

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: CSX Transportation, Inc. Agreement

DEPARTMENT: Public Safety **DIVISION:** EMS/Fire/Rescue

AUTHORIZED BY: *Kerr Roberts* **CONTACT:** Terry Schenk **EXT.** 5002

Agenda Date <u>1/11/04</u> Regular <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Work Session <input type="checkbox"/> Briefing <input type="checkbox"/>
Public Hearing – 1:30 <input type="checkbox"/> Public Hearing – 7:00 <input type="checkbox"/>

MOTION/RECOMMENDATION:

Approve and authorize Chairman to execute CSX Private Road Grade Crossing Agreement for crossing of the railway located at the Fire Training Center, 201 Valentine Way, Longwood, FL.

BACKGROUND:

In October 2003, the County purchased property at 201 Valentine Way for a Fire Training Center. The Fire Division has been in communication with CSX Transportation, Inc. to gain legal crossing rights to the railway that crosses the entrance to the property. Under the conditions of this agreement, it authorizes the County to use and maintain the existing "private road at grade" across the tracks and property. The agreement includes access by the County's agents, employees, servants, sub-licensees and invitees.

There is a \$750 application fee, plus annual fees totaling \$1347.50. These expenses will be funded out of operating expenses 056100-530490.

Reviewed by: Co Atty: <u><i>ML</i></u> DFS: _____ Other: _____ DCM: <u><i>SS</i></u> CM: <u><i>KS</i></u> File No. <u>CPSF31</u>

PRIVATE ROAD GRADE CROSSING AGREEMENT

THIS AGREEMENT, Made as of November 1, 2004, effective October 30, 2003, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and SEMINOLE COUNTY, FLORIDA, a municipal corporation, political subdivision or state agency, under the laws of the State of Florida, whose mailing address is 150 Bush Boulevard, Sanford, Florida 32773, hereinafter called "Licensee," WITNESSETH:

Licensor, subject to the limitations herein, for and in consideration of the fee(s) to be paid by Licensee and of the covenants, terms, conditions and agreements herein to be kept and performed by Licensee, hereby grants to Licensee the right or license to use and maintain an existing private road at grade across the track(s) and property of Licensor, at or near Longwood, County of Seminole, State of Florida, DOT/AAR No. 626437P, hereinafter called "Crossing," said Crossing being twenty four (24) feet wide, the center line of which extends across said right-of-way and intersects the center line of Licensor's one (1) track(s) at Valuation Station 409+65, Milepost AU-776.69, Sanford Subdivision, as shown on print of Licensee's Drawing 1935-102, dated July 20, 1973, last revised November 1, 2004, attached hereto and made a part hereof.

1. DEFINITIONS:

1.1 The term "Licensee" herein shall include the undersigned corporation, association, partnership, governmental body or individual, as the case may be. The term "Licensee" shall also include Licensee's agents, employees, servants, sublicensees and invitees. All words herein referring to Licensee shall be taken to be of such number and gender as the context may require.

1.2 The term "Licensor" herein shall include any other company or companies whose property at the aforesaid location may be leased or operated by the undersigned Licensor, and any parent, subsidiary or affiliated system companies of Licensor and the servants, agents or employees of each.

1.3 The term "satisfactory" or "satisfaction" herein shall mean approval by Licensor's Division Engineer or his designated representative, usually Licensor's local Engineer.

1.4 The term "Crossing" herein shall include track crossings, approaches, roadways, drainage facilities, warning devices, signal and wire lines, gates, barricades, signs, appliances and ancillary facilities.

1.5 If this Agreement covers more than one crossing or more than one track, the terms "Crossing" and "track" herein shall be construed respectively as including any one or all of said crossings or tracks, as the context may require.

1.6 "Maintenance" shall include keeping all vegetation, to the extent possible, within the area(s) known as "Sight Clearance Area(s)," as shown on attached Exhibit A-40, cut to a height not exceeding two feet (2') above ground level, and keeping said "Sight Clearance Area(s)" free of parked vehicles and other obstructions.

