

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: CSX Wireline Crossing Agreement for East Lake Mary Boulevard / Silver Lake Drive - District 5

DEPARTMENT: Public Works **DIVISION:** Traffic Engineering

AUTHORIZED BY: *W. Gary Johnson* **CONTACT:** Charles Wetzel ^{ARW} **EXT.** 5686
W. Gary Johnson, P.E. Asst. County Traffic Engineer

Agenda Date <u>01/27/04</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 of the Board to execute the Wireline Crossing Agreement for East Lake Mary Boulevard / Silver Lake Drive (two originals).

BACKGROUND:

Traffic Engineering will be installing fiber optic cable under the CSX railroad tracks in order to connect the fiber on Sanford Avenue to the fiber installed as part of the East Lake Mary Boulevard projects. This will eventually provide fiber connectivity to the Orlando-Sanford Airport and all the way out to State Road 46. This Agreement is similar to the one recently executed for U.S. 17/92 at 13th Street, where Traffic Engineering installed fiber and signal cable under the tracks as part of the signal re-building project. Traffic Engineering's signal contractor (Traffic Control Devices, Inc.) will be doing the actual work under our existing contract A/B-3021-01/GG.

The total fee cost for this agreement is \$1,500.00. Funds are available in Traffic Engineering's budget for this project.

Attachments: Agreement (2 originals)

Reviewed by:	<i>[Signature]</i>
Co Atty:	<i>[Signature]</i>
DFS:	
Other:	
DCM:	<i>[Signature]</i>
CM:	<i>[Signature]</i>
File No.	<u>CPWTE01</u>

AGREEMENT CHECKLIST
Agreement Number: CSX-046439

Please perform the following when executing the attached instrument:

X Sign the signature page in order to execute the agreement. One of the following should apply:

Execution on behalf of a CORPORATION should be accomplished by the President, Vice President or an officer authorized by Board Resolution to execute legal documents on behalf of the Corporation. (Copy of Board Authorization should be furnished for anyone signing, other than the President or Vice President.) If the Corporate name is set out erroneously in the Agreement, the document should be executed and the name corrected and initialed where it appears. (Municipal Corporation, furnish copy of such Resolution.)

If Agreement is with an INDIVIDUAL, that individual should sign the Agreement exactly as the name is set out in the caption of the Agreement. If the name is set out erroneously in the Agreement, the document should be executed and the name corrected and initialed where it appears.

If the Agreement is with a PARTNERSHIP, all general members of the partnership should execute the document unless one member of the firm has been designated managing partner or expressly by the partnership to execute the Agreement. (Furnish copy of such authority.)

X **The signature(s) must be WITNESSED by ONE (1) witness in the space(s) provided.**

X NAME(S) and TITLE(S) of person(s) executing the agreement must be typed or printed in ink directly beneath signature(s).

X **Social Security Number is required if Agreement is with an INDIVIDUAL, if Agreement is with other than an INDIVIDUAL, a Tax Identification Number is required.**

X Furnish Certificate of Insurance which states "**CSX Transportation, Inc. as additional insured,**" which is required under the INSURANCE Article, to Speed Code J180, 500 Water Street, Jacksonville, FL 32202. Questions regarding the insurance requirements should be directed to CSXT's Mr. W. D. Tyler, Manager Risk Management (904) 366-5090.

X In returning the Agreement, please furnish the following fee(s) set out in the Article(s) described within the Agreement:

One-Time Encroachment Inventory Fee (refer to FEE's Article)	\$500.00
Construction Risk Fee (refer to INSURANCE Article)	\$1,000.00
TOTAL DUE	\$1,500.00

WIRELINE CROSSING AGREEMENT

THIS AGREEMENT, Made as of November 24, 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, a municipal corporation, political subdivision or state agency, under the laws of the State of Florida, whose mailing address is 140 Bush Loop, Sanford, Florida 32773, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct, use and maintain a wire or cable, solely for the transmission of voice communication or other data only, via an optical waveguide, through a solid core of glass or plastic fiber material, hereinafter called "Wireline," over or across the track(s) and property owned or controlled by Licensor at or near Sanford, County of Seminole, State of Florida, located at Valuation Station 188+07, Milepost AU-772.51, Sanford Subdivision, hereinafter called the "Crossing," as shown on print of Licensee's Drawing KL046439, dated November 21, 2003, attached hereto and made a part hereof; other details and data pertaining to said Wireline being as indicated on Licensee's Application Form, dated November 24, 2003, also attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

1. LICENSE:

1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:

(A) Licensor's present and future right to occupy, possess and use its property within the area of the Crossing for any and all purposes;

(B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and

(C) Compliance by Licensee with the terms and conditions herein contained;

does hereby license and permit Licensee to construct, maintain, repair, renew, operate, use, alter or change said Wireline at the Crossing above for the term herein stated, and to remove same upon termination.

