

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

FREDDIE O'CONNELL MAYOR NASHVILLE DEPARTMENT OF TRANSPORTATION AND MULTIMODAL INFRASTRUCTURE

February 28, 2025

Ms. Jenneen Reed
Director of Finance
Metro Nashville and Davidson County

RE: Proposal No. 2025M-003AG-001, Resolution approving a Preliminary Engineering Agreement with CSX Transportation, Inc. to provide certain engineering services related to a sidewalk project.

Ms. Reed,

This resolution will accept a Preliminary Engineering Agreement with CSX Transportation, Inc. to provide certain engineering services related to the Sidewalk Improvements Project adjacent to CSX Rail at I-40 from Alabama Avenue to Delaware Avenue, Project No. MET008. Metropolitan Government of Nashville and Davidson County (Metro) will provide funding participation from the project budget in the amount of \$6,000.00.

Sincerely,

Edward Francis

Right of Way Coordination Manager Nashville Department of Transportation

615-862-8718

Edward.Francis@Nashville.gov

PRELIMINARY ENGINEERING AGREEMENT

Infrasti	ructur	e (NDO	T). ("A	gency"	').										
Tenness	see, by	y and	through	h the	Nashv	ille De	partme	nt of	f Tra	insporta	ation	and	Mul	timo	dal
Govern	ment of	f Nashv	ille and	Davids	son Cou	ınty, a bo	dy corp	orate	and po	olitical s	subdivi	sion o	f the	State	of
corpora	tion wi	th its pr	rincipal	place of	of busin	ess in Ja	cksonv	ille, Fl	lorida	("CSX"	Γ"), an	d the	Metr	opoli	tan
					•	d betwe								_	
	This	Prelim	inary	Engine	eering	Agreen	nent (this	"Agr	eement	:") is	s ma	de	as	of

EXPLANATORY STATEMENT

- 1. Agency wishes to facilitate the development of the proposed Sidewalk improvements adjacent to CSX Rail at Alabama Avenue, Nashville, Davidson County, Tennessee; DOT: 350248B, MP: 0NW 4.12, Nashville Zone, Nashville Terminal Subdivision (the "Project").
- 2. Agency has requested that CSXT proceed with certain necessary engineering and/or design services for the Project to facilitate the parties' consideration of the Project.
- 3. Subject to the approval of CSXT, which approval may be withheld for any reason directly or indirectly related to safety or CSXT operations, property, or facilities, the Project is to be constructed, if at all, at no cost to CSXT, under a separate construction agreement to be executed by the parties at a future date.

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

1. Scope of Work

1.1. Generally. The work to be done by CSXT under this Agreement shall consist of: (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 CSXT'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 CSXT 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 CSXT to perform work which, in CSXT's opinion, is not relevant to CSXT's participation in the Project.

- 1.2. <u>Effect of CSXT Approval or Preparation of Documents</u>. By its review, approval or preparation of plans, specifications, drawings or other documents pursuant to this Agreement (collectively, the "**Plans**"), CSXT signifies only that the Plans and the Project proposed to be constructed in accordance with the Plans satisfy CSXT's requirements. CSXT expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of Agency or any other persons of such Plans or the Project constructed in accordance with the Plans.
- 2. <u>Project Construction</u>. Nothing contained in this Agreement shall be deemed to constitute CSXT'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 CSXT 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.

3. Reimbursement of CSXT Expenses.

- 3.1. <u>Reimbursable Expenses</u>. Agency shall reimburse CSXT for all costs and expenses incurred by CSXT 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 CSXT pursuant to applicable law (collectively, the "Reimbursable Expenses").
- 3.2. Estimate. CSXT has estimated the total Reimbursable Expenses for the Project to be approximately \$6,000.00 (the "Estimate" as amended or revised). In the event CSXT anticipates that actual Reimbursable Expenses may exceed such Estimate, it shall provide Agency with the revised Estimate of total Reimbursable Expenses for Agency's approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses as reflected in the revised Estimate. CSXT may elect, by delivery of notice to Agency, to immediately cease all further Engineering Work, unless and until Agency provides such approval and confirmation.

