as an unanticiapated discovery pursuant to Stipulation II.B. of this MOA. Reuse of the paving stones for interpretation pursuant to Stipulation H of this MOA should ensure a secure location for the stockpiling the salvaged stones. DDOT may request some of the stones for repiar of similar paved streets, but will be responsible for reolcating the stones.
4. Prior to any construction disturbance, CSX shall arrange that sections of cross streets proximate to Virginia Avenue SE between 2<sup>nd</sup> and 11<sup>th</sup> Street SE be subjected to testing to assess the potential and verify the presence of any additional intact historic cut-stone block paving. This work will be conducted in consultation with the DCSHPO and a work plan will be submitted for review and approval to the DCSHPO before testing will begin. There are numerous utilities present under both Virginia Avenue and the numbered streets in the immediate area, so coordination with “Miss Utility” and DC Water will be necessary.
5. The results of these investigations will be incorporated into an draft archeological technical report to be submitted to the DCSHPO for review and comment, as provided in Stipulation VI of this MOA, and a revised final report will be prepared incorporating DCSHPO comments.
6. As described in Stipulation I.H. of this MOA, CSX shall salvage and reuse some of the Virginia Avenue Paving as part of an interpretive sign and display relating to the L’Enfant Plan and Virginia Avenue, SE.
7. All archeological work and submittals will follow Guidelines for Archaeological Investigations in the District of Columbia (1998, as amended).
8. Archaeological collections, digital data, field notes and records, images, and related records generated by the Project will be prepared for permanent curation following procedures outlined in the *Guidelines for*

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*Archaeological Investigations in the District of Columbia* (1998, as amended) and submitted to the DC SHPO for curation.

### **B. Unanticipated Archaeological Discoveries**

1. In the event that a previously unidentified archaeological resource is discovered during ground disturbing activities, all construction work within a 25-foot radius of the resource will be halted.
2. CSX will notify FHWA, DDOT and DCSHPO in writing, by email or by telephone within 24 hours upon discovery of potentially significant archaeological remains. CSX will arrange for a qualified archaeologist to investigate the site. The archaeologist shall conduct an assessment of the resource in consultation with the DCSHPO, which will include NRHP eligibility, and if necessary, a recommended buffer zone surrounding the resource and a treatment (data recovery) plan.
3. Upon receipt of the archaeologist's assessment, the FHWA and DDOT, in consultation with the DCSHPO, shall determine within two (2) working days the NRHP eligibility of the resource, and if appropriate (resource found to be eligible for listing on the NRHP), they shall determine the boundaries of the resource buffer zone and agree to a treatment plan. Appropriate treatment may include data recovery and/or archaeological monitoring, but other treatments are possible and will be determined during consultation. Upon this determination, construction may continue outside of this resource buffer zone.
4. If the resource is determined by FHWA and DDOT, in consultation with the DCSHPO, not eligible for inclusion on the National Register, then construction within the resource area can proceed immediately.
5. If the resource is determined eligible for the National Register and data recovery and/or archaeological monitoring investigations are part of the agreed-upon treatment, then CSX will arrange for a qualified archaeologist to submit a work plan to the DCSHPO for review and approval, prior to conducting said investigations. When the investigations are completed, a management summary will be prepared that outlines the steps taken to identify, evaluate and mitigate the unanticipated discovery and submitted for review by the DCSHPO.
6. Upon receipt of the management summary, the FHWA and DDOT, in consultation with the DCSHPO, shall determine the completeness of the data recovery within five (5) working days. If determined to be completed, construction within the resource area can proceed immediately.
7. Draft and final technical reports detailing the results of data recovery/and or monitoring investigations in accordance with contemporary professional standards, and the standards as set out in *Guidelines for*

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*Archaeological Investigations in the District of Columbia* (1998, as amended). The *Standards for Final Reports of Data Recovery Programs* Department of the Interior (42 FR 5377-79), and the ACHP's publications, *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999), ACHP *Section 106 Archaeology Guidance* (at: <http://www.achp.gov/archguide/>) shall also be taken into account.