1.2 The term Wireline, as used herein, shall include only the wires and/or cables, poles, guys, anchors, fixtures, appliances and ancillary facilities devoted exclusively to the transmission usage above within the Crossing, and as shown on attached Application Form.

1.3 No additional wireline or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Crossing except upon prior separate written consent of Licensor.

2. ENCROACHMENT INVENTORY FEE; TERM:

2.1 In lieu of annual payments and in consideration of Licensor's waiver of future fee increases, Licensee shall pay Licensor a one-time nonrefundable Encroachment Inventory Fee of FIVE HUNDRED AND 00/100 U.S. DOLLARS (\$500.00) upon execution of this Agreement. Licensee agrees that the License Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Wireline or Crossing.

2.3 Effective date of this Agreement shall be the date first written above. This Agreement shall be revocable only, as herein provided, but shall also terminate upon (a) Licensee's cessation of use of the Wireline or occupancy for the purpose(s) above, (b) removal of the Wireline, and/or (c) subsequent mutual consent.

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Wireline and appurtenances, and/or maintenance thereof, or for any public works project of which said Wireline is a part.

3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove said Wireline, in a prudent, workmanlike manner, using quality materials and complying with any applicable standard(s) or regulation(s) of Licensor, or Licensee's particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Crossing.

3.2 Location and construction of Wireline shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.

3.3 All Licensee's work and exercise of rights hereunder shall be undertaken at time(s) satisfactory to Licensor and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's track(s) and appurtenances thereto.

3.4 In the installation, maintenance, repair and/or removal of said Wireline, Licensee shall not use explosives of any type or perform or cause any blasting without the separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to Wireline, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.

3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Wireline, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

3.7 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 under this Agreement.

3.8 All work on the Crossing shall be conducted in accordance with Licensor's safety rules and regulations.

3.9 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to Wireline.

4. PERMITS, LICENSES:

4.1 Before any work hereunder is performed, or before use by Licensee of the Crossing for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) or certificate(s) of approval from any Federal, State, or local public authorities having jurisdiction over the Crossing or its intended use and, to the extent required by State law, shall thereafter observe and comply with all applicable requirements of such public authorities, and all applicable laws and regulations and future modifications thereof, including any state "One Call" - "Call Before You Dig" requirements.

4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

5. MARKING AND SUPPORT:

5.1 With respect to any subsurface installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:

(A) support track(s) and roadbed of Licensor, in a manner satisfactory to Licensor;

(B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and

(C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.

5.2 After construction or maintenance of Wireline, Licensee shall:

(A) Restore any track(s), roadbed and other disturbed property of Licensor, to a condition satisfactory to Licensor; and

B Remain responsible for any settlement of any disturbed track(s) or roadbed for a period of one (1) year subsequent to completion of installation.

6. TRACK CHANGES:

6.1 In the event that Licensor's rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of Licensor's track(s) or other facilities, or in the event future use by Licensor of Licensor's right-of-way or property necessitate any change of location, height or depth in Wireline or Crossing, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in Wireline or Crossing to accommodate Licensor's track(s) or operations.

6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

7. WIRE CHANGES:

7.1 Licensee shall periodically monitor and verify the depth or height of Wireline or Crossing in relation to Licensor's tracks and facilities, and shall relocate Wireline or change Crossing, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of this Agreement.

7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of Wireline (including any change in voltage or gauge of wire), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before such change. After approval, the terms and conditions of this Agreement shall apply thereto.