3.3. Payment Terms.

- Advance Payment in Full. Upon execution and delivery of this Agreement by Agency, Agency will deposit with CSXT a sum equal to the Reimbursable Expenses, as shown by the Estimate. Agency shall pay CSXT for Reimbursable Expenses in the amount set forth in CSXT Schedule PA attached hereto, a copy of which shall accompany the advance payment. 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 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, CSXT shall reconcile the total Reimbursable Expenses incurred by CSXT against the total payments received from Agency and shall submit to Agency a final invoice if required. Agency shall pay to CSXT the amount by which actual Reimbursable Expenses exceed total payments, as

shown by the final invoice, within thirty (30) days following delivery to Agency of the final invoice. CSXT 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 CSXT any sums due CSXT under this Agreement:

 (i) Agency 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 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. <u>Effect of Termination</u>. Agency's obligation to pay CSXT Reimbursable Expenses in accordance with this Section shall survive termination of this Agreement for any reason.
- 4. <u>Appropriations</u>. Agency represents to CSXT that: (i) Agency has obtained appropriations sufficient to reimburse CSXT for the Reimbursable Expenses encompassed by the initial Estimate; (ii) Agency shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by Agency; and (iii) Agency shall promptly notify CSXT in the event that Agency is unable to obtain such additional appropriations.

5. Termination.

- 5.1. By Agency. Agency may terminate this Agreement, for any reason, by delivery of notice to CSXT. Such termination shall become effective upon the expiration of fifteen (15) calendar days following delivery of notice to CSXT or such later date designated by the notice.
- 5.2. By CSXT. CSXT 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 CSXT 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 CSXT pursuant to this Agreement for the Engineering Work performed, plus all costs reasonably incurred by CSXT to discontinue the Engineering Work and all other costs of CSXT incurred as a result of the Project up to the time of full suspension of the Engineering Work. Termination of this Agreement or Engineering Work on the Project, for any reason, shall not diminish or reduce Agency's obligation to pay CSXT for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Engineering Work for any reason, CSXT's only remaining obligation to Agency shall be to refund to Agency payments made to CSXT in excess of Reimbursable Expenses in accordance with Section 2.
- 6. <u>Subcontracts</u>. CSXT 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 CSXT: CSX Transportation, Inc.

1590 Marietta BLVD NW

Atlanta, GA 30318 ATTN: Todd Allton

If to Agency: Nashville Department of Transportation

700 President Ronald Reagan Way, Suite 215

Nashville, TN 37210 ATTN: Rachel Wehring

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.

- 8. <u>Waiver</u>. 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.
- 9. <u>Assignment</u>. 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 by CSXT's assignee of CSXT's obligations under this Agreement, CSXT shall have no further obligations under this Agreement. Agency shall not assign its rights or obligations under this Agreement without CSXT's prior written consent, which consent may not be unreasonably withheld.
- 10. <u>Applicable Law</u>. This Agreement shall be governed by the laws of the **State** of **Tennessee**, 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 Davidson County, Tennessee, and the parties agree to submit to the personal jurisdiction of any State or Federal court situated in Davidson County, Tennessee.

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.

CSX TRANSPORTATION, INC.

By:	
·	
Title:	
THE METROPOLITAN GOVERNMENT AND DAVIDSON COUNTY NASHVILLE TRANSPORTATION AND MULTIMODA	DEPARTMENT OF
RECOMMENDED BY:	
Diana Alarcon	3/3/2025
Director Nashville Department of Transportation And Multimodal Infrastructure	Date
APPRONED AS TO AVAILABILITY OF F	UNDS:
Junuen Rud/mjw Director of Finance	3/4/2025
Director of Finance Department of Finance	Date
APPROMED: AS TO FORM AND LEGALIT	Y:
Erica Haber	3/5/2025
Assistant Metropolitan Attorney	Date
THE METROPOLITAN GOVERNMENT O NASHVILLE AND DAVIDSON COUNTY:	F
Mayor	Date
ATTEST:	
Metropolitan Clerk	Date

CSXT Schedule PA

PAYMENT SUBMISSION FORM

Project Description: <u>NDOT Pedestrian S</u>	idewalk Improveme	nts Alabama Ave Adja	cent to CSXT Tracks
CSXT OP# (To be file	lled in by CSXT)		
**********	******	*******	*****
Payment may be made via pa	•	1 -	ed below.
Payment	due prior to work co	ommencing.	
********Mail a Check******		******ACH/EF	T Payment*****
Mail this form, along with your paper			Payment to:
check (do not send the Agreement) to			
the following address:			ovt. Billing
	OR		ox 530192
CSX Transportation, Inc.		Atlanta, G	A 30353-0192
P.O. Box 530192		A 4 11 1	210002152
Atlanta, GA 30353-0192			219082172 A# 267084199
********		ACH ADA	
When submitting payment VIA EITHER associated ACH/EFT payment info, along	with this form via e	email/mail to:	of the check or
	rouch Engineering,		
	Maryland Way, St Brentwood, TN 370		
	elly@crouchengine		
<u>muonne</u>	eny(w/crouchengine	er mg.com	
*******	*****	*****	****
(All information below to	be completed by A	Agency providing Pay	ment)
Sponsor Name	Payment Date	Check #	<u>Amount</u>
			