2. USE, LIMITATIONS:

2.1 This license is subject to: (a) all encumbrances, conditions, covenants and easements applicable to Licensor's title to or rights in the subject property; (b) any existing public utilities and other pipe or wireline facilities located in, on, over, under or across the Crossing; (c) all instruments, easements, agreements and rights therefor, recorded or not; and (d) compliance by Licensee with terms and conditions herein.

2.2 The Crossing shall be used solely as a private road for the purpose of vehicular or pedestrian access to/from Licensee's adjacent land, only.

2.3 This Agreement is a personal license to Licensee and, except for Licensee's employees (or family), agents, servants, patrons, and/or invitees, Licensee will not allow any other person(s) to use said Crossing without the prior consent in writing of Licensor.

2.4 Licensee, at its sole cost and expense, shall erect and permanently maintain "PRIVATE ROAD -- NO TRESPASSING RESTRICTED USE" sign(s) or other signs indicating the private nature and limited use of the Crossing, at location(s) adjacent to said Crossing designated by Licensor.

2.5 Without separate written consent of Licensor, Licensee shall not dedicate nor permit Crossing to be used for any purpose or in any manner that might be in any way make said Crossing a public crossing or subject it to any public servitude.

2.6 Licensor reserves and excepts unto itself the paramount right to continue to occupy, possess and use the area of the Crossing(s) for any and all railroad purposes. Licensor shall not be obligated to make cuts in its trains for the Crossing.

2.7 No expressed or implied means of ingress and egress or way of necessity upon, across or over or adjacent lands of Licensor is granted by this Agreement. Licensee, at its own expense, will secure and maintain any necessary means of ingress and egress to the Crossing across lands of others.

3. FEES:

3.1 a. Licensee shall pay Licensor TWO HUNDRED FIFTY AND 00/100 U.S. DOLLARS (\$250.00) per year as base minimum annual license fee ("Fee"). Licensee shall have no right of refund for any cause whatsoever with respect to Fees paid to Licensor, which shall be payable annually in advance commencing as of the effective date. Such Fee shall be subject to periodic review and adjustment by Licensor.

b. Licensee shall pay to Licensor an Annual Replacement Fee, of ONE THOUSAND EIGHTY AND 00/100 U.S. DOLLARS (\$1,080.00). Such Fee(s) shall be subject to periodic review and adjustment by Licensor.

c. In addition to the periodic review and adjustment referred to in the Sections above, Licensor's Fee(s) shall be adjusted on an annual basis by the same percentage of increase as reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (1982-84=100) specified for All Items - United States compiled by the Bureau of Labor Statistics of the United States Department of Labor" ("CPI"). In no event, however, shall the Fee(s) be less than the Fee(s) payable as of the effective date of this License.

The Fee(s) shall be increased in accordance with the following:

$$\frac{\text{Current Price Index}^*}{\text{Base Price Index}^{**}} \times \text{Fee} = \text{Adjusted Fee}$$

* Effective CPI in the fourth month prior to the anniversary date of the fee.

** Effective CPI at the time of the effective date of the fee.

In the event the CPI is converted to a different standard reference base or otherwise revised or changed, the calculation of the percentage increase shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then as reasonably determined by Licensor.

3.2 Payment by Licensee of any Annual License Fee or Annual Replacement Fee shall not be held to create an irrevocable license for any period.

3.3 Licensee shall also indemnify Licensor against, and shall pay or reimburse Licensor for, any additional taxes and assessments levied solely on account of the existence of said Crossing.

3.4 In the event this Agreement is terminated by notice of either party (other than for breach or cause), Licensor shall refund to Lessee the proration of any prepaid base fees plus any taxes paid in advance; PROVIDED, however, such refund shall not be made when the cumulative total involved is less than One Hundred Dollars (\$100.00).

4. CONSTRUCTION, MAINTENANCE:

4.1 Crossing (including the necessary appurtenances, approaches, roadway, curbs, gutters, shoulders, slopes, fills and cuts and drainage thereof) shall be constructed, and thereafter maintained, at the sole cost and expense of Licensee.

4.2 Because of Licensor's labor agreements, all construction and maintenance work to be performed on that portion of said Crossing between the rails of said track(s) and for two feet (2') on the outside of each rail thereof, and any work on Licensor's signal and communication facilities deemed necessary by Licensor to permit Licensee's use of Crossing, must be performed by Licensor, but at the sole cost and expense of Licensee.

