

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Preliminary Engineering Agreement with CSX Transportation, Inc., in
conjunction with the Airport Boulevard, Phase II Project

DEPARTMENT: PUBLIC WORKS **DIVISION:** ENGINEERING

AUTHORIZED BY: W. Gary Johnson **CONTACT:** Kathleen Myer, P.E. **EXT.** 5664
W. Gary Johnson, P.E., Director Jerry McCollum, P.E., County Engineer

Agenda Date <u>05-25-04</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 the Chairman to execute the Preliminary Engineering Agreement with CSX Transportation Inc., to facilitate the proposed widening of existing crossing surface and installation of cantilevered flashing lights and gates in conjunction with the Airport Boulevard, Phase II Project.

District 5 – Commissioner McLain (Kathleen Myer, P.E.)

BACKGROUND:

This agreement will facilitate the preliminary engineering for the proposed widening of existing crossing surface and installation of cantilevered flashing lights and gates on Airport Boulevard as part of Phase II of the Airport Boulevard Improvement Project (see attached location map). CSX has estimated that the Reimbursable Expenses for the project will be approximately \$16,500.00. This estimate for Reimbursable Expenses is to pay CSX for the necessary engineering to determine the cost for construction of CSX's improvements needed when the road is improved. The County pays for both the engineering and the construction. This item is for the preliminary engineering to determine the construction cost estimate and is paid by the County to CSX. Once the construction estimate is determined, a subsequent agreement for the actual crossing construction will be required with payment by the County to CSX for the work.

Attachment: Location Map
Preliminary Engineering Agreement

Reviewed by:	<u>SP</u>
Co Atty:	<u>SP</u>
DFS:	_____
Other:	_____
DCM:	<u>SP</u>
CM:	<u>SP</u>
File No.	<u>CPWE04</u>

Project
Lake Mary, Seminole County, FL
Widening of existing crossing surface and installation
of cantilevered flashing lights and gates at Airport Boulevard
DOT# 622 061 J; RRMP# A-771.10
CSXT OP# TBD

PRELIMINARY ENGINEERING AGREEMENT

This Preliminary Engineering Agreement (“**Agreement**”) is made as of _____, 2004, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida (“CSXT”), and **Seminole County**, a body corporate and political subdivision of the State of **Florida** (“Agency”).

EXPLANATORY STATEMENT

1. Agency wishes to facilitate the development of the proposed **Preliminary Engineering for the proposed widening of existing crossing surface and installation of cantilevered flashing lights and gates at Airport Boulevard** (the “**Project**”).
2. Agency has requested that CSXT proceed with certain necessary engineering and/or design services for the Project to facilitate the parties’ consideration of the Project.
3. Subject to the approval of CSXT, which approval may be withheld for any reason, the Project is to be constructed, if at all, at no cost to CSXT, under a separate construction agreement to be executed by the parties at a future date.

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

1. Scope of Work

1.0 Generally. The work to be done by CSXT under this Agreement shall consist of: (1) the preparation or review and approval of preliminary and final engineering and design plans, specifications, drawings and other documents pertaining to the Project, (2) the preparation of cost estimates for CSXT's work in connection with the Project, and (3) the review of construction cost estimates, site surveys, assessments, studies and related construction documents submitted to CSXT by Agency for the Project (“**Engineering Work**”). Engineering Work may also include: (1) office reviews, (2) field reviews, (3) attendance at hearings and meetings, and (4) preparation of correspondence, reports, and other documentation in connection with the Project. Nothing contained in this Agreement shall oblige CSXT to perform work which, in CSXT’s opinion, is not relevant to CSXT’s participation in the Project.

2.0 Effect of CSXT Approval or Preparation of Documents. By its review, approval or preparation of plans, specifications, drawings or other documents pursuant to this Agreement (collectively, the “**Plans**”), CSXT signifies only that the Plans and improvements constructed in accordance with the Plans satisfy CSXT’s requirements. CSXT expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of Agency or any other persons of such Plans or improvements constructed in accordance with the Plans.

2. Reimbursement of CSXT Expenses.

1.0 Reimbursable Expenses. Agency shall reimburse CSXT for all costs and expenses incurred by CSXT in connection with the Engineering Work, including, without limitation: (1) all out of pocket expenses, (2) travel and lodging expenses, (3) telephone, facsimile, and mailing expenses, (4) costs for equipment, tools, materials and supplies, (5) sums paid to consultants and subcontractors by CSXT, and (6) CSXT labor, together with CSXT labor overhead percentages established by CSXT pursuant to applicable law (collectively, "**Reimbursable Expenses**").

2.0 Estimate. CSXT has estimated the total Reimbursable Expenses for the Project to be approximately \$16,500.00 (the "**Estimate**" as amended or revised). In the event CSXT anticipates that actual Reimbursable Expenses may exceed such Estimate, it shall provide Agency with the revised Estimate of total Reimbursable Expenses for Agency's approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses as reflected in the revised Estimate. CSXT may elect, by delivery of notice to Agency, to immediately cease all further Engineering Work, unless and until Agency provides such approval and confirmation.