8. All materials and records resulting from data recovery will be curated in accordance with Stipulation III.C of this MOA.

### C. Treatment of Human Remains

1. If human remains are discovered during construction, CSX will notify FHWA, DDOT and DCSHPO of the discovery and CSX will ensure that all ground-disturbing activities in the immediate area of the discovery cease immediately and remain halted until all of the following actions have been carried out:
2. CSX shall immediately implement measures to protect the human remains from inclement weather and vandalism, and notify the District of Columbia Office of the Chief Medical Examiner (OCME) of the discovery. Sufficient description of the discovery shall be provided to allow OCME to complete its obligations under Statute § 5-1406 of the District of Columbia code or other applicable law(s).
3. If the OCME determines that the human remains are not subject to a criminal investigation by local or federal authorities, DDOT and FHWA shall determine appropriate disposition in consultation with DCSHPO. CSX shall comply with all applicable federal and District of Columbia laws and regulations governing the discovery and disposition of human remains and consider the Council's 2007 Policy Statement Regarding Treatment of burial Sites, Human Remains, and Funerary Objects.
4. Removal of human remains shall be undertaken by a qualified archaeologist.
5. Should the Undertaking uncover Native American human remains on federal property, FHWA will comply with the requirements of the Native American Graves Repatriation Act (NAGPRA, 25 U.S.C. 3001).

## III. PROFESSIONAL STANDARDS AND CURATION

### A. Qualifications

CSX shall ensure that all cultural resources work performed pursuant to this MOA is carried out by or under the direct supervision of personnel who meet the applicable *Secretary of the Interior's Professional Qualifications Standards* (48

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FR 44716) (hereinafter cited as “Qualifications”) for the work that is being carried out.

### **B. Standards and Guidelines**

CSX shall ensure that all cultural resources investigations and preservation work executed as part of this MOA will be completed according to the following accepted professional standards and guidelines:

1. Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716; 1983 and successors);
2. Advisory Council on Historic Preservation – Section 106 Archaeology Guidance (Council, 2007);
3. Recommended Approach for Consultation on Recovery of Significant Information for Archeological Sites (Council, 2007) (64 FR 27085-27087);
4. Advisory Council on Historic Preservation Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects (Council,2007); and
5. Secretary of the Interior’s Standards for the Treatment of Historic Properties (36 CFR Part 68).
6. *Guidelines for Archaeological Investigations in the District of Columbia* (1998, as amended).

### **C. Curation**

Archaeological collections, digital data, field notes and records, images and related records generated by the project will be prepared for permanent curation following procedures outlined in the *Guidelines for Archaeological Investigations in the District of Columbia* (1998, as amended) and in accordance with 36CFR 79 and submitted to the DC SHPO for curation.

## **IV. DOCUMENT AND DELIVERABLE REVIEW**

- A. Throughout the term of this MOA, CSX shall provide the DCSHPO and other Signatories with opportunities to review, comment and approve the reports, plans, designs, and other products stipulated in this MOA. In general, review periods will encompass a timeframe not to exceed thirty (30) calendar days from the date that each Signatory receives the item for review, unless otherwise specified in this MOA.

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- B. The DCSHPO and other Signatories will provide comments to CSX and the other Signatories regarding any document or product submitted pursuant to this MOA, as promptly as possible, but not to exceed thirty (30) calendar days from the date of receipt.
- C. If the DCSHPO or other Signatories do not submit comments in writing within thirty (30) calendar days of the receipt of any such submissions, CSX and the other Signatories may proceed with the plans, reports, proposals or actions as specified in their submittal.
- D. If the DCSHPO or other Signatory or Signatories object in writing to any document or product submitted for review within thirty (30) calendar days of the receipt of any such submission, then the Signatories will consult expeditiously in an effort to resolve the objection.
- E. If the objection cannot be resolved among the Signatories, and FHWA determines that further consultation will be unproductive, then the Signatories will comply with the Dispute Resolution procedures detailed under Stipulation VI of this MOA.
- F. The Signatories acknowledge that the timeframes set forth in this stipulation are the maximum allowable under normal circumstances. In exigent circumstances (such as when construction activities have been suspended or delayed pending resolution of the matter), each party agrees to expedite their respective document review and dispute resolution obligations to the extent possible.