4.3 Before construction, Licensee shall deposit with Licensor the sum of N/A U.S. DOLLARS (\$N/A), the minimum estimated cost and expense of Licensor's portion of construction work and materials (including signalization). Should Licensor's costs and expenses exceed said deposit, Licensee shall promptly pay such excess upon receipt from Licensor of bill therefor.

4.4 Licensee shall furnish all other labor and materials required to install the Crossing and do all necessary grading for the approaches.

4.5 Licensee, at its sole cost and expense, shall maintain all approachways, and shall keep the Crossing and designated Sight Clearance Area(s) at all times free and clear of all spilled materials, ice, snow, mud, debris and all obstructions (including parked vehicles) to satisfaction of Licensor.

4.6 Licensee shall perform or cause all Licensee's construction and maintenance under this Agreement to be performed in a prudent and workmanlike manner, in conformity with any applicable statutes, orders, rules, regulations and specifications of any public authority having jurisdiction over the Crossing and under conditions satisfactory to and approved by Licensor. Said construction and maintenance shall be performed at such times and in such manner as not to interfere with the movement of Licensor's trains.

4.7 In the event Licensee contracts for the performance of any Crossing work, Licensee shall require its contractor(s) and/or subcontractor(s) to comply with all the terms of this Agreement.

4.8 In the event Licensee fails, in the judgment of Licensor, to comply with any construction or maintenance requirement of this Agreement, Licensor, without waiving any other provision of this Agreement, may either furnish the labor and materials required to do such work, at the sole cost and expense of Licensee, or terminate this Agreement in accordance with Article 12 hereof.

4.9 Licensee shall be solely responsible for any relocation or protective encasement of any subsurface pipe or wire lines (telephone, electrical power transmission or distribution, fiber optic, cable television, water, sewer, gas or petroleum products, et al.) and for necessary relocation of surface structures or facilities (fences, towers, poles, etc.) incident to Licensee's construction (or reconstruction) of the Crossing.

5. DRAINAGE:

5.1 Licensee shall not interfere with, or permit its contractors to interfere with, the existing drainage facilities within the approachways or underneath said Crossing.

5.2 Licensee shall furnish, install and maintain, at Licensee's sole expense and in a manner satisfactory to Licensor, necessary drainage pipe within the approachways and underneath said Crossing, on each side of said track(s), to accept drainage from the roadbed and keep drainage from the track(s) and right-of-way of Licensor.

6. PERMITS:

6.1 Before any construction hereunder is performed, or before use by Licensee of the Crossing, Licensee, at its sole cost and expense, shall obtain any necessary permits or licenses from all Federal, State or local public authorities having jurisdiction over the Crossing or Licensor's right-of-way and shall thereafter observe and comply with said licenses and permits, with the requirements of such public authorities, and with all applicable laws, rules and regulations and modifications thereof.

6.2 Licensor shall co-operate with Licensee in securing and complying with any Federal, State or local permits relative to Licensee's Crossing.

6.3 Licensee shall defend, protect and hold Licensor harmless for failure to obtain permits and licenses, for any violation thereof, or for costs or expenses of compliance or remediation.

7. BARRICADES, GATES; SIGNALS:

7.1 Licensee, at its sole cost and expense, shall furnish, construct and maintain any gate(s), barricade(s), sign(s), flashing light signals, and/or crossing warning device(s), or provide permanent flaggers or other protective services, as shall from time to time be deemed necessary for public safety purposes by Licensor or by any public authority sharing jurisdiction over rail grade crossings. The design and placement of signs, barriers, gates and any crossing warning devices shall be subject to the approval of Licensor. The cost of installing and maintaining and/or furnishing such additional crossing protection shall be paid solely by Licensee as a condition to keeping the Crossing in place.