8. INTERFERENCE WITH RAIL FACILITIES:

8.1 Although the Wireline/Crossing herein permitted may not presently interfere with Licensor's railroad or facilities, in the event that the operation, existence or maintenance of said Wireline, in the reasonable judgment of Licensor, causes: (a) interference (including, but not limited to, physical interference, interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner with the operation, maintenance or use by Licensor of its right-of-way, track(s), structures, pole line(s), devices, other property, or any appurtenances thereto; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly take such remedial action or make such changes in its Wireline or its installation as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so, at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect Licensee's Wireline, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to Wireline, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

9. RISK, LIABILITY, INDEMNITY:

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

9.1 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 construction, presence, existence, repair, maintenance, replacement, operations, use or removal of Wireline or any structure in connection therewith, or the restoration of premises of Licensor to good order or condition after removal, EXCEPT when caused solely by the willful misconduct or gross negligence of Licensor. ~~HOWEVER, during any period of actual construction, repair, maintenance, replacement or removal of Wireline, wherein agents, equipment or personnel of Licensee are on the railroad right of way, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.~~ *LRW*

9.2 Use of Licensor's right-of-way involves certain risks of loss or damage as a result of Licensor's rail operations. Notwithstanding Section 9.1, Licensee expressly assumes all risk of loss and damage to Licensee's Wireline or Property in, on or over the Crossing, including loss of or any interference with use thereof, regardless of cause, including electrical field creation, fire or derailment resulting from Licensor's rail operations. For this Section, the term "Licensee's Property" shall include the Wireline and property of third parties situated or placed upon Licensor's right-of-way by Licensee or by such third parties at request of or for sole benefit of Licensee.

9.3 Obligations of Licensee hereunder to defend, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of or are affiliated with Licensor, and their respective officers, agents and employees.

9.4 If a claim is made or action is brought against either party, for which the other party may be responsible hereunder, in whole or in part, such other party shall be notified and permitted to participate in the handling or defense of such claim or action.

10. INSURANCE:

10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of Commercial General Liability Insurance (CGL), naming Licensor as additional insured and covering liability assumed by Licensee under this Agreement. A coverage limit of not less than THREE MILLION AND 00/100 U.S. DOLLARS (\$3,000,000.00) Combined Single Limit per occurrence for bodily injury liability and property damage liability is currently recommended as a prudent minimum to protect Licensee's assumed obligations. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor prior to cancellation or modification of any policy. 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.

10.2 If said CGL policy does not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee or Licensee's contractor. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall require its Contractor to arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

10.4 Securing such insurance shall not limit Licensee's liability under this Agreement, but shall be additional security therefor.

10.5 Specifically to cover construction and/or demolition activities within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee 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.

11. GRADE CROSSINGS; FLAGGING:

11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's contractor to move any vehicles or equipment over track(s) of Licensor, except at public road crossing(s), without separate prior written approval of Licensor (CSXT Form 7422).

11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Wireline, to place watchmen, flagmen, inspectors or supervisors for protection of operations of Licensor or others on Licensor's right-of-way at the Crossing, and to keep persons, equipment or materials away from Licensor's track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

11.3 Subject to Licensor's consent and to Licensor's Railroad Operating Rules and labor agreements, Licensee may provide flagmen, watchmen, inspectors or supervisors during all times of construction, repair, maintenance, replacement or removal, at Licensee's sole risk and expense; and in such event, Licensor shall not be liable for the failure or neglect of such watchmen, flagmen, inspectors or supervisors.

12. LICENSOR'S COSTS:

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or wire changes shall also be paid by Licensee.

12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor, subject to Licensee's budgetary rules.

12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate.

13. DEFAULT, BREACH, WAIVER:

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or to remedy any breach, within thirty (30) days after receiving a written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of railroad emergency), unless such work cannot be completed within said time period but Licensee has commenced and is diligently prosecuting such remedy, Licensor shall have the option of immediately terminating this Agreement, and of revoking the privileges and powers hereby conferred, regardless of encroachment inventory fee(s) having been paid in advance for any annual or other period. Upon such termination, Licensee shall make removal in accordance with Article 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.

14. TERMINATION, REMOVAL:

14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the Wireline from the Crossing. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove Wireline from the right-of-way of Licensor, unless the parties hereto agree otherwise, (b) restore property of Licensor in a manner satisfactory to Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

15. NOTICE:

15.1 Licensee shall give Licensor's Division Engineer (Jacksonville Division, 4901 Belfort Road, Suite 130, Jacksonville, FL 32256) at least five (5) days written notice before doing any work on Licensor's right-of-way, except that in cases of emergency shorter notice may be given to said Division Engineer.

15.2 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.