### **V. COORDINATION AND REPORTING**

#### **A. Reporting**

Commencing four (4) months from the date of the last signature on this MOA, CSX shall provide quarterly reports to the Signatories for the duration of this MOA. The report will reference each of the Stipulations of this MOA by number/letter and will provide a detailed description of the status of implementation of each.

#### **B. Ongoing Coordination**

Based upon the information provided in the quarterly reports specified in Stipulation V.A. above, the Signatories shall consult formally or informally on a quarterly basis via email, telephone or in writing, to discuss topics related to this MOA and its implementation. If any Signatory requests a formal meeting during the term of this MOA, DDOT and the DCSHPO shall coordinate and arrange to host a meeting.

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### **VI. DISPUTE RESOLUTION**

#### **A. Resolution of Objection by the Signatories**

1. Should any Signatory to this MOA, object in writing within thirty (30) days of receipt of any document or product submitted or actions proposed pursuant to this MOA, including receipt of the annual report, FHWA shall consult with the objecting party and CSX to resolve the objection. If the FHWA determines that such objection cannot be resolved, the FHWA will:
  - a. Forward all documentation relevant to the dispute, including FHWA's proposed resolution, to the Council. The Council shall provide the FHWA with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Council, Signatories, and Consulting Parties, and provide them with a copy of this written response. The FHWA and CSX will then proceed according to FHWA's final decision.
  - b. If the Council does not provide its advice regarding the dispute within the thirty (30) day time period, the FHWA may make a final decision on the dispute. FHWA and CSX will then proceed according to FHWA's final decision. Prior to reaching such a final decision, the FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and Consulting Parties to the MOA, and provide them and the Council with a copy of such written response.
2. The FHWA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remains unchanged.

#### **B. Resolution of Objections by the Public**

At any time during the implementation of the measures stipulated in this MOA, should an objection pertaining to this MOA or the effect of the Project on historic properties be raised by a member of the public, FHWA shall notify the Signatories and take the objection into account, consulting with the objector, and should the objector so request, with any of the Signatories to this MOA to resolve the objection.

### **VII. SIGNATORY CONTACTS**

For purposes of notices and consulting pursuant to this MOA, the following addresses and contact information should be used for the following agencies:

#### **FHWA**

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Federal Highway Administration  
District of Columbia Division  
1990 K Street NW, Suite 510  
Washington, DC 20006-1103

### **DCSHPO**

Government of the District of Columbia  
Office of Planning  
State Historic Preservation Officer  
1100 4<sup>th</sup> Street SW, Suite E650  
Washington, DC 20024

### **DDOT**

District Department of Transportation  
55 M Street SE, Suite 400  
Washington, DC 20003

### **CSX**

CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202

### **Council**

Advisory Council on Historic Preservation  
Old Post Office Building  
1100 Pennsylvania Avenue NW, Suite 803  
Washington, DC 20004

### **USMC**

U.S. Marine Corps  
Marine Barracks Washington, DC  
8<sup>th</sup> & I Streets SE  
Washington, DC 20390

### **NPS**

National Park Service  
National Capital Region  
1100 Ohio Drive SW  
Washington, DC 20242

### **DPR**

DC Department of Parks and Recreation  
1250 U Street NW  
Washington, DC 20009

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### **VIII. EMERGENCY SITUATIONS**

If during the duration of this MOA an emergency situation arises representing an immediate threat to public health, safety, life or property that has the potential to effect a historic property, the regulations set forth in 36 CFR 800.12 shall be followed. CSX shall notify the DDOT, FHWA, the Council, and the DCSHPO of the condition which has created the situation and the measures to be taken to respond to the emergency or hazardous condition within twenty-four (24) hours of the event. DDOT, the Council, and the DCSHPO may submit comments to the FHWA within seven days of the notification. If FHWA determines that circumstances do not permit seven days for comment, FHWA shall notify the DDOT, the Council, and DCSHPO and invite any comments in the determined and stated time available. FHWA shall consider these comments in developing a response to the treatment of historic properties in relation to the emergency situation.

