

EXHIBIT A



**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF MULTIMODAL TRANSPORTATION RESOURCES  
SUITE 1800, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-1402  
(615) 741-2781**

**JOHN C. SCHROER**  
COMMISSIONER

**BILL HASLAM**  
GOVERNOR

January 26, 2017

Mark D. Macy, Engineering Director  
The Metropolitan Government of Nashville and Davidson County  
750 South Fifth Street  
Nashville, TN 37201

**Subject: Highway-Rail Grade Crossing Improvement Project Contract # CRR070178**

Dear Mr. Macy:

The Tennessee Department of Transportation has prepared an Agreement for The Metropolitan Government of Nashville and Davidson County for safety improvements at the subject highway-rail grade crossing listed below:

U.S. DOT Crossing Number	350263D
Federal Project Number	HSIP-R-3257(4)
State Project Number	19960-2555-94
PIN Number	123255.00
Railroad Company	CSX Railroad
Railroad Milepost	ONW 3.41
Highway (Route)	Centennial Blvd (03257)
Highway Log Mile	7.58
City, County	Nashville, Davidson County

Please note that on Item 2 (a), of the work agreement, TDOT will need the City/County to place a checkmark next to the method by which the City/County will perform the Railroad Crossing safety improvement work.

Enclosed is one (1) original counterpart of an agreement between the Department and the City/County for the performance of this work.

Please have the appropriate City/County representative review, sign, and return Agreement to me. I will then forward the copy for TDOT Commissioner's Signature.

As soon as TDOT's internal signature process is completed, TDOT will then forward to the City/County the fully executed agreement. Upon receipt of the fully executed agreement the City/County may begin work.

Mark D. Macy  
January 26, 2017  
Page 2

If you have any questions regarding this matter, please contact me by phone at (615) 253-1043 or by email at Erik.Andersen@tn.gov

Sincerely,

Handwritten signature of Erik Andersen in black ink.

Erik Andersen  
TN Rail Crossing Safety Manager  
Section 130 Program

EA:dm

Enclosure: City/County Agreement (1 copy)

Cc: File



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## RAILROAD AGREEMENT

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THIS AGREEMENT is made and entered into by and between the **State of Tennessee** acting through its Department of Transportation, hereinafter called "TDOT", and **The Metropolitan Government of Nashville and Davidson County, Tennessee**, hereinafter referred to as the "Local Government".

### WITNESSETH:

WHEREAS, in accordance with 23 CFR, Subpart 646B, TDOT has directed the Local Government to prepare plans, specifications, and estimates of costs of labor, material and equipment, etc. for construction of the crossing roadway approaches adjustments, hereinafter referred to as the "Railroad Crossing Approaches Project" number **HSIP-R-3257(4), 19960-2555-94**, at the **Centennial Blvd (03257) Highway-Rail Grade Crossing DOT No. 350-263D** located in **Nashville, Davidson County, Tennessee**; and

WHEREAS, the Local Government is eligible for reimbursement for the Railroad Crossing Approaches Project under 23 CFR, Subparts 140I and 646B which are incorporated herein by reference; and

WHEREAS, for the Railroad Crossing Roadway Approaches Adjustment Project, the Local Government has prepared plans, specifications, and estimates of cost, dated **October 26, 2016**, which estimate is in the amount of **\$9,093.48**, as required for the construction or installation of

1. Remove and replace one (1) Grade Crossing Advance Warning (W10-1) (36" dia.) sign approximately 395 feet north of the crossing on Approach 2 (Southbound Centennial Boulevard). Install 2" min. width yellow reflective strip on front of sign post.
2. Install two (2) Word Pavement Markings (RxR) approximately 350 feet north of the crossing on Approach 2 (Southbound Centennial Boulevard).
3. Restripe existing lane line and edgeline pavement markings for approximately 395 feet north of the crossing on Approach 2 (Southbound Centennial Boulevard).
4. Install one (1) stop line (22' long and 24" wide) on Approach 2 (Southbound Centennial Boulevard), approximately 30 feet north of the crossing.
5. Install one (1) stop line (22' long and 24" wide) on Approach 1 (Northbound Centennial Boulevard), approximately 30 feet south of the crossing.
6. Restripe existing lane line and edgeline pavement markings for approximately 220 feet south of the crossing on Approach 1 (Northbound Centennial Boulevard).
7. Install two (2) Word Pavement Markings (RxR) approximately 200 feet south of the crossing on Approach 1 (Northbound Centennial Boulevard).
8. Remove and replace one (1) Grade Crossing Advance Warning (W10-1) (36" dia.) sign approximately 220 feet south of the crossing on Approach 1 (Northbound Centennial Boulevard). Install 2" min. width yellow reflective strip on front of sign post.

