



Staff Report

File #: 15-230, **Version:** 1

Agenda Date: 11/10/2015

Subject:

Facility Encroachment Agreement with CSX Transportation, Inc. for the installation of fiber optic cable along the South Belcher Road Intelligent Transportation System Project from Druid Road to Park Boulevard.

Recommended Action

Approval of the Facility Encroachment Agreement with CSX Transportation, Inc. (CSXT), for the installation of fiber optic cable along the South Belcher Road Intelligent Transportation System (ITS) Project from Druid Road to Park Boulevard.

CSXT Agreement No. CSX798383. County PID No. 001030A. The total cost to the County for authorization to install the fiber optic cable is \$2,550, which includes a one-time license fee of \$1,500, and a Railroad Protective Liability Insurance Fee of \$1,050. The current construction cost for this project is estimated to be \$2,314,293.

Strategic Plan:

Ensure Public Health, Safety, and Welfare

2.5 Enhance pedestrian and bicycle safety.

Foster Continual Economic Growth and Vitality

4.4 Invest in infrastructure to meet current and future needs.

4.5 Provide safe and effective transportation systems to support the efficient flow of motorists, commerce, and regional connectivity.

Summary:

This agreement authorizes the County to perform the installation of fiber optic cable along South Belcher Road as part of the Countywide ITS Program. The agreement also stipulates the encroachment fee, specifications and requirements for installation and maintenance of the cable, as well as liability and insurance requirements.

Background Information:

Installation of this cable traverses the CSXT rail corridor, which crosses South Belcher Road just north of 90th Avenue North. The fiber optic cable will be installed above the railroad tracks by attachment to the underside of the bridge deck crossing the CSXT railroad and Cross Bayou Canal. In order to install the cable over CSXT's right-of-way, a Facility Encroachment Agreement with CSXT is required.

Additionally, staff and the County Attorney have reviewed the indemnification language contained in Section 10.1 of the Facility Encroachment Agreement and agree that it does not increase the liability to the County beyond an acceptable level of risk. Furthermore, CSXT will not modify their indemnification language, as it is a standard requirement in their agreements.

Fiscal Impact:

The total cost to the County for authorization to install the fiber optic cable is \$2,550, which includes a one-time license fee of \$1,500, and a Railroad Protective Liability Insurance Fee of \$1,050. The contractor will be required to obtain a railroad protective liability policy either through a private insurance provider, or as a rider to CSXT's existing policy. The County will self-insure for commercial general liability requirements. The current construction cost for this project is estimated to be \$2,314,293.

While there is no financial cap to the agreement, as the County is responsible for all costs incurred, the only foreseeable cost in addition to the license fee is the cost for flagging services. Flagging services may be required by CSXT and are reimbursable to them at approximately \$800/day. The installation of conduit is anticipated to be three (3) days or less for a total flagging cost of \$2,400.

Funding for this agreement is budgeted in the County's Capital Improvement Program. The sources of funding are provided by the Local Option Fuel Tax (9th Cent), and a Transportation Regional Incentive Program grant through the Florida Department of Transportation.

Staff Member Responsible:

Ken Jacobs, Traffic Division Manager, Public Works

Partners:

CSX Transportation, Inc.

FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and effective as of _____, 20__, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and PINELLAS COUNTY, a municipal corporation, political subdivision or state agency, under the laws of the State of Florida, whose mailing address is 22211 US Highway 19, Building 1, Clearwater, Florida 33765, hereinafter called "Licensee,"

WITNESSETH:

WHEREAS, Licensee desires to construct (unless previously constructed and designated as existing herein), use and maintain the below described facility(ies), including two (2) new empty conduit(s), hereinafter, collectively, called "Facilities," over, under or across property owned or controlled by Licensor at the below described location(s): hereinafter, collectively, called the "Encroachment," as shown on print(s) labeled Exhibit "A," attached hereto and made a part hereof;

1. One (1) ninety-six count (96) fiber optic crossing, 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, located at or near Pinellas Park, Pinellas County, Florida, Jacksonville Division, Clearwater Subdivision, Milepost ARE-889.92, Latitude N27:51:38.34, Longitude W82:44:13.37;

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 Encroachment 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 the Facilities at the Encroachment above for the term herein stated, and to remove same upon termination.