### **IX. AMENDMENTS**

This MOA may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date that a fully executed copy of the amendment is filed with the Council.

### **X. TERMINATION**

If any Signatory of this MOA determines that its terms will not or cannot be carried out, that party will immediately consult with the other Signatories to attempt to develop an amendment per Section XIII. If within thirty (30) days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories. Once the MOA is terminated, and prior to work continuing on the Project, DDOT and FHWA must either (a) execute another MOA pursuant to 36 CFR Section 800.6 or (b) request, take into account, and respond to the comments of the Council under 36 CFR Section 800.7. DDOT and FHWA will notify the Signatories as to the course of action it will pursue.

### **XI. DURATION**

This MOA shall be null and void if its terms are not carried out within ten (10) years from the date of execution, unless the Signatories agree to amend it in accordance with Stipulation IX of this MOA. If the CSX, FHWA and DDOT have not fulfilled the terms of the MOA prior to its expiration, the Signatories shall consult to reconsider the terms of the MOA and amend it according to Stipulation IX of this MOA or terminate it in accordance with Stipulation X of this MOA. Termination of the MOA or failure to amend the MOA will require further consultation with 36 CFR Part 800 for all unfulfilled terms.



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## **XII. LIST OF ATTACHMENTS**

Attachment A: Area of Potential Effect

Attachment B: Site Form and Photographs of Archaeological Site 52SE062

Attachment C: Control Point Virginia Tower Photographs and Location Map

## **XIII. SIGNATURES**

Execution of this MOA, implementation of its terms and filing a copy with the Council evidences that FHWA and USMC have taken into account the effects of their undertakings on historic properties and provided the Council a reasonable opportunity to comment with regard to their undertakings.

Signatures Follow On Individual Pages Below

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**SIGNATURE PAGE  
MEMORANDUM OF AGREEMENT  
REGARDING  
THE RECONSTRUCTION OF THE VIRGINIA AVENUE TUNNEL**

**Federal Highway Administration**

\_\_\_\_\_  
INSERT NAME AND TITLE HERE

\_\_\_\_\_  
Date

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**SIGNATURE PAGE  
MEMORANDUM OF AGREEMENT  
REGARDING  
THE RECONSTRUCTION OF THE VIRGINIA AVENUE TUNNEL**

**District of Columbia State Historic Preservation Office**

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Mr. David J. Maloney  
DC State Historic Preservation Officer

Date

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**SIGNATURE PAGE  
MEMORANDUM OF AGREEMENT  
REGARDING  
THE RECONSTRUCTION OF THE VIRGINIA AVENUE TUNNEL**

**District Department of Transportation**

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INSERT NAME AND TITLE HERE

\_\_\_\_\_  
Date

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**SIGNATURE PAGE  
MEMORANDUM OF AGREEMENT  
REGARDING  
THE RECONSTRUCTION OF THE VIRGINIA AVENUE TUNNEL**

**District Department of Parks and Recreation**

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\_\_\_\_\_  
Date

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**SIGNATURE PAGE  
MEMORANDUM OF AGREEMENT  
REGARDING  
THE RECONSTRUCTION OF THE VIRGINIA AVENUE TUNNEL**

**CSX Transportation, Inc.**

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Date

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**INVITED SIGNATURE PAGE  
MEMORANDUM OF AGREEMENT  
REGARDING  
THE RECONSTRUCTION OF THE VIRGINIA AVENUE TUNNEL**

**United States Marine Corps**

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Date

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**INVITED SIGNATURE PAGE  
MEMORANDUM OF AGREEMENT  
REGARDING  
THE RECONSTRUCTION OF THE VIRGINIA AVENUE TUNNEL**