(hereinafter referred to as the "Railroad Crossing Approaches Work"); **Items are numbered to correspond with the Aerial Drawing in Exhibit A and**

NOW, THEREFORE, in consideration of these premises, and the mutual promises contained herein, it is agreed by and between the parties hereto as follows:

1. 

(a) The Local Government shall construct said Railroad Crossing Approaches Project in accordance with the estimate of cost, plans and specifications, as approved by TDOT, which are incorporated herein by reference, and as otherwise contemplated by this Agreement. The approved estimate of cost, plans and specifications are attached hereto as "Exhibit A".

(b) Any change in approved estimate of cost, plans or specifications shall require the prior written approval of TDOT. TDOT agrees to review and, if acceptable, approve such requests for change in a timely manner, and TDOT agrees to cooperate with the Local Government to resolve, if possible, any objections TDOT may have to such requested changes in the Agreement.
2. 

(a) The Local Government agrees that it will perform the Railroad Crossing Approaches Work provided for in this Agreement by one of the following methods (mark the appropriate space):

\_\_\_\_\_ By force account (provided that the Local Entity is qualified to perform the work with its own forces and equipment in a satisfactory and timely manner).

\_\_\_\_\_ By contract awarded to the lowest qualified bidder based on appropriate solicitation.

\_\_\_\_\_ By use of an existing continuing contract (provided that the costs are reasonable).

\_\_\_\_\_ By combination of the above, or otherwise as authorized in 23 CFR, Subpart 646B as follows:

\_\_\_\_\_

\_\_\_\_\_

- (b) Whenever the Local Government elects to perform the Railroad Crossing Approaches Work by award of a contract, it shall submit the same to TDOT for prior approval. TDOT shall not be required to reimburse the Local Government for its obligation under any contract that has not received the advance written approval of TDOT.
- (c) The Local Government shall not release or make available any memoranda or other information concerning the estimated cost of the Railroad Crossing Approaches Work to anyone other than TDOT. The Local Government hereby agrees, warrants and assures that the estimated cost information is confidential, and that it will not directly or indirectly disclose said estimated cost information to potential bidders.
- (d) Neither the Local Government nor any affiliate or subsidiary thereof shall participate directly or indirectly as a bidder for any part of the Railroad Work to be performed under a contract to be awarded by the Local Government. The Local Government further agrees that no employee, officer, or agent, of the Local Government, shall participate in the selection, or in the award or administration of a contract for the

performance of any part of the Railroad Crossing Approaches Work if a real or apparent conflict of interest would be involved. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the above, has a substantial financial interest, such as five-percent (5%) or greater ownership interest, or other interest in the firm selected for award of a contract to perform or supply material for the Railroad Crossing Approaches Work. Neither the Local Government nor any affiliate, subsidiary, employee, officer, or agent, of the Local Government, shall solicit, or accept gratuities, favors, or anything of monetary value, except an unsolicited gift having nominal monetary value, from contractors or bidders.

- (e) The Local Government must request in writing and receive TDOT's written approval prior to any revision in the method of performing the Railroad Crossing Approaches Work. Failure to do so may result in the loss of TDOT participation in payment for the cost of the Railroad Crossing Approaches Work.
- 3. The Railroad, under separate Agreement described above, shall provide flagging protection as may be required for the maintenance and protection of Railroad and highway traffic during the progress of the Railroad Crossing Approaches Work.
- 4. The Local Government agrees to provide engineering, erosion control, traffic control, clearing and grubbing of the proposed Railroad Crossing Approaches Work site, and all survey staking for the purpose of the Railroad Crossing Approaches Work, and the estimated cost thereof is included in the estimate described above.
- 5. After the Railroad Crossing Approaches Work has been constructed or installed and found to be in satisfactory working order by the parties hereto, the same shall be maintained by the Local Government for the benefit of the public for so long as the Railroad maintains and operates its track facilities at the crossing, or until the crossing is abandoned and unused or legal requirements make it necessary to cease operation and maintenance of the Railroad's signals and related equipment. It is understood that as of the date hereof, the provisions of applicable law require the Local Government to maintain said railroad-highway grade crossing roadway approaches at its own expense. It is further understood by the parties that State funds for the purpose of operating and maintaining the facilities, constructed or installed, may be expended in the event the General Assembly of Tennessee specifically authorizes and appropriates funds for such purposes, or in the event such funds are otherwise available for such purposes under prior authority and appropriation granted to TDOT by the General Assembly.
- 6. Subject to the provisions of this paragraph, and as otherwise provided in this Agreement, TDOT agrees to reimburse the Local Government for the cost of designing, and constructing the Railroad Crossing Approaches Project in accordance with the approved plan, as follows:
  - (a) TDOT shall reimburse the Local Government for such direct and indirect costs as are allowable under the current provisions of 23 CFR, Subparts 140I and 646B. Any claim for costs that would be ineligible for Federal reimbursement under 23 CFR 646B on a federal-aid project shall be ineligible for reimbursement by TDOT on this Railroad Crossing Approaches Project, whether it is or is not a federal-aid project.