15.3 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 considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

16. ASSIGNMENT:

16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensor's prior written consent to any assignment of Licensee's interest herein; said consent shall not be unreasonably withheld.

16.2 Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Licensee shall give Licensor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.4 Licensor expressly reserves the right to assign this Agreement, in whole or in part, to any grantee or vendee of Licensor's underlying property interests in the Crossing, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensor, at its option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensor for any loss, cost or expense Licensor may incur as a result of Licensee's failure to obtain said consent.

16.6 In the event of sale or other conveyance by Licensor of its Right-of-Way, across, under or over, which the Crossing(s) is constructed, Licensor's conveyance shall be made subject to the right of Licensee to continue to occupy the Crossing on the specific segment of Right-of-Way, and to operate, maintain, repair, renew thereon and to remove therefrom the facilities of Licensee, subject to all other terms of this Agreement.

17. TITLE:

17.1 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 Crossing(s) or segment of Right of Way 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 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 therein.

17.2 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.

17.3 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.

17.4 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 Crossing, including claims for punitive or special damages.

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

18. GENERAL PROVISIONS:

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

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

18.3 Neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

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

18.5 This Agreement shall be construed and governed by the laws of the state in which the Wireline and Crossing are located.

18.6 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the date and year first above written.

Witness for Licensor:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: _____

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

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

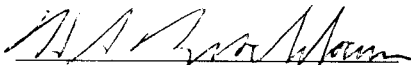
By: _____
DARYL G. McLAIN, Chairman

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. Approved
as to form and legal sufficiency.

As authorized for execution by the Board of
County Commissioners at its _____,
200__, regular meeting.



County Attorney



APPLICATION FOR WIRE OR CABLE LINES
CROSSING OR PARALLELING PROPERTIES AND TRACK

Submit one original and one copy of both the application and drawing along with a \$650.00 **nonrefundable** Application Fee to CSX Transportation, Property Services J180, 500 Water Street, Jacksonville, FL 32202.

Application and plans must be approved and written authority received from the Railroad before construction is begun. Your proposal and construction must be in accordance with CSXT's Specifications, the National Electrical Safety Code, and any governing laws or regulations. Note: Specifications furnished in the Application Package are to be used as a guideline only. CSXT reserves the right to approve or decline any application.

PLEASE SIGN BEFORE COMPLETING:

Agreement No.: CSX-046439

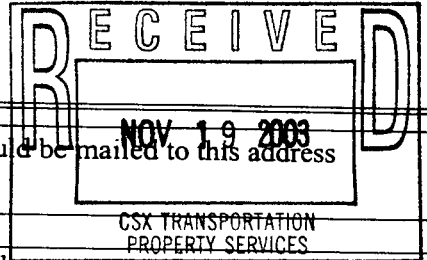
I affirm the information I am furnishing in this application will comply with the NESC Standards and accurately reflects the proposed construction plans:

Signature: [Handwritten Signature]

Application Date: 4 NOVEMBER 2003

Project Owner Information: Check here if agreement should be mailed to this address

- Complete Legal Name of applicant as it would appear in a legal document (**inaccurate information will delay your request**): SEMINOLE COUNTY TRAFFIC ENGINEERING
- Company Contact Name: ROBERT LAYER
Title: PRINCIPAL COORDINATOR
- Telephone: (407) 555-5642 Fax: (407) 555-5623 E-Mail: rlayer@co.seminole.fl.us
- Street Address: 140 BUSH LOOP City: SANFORD State: FL Zip: 32773
- Type of business:
 - Corporation (State of incorporation _____)
 - Partnership (Type and State of Partnership _____)
 - Individual Developer Municipality Other



Engineer/Consultant Information: Check here if agreement should be mailed to this address

- Company Name: _____
- Company Contact Name: _____ Title: _____
- Telephone: () _____ Fax: () _____ E-Mail: _____
- Street Address: _____ City: _____ State: _____ Zip: _____

Project Information: (Note: Metric Information will NOT be accepted.)

