



HISTORIC  
FRANKLIN  
TENNESSEE

ITEM #26  
BOMA 01/12/10

## MEMORANDUM

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December 3, 2009

**TO:** Board of Mayor and Aldermen

**FROM:** David Parker, City Engineer/CIP Executive  
Eric Stuckey, City Administrator

**SUBJECT:** **Preemption Interconnection Project Agreement with  
CSX Transportation, Inc. (CSXT)  
CSXT OP# 432552  
COF Contract No. 2009-0087**

### Purpose

The purpose of this memorandum is to provide information to the Board of Mayor and Aldermen (BOMA) to consider a preemption interconnection project agreement with CSX Transportation, Inc. for the traffic signalization project at General George Patton Drive and Mallory Station Road.

### Background

Approximately two and one half years ago, the City of Franklin initiated contact with CSX Transportation, Inc. (CSXT) concerning a crossing of their facilities along Mallory Station Road for the purpose of the installation of fiber cabling for the City's traffic signalization interconnect. In addition to this cabling, there was a need to interconnect with the CSXT Grade Crossing Warning Devices Cabinet to access a preemption impulse to provide a preemption of the traffic signals to be installed near the railroad/street crossing. Traffic signalization is proposed at the intersections of General George Patton Drive with Mallory Station Road and at Duke Drive with Mallory Station Road. The agreement as presented (see attached) is the culmination of negotiation between City staff and CSXT to obtain a permit for the cable crossing and interconnect circuitry between the City's traffic signals and CSXT's warning devices.

The Interim City Attorney has reviewed the attached Agreement and approves its contents with the exception of Section 17, Applicable Law. Legal counsel has indicated that since Franklin is a municipal entity in Tennessee the laws of the State of Tennessee govern any dispute and the City cannot agree to a court venue other than a local one. We have transmitted this back to CSXT through their consultant and are awaiting any response. With this one exception, however, this Agreement is acceptable to staff.

### Financial Impact

The City's cost to CSXT for the preemption interconnect is estimated by CSXT to be \$123,568. It should be noted that this is an estimate. In accordance with Section 3 of the Agreement, the City will be responsible for reimbursing CSXT for all costs and expenses incurred in connection with the construction and maintenance of the Project. The cost of the CSXT work has been added to the overall cost of the Mallory Station Road at General George Patton Drive Signalization Project. The signalization project is included in the City's Priority Ranking for Small Projects to be funded as approved in the Capital Funding Plan.





**Options**

1. Approve this agreement as a part of the Mallory Station Road at General George Patton Drive Signalization Project and include the funding in the City's Small Projects approval for funding.
2. Hold on the approval of this agreement until the Signalization project is approved for funding.

**Recommendation**

Staff recommends approval of this agreement contingent upon;

1. Final language being approved by the City Engineer, City Attorney and City Administrator; and
2. The Mallory Station Road at General George Patton Drive Signalization Project is approved for construction funding by BOMA.



**PREEMPTION INTERCONNECTION PROJECT  
CITY OF FRANKLIN, TENNESSEE  
AT CSXT MILEPOST 000-202.08 (DOT # 350 625M)  
CSXT OP# 432552**

**PREEMPTION INTERCONNECTION AGREEMENT**

This Preemption Interconnection Construction and Maintenance Agreement ("**Agreement**") is made as of \_\_\_\_\_, 200\_\_, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida ("**CSXT**") and the City of Franklin, a body corporate and political subdivision of the State of Tennessee ("**Agency**").

**EXPLANATORY STATEMENT**

1. CSXT has or will construct and maintain highway rail grade crossing warning devices, consisting of automatic cantilevered flashing lights (the "Grade Crossing Warning Devices"), at the grade crossing of Mallory Station Road of CSXT's mainline track (DOT 350 625M) at Railroad Milepost 000-202.08, in Franklin, Tennessee.
2. Agency has or proposes to erect certain highway traffic signals at the intersections of Mallory Station Road and General George Patton Drive and Mallory Station Road and Duke Drive ("**Highway Traffic Signals**") and to establish interconnection circuitry between such Highway Traffic Signals and the Grade Crossing Warning Devices.
3. CSXT is willing to permit such interconnection (the "Project"), subject to the terms and conditions of this Agreement.
4. Agency proposes to use the interconnection circuitry to change the Highway Traffic Signals sequence of operation when a signal is received from the Grade Crossing Warning Devices. The interconnection will provide Advanced Preemption of the Highway Traffic Signals as specified in the project plans and specification.
5. Agency has obtained, or will obtain all authorizations, permits and approvals from all local, state and federal agencies, and their respective governing bodies and regulatory agencies, necessary to proceed with the Project and will implement the Project at its sole cost and expense.
6. Agency and CSXT acknowledge 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 Agency 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 Agency or Agency contractors, pursuant to this Agreement; and (iii) CSXT retains the paramount right to regulate all activities affecting its property and operations.
7. It is the purpose of this Agreement to provide for the terms and conditions upon which construction of the Project shall proceed and the parties' obligations with respect to the future maintenance and operation of the permanent aspects of the Project.