- (b) The Local Government shall develop and record Railroad Crossing Approaches Work costs in a manner consistent with the current provisions of 23 CFR 140I as of the effective date of this Agreement, and as approved by TDOT.
  - (c) Unless a lump-sum payment has been approved by TDOT, the Local Government shall submit all requests for payment by invoice, in form and substance acceptable to TDOT with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amount charged for the period invoiced, and the total amount charged under the Agreement to date.
  - (d) The Local Government may submit invoices for interim payments during the progress of the Railroad Crossing Approaches Work; provided, however, that such interim payments may be approved only up to a maximum of eighty percent (80%) of the approved estimate of reimbursable costs for the Railroad Crossing Approaches Project, as described in Paragraph 1 of this Agreement, and any remaining reimbursable costs must be submitted on the final bill. Such invoices for interim payments shall be submitted no more often than monthly.
  - (e) TDOT shall, unless it has good faith and reasonable objections to the Local Government's invoice for interim payment, use its best efforts to issue payment based on the Local Government's invoice within forty-five (45) days after receipt. If, however, TDOT has good faith and reasonable objections to the Local Government's invoice(s) or any part thereof, TDOT shall specifically identify those objections in writing to the Local Entity so as to allow the parties to address them in a prompt manner. If the invoice is otherwise acceptable, TDOT shall only withhold payment(s) as to those cost items it has specified in its written notice of objections to the Local Government. All other reimbursable cost items set out in the Local Government's invoice shall be paid by TDOT.
  - (f) Subject to the Local Government's right to bill on an interim basis as described above, the Local Government shall by invoice provide one final and complete billing of all costs incurred, or of the agreed-to lump sum, within one year following the completion of the Railroad Crossing Approaches Work in its entirety. Otherwise, any previous payments to the Local Entity shall be considered final, and the Local Government shall be deemed to have waived any claim for additional payments, except as TDOT and the Local Government may have agreed otherwise in writing before the end of that year.
  - (g) The Local Government's invoice(s) shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by TDOT, on the basis of audits or monitoring conducted in accordance with the terms of this Agreement, not to constitute allowable costs. The payment of an invoice shall not prejudice TDOT's right to object to or question any invoice or matter in relation thereto. Such payment by TDOT shall neither be construed as acceptance of the work nor as final approval of any of the costs invoiced therein.
7. TDOT shall have the right to inspect the Railroad Crossing Approaches Work on this project and to confirm the financial information made available by the Local Government to TDOT

in support of the Local Government's invoiced amounts. The Local Government shall notify TDOT of the date that the first work will be performed in order that adequate inspection can be arranged and proper records kept. Any costs billed by the Local Government that cannot be verified by the TDOT Project Supervisor's records will not be reimbursed.