**The National Park Service**

\_\_\_\_\_  
INSERT NAME AND TITLE HERE

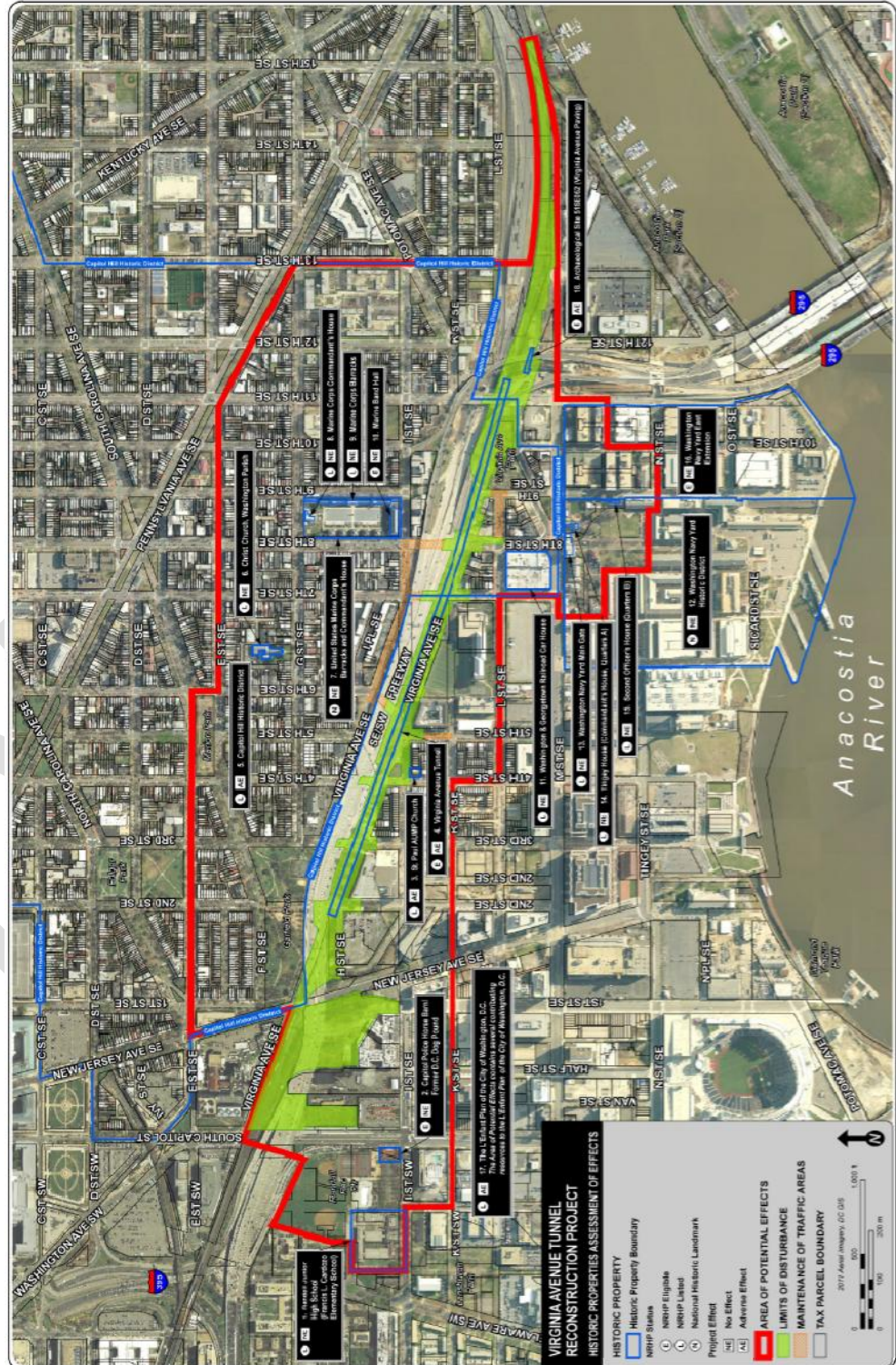
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## ATTACHMENT A – AREA OF POTENTIAL EFFECT MEMORANDUM OF AGREEMENT REGARDING THE RECONSTRUCTION OF THE VIRGINIA AVENUE TUNNEL