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. Agency shall prepare, or cause to be prepared, all plans, specifications, drawings and other documents necessary or appropriate to the design and construction of the Project (including, but not limited to, a written or graphic description of the operation of the interconnection system both in the operational mode and failed mode), at Agency sole cost and expense, by Agency or its contractors. Project plans, specifications and drawings prepared by or on behalf of Agency shall be subject, at CSXT's election, to the review and approval of CSXT. Such plans, specifications and drawings, as approved by CSXT, are referred to as the "**Plans**", and shall be incorporated and deemed a part of this Agreement.
- 1.2. Effect of CSXT Approval or Review 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 therewith satisfy CSXT's requirements for the interconnection of the Highway Traffic Signals and the Grade Crossing Warning Devices. 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 the Plans or improvements constructed in accordance with the Plans, and the suitability or fitness of the Grade Crossing Warning Devices for purposes of the Project. Accordingly, Agency acknowledges and agrees that CSXT assumes no responsibility for, and releases CSXT from all liability or losses arising from or related to, the timing or sequencing of the Highway Traffic Signals and the Grade Crossing Warning Devices, and the maintenance, operation, use, fitness or suitability of the Highway Traffic Signals and related cables connecting the Highway Traffic Signals to the Grade Crossing Warning Devices.
- 1.3. Other Approval or Review of Plans. The agency shall schedule and conduct a Diagnostic Review of the existing and proposed Highway-Rail Grade Crossing Devices, the proposed Highway Traffic Signals and the interconnection circuitry. The Plans and Specifications shall be approved in writing by the appropriate highway and/or regulatory authority. Project plan specifications and drawings prepared by or on behalf of Agency shall comply with current MUTCD requirements, use appropriate current AREMA recommended practices. The Plans must specify Advance Preemption and the preemption timing in seconds.
- 1.4. 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 3.1, CSXT shall furnish the following services, at Agency's sole cost and expense:
- 2.1.1. CSXT shall furnish one or more preemption interconnection circuits of a normally closed contact that is designed to open upon the approach or presence of a train and shall terminate the closed preemption interconnection circuit in the common cable junction box to be used for the interconnection of the Highway Traffic Signals and the Grade Crossing Warning Devices.
- 2.1.2. CSXT shall furnish additional preemption interconnection circuits of a normally closed contact designed to open to provide additional information for the

Highway Traffic Signals as specified in the Plans for gate down, occupancy of the crossing island circuit or other purposes.

- 2.1.3. CSXT shall furnish flagging and other protective services, as CSXT deems necessary or appropriate during the construction of the Project;
  - 2.1.4. CSXT shall furnish all other services that CSXT deems necessary or appropriate 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.
  - 2.1.5. Initial testing and placing in service.
  - 2.1.6. Periodic testing initiated by the agency and periodic testing by CSXT in conformance with Federal Railroad Administration regulations in 49 CFR Part 234.
- 2.2. Agency Work. Agency shall perform, or cause to be performed, all other work in connection with the Project, at Agency's sole cost and expense, including:
- 2.2.1. Preparation of all Plans
  - 2.2.2. Installation of all cables from the Highway Traffic Signals up to the preemption interconnection circuit at the common cable junction box;
  - 2.2.3. Provide standby electric power for operation of the Highway Traffic Signals.
  - 2.2.4. Configuration of the circuitry connection of the Highway Traffic Signals whereby a failure will not cause any unsafe condition
  - 2.2.5. Initial testing and placing in service
  - 2.2.6. Periodic testing
- 2.3. Conduct of Work. The parties shall not commence work under this Agreement unless and until: (i) delivery to CSXT of a notice to proceed from Agency; (ii) payment of Reimbursable Expenses (as provided by Section 3.1) 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 7. 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.
3. CSXT Rules and Procedures. Agency shall observe and abide by, and shall require its contractors ("Contractors") to observe and abide by the rules, procedures, directions and instructions of CSXT. To the extent that Agency performs Project work itself, Agency shall be deemed a Contractor for purposes of this Agreement. Agency 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.