8. The Local Government agrees that its cost records will be subject to inspection at any reasonable time by representatives of TDOT before or after final payment for reimbursable work. In the event any costs are determined not to be allowable under provisions of this Agreement, the Local Government agrees to repay TDOT such amount of ineligible costs included within payments made by TDOT.
9. The Local Government shall keep and maintain accurate records by which all invoices can be verified. The books, records, and documents of the Local Government, insofar as they relate to work performed or monies received under this Agreement shall be maintained for a period of three (3) full years after final payment has been received by the Local Government and shall be subject to audit at any reasonable time and upon reasonable notice by TDOT, the State Comptroller of the Treasury, or by the Federal Highway Administration, or their duly appointed representatives during this three (3) year period. The financial statements shall be prepared in accordance with generally accepted accounting principles.
10. This Agreement is subject to the appropriation and availability of TDOT funds. In the event that the funds are not appropriated or are otherwise unavailable, TDOT reserves the right to terminate this Agreement upon written notice to the Local Government. Said termination shall not be deemed a breach of this Agreement by TDOT. Upon receipt of the written notice, the Local Government shall cease all work associated with the Agreement, except as may be reasonably necessary to return the Local Government's roadway facilities to safe operation. Should such an event occur, the Local Government shall be entitled to compensation for all costs reimbursable under 23 CFR 646B (in accordance with paragraph 7 of this Agreement) for work completed as of the termination date or in accordance with this provision. Upon such termination, the Local Government shall have no right to recover from TDOT any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
11. The Local Government, its successors and assigns, agrees to indemnify and hold harmless TDOT as well as its employees, officers and agents from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Local Government, its employees, its contractors, or any person acting for or on its or their behalf in the performance of the Railroad Crossing Approaches Work relating to this Agreement. The Local Government further agrees it shall be liable for the reasonable cost of attorneys for TDOT in the event such services are necessitated to enforce the terms of this Agreement or otherwise enforce the obligations of the Local Government to TDOT.

In the event of any such suit or claim, the Local Government shall give TDOT immediate notice thereof and shall provide all assistance required by TDOT in TDOT's defense. TDOT shall give the Local Government written notice of any such claim or suit, and the Local Government shall have full right and obligation to conduct the Local Government's

own defense thereof. Nothing contained herein shall be deemed to accord to the Local Government, through its attorney(s), the right to represent TDOT in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

12. TDOT shall have no liability except as specifically provided in this Agreement.
13. This Agreement may be modified only by a written amendment executed by the parties hereto.
14. Failure by any party to this Agreement to insist in any one or more cases upon strict performance of any of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition or provision. No term, covenant, condition or provision of this Agreement shall be held to be waived, modified, or deleted except by written amendment signed by the parties hereto.
15. The Local Government hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the Local Government on the grounds of disability, age, race, color, religion, sex, national origin, or any classification protected by the Constitution or statutes of the United States or the State of Tennessee. The Local Government shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
16. The Local Government agrees to comply with all applicable federal and state laws and regulations in performing any of its obligations under this Agreement. The parties agree that failure of the Local Government to comply with this provision shall constitute a material breach of this Agreement, and subject the Local Government to the repayment of all State funds expended, or expenses incurred, under this Agreement.
17. This Agreement shall be binding upon, and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors, and assigns. Time is of the essence of this Agreement.
18. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Local Government acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.
19. If any terms, covenants, conditions or provisions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms, covenants, conditions, and provisions hereof shall not be affected thereby, and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.
20. TDOT and the Local Government agree that any notice provided for in this Agreement or concerning this Agreement shall be in writing, and shall be made by personal delivery, by certified mail (return receipt requested), by nationally recognized overnight delivery service (such as FedEx or UPS), or by facsimile transmission (provided that notice shall also be given in one of the other methods prescribed herein) addressed to the respective party at the

appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

To TDOT:

Tennessee Department of Transportation  
Attention: Multimodal Transportation Resources  
Highway Railroad Crossing Program  
Suite 1800, James K. Polk Building  
505 Deaderick Street  
Nashville, TN 37243-0349  
Fax: (615) 253-1482

With a copy if requested by TDOT to:

John H. Reinbold, Office of General Counsel  
Suite 300, James K. Polk Building  
505 Deaderick Street  
Nashville, TN 37243-0326  
Fax: (615) 532-5988

To the Local Government:

Mark D. Macy, Engineering Director  
The Metropolitan Government of Nashville and Davidson County  
750 South Fifth St  
Nashville, TN 37201

With a copy if requested by the Local Government to:

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IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

RECOMMENDED BY:

*SK Wahlestrom*

BY: *for M. Sturtevant*

Mark Sturtevant, Director  
Department of Public Works

STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_

John C. Schroer  
Commissioner

APPROVED AS TO AND  
AVAILABILITY OF FUNDS

BY: *Talia Lomax-O'neal*

Talia Lomax-O'neal, Director  
Department of Finance

APPROVED AS TO FORM AND  
LEGALITY

BY: \_\_\_\_\_

John H. Reinbold  
General Counsel

APPROVED AS TO FORM AND  
LEGALITY

BY: *C. H. Oadel*

Metropolitan Attorney

THE METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY

BY: \_\_\_\_\_

David Briley  
Metropolitan County Mayor

ATTEST, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

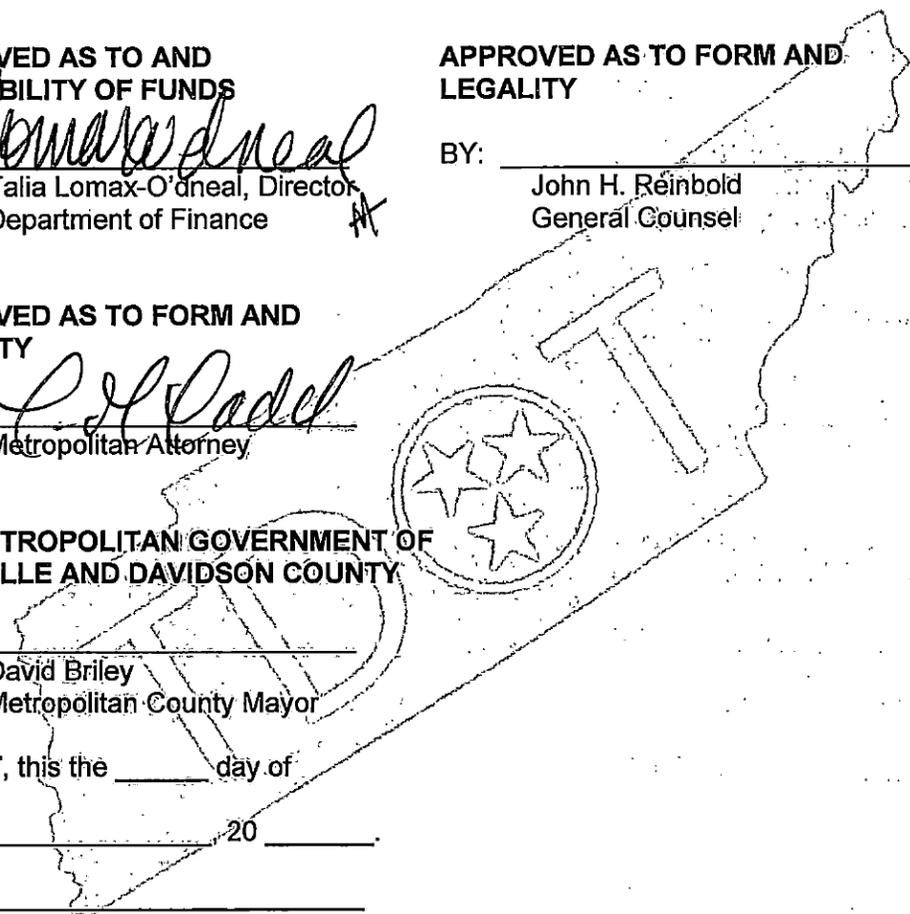
BY: \_\_\_\_\_

Metropolitan Clerk

APPROVED AS TO RISK AND  
INSURANCE

BY: *BCN*

Director of Insurance

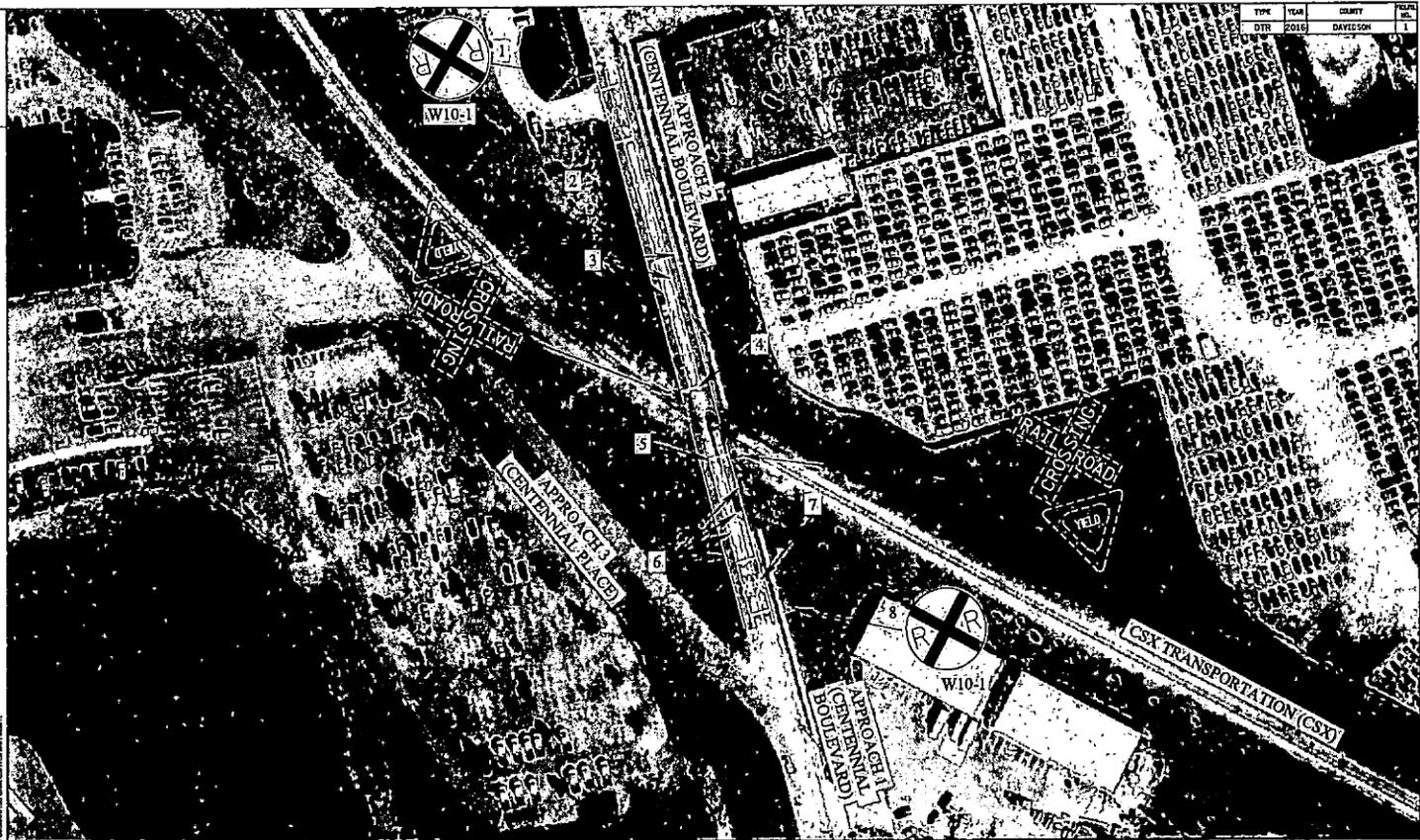


**OPINION OF PROBABLE COST (CENTENNIAL BOULEVARD)**

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
712-01	TRAFFIC CONTROL	LS	1	\$2,500.00	\$2,500.00