7.2 Licensor may elect to furnish materials and install such gates, barricades signs or automatic or other crossing warning devices, or provide such protective services, at the sole cost and expense of Licensee. Licensor may require advance deposit of estimated cost and expense of such work and materials. Upon completion of construction, Licensor will promptly refund any portion of the deposit in excess of Licensor's costs and expenses. Should Licensor's costs and expenses exceed said deposit, Licensee shall promptly pay such excess upon receipt from Licensor of bill therefor.

7.3 The operation of barriers and other warning devices and the performance of said protective services shall be in accordance with the requirements of Licensor and such public authority. Licensee shall keep all such gates and barricades closed and locked when Crossing is not in actual use by authorized parties.

7.4 After any Crossing signals have been placed in service, Licensor will operate and maintain said signals, at the sole expense of Licensee. Costs of such signal maintenance and operation (including electric current) will be reviewed periodically, and the amount billed will be revised accordingly. In addition to said signal maintenance and operation expense, Licensee shall reimburse Licensor, within sixty (60) days after receipt of itemized bill from Licensor, (a) the cost of upgrading said signals to prevent obsolescence and (b) the cost of repairing or replacing said signals as a result of damages thereto, howsoever resulting. If Licensee fails or refuses to maintain and/or provide or pay costs thereof, Licensor may terminate this Agreement as in Article 12.

8. OPERATIONAL SAFETY:

8.1 Licensee shall use and shall cause its agents, employees (family), servants, sublicensees and invitees to use the highest degree of care in the operation and use of said Crossing so as to avoid collisions and/or interference with operations of Licensor.

8.2 Licensor shall erect, and thereafter Licensee shall maintain, all at Licensee's cost, reflectorized 'Railroad Crossing' Crossbuck signs on each side of the Crossing, clearly visible to vehicular traffic approaching the Crossing from either side, and advising of the number of track(s) to be crossed. Licensee shall erect, and thereafter maintain, reflecting standard highway 'STOP' signs on each side of the Crossing, clearly visible to vehicular traffic approaching the Crossing from either side. Licensee shall be solely responsible to periodically inspect such signs to insure that same are in place and visible.

9. FLAGGING, CONSTRUCTION:

9.1 If Licensor deems it advisable during any period of construction, maintenance, repair, renewal, alteration, change, or removal of said Crossing, to place temporary watchmen, flaggers, inspectors or supervisors, for protection of operations of Licensor or others on Licensor's right-of-way at the Crossing, Licensor shall have the right to do so, at the expense of Licensee, but Licensor shall not be liable for its failure to do so. Licensor may, at its discretion, require advance deposit(s) for estimated costs and expenses.

9.2 Subject to Licensor's consent and to Licensor's railroad operating rules and labor agreements, Licensee may provide flaggers, watchmen, inspectors or supervisors during all times of such construction, re-construction, etc., at Licensee's sole risk and expense; and in such event, Licensor shall not be liable for the failure or neglect of such watchmen, flaggers, inspectors or supervisors.

10. EXPLOSIVES:

10.1 In the construction and/or maintenance of said Crossing, Licensee shall not use explosives of any type or perform or cause any blasting without the separate express prior written consent of Licensor. In the event such consent is extended, a representative will be assigned by Licensor to monitor, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

10.2 Neither Licensee nor Licensee's contractor(s), agent(s) or employee(s), may transport, carry or haul any explosive, flammable, combustible or other hazardous or dangerous materials, goods or commodities across track(s) of Licensor without separate prior written consent of Licensor. Such restrictions shall not apply to gasoline or diesel fuel in the vehicular fuel supply tanks of any vehicle passing over Crossing.

11. ALTERATIONS; TRACK CHANGES:

11.1 Whenever any repairs or changes are made to Licensor's right-of-way or track, or if additional track(s) are laid at the site of the Crossing, necessitating repairs to, alteration of, or relocation of the Crossing, Licensee shall pay for or shall furnish labor and materials to make such repairs to, alterations of, or relocation of the Crossing.

11.2 In the event that Licensor's operating and/or maintenance needs or uses require any change (including any raising, lowering, or additions to), relocation or improvement in its right-of-way, track(s), structures, roadbed, rail communication or other facilities (including fiber optic cable), which necessitate any change of location, height or depth of Crossing, Licensee shall make such changes in Crossing and/or the grading, approaches or drainage, within thirty (30) days after notice in writing from Licensor, all at Licensee's sole cost and expense, and upon plans and specifications approved by Licensor.