Reimbursement of CSXT Expenses:

- 3.1. Reimbursable Expenses. Agency shall reimburse CSXT for all costs and expenses incurred by CSXT in connection with construction and maintenance of the Project 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**"). Reimbursable Expense shall also include expenses incurred by CSXT prior to the date of this agreement included in the estimate.
- 3.2. Estimate. CSXT has estimated the total Reimbursable Expenses for the construction of the Project as shown on Exhibit A (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 the 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 work on the Project, 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 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.

4. Termination.

- 4.1. By Agency. Agency may terminate this Agreement, for any reason, by delivery of notice to CSXT. Such termination shall become effective upon the expiration of fifteen (15) calendar days following delivery of notice to CSXT or such later date designated by the notice.
- 4.2. By CSXT. CSXT may terminate this Agreement (i) as provided pursuant to Section 3.3.3(ii)(B), 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 ten (10) days after written notification from CSXT to Agency of such breach.
- 4.3. If this agreement is terminated the Agency shall close and barricade the highway-rail grade crossing and prevent all vehicle traffic from entering the highway-rail grade crossing unless Highway and/or Regulatory Authority determines the preemption is no longer required and notifies CSXT in writing of this determination.
- 4.4. The Agency shall close and barricade crossing if Agency does not maintain and test the traffic signal and preemption operation to assure the Highway Traffic Signals and traffic signal preemption sequence operate in compliance with the design, or as may be modified from time to time by agreement between CSXT and Agency and provided Agency secures all appropriate approvals including from any regulatory entity having jurisdiction.
- 4.5. If Agency does not close and barricade the highway-rail grade crossing and prevent traffic from utilizing said crossing to the satisfaction of CSXT when required by this Agreement, the FRA or other Regulatory or Highway Agency, CSXT may close and barricade the crossing at the expense of the Agency. CSXT will not be required to reduce train speed, stop and flag the crossing or make other change in train operation to accommodate the operation of the traffic signal, preemption circuitry or failure of Agency to comply with any terms of this Agreement.
- 4.6. The Agency shall not reopen the highway-rail grade crossing or attempt to reopen or remove any barricades until the Highway Traffic Signal and preemption circuitry have been inspected, tested and operating according to the plans and specification or as may otherwise be determined between the parties hereto. In case of dispute over the status of the operating condition and compliance with the plans and specification the FRA, and appropriate highway or regulatory authority will be requested to inspect and observe appropriate testing to confirm proper operation.
- 4.7. 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/or safely suspend the work. Agency 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, and all other costs of CSXT incurred as a result of the Project up to the time of full suspension of the work. In addition, Agency shall return CSXT's property to its former condition to the extent altered by Agency or its Contractors, and shall reimburse CSXT for all costs incurred by CSXT to return its property to its former condition to the extent altered by CSXT or its contractors. Termination of this Agreement or work on the

Project, for any reason, shall not diminish or reduce Agency's obligation to pay CSXT for CSXT Costs 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 Agency shall be to refund to Agency payments made to CSXT in excess of CSXT Costs in accordance with Section 3.3.2. Agency 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.

5. Construction Easements and Licenses.

5.1. Agency Obligation. Agency shall acquire all necessary licenses, permits and easements required for the Project.

5.2. Temporary Construction Licenses. Insofar as it has the right to do so, CSXT hereby grants Agency, and upon execution and delivery to CSXT of Contractor's Acceptance (Schedule I), its Contractors, a nonexclusive license to access and cross CSXT's property, to the extent necessary for the construction of the Project (excluding ingress or egress over public grade crossings), along such routes and upon such terms as may be defined and imposed by CSXT and such temporary construction easements as may be designated on the Plans approved by CSXT. No work shall be performed on CSXT property by Agency or its Contractors, without the prior approval of CSXT.