ACCT. CODE: 709 - TBD

Form Revision 03/13/24

ESTIMATE SUBJECT TO REVISION AFTER: 12/2/2025 DOT NO.: 350248B

CITY: Nashville COUNTY: Davidson STATE: TN

DESCRIPTION: Nashville, Davidson County, TN - Pedestrian Sidewalk Improvements NDOT Alabama Ave CSXT; DOT 350248B,

Nashville Zone, Nashville Terminal Subdivision, MP# 0NW 4.12

ZONE: Nashville SUB-DIV: Nashville Terminal MILE POST: 0NW 4.12

AGENCY PROJECT NUMBER:

	ACENOT I ROBEOT NOMBER.		
	PRELIMINARY ENGINEERING:		
212	Contracted & Administrative Engineering Services - Crouch Engineering	\$	5,500
	Contracted & Administrative Engineering Services - CSXT Real Estate Research Fee	\$	-
	Contracted & Administrative Engineering Services - CSXT	\$	500
	Subtotal	\$	6,000
	CONSTRUCTION ENGINEERING/INSPECTION:		
	Contracted & Administrative Engineering Services - Crouch Engineering	\$	-
212	Contracted & Administrative Engineering Services - CSXT	\$	-
	Subtotal	\$	-
	FLAGGING SERVICE: (Contract Labor)		
70	Labor (Conductor-Flagman) <u>0</u> Days @ \$ 350.00	\$	-
50	Labor (Foreman/Inspector) 0 Days @ \$504.00	\$	_
70	Additive 231.00% (Transportation Department)	\$	_
50	Additive 268.00% (Engineering Department)	\$	-
	Subtotal	\$	-
	SIGNAL & COMMUNICATIONS WORK:	\$	-
	TRACK WORK:	\$	-
	DDO IECT CURTOTAL.	.	C 000
000	PROJECT SUBTOTAL: CONTINGENCIES: 0.00%	\$ \$	6,000
900	CONTINGENCIES.	Ą	-
	PROJECT TOTAL: ************************************	\$	6,000
	CURRENT AUTHORIZED BUDGET:	\$	-
	TOTAL SUPPLEMENT REQUESTED:	\$	6,000
	DIVISION OF COST:		
	Agency <u>100.00%</u>	\$	6,000
	Railroad <u>0.00%</u>	\$	-
		\$	6,000

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: M Moawad, Crouch Engineering Approved by: CTA CSXT Public Project Group

DATE: 12/02/24 REVISED: DATE: 01/13/25

PRELIMINARY ENGINEERING AGREEMENT

Infrasti	ructur	e (NDO	T). ("A	gency"	').										
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Govern	ment of	f Nashv	ille and	Davids	son Cou	ınty, a bo	dy corp	orate	and po	olitical s	subdivi	sion o	f the	State	of
corpora	tion wi	th its pr	rincipal	place of	of busin	ess in Ja	cksonv	ille, Fl	lorida	("CSX"	Γ"), an	d the	Metr	opoli	tan
					•	d betwe								_	
	This	Prelim	inary	Engine	eering	Agreen	nent (this	"Agr	eement	:") is	s ma	de	as	of

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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 CSXT: CSX Transportation, Inc.

1590 Marietta BLVD NW

Atlanta, GA 30318 ATTN: Todd Allton

If to Agency: Nashville Department of Transportation

700 President Ronald Reagan Way, Suite 215

Nashville, TN 37210 ATTN: Rachel Wehring

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.

- 8. <u>Waiver</u>. 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.
- 9. <u>Assignment</u>. 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 by CSXT's assignee of CSXT's obligations under this Agreement, CSXT shall have no further obligations under this Agreement. Agency shall not assign its rights or obligations under this Agreement without CSXT's prior written consent, which consent may not be unreasonably withheld.
- 10. <u>Applicable Law</u>. This Agreement shall be governed by the laws of the **State** of **Tennessee**, 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 Davidson County, Tennessee, and the parties agree to submit to the personal jurisdiction of any State or Federal court situated in Davidson County, Tennessee.

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.

CSX TRANSPORTATION, INC.