11.3 If Licensee desires to revise, relocate or change in all or any part of said Crossing, or if Licensee is required to change or alter Crossing, drainage or approachways, plans therefor shall be submitted to Licensor for approval before any such change is made.

11.4 After change or alteration, the terms and conditions of this Agreement shall apply thereto.

12. TERM, TERMINATION, REMOVAL:

12.1 This Agreement shall be and remain in effect, from the date first written above, until terminated by either party giving to the other thirty (30) days' written notice of such termination.

12.2 Upon failure of Licensee to perform or comply with any term, covenant, clause, or condition herein contained, this Agreement may be terminated immediately upon notice by Licensor. After such notice of breach, Licensor may barricade or otherwise block said Crossing until removed by Licensee, at sole risk and expense of Licensee.

12.3 Within thirty (30) days after termination of this Agreement, unless the parties hereto otherwise agree, said Crossing shall be removed, all approaches barricaded, and right-of-way of Licensor restored in a manner satisfactory to Licensor, all at the sole cost and expense of Licensee. All removal and restoration work to be performed on that portion of said Crossing between the rails of said track(s) and for two feet (2') beyond each rail shall be done by Licensor, at Licensee's sole cost and expense.

12.4 If Licensee fails to make removal as in Section 12.3, Licensor may remove same, by Licensor employee or contract forces, at Licensee's sole risk, cost and expense.

12.5 All rights which Licensee may have hereunder shall cease and end upon the termination date so specified; provided, however, that termination of this Agreement shall not in any manner affect any claims and liability which may have arisen or accrued hereunder prior to termination, and which, at the time of termination, have not been satisfied.

13. RAILROAD FORCE ACCOUNT COSTS:

13.1 Licensor's expense for wages of Licensor's employees ("force account" charges) and materials for any work performed at the expense of Licensee pursuant to this Agreement shall be paid by Licensee within thirty (30) days after receipt of bill therefor.

13.2 Such expense shall include, but not be limited to: cost of labor and supervision under "force account" rules, plus current applicable overhead charges (traveling expense, Federal Railroad Retirement and Unemployment Taxes, vacation allowances); the actual cost of materials; and insurance and freight and handling charges on all material used. Equipment rentals, if any, shall be in accordance with Railroad fixed applicable rates.

14. RISK, LIABILITY, INDEMNITY:

14.1 Licensee hereby assumes, and, to the fullest extent permitted by State law, shall defend, indemnify and save Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor); and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the:

- (i) construction, presence, existence, repair, maintenance, replacement, operations, use or removal of the Crossing, or any structure in connection therewith;
- (ii) the restoration of the Premises of Licensor to good order or condition after removal;
- (iii) any fire, regardless of the source or origin thereof;

EXCEPT when caused solely by the willful misconduct or gross negligence of Licensor.

14.2 All obligations of Licensee under this Agreement to release, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, are subsidiaries of, or are affiliated with Licensor, and their respective officers, agents and employees.

14.3 Licensee shall promptly (within thirty (30) days) advise Licensor in writing, by Certified Mail of any claims made against Licensee and/or Licensor under this Agreement or from use of the Crossing.

15. INSURANCE:

15.1 (a.) In the event Licensee and/or its agents or contractor(s) must perform construction or demolition operations within fifty feet (50') of any operated railroad track(s), or affecting a railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee, or Licensee's contractor shall first procure, at Licensor's current rate at time of request, Railroad Protective Liability (RPL) insurance from Licensor to cover the cost of adding this Crossing, or additional construction and/or demolition activities, to Licensor's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Railroad's discretion and may not be available under all circumstances.

(b.) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, and Section 15.1 (a.) is not an applicable option, Licensee shall: (a) notify Licensor; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor, Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition. Licensor reserves the right to demand higher limits.