- Is this installation: New Revision to existing Attachment to existing Upgrade to existing
- If not a new installation, furnish existing Agreement Number: _____
- If this installation is to be a supplement to your master (general) agreement, furnish: Agreement Number: _____ Date: _____
- Your Reference Number: _____
- Town Location: CITY OF SANFORD County: SEMINOLE State/Province: FLORIDA
- Type of Crossing: Electric CATV Telephone Communications
 Other (explain): FIBEROPTIC CABLE
- Crossing is dedicated to: Trunk Distribution Transmission Other
- Conductor Material: Copper Aluminum Fiber Optic & Fiber Count 72 STRAND
- AC / DC : Voltage: _____ No. of Phases: _____ Amperes: _____ Hertz: _____
- Maximum Voltage: _____ Maximum Current: _____
- Maximum Fault to Ground: _____
- AWG Gauge: _____

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Project Information Cont'd:

- 22. Is this both a Crossing and Parallelism? Yes No
- 23. Number of tracks to be crossed: 1 SET Angle of crossing EAST TO WEST
- 24. Crossing location: 2,719 feet SOUTH (direction) from Railroad Milepost: AU-772
 If known: Valuation Station: _____ Valuation Map Number: _____
 If known: Latitude/Longitude: _____
 If known: Street Address of Crossing/Parallelism: _____
- 25. Parallelism location: Beginning: _____ feet _____ (direction) from RR Milepost: _____
 and Ending: _____ feet _____ (direction) from RR Milepost: _____
- 26. Total length on Railroad R/W: 50 FT Length Crossing: 50 FT Length Paralleling: _____
- 27. Will line be located entirely within a public road right-of-way? Yes No
 ** If you answered yes, road name, number, and width of public right-of-way are **required** on drawing
 DOT/AAR Crossing Number: 621 378X
- 28. a) Will this occupancy connect to an existing facility within Railroad corridor? Yes No
 b) If Yes, name facility owner(s): _____
- 29. Number of Manholes Handholes Pull boxes Other (describe) _____
 to be located within Railroad corridor. Dimensions of ancillary structures are required on drawing.
- 30. Distance from manholes/handholes/pull boxes/other to nearest track: _____
- 31. Number of new poles to be located on Railroad R/W: _____
- 32. Number of existing poles to be utilized on Railroad R/W: _____
- 33. Owner of existing poles to be utilized within Railroad R/W: _____
- 34. Distance from butt of pole utilized to nearest rail of track: _____
- 35. **Underground facilities: (For the purpose of this application, Conduit or Innerduct shall mean a single duct or pipe suitable for housing cables or wires).**
 Total buried length on Railroad R/W: 50 FT
 Number of Conduit(s): 1 EA. Total Filled Conduit(s): 1 EA. Total Empty Conduit(s): 0
 Number of Cables or Lines in each Conduit: 1 EA.
 Number of Conductors in each Cable or Line: 72 STRAND FIBER
 Encasement material: RIGID Outside diameter: 2.5 INCHES Wall thickness: .25 INCH
 Bury depth from base of rail to top of casing: 4 FT. feet
 Bury depth on right of way, but not beneath tracks: 4 FT. feet
 Bury depth below ditches: _____ feet
- 36. **Aerial facilities:**
 Total aerial length on Railroad R/W: _____
 Total number of CSX pole lines to be crossed: _____
 Type of wire supports: _____ Size: _____ False dead ends: _____
 Height of wires above top of rail at 60°f: _____ feet Sag in Spans at 60°f: _____
 Height of wires above Railroad communication and signal wires at 60°f: _____ feet