THE METROPOLITAN GOVERNMENT O AND DAVIDSON COUNTY NASHVILLE D TRANSPORTATION AND MULTIMODAL	DEPARTMENT OF
RECOMMENDED BY:	
Diana Alarcon	3/3/2025
Director Nashville Department of Transportation And Multimodal Infrastructure	Date
APPROVED AS TO AVAILABILITY OF FUN	NDS:
Junean Rud/mjw Director of Finance	3/4/2025
Director of Finance Department of Finance	Date
APBROWED: AS TO FORM AND LEGALITY:	:
Erica Haber	3/5/2025
Assistant Metropolitan Attorney	Date
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:	
Mayor	Date
ATTEST:	
Metropolitan Clerk	Date

CSXT Schedule PA

PAYMENT SUBMISSION FORM

Project Description: <u>NDOT Pedestrian S</u>	idewalk Improveme	nts Alabama Ave Adja	cent to CSXT Tracks
CSXT OP# (To be file	lled in by CSXT)		
**********	******	*******	*****
Payment may be made via pa	•	1 -	ed below.
Payment	due prior to work co	ommencing.	
********Mail a Check*****		******ACH/EF	T Payment*****
Mail this form, along with your paper			Payment to:
check (do not send the Agreement) to			
the following address:			ovt. Billing
	OR		ox 530192
CSX Transportation, Inc.		Atlanta, G	A 30353-0192
P.O. Box 530192		A 4 11 1	210002152
Atlanta, GA 30353-0192			219082172 A# 267084199
********		ACH ADA	
When submitting payment VIA EITHER associated ACH/EFT payment info, along	with this form via e	email/mail to:	of the check or
	rouch Engineering,		
	Maryland Way, St Brentwood, TN 370		
	elly@crouchengine		
<u>muomi</u>	eny(w/crouchengine	er mg.com	
*******	*****	*****	****
(All information below to	be completed by A	Agency providing Pay	ment)
Sponsor Name	Payment Date	Check #	<u>Amount</u>
			

ACCT. CODE: 709 - TBD

Form Revision 03/13/24

ESTIMATE SUBJECT TO REVISION AFTER: 12/2/2025 DOT NO.: 350248B

CITY: Nashville COUNTY: Davidson STATE: TN

DESCRIPTION: Nashville, Davidson County, TN - Pedestrian Sidewalk Improvements NDOT Alabama Ave CSXT; DOT 350248B,

Nashville Zone, Nashville Terminal Subdivision, MP# 0NW 4.12

ZONE: Nashville SUB-DIV: Nashville Terminal MILE POST: 0NW 4.12

AGENCY PROJECT NUMBER:

	ACENOT I ROBEOT NOMBER.		
	PRELIMINARY ENGINEERING:		
212	Contracted & Administrative Engineering Services - Crouch Engineering	\$	5,500
	Contracted & Administrative Engineering Services - CSXT Real Estate Research Fee	\$	-
	Contracted & Administrative Engineering Services - CSXT	\$	500
	Subtotal	\$	6,000
	CONSTRUCTION ENGINEERING/INSPECTION:		
	Contracted & Administrative Engineering Services - Crouch Engineering	\$	-
212	Contracted & Administrative Engineering Services - CSXT	\$	-
	Subtotal	\$	-
	FLAGGING SERVICE: (Contract Labor)		
70	Labor (Conductor-Flagman) <u>0</u> Days @ \$ 350.00	\$	-
50	Labor (Foreman/Inspector) 0 Days @ \$504.00	\$	_
70	Additive 231.00% (Transportation Department)	\$	_
50	Additive 268.00% (Engineering Department)	\$	-
	Subtotal	\$	-
	SIGNAL & COMMUNICATIONS WORK:	\$	-
	TRACK WORK:	\$	-
	DDO IECT CURTOTAL.	.	C 000
000	PROJECT SUBTOTAL: CONTINGENCIES: 0.00%	\$ \$	6,000
900	CONTINGENCIES.	Ą	-
	PROJECT TOTAL: ************************************	\$	6,000
	CURRENT AUTHORIZED BUDGET:	\$	-
	TOTAL SUPPLEMENT REQUESTED:	\$	6,000
	DIVISION OF COST:		
	Agency <u>100.00%</u>	\$	6,000
	Railroad <u>0.00%</u>	\$	-
		\$	6,000

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: M Moawad, Crouch Engineering Approved by: CTA CSXT Public Project Group

DATE: 12/02/24 REVISED: DATE: 01/13/25