15.2 Prior to commencement of any use of the Crossing, Licensee shall procure and shall thereafter maintain during continuance of this Agreement, at its sole cost and expense, Commercial General Liability (CGL) Insurance, covering liability assumed by Licensee under this Agreement which, if permitted by law, will name Licensor, and/or its designee, as additional insured. Coverage of not less than THREE MILLION AND 00/100 U.S. DOLLARS (\$3,000,000.00) Combined Single Limit per occurrence, for bodily injury and property damage is required as a prudent minimum to protect Licensee's assumed obligations hereunder. The CGL policy shall be endorsed to provide for thirty (30) days' notice in writing to Licensor's Director-Casualty Insurance J907, at the address shown on Page 1, prior to termination of or change in the coverage provided. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to Speed Code C907 at the address listed above.

15.3 If said CGL policy is written on a "Claims Made" basis rather than "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to arrange adequate reporting time shall be Licensee's sole risk.

15.4 Said Crossing shall not be opened for traffic until said CGL insurance coverage is placed in effect. In the event said CGL insurance is cancelled, or is allowed to lapse, Crossing shall be subject to immediate closure and removal by Licensor upon notice to Licensee, all at Licensee's cost.

15.5 Licensor may at any time request evidence of insurance purchased by Licensee to comply with this Article and may demand that Licensee purchase insurance deemed adequate by Licensor. Failure of Licensee to comply within thirty (30) days of Licensor's demand shall be an event of default subject to termination as in Article 12.

15.6 Furnishing of insurance by Licensee shall not limit Licensee's liability under this Agreement, but shall be additional security therefor.

16. BREACH, WAIVER:

16.1 Any waiver by either party at any time of its rights as to anything herein contained shall not be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or breach is waived in writing by said party.

16.2 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Crossing, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee.

17. NOTICE(S):

17.1 Before doing any work on Licensor's right-of-way, Licensee shall give Licensor's Division Engineer, 4901 Belfort Road, Suite 130, Jacksonville, FL 32256, at least thirty (30) days' written notice, except that in cases of emergency repairs shorter notice may be given to said Division Engineer.

17.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licensor at the address shown on Page 1, c/o CSXT Contract Administration J180; or at such other address as either party may designate in writing to the other.

17.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be effective upon (a) actual receipt or (b) addressee's refusal of delivery.

18. TITLE:

18.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Right-of-Way in Crossing(s) occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Right-of-Way in Crossing(s), and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Right-of-Way, and all leases, licenses and easements or other interests previously granted to others herein.

18.2 The term "license," as used herein, shall mean with regard to any portion of the Right-of-Way which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Crossing is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Right-of-Way, with dominion and control over such portion of the Right-of-Way remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Right-of-Way occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Right-of-Way and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Right-of-Way. Licensee further acknowledges that it does not have the right to occupy any portion of the Right-of-Way held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Right-of-Way that would impair Licensor's existing rights therein.

18.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right, to any claim against Licensor for damages on account of any deficiencies in title to the Right-of-Way in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

18.4 Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon Licensee's facilities placement, or the presence of Licensee's facilities in, on or along any Crossing(s), including claims for punitive or special damages.

18.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Crossings(s), nor shall the exercise of this Agreement for any length of time give rise to any right title or interest in Licensee to said property other than the license herein created.

19. GENERAL PROVISIONS:

19.1 Neither this Agreement nor any provision hereof or agreement or provision included herein by reference shall operate or be construed as being for the benefit of any third person.

19.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of Licensor, and the heirs, legal representatives, successors or assigns of Licensee, as the case may be, but, this license is a personal privilege granted to Licensee and therefore no assignment sublease or sublicense hereof or of any rights or obligations hereunder shall be valid for any purpose without the prior written consent of Licensor.

19.3 This Agreement contains the entire understanding between the parties hereto, and cannot be changed, altered, amended or modified, except by written instrument subsequently executed by the parties hereto.

19.4 Neither the form nor any language of this Agreement shall be interpreted or construed in favor of or against either party hereto.

19.5 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law. Each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status from each other separate division for the determination of legality, so that if any separate division is determined to be void, voidable, invalid or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division herein contained, or any other combination thereof.

19.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

19.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.

19.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, or (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, each of which shall be evidence of this Agreement but which shall constitute but one agreement, as of the effective date of this Agreement.