3.0 Payment Terms.

1.0.0 **Advance Payment in Full:** Upon execution and delivery of this Agreement by Agency, Agency will deposit with CSXT a sum equal to the Reimbursable Expenses, as shown by the Estimate. If CSXT anticipates that it may incur Reimbursable Expenses in excess of the deposited amount, CSXT will request an additional deposit equal to the then remaining Reimbursable Expenses which CSXT estimates that it will incur. CSXT shall request such additional deposit by delivery of invoices to Agency. Agency shall make such additional deposit within thirty (30) days following delivery of such invoice to Agency.

2.0.0 Following completion of all Engineering Work, CSXT shall submit to Agency a final invoice that reconciles the total Reimbursable Expenses incurred by CSXT against the total payments received from Agency. Agency shall pay to CSXT the amount by which actual Reimbursable Expenses exceed total payments, as shown by the final invoice, within thirty (30) days following delivery to Agency of the final invoice. CSXT shall refund any surplus to Agency together with the final invoice.

3.0.0 In the event that Agency fails to pay CSXT any sums due CSXT under this Agreement: (i) Agency shall pay CSXT interest at the lesser of 1.0% per month or the maximum rate of interest permitted by applicable law on the delinquent amount until paid in full; and (ii) CSXT may elect, by delivery of notice to Agency: (A) to immediately cease all further work on the Project, unless and until Agency pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.

4.0.0 All invoices from CSXT shall be delivered to Agency in accordance with Section 6 of this Agreement. All payments by Agency to CSXT shall be made by certified check and mailed to the following address or such other address as designated by CSXT's notice to Agency:

CSX Transportation, Inc.
P.O. Box 116651
Atlanta, GA 30368-6651

4.0 Effect of Termination. Agency's obligation to pay CSXT Reimbursable Expenses in accordance with this Section shall survive termination of this Agreement for any reason.

1. Appropriations. Agency represents to CSXT that: (i) Agency has obtained appropriations sufficient to reimburse CSXT for the Reimbursable Expenses encompassed by the initial Estimate; (ii) Agency shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by Agency; and (iii) Agency shall promptly notify CSXT in the event that Agency is unable to obtain such additional appropriations.

2. Termination.

1.0 By Agency. Agency may terminate this Agreement, for any reason, by delivery of notice to CSXT. Such termination shall become effective upon the expiration of fifteen (15) calendar days following delivery of notice to CSXT or such later date designated by the notice.

2.0 By CSXT. CSXT may terminate this Agreement as provided pursuant to Section 2.3.3.

4.3 Consequences of Termination. If the Agreement is terminated by either party pursuant to this Section or any other provision of this Agreement, the parties understand that it may be impractical for them to immediately stop the Engineering Work. Accordingly, they agree that, in such instance a party may continue to perform Engineering Work until it has reached a point where it may reasonably and safely suspend the Engineering Work. Agency shall reimburse CSXT pursuant to this Agreement for the Engineering Work performed, plus all costs reasonably incurred by CSXT to discontinue the Engineering Work and all other costs of CSXT incurred as a result of the Project up to the time of full suspension of the Engineering Work. Termination of this Agreement or Engineering Work on the Project, for any reason, shall not diminish or reduce Agency's obligation to pay CSXT for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Engineering Work for any reason, CSXT's only remaining obligation to Agency shall be to refund to Agency payments made to CSXT in excess of Reimbursable Expenses in accordance with Section 2.

3. Subcontracts. CSXT shall be permitted to engage consultants and subcontractors to perform all or any portion of the Engineering Work.

4. Notices. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the parties at the addresses set forth below, or such other addresses as either party may designate by delivery of prior notice to the other party:

If to CSXT:

CSX Transportation, Inc.
Liberty Business Park
4901 Belfort Road, Suite 130
Jacksonville, Florida 32256
Attention: Leslie L. Scherr

If to Agency:

Seminole County

5. Project Construction. Nothing contained in this Agreement shall be deemed to constitute CSXT's approval of or consent to the construction of the Project.
6. Entire Agreement. This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.
7. Waiver. If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
8. Assignment. CSXT may assign this Agreement and all rights and obligations herein to a successor in interest, parent company, affiliate, or future affiliate. Upon assignment of this Agreement by CSXT and the assumption by CSXT's assignee of CSXT's obligations under this Agreement, CSXT shall have no further obligations under this Agreement. Agency shall not assign its rights or obligations under this Agreement without CSXT's prior written consent, which consent may be withheld for any reason.
9. Applicable Law. This Agreement shall be governed by the laws of the State of **Florida**, exclusive of its choice of law rules. The parties further agree that the venue of all legal and equitable proceedings related to disputes under this Agreement shall be situated in Duval County, Florida, and the parties agree to submit to the personal jurisdiction of any State or Federal court situated in Duval County, Florida.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, each by its duly authorized officers, as of the date of this Agreement.

**Board of County Commissioners
Seminole County, Florida**

By: _____
 Print Name: _____
 Title: _____

CSX TRANSPORTATION, INC.

By: _____
 Print Name: Richard M. Kadlick
 Title: VP – Engineering and Mechanical Standards and Quality