713-02.21	SIGN POST DELINEATION ENHANCEMENT	L.F.	20	\$6.75	\$135.00
713-15.36	REMOVE SIGN, SUPPORT & FOOTING	EACH	2	\$65.00	\$130.00
713-16.23	SIGNS (W10-1, 36" DIA.)	EACH	2	\$275.00	\$550.00
716-02.05	PLASTIC PAVEMENT MARKING (STOP LINE)	L.F.	44	\$20.00	\$880.00
716-03.02	PLASTIC WORD PAVEMENT MARKING (RXR)	EACH	4	\$400.00	\$1,600.00
716-12.01	ENHANCED FLATLINE THERMO PVMT MRKNG (4IN LINE)	L.M.	0.52	\$4,000.00	\$2,098.48
717-01	MOBILIZATION	LS	1	\$1,200.00	\$1,200.00
				<b>TOTAL</b>	<b>\$9,093.48</b>

TENNESSEE D.O.T.  
 DIVISION OF TRANSPORTATION  
 TRANSPORTATION RECORDS  
 FILE NO.

TYPE	YEAR	COUNTY	PLAN NO.
OTR	2016	DAVIDSON	1



0' 100' 200' 300'



**DIAGNOSTIC TEAM REVIEW**  
 CENTENNIAL BOULEVARD (03257)  
 AT CSX TRANSPORTATION  
 CROSSING NO. 350263D  
 DAVIDSON COUNTY

Exhibit A, Page 2 of 2

STATE OF TENNESSEE  
 DEPARTMENT OF TRANSPORTATION  
 DIVISION OF TRANSPORTATION RECORDS

**FIGURE 1**  
 CENTENNIAL  
 BLVD AT CSX

TAYLOR, BOSTON, JR.  
 PHOTOGRAPHY AND VIDEO SERVICES, INC.