Witness for Licensor:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: _____

ATTEST:

SEMINOLE COUNTY, FLORIDA

By: _____

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

Date: _____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.

For the use and reliance
of Seminole County only.

Print/Type Name: Carlton Henley

Print/Type Title: Chairman, Board of County
Commissioners of Seminole County, Florida

Approved as to form and
legal sufficiency.

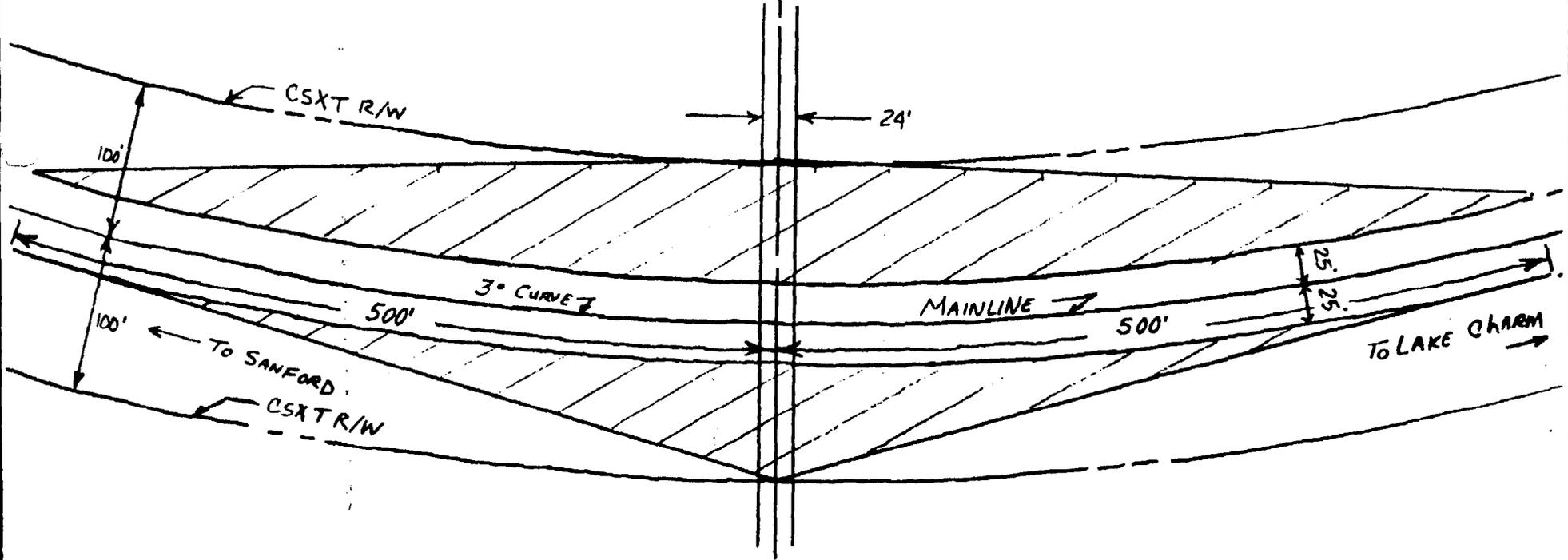
Tax ID No. _____

County Attorney

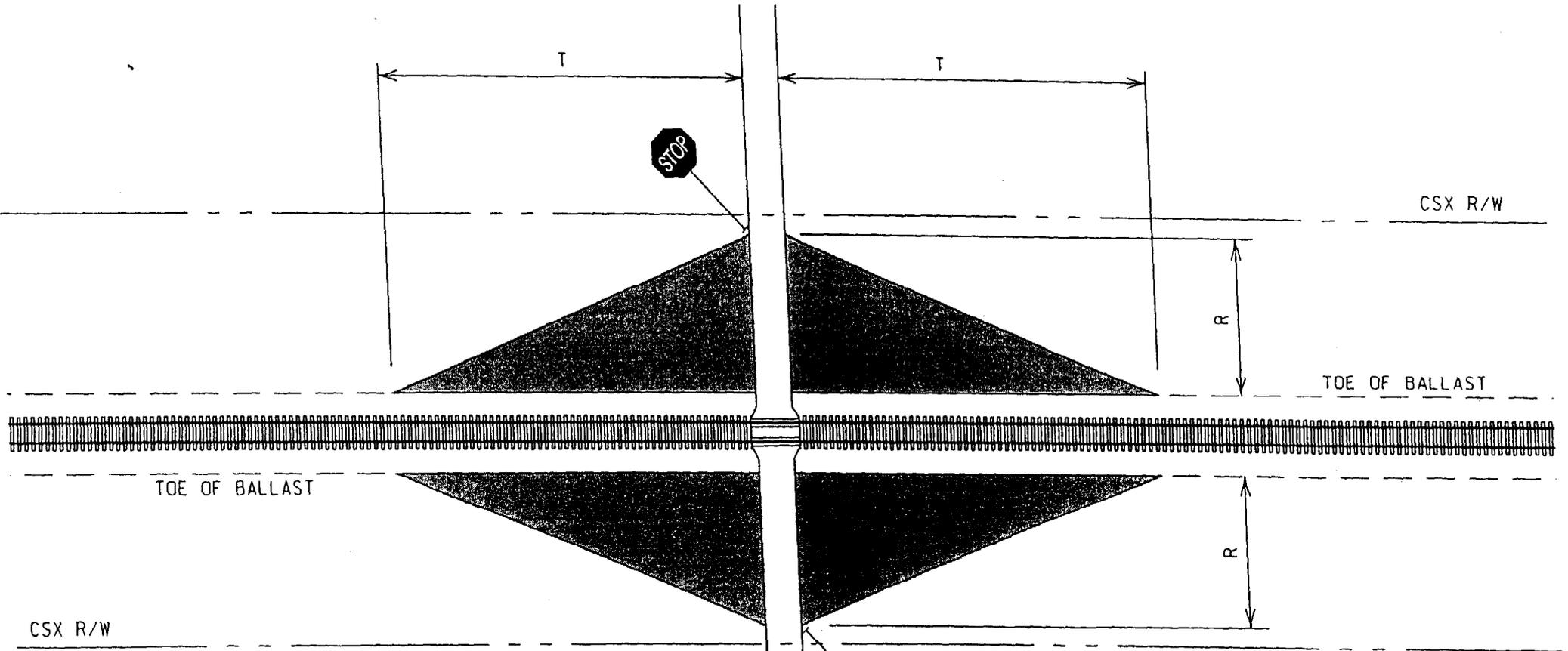
As authorized for execution by the
Board of County Commissioners
at their _____, 20__
regular meeting.

NORTH
SCALE 1" = 100'

1657' TO MP AU 777
VAL ST. 409+65
← E ROAD (M.P. AU-776.69)



CSX TRANSPORTATION		RAIL TRANSPORT GROUP ENGINEERING DEPARTMENT	