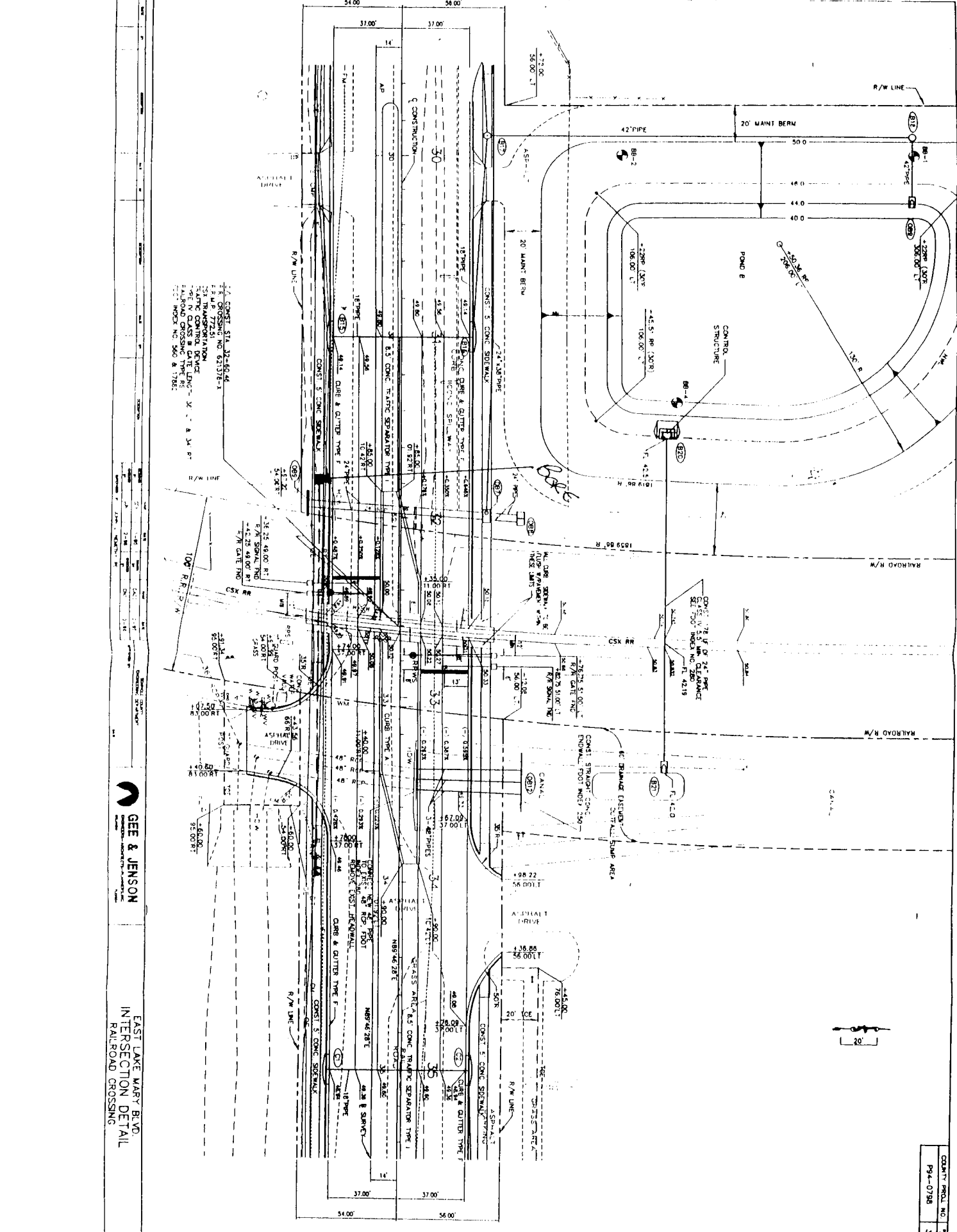
Supplemental Fiber Optic Information (Must be Completed for Fiber Proposals):

- 37. Identify each intended user of the conduit/cable: SEMINOLE COUNTY TRAFFIC & TELECOMMUNICATIONS
- 38. Entity performing construction: TRAFFIC CONTROL DEVICES
- 39. Number of fibers per cable: 72 STRANDS

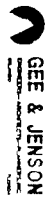
Railroad Use Only:

Division JACKSONVILLE Subdivision SANFORD No. of Crossings: 1
 Absolute No.: 02007 Valuation Section/Map No.: V3DFL/1
 Valuation Station: 188+07
 Milepost: AU-772.51