1.2 The term Facilities, as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached Facility Application Form and plan(s).

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

1.4 The term "Contractor" shall mean Licensee's agent, contractor, developer, and/or designees performing any of the work related to the Facilities as provided in this Agreement. Prior to any work described in this Agreement is performed by Contractor, Licensee shall require Contractor to execute and deliver to Licensor the Contractor Acceptance Form, attached to and made part of this Agreement as Contractor Acceptance Form, to acknowledge Contractor's agreement to observe and abide by terms and conditions of this Agreement.

2. ENCROACHMENT FEE; TERM:

2.1 Licensee shall pay Licensor a one-time nonrefundable Encroachment Fee of ONE THOUSAND FIVE HUNDRED AND 00/100 U.S. DOLLARS (\$1,500.00) upon execution of this Agreement. Licensee agrees that the Encroachment 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 Facilities or Encroachment.

2.3 This Agreement shall terminate as herein provided, but shall also terminate upon: (a) Licensee's cessation of use of the Facilities or Encroachment for the purpose(s) above; (b) removal of the Facilities; (c) subsequent mutual consent; and/or (d) failure of Licensee to complete installation within five (5) years from the effective date of this Agreement.

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 Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part.

3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

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

3.2 Location and construction of Facilities 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 of 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 property and appurtenances thereto.

3.4 In the installation, maintenance, repair and/or removal of said Facilities, 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 the Facilities, 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 Facilities, 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 Encroachment, 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 Encroachment 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 the Facilities or Encroachment.

4. PERMITS, LICENSES:

4.1 Before any work hereunder is performed, or before use of the Encroachment for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s)

and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (State, Federal or Local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b)), et al., and 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 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 the Facilities, Licensee shall:

- (A) Restore any track(s), roadbed and other disturbed property; and
- (B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of any underground Facilities or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Encroachment area that is attributable to Licensee's construction, use, and maintenance of the Facilities for a period of three (3) years after completion of installation.

6. TRACK CHANGES:

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

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

7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facilities (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), 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 Facilities/Encroachment herein permitted may not presently interfere with Licensor's railroad or facilities, in the event that the operation, existence or maintenance of said Facilities, in the sole judgment of Licensor, causes: (a) interference (including, but not limited to, physical or 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 of the rail corridor, 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 make such changes in its Facilities or 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 the Facilities, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to the Facilities, 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 To the fullest extent permitted by Section 768.28, Florida Statutes, (constitutional or statutory, as amended), Licensee hereby agrees to, defend, indemnify, and hold 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, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor.

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

9.3 To the fullest extent permitted by Section 768.28, Florida Statutes, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensor harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities; (b) any claim or liability arising under federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facilities leakage.

9.4 Notwithstanding Section 9.1, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities, whether or not such loss(es) result(s) in whole or part from Licensor's contributory negligence or joint fault.

9.5 Obligations of Licensee hereunder to release, 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, as well as any railroad that operates over the rail corridor on which the Encroachment is located, and the officers, employees and agents of each.

9.6 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee may be responsible hereunder, in whole or in part, Licensee shall be notified to assume the handling or defense of such claim or action; but Licensor may participate in such handling or defense.

9.7 Notwithstanding anything contained in this Agreement, the limitation of liability contained in the state statutes, as amended from time to time, shall not limit Licensor's ability to collect under the insurance policies required to be maintained under this Agreement.

9.8 Notwithstanding anything to the contrary contained in this Agreement, Licensee's indemnification obligations shall not be construed as a waiver of its sovereign immunity under Section 768.28, Florida Statutes, (constitutional or statutory, as amended).

9.9 Licensee may, to the fullest extent possible, through use of the Contractor Acceptance Form attached as a Rider hereto, as well as Licensee's contracts entered into pursuant to this Agreement, require its third-party contractor(s) to indemnify and defend both Licensor and Licensee.

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

(i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which must contain a waiver of subrogation against CSXT and its Affiliates;

(ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00), naming Licensor, and/or its designee, as additional insured and in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, 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 RenewalCOI@csx.com.

(iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence;

(iv) Such other insurance as Licensor may reasonably require.

10.2 If Licensee's existing CGL policy(ies) do(es) 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. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Licensor, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensor's request shall be considered a default by Licensee.

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

10.5 (A) 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, 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.

(B) At Licensor's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Licensee may pay Licensor, at Licensor's current rate at time of request, the cost of adding this Encroachment, 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 Licensor's discretion and may not be available under all circumstances.

10.6 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.

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 the track(s), 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 Facilities, to place watchmen, flagmen, inspectors or supervisors for protection of operations of Licensor or others on Licensor's rail corridor at the Encroachment, and to keep persons, equipment or materials away from the 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. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.

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. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

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 remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, 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.

13.3 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, 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.

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 Facility from the Encroachment. 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 the Facilities from the rail corridor of Licensors, unless the parties hereto agree otherwise, (b) restore the rail corridor of Licensors in a manner satisfactory to Licensors, and (c) reimburse Licensors any loss, cost or expense of Licensors resulting from such removal.

15. NOTICE:

15.1 Licensee shall give Licensors at least thirty (30) days written notice before doing any work on Licensors's rail corridor, except that in cases of emergency shorter notice may be given. Licensee shall provide proper notification as follows:

a. For non-emergencies, Licensee shall complete and submit Licensors's Outside Party Number Request Form (Form # OP) by facsimile, to facsimile numbers: (904) 245-3692. Licensee may also scan and email a completed form to email address: OP_Request@csx.com. A blank form, as well as additional instructions and information, can be obtained from Licensors's web site, via web link: http://www.csx.com/share/wwwcsx_mura/assets/File/Customers/Non-freight_Services/Property_Real_Estate/Outside_Party_Number_Request_Form.pdf.

b. For emergencies, Licensee shall complete all of the steps outlined in Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee shall also call and report details of the emergency to Licensors's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Licensors needs to contact Licensee concerning an emergency involving Licensee's Facility(ies), the emergency phone number for Licensee is: (727) 464-8900.

15.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licensors at the address shown on Page 1, c/o CSXT Contract Management, 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, lessee, or vendee of Licensor's underlying property interests in the Encroachment, 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.

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 Encroachment or segment of Rail Corridor 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 Rail Corridor 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 Rail Corridor, 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 Rail Corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Rail Corridor 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 Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor 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 Rail Corridor 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 Rail Corridor 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 the Facilities placement, or the presence of the Facilities in, on or along any Encroachment(s), including claims for punitive or special damages, to the maximum extent permitted by Section 768.28, Florida Statutes.

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 Encroachments, 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.

17.6 Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Facilities.

17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including without limitation, tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Facilities in or on any portion of the Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof or any other Licensor property.

17.8 In the event that any property of Licensor becomes subject to such Liens or Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

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 Except as otherwise provided herein, or in any Rider attached hereto, 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 Facilities and Encroachment 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.

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

18.8 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, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement.

18.9 Licensor shall refund to Licensee any overpayments collected, 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).

18.10 The obligation of the Licensee as to funding required payments pursuant to Article 2 shall be limited to an obligation in any given year to budget and appropriate the payment from legally available non-ad-valorem funds sufficient for the funding that is required during that year. Notwithstanding the foregoing, the Licensee shall not be prohibited from pledging any legally available non-ad-valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to an obligation of the Licensee. Notwithstanding any other provision in this Agreement, the total expenditures pursuant to Article 2.1, which Licensee is obligated to pay, shall not exceed ONE THOUSAND AND 00/100 U.S. Dollars (\$1,000.00) without written amendment to this Agreement by Licensor and Licensee.

19. RIDERS:

19.1 The following Rider(s) is/are herewith attached and included herein:



☒ Contractor Acceptance Form

[Signature Page to follow]

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

Witness for Licensor:

CSX TRANSPORTATION, INC.

 By: 

Print/Type Name: David E. Elder
Director

Print/Type Title: _____

~~Witness for Licensee~~

Attest:

Clerk

PINELLAS COUNTY

By: _____

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.