REVISIONS		Map to Accompany Agreement CSX-047979	
8/28/96 JTL 11/01/2004 MEA		Seminole County Florida	
		DIVISION	JAX SUBDIV Sanford
SCALE 1" = 100'		VAL. SEC.	DRAWING NO.
DATE 7-20-73		V3dFla	1935-102
DRAWN		2	
FILE:		CHECKED	SHEET OF



"R" = DISTANCE ALONG ROADWAY TO STOPPED VEHICLE;

R = 15ft. (min.) to 26ft. (max.)

"T" = DISTANCE OF CLEAR SIGHT ALONG TRACK;

T = 600ft. FOR TRAIN SPEEDS OF 40mph OR LESS

WARNING: LICENSEE MUST INQUIRE IF HE/SHE BELIEVES THE TRAIN SPEED IS IN EXCESS OF 40 mph

LEGEND



REFLECTORIZED STANDARD HIGHWAY "STOP" SIGN INSTALLED AND MAINTAINED BY LICENSEE



SIGHT CLEARANCE AREA, CLEARED AND MAINTAINED BY LICENSEE

CSX
TRANSPORTATION

DESIGN & CONSTRUCTION
PRIVATE ROAD CROSSING
SIGHT CLEARANCE DISTANCES
FOR TRAIN SPEEDS OF 40 mph OR LESS