5.3. Interconnection Cable License. CSXT hereby grants to Agency, insofar as CSXT has the right to do so, permission to place conduit and wire or cable on CSXT property, in accordance with the Plans, but has not permitted the placement of traffic signals or traffic light cabinets on CSXT property even where road across track is there by prior license or easement. The installation shall be in compliance with the term and conditions of Exhibit B; Wire Line Requirements and Conditions.

6. Permits. At its sole cost and expense, Agency 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.

7. Insurance. In addition to the insurance that Agency requires of its Contractor, Agency shall acquire or require its Contractor to purchase and maintain insurance in compliance with CSXT's insurance requirements attached to this Agreement as Exhibit C. Neither Agency 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.

8. Ownership and Maintenance.

8.1. By Agency. Agency shall own, maintain, inspect and repair, at its sole cost and expense, the Highway Traffic Signals and the interconnecting cable terminating at the common cable junction box. Agency shall be solely responsible for the provision of electricity and all other utilities necessary to the operation of such facilities. Upon the cessation of use of the Highway Traffic Signals and the interconnecting cable terminating at the common cable junction box, Agency shall remove the interconnecting cable and restore CSXT's property to its original condition, at Agency's sole cost and expense, to CSXT's satisfaction. CSXT hereby grants to Agency, insofar as CSXT has the right to do so, permission to access CSXT's property for the purposes maintaining, inspecting and repairing the Agency's interconnection cable, upon reasonable

advance notice to CSXT and CSXT's prior approval. Agency agrees to reimburse CSXT for all costs and expenses incurred by CSXT for flagging, testing and protective services provided by CSXT in connection with such activities, within thirty (30) days of delivery of an invoice for such costs and expenses to Agency.

- 8.2. By CSXT. CSXT shall possess, and shall inspect, test and maintain, at Agency's sole cost and expense, the preemption interconnection circuit only from the common cable junction box to the railroad cabinet. Agency agrees to reimburse CSXT for all such costs and expenses, within thirty (30) days following delivery of an invoice for such costs and expenses to Agency.
- 8.3. By Agency. Upon completion of the Project, Agency shall deliver notice of completion to CSXT and Agency. Agency and CSXT shall promptly inspect the Project. If either Agency or CSXT notify Agency of its determination that the Project requires further work to comply with the Plans, Agency shall promptly perform such work and notify CSXT and Agency upon completion of such work. Upon completion of the Project in accordance with the Plans and to the satisfaction of CSXT and Agency, Agency shall accept Agency's obligations under Section 1.2, Section 8.1, Section 8.1 and Section 8.2 of this Agreement.
- 8.4. Alterations. Neither Agency nor CSXT shall change the effective circuits or equipment without the prior written concurrence of the other.

9. Indemnification.

- 9.1. Generally. To the maximum extent permitted by applicable law, Agency 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, Agency and 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, Agency and 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 Agency, and its Contractors, and their respective agents, employees, invitees, 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.
- 9.2. Compliance with Laws. Agency and its Contractors 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. Agency's Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.
- 9.3. Operation of Preemption Interconnection. To the maximum extent permitted by applicable law, Agency and their Contractors shall indemnify, defend and hold harmless CSXT and its affiliates from and against, and releases CSXT and its affiliates from all liability for, 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 the loss or damage to any property whatsoever (including, but not limited to, property owned by or in the care, custody or control of CSXT or its affiliates or Agency and/or their Contractors) and for any

injury to or death of any person(s) (including, but not limited to, the employees of CSXT, its affiliates or Agency and/or their Contractors), arising directly or indirectly from: (1) the negligence, recklessness, or willful misconduct of Agency, their employees, agents or contractors in connection with the operation, inspection, testing and maintenance of the Highway Traffic Signals and the interconnecting cable pursuant to this Agreement; or (2) defects, faults or inaccuracies in the timing intervals, sequence chart or preemption aspects of the interconnection with the Grade Crossing Warning Devices.