Print/Type Name: John Morroni

Print/Type Title: Chairman

Tax ID No.: 85-8013287050C-7

Authority under Ordinance or

Resolution No. _____,

Dated _____.

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

By 
Attorney

CONTRACTOR ACCEPTANCE

This Rider is and shall be a part of Agreement CSX798383, and is incorporated therein.

To and for the benefit of CSX Transportation, Inc., ("Railroad") and to induce Railroad to permit Contractor on or about the Railroad's property for the purposes of performing work in accordance with the agreement dated _____, 2015, between Utility and Railroad, (the "Agreement"), Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to Sections 3, 9, 10, and 19 of the Agreement, and the Contractor Insurance Requirements listed below.

CONTRACTOR INSURANCE REQUIREMENTS:

Railroad requires that the following insurance coverage be provided prior to any entry and/or work within Railroad's property and maintained by the Contractor until completion of the work. Railroad or its designee, may at any time request evidence of insurance purchased by Contractor to comply with the Agreement. Securing such insurance shall not limit Contractor's liability under the Agreement but shall be a security therefor.

- (i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which must contain a waiver of subrogation against Railroad and its Affiliates;
- (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00), naming Railroad, and/or its designee, as additional insured and in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under the Agreement. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Railroad, or its designee, prior to cancellation or modification of any policy. If Contractor's existing CGL policy(ies) do(es) not automatically cover Contractor's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Contractor. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Contractor shall arrange for adequate time for reporting losses. Failure to do so shall be at Contractor's sole risk;
- (iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence;
- (iv) Such other insurance as Railroad may reasonably require.

Utility may require its Contractor performing the work cover its requirement for Railroad Protective Liability ("RPL") Insurance coverage. In the event Contractor will be responsible for procuring and maintaining RPL the following shall apply:

Contractor shall procure and maintain during the period of construction or demolition operations, at no cost to Railroad, Railroad Protective Liability (RPL) Insurance, naming Railroad, 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 Railroad prior to commencement of such construction or demolition. Railroad reserves the right to demand higher limits.

At Railroad's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Contractor may pay Railroad, at Railroad's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Railroad'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.