Roadmaster No.: P71 Contr. Type: FITRW Fiber? NO

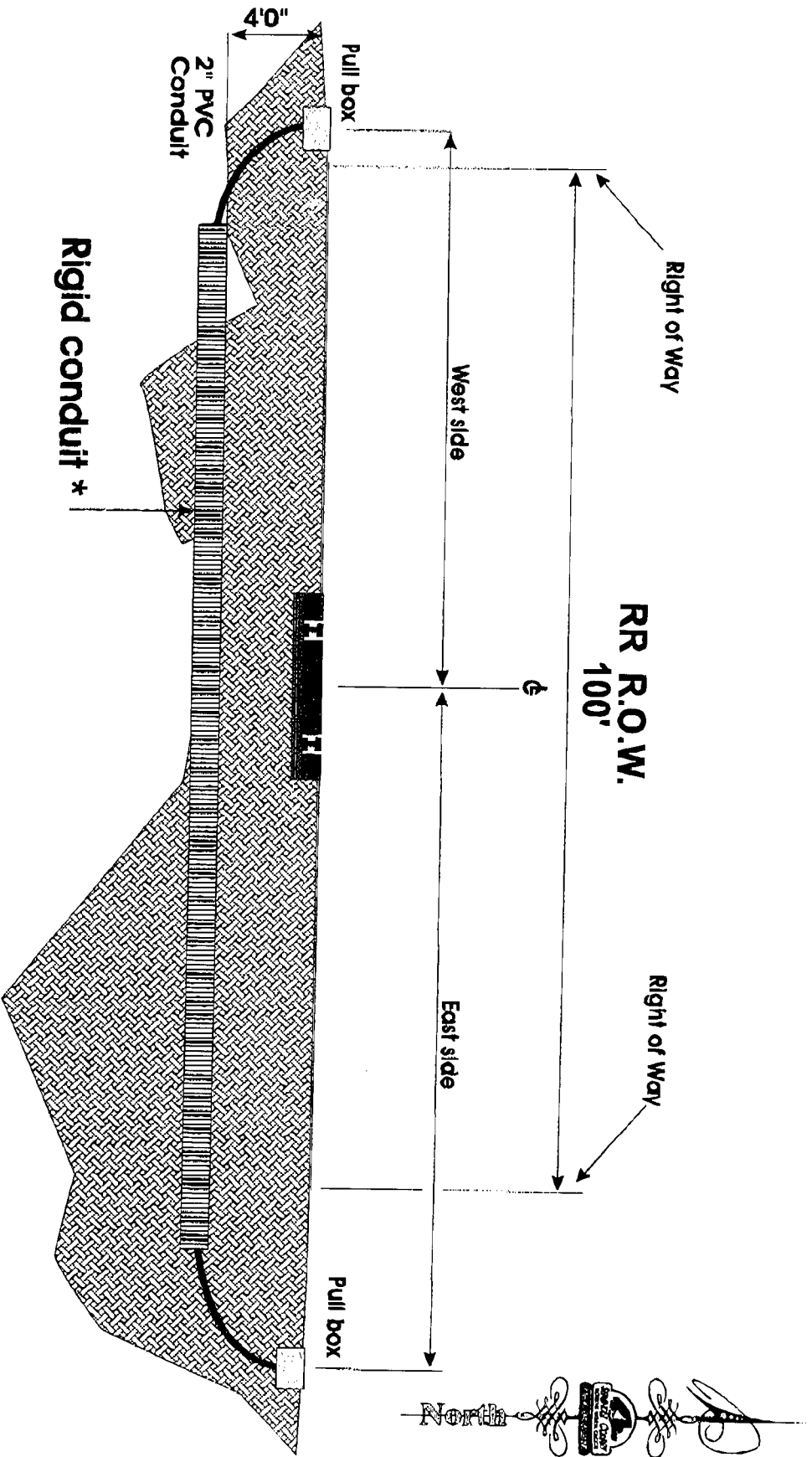


1. CONST. STA. 32+80.44
 2. CROSSING NO. 623378-3
 3. TRANSPORTATION
 4. TRAFFIC CONTROL DEVICE
 5. R/W CLASS B DATE LEND. X, Y, & Z
 6. INDEX NO. 960 & 1785




GEE & JENSON
 ENGINEERS
 EAST LAKE MARY BLVD.
 RAILROAD CROSSING

COUNTY PROJ. NO.	94-0788
SHEET NO.	38



*** Note**
 Conduit depth to be at R/R requirements
 But not less than 4.0 feet

CSX-046439
 DRG. #KLO46439
 11-21-03

 SEMINOLE COUNTY FLORIDA'S NATURAL CHOICE	
SEMINOLE COUNTY TRAFFIC ENGINEERING	
PROJECT <u>SIGNAL/RE-EMPTION CABLE CROSSING</u>	
FOR <u>SEMINOLE COUNTY</u>	
LOCATION <u>E. Lake Mary Blvd / Silver Lake Di.</u>	
SCALE: <u>NOT TO SCALE</u>	CHECKED: _____
DATE: <u>11-21-2003</u>	DRAWING NO. <u>KLD46439</u>
DRAWN BY: <u>Loyer / T. Harrison</u>	SHEET <u>2</u> OF <u>2</u>
FILE: <u>Identify-stred/03/03/03</u>	