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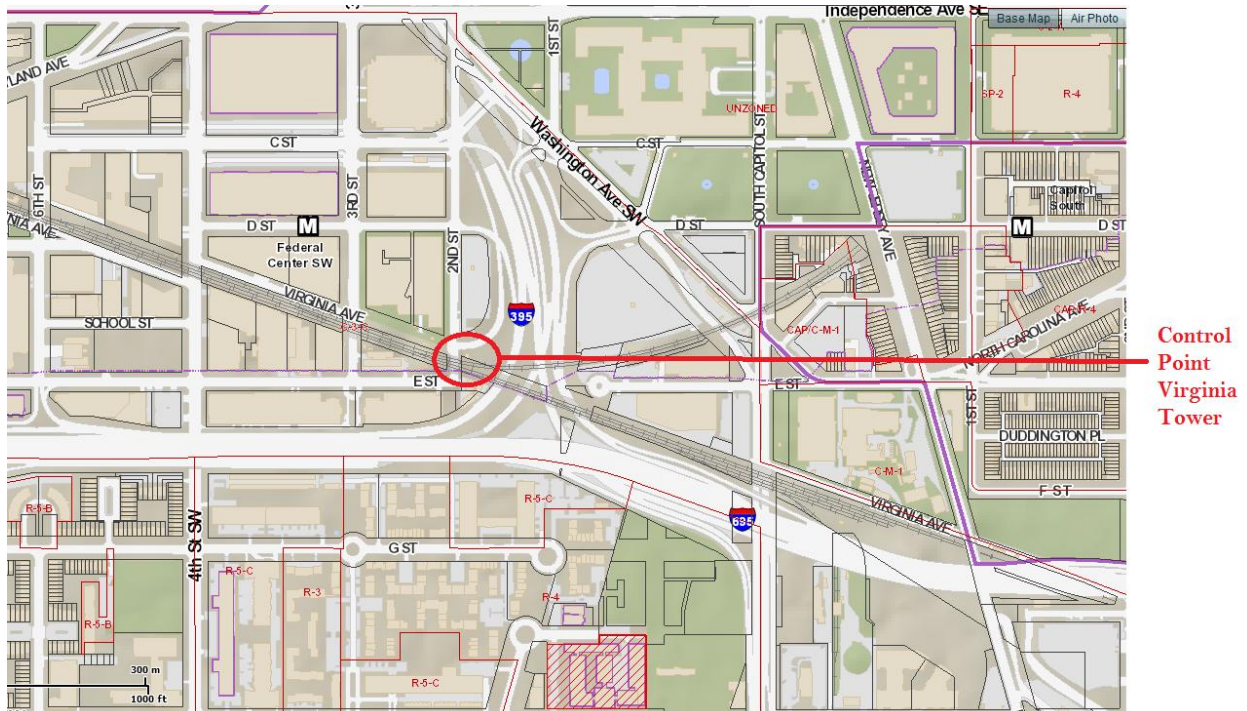
**ATTACHMENT B – SITE FORM: ARCHAEOLOGICAL SITE 52SE062  
MEMORANDUM OF AGREEMENT  
REGARDING  
THE RECONSTRUCTION OF THE VIRGINIA AVENUE TUNNEL**

TO BE INCORPORATED AT A LATER DATE

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ATTACHMENT C – CP VIRGINIA PHOTOGRAPHS AND LOCATION MAP  
MEMORANDUM OF AGREEMENT  
REGARDING  
THE RECONSTRUCTION OF THE VIRGINIA AVENUE TUNNEL



Control Point Virginia Tower, November, 2013