CONTRACTOR: _____
 By: _____
 Name: _____
 Title: _____
 Date: _____

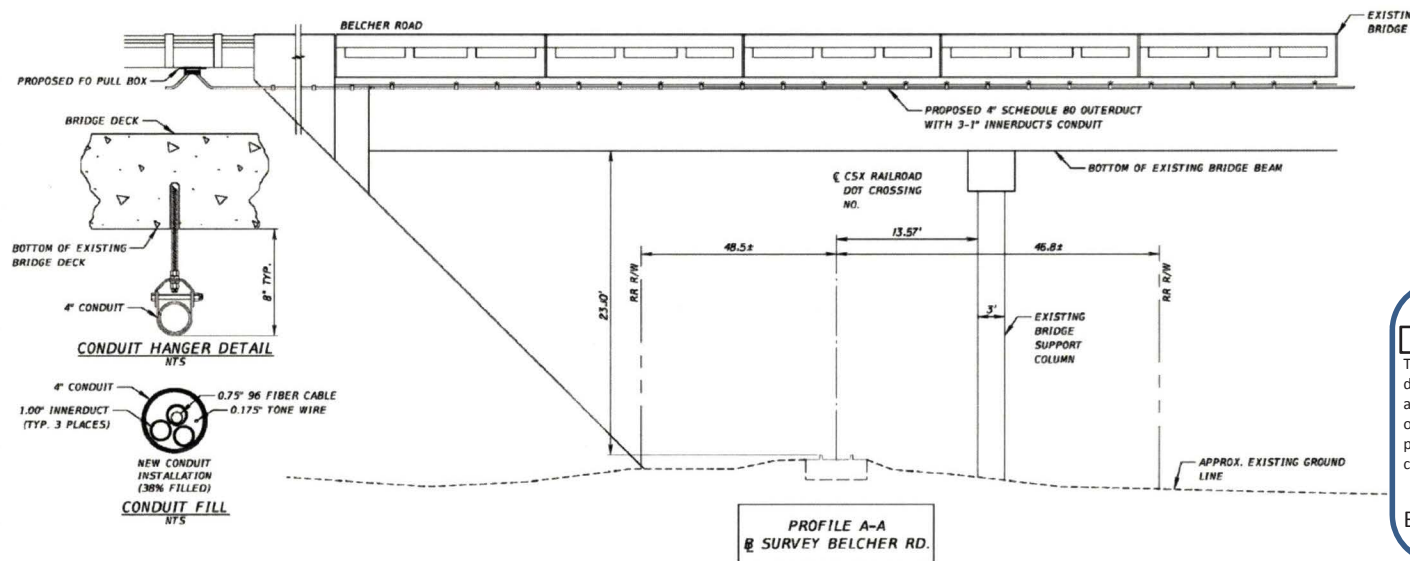
CSX 798383

Print Form

Reset Form

NOTES:

ALL BRIDGE MOUNT CONDUIT INDICATED IN THE PLANS SHALL BE FOUR INCH SCHEDULE 80 OUTERDUCT AND INCLUDE THREE INNERDUCTS. THE INNERDUCTS SHALL BE ONE INCH SDR 13.5 HDPE. THE INNERDUCT COLORS SHALL BE RED, ORANGE AND YELLOW. A LOCATE WIRE SHALL BE INSTALLED WITHIN THE VOID AREA OF THE OUTERDUCT. ALL LOCATE WIRE SHALL BE NO. 12 STRANDED AWG. A PULL TAPE SHALL BE INSTALLED IN EACH INNERDUCT. AT LEAST THREE FEET OF PULL TAPE SHALL BE ACCESSIBLE AT EACH CONDUIT TERMINATION AND SHALL BE SECURED WITHIN THE PULL BOX OR PLACE OF TERMINATION.



CSX PROPERTY SERVICES REVIEW

☐ No Exceptions ☒ Exceptions Noted

This review is for the general conformance with CSX utility design specifications only. Sole responsibility for all aspects of the overall design shall remain with the facility owner. This review does not constitute approval to proceed without meeting all of CSX's safety and contractual requirements.

By: _____

Additional Notes/Information:

The proposed conduit will be attached to the underside of the bridge deck and remain above the bottom of the existing bridge beam. The vertical clearance over the railroad tracks will not be affected.

WIRE/CABLE DETAILS

Type:	<input type="checkbox"/> Electric	<input checked="" type="checkbox"/> Communications
	<input type="checkbox"/> Cable TV	<input type="checkbox"/> Other Describe:
Conductor Material(s):	<input type="checkbox"/> Aluminum/Copper	<input checked="" type="checkbox"/> Fiber Optic <input type="checkbox"/> Other Describe:
	Wire/Cable 1	Wire/Cable 2
Fiber Cable Count:	1-4"	Wire/Cable 3
Wire Size/Pair:	96 COUNT SM FO	
Voltage:		
If options above not applicable, describe:		
Number of Phases (Electric Only):		
Type of Wire Supports:		
False Dead Ends:		
Total # of CSX Pole Lines to be Crossed:		

Parsons Brinckerhoff, Inc.
2202 North West Shore Blvd., Suite 300
Tampa, Florida 33607
(813) 520-4444
Cert. of Auth. No. 01462
EOR: Derrick A. Lue, P.E. No. 44730