- 9.4. “CSXT Affiliates”. For the purpose of this Section 9, 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.
- 9.5. Notice of Incidents. Agency and their Contractors shall notify CSXT promptly of any loss, damage, injury or death arising out of or in connection with the Project work.
- 9.6. No Insurance Limitations. The foregoing indemnification obligations of this Section 9 shall not be limited to the insurance coverage required by this Agreement, except to the extent required by law.
- 9.7. Survival. The provisions of this Section 9 shall survive the termination or expiration of this Agreement.
10. Independent Contractor. The parties agree that neither Agency 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 Agency or their Contractors, or the construction practices, procedures, and professional judgment employed by Agency or its Contractors to complete the Project. Notwithstanding the foregoing, this Section 10 shall in no way affect the absolute authority of CSXT to prohibit Agency or their 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.
11. Subcontracts. CSXT shall be permitted to engage outside consultants, counsel and subcontractors to perform all or any portion of the Engineering Work.
12. 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, J301  
Jacksonville, Florida 32202  
Attention: Shelby Stevenson, Principal Engineer

If to Agency: City of Franklin  
Traffic Operations Center  
109 3<sup>rd</sup> Avenue, South, Suite 142

Franklin, Tennessee 37064  
Attention: ITS Project Manager  
Kevin E. Comstock

13. 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.
14. 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.
15. 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.
16. 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 by CSXT's assignee of CSXT's obligations under this Agreement, CSXT shall have no further obligations under this Agreement. Agency shall not assign its rights or obligations under this Agreement without CSXT's prior written consent, which consent may be withheld for any reason.
17. Applicable Law. 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 Duval County, Florida, and the parties agree to submit to the personal jurisdiction of any State or Federal court situated in Duval County, Florida.

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.

The City of Franklin, Tennessee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CSX TRANSPORTATION, INC.

By: \_\_\_\_\_  
Charles E. Gullakson  
Assistant Chief Engineer – Public Projects

PREEMPTION INTERCONNECTION PROJECT  
CITY OF FRANKLIN, TENNESSEE  
AT CSXT MILEPOST 000-202.08 (DOT # 350 625M)  
CSXT OP# 432552

**EXHIBIT A**

ESTIMATE

Using Standard CSXT Estimate Formats

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

ACCT. CODE : 709 - 432552

<b>ESTIMATE SUBJECT TO REVISION AFTER:</b>	03/17/2010	<b>DOT NO.:</b> 350 625M
<b>CITY:</b> Franklin	<b>COUNTY:</b> Williamson	<b>STATE:</b> TN
<b>DESCRIPTION:</b> Traffic Signal Pre-emption - Mallory Station Road at (1) General George Patton Drive and at (2) Duke Drive.		
<b>DIVISION:</b> Nashville	<b>SUB-DIV:</b> Nashville	<b>MILE POST:</b> 000-202.08
<b>AGENCY PROJECT NUMBER:</b> 06-0416		

**PRELIMINARY ENGINEERING:**

200 Labor (Non Contract)	\$ 1,350
200 Additive 38.91%	\$ 525
230 Expenses	\$ 235
212 Contracted & Administrative Engineering Services	\$ 6,500
<b>Subtotal</b>	<b>\$ 8,610</b>

**CONSTRUCTION ENGINEERING/INSPECTION:**

200 Labor (Non Contract)	\$ 1,350
200 Additive 38.91%	\$ 525
230 Expenses	\$ 235
212 Contracted & Administrative Engineering Services	\$ 6,500
<b>Subtotal</b>	<b>\$ 8,610</b>

**FLAGGING SERVICE: (Contract Labor)**

070 Labor (Conductor-Flagman)	\$ -
050 Labor (Foreman/Inspector)	\$ 1,680
070 Additive 133.71% (Transportation Department)	\$ -
050 Additive 129.08% (Engineering Department)	\$ 2,169
230 Per Diem (Engineering Department)	\$ 375
230 Expenses	\$ 225
<b>Subtotal</b>	<b>\$ 4,449</b>

**SIGNAL & COMMUNICATIONS WORK:** (Details Attached) \$ 87,223

**TRACK WORK:** (Details Attached) \$ -

**ACCOUNTING & BILLING:**

040 Labor	\$ 1,400
040 Additive 145.92%	\$ 2,043
<b>Subtotal</b>	<b>\$ 3,443</b>

**PROJECT SUBTOTAL**

900 <b><u>CONTINGENCIES:</u></b> 10.00%	\$ 11,233
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**GRAND TOTAL \*\*\*\*\*** \$ 123,568

**DIVISION OF COST:**

Agency	<u>100.00%</u>	\$ 123,568
Railroad		\$ -
<b>TOTAL *****</b>		<b>\$ 123,568</b>

**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 Assistant Chief Engineer Public Projects--Jacksonville, Florida

Estimated by: Steve Van Slyke

Approved by: S.L. Stevenson

CSXT Public Project Group

DATE: 09/18/2009

REVISED:

DATE: 11/24/2009