Location: BELCHER ROAD OVER CSX RR

Latitude: 27°51'39"N

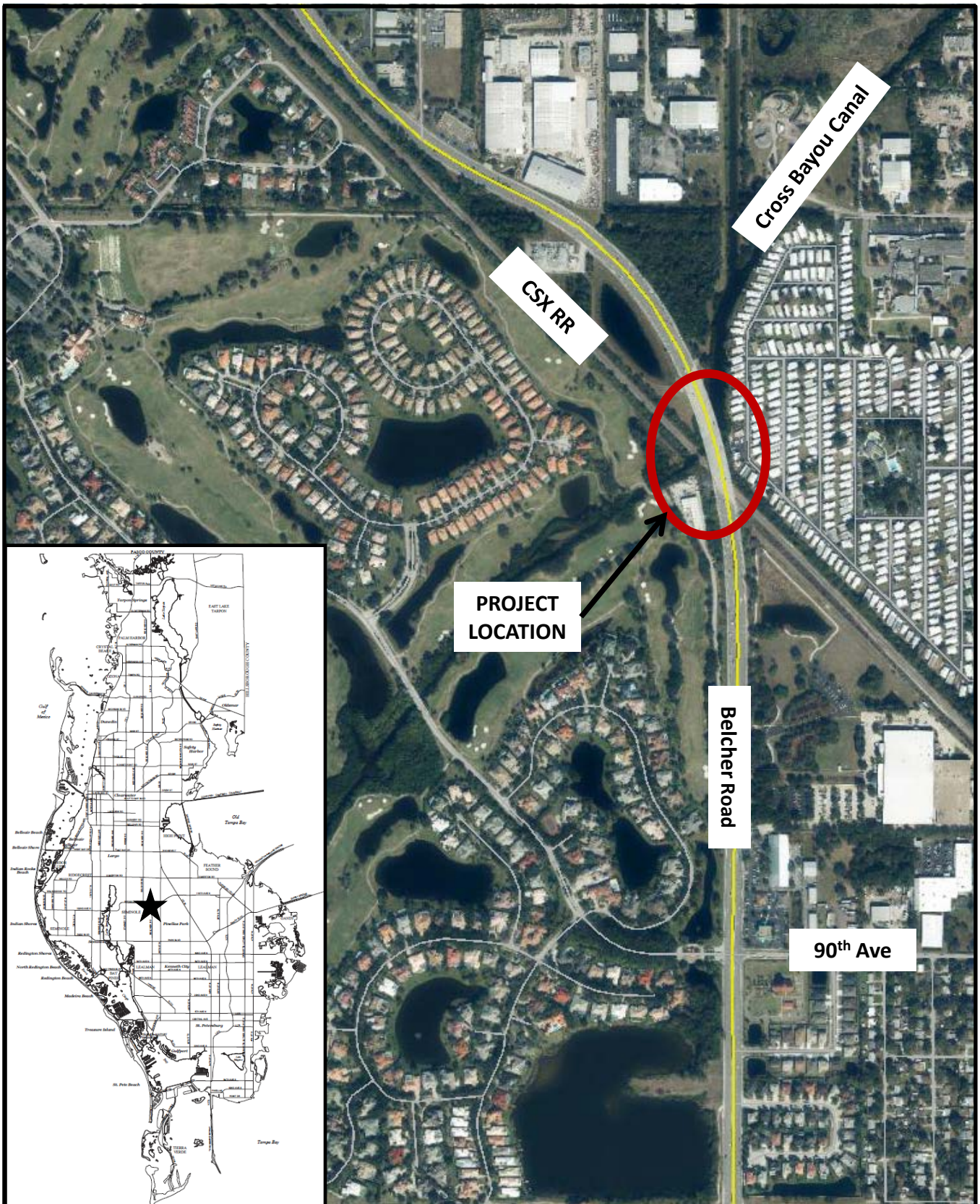
Longitude: 82°44'14"W

Drawing No.: _____ Sheet _____ of _____

Drawing Date: Jul 7, 2015 Last Revised: _____

Drawing Scale: V NTS Inches = NTS Feet

Drawing Scale: H NTS Inches = NTS Feet



S BELCHER ROAD ATMS – AERIAL CROSSING OF CSX LOCATION MAP





Statement of Fees

Page 1 of 1
Account/Contract CSX798383
Customer Project No.
Date 9/4/2015

Customer

Pinellas County
22211 US Highway 19 North
Building 1
Clearwater, FL 33765

Please submit a copy of this statement with payment submission to the "Remit To" address shown below.

Fees - At - A - Glance

Amount Due \$ 2550.00

Fees Summary

Railroad Protective Liability Insurance Fee	\$	1050.00
One-time License Fee	\$	1500.00
	\$	
	\$	
	\$	
Total Current Fees	\$	2550.00

News You Can Use

CSX Federal ID No.
CSX Canadian ID No.
CSX Quebec ID No.

54-6000720
105203095 RC 0001
1022434469 IC 0001

Please remit payment to:

CSX Transportation, Inc.
6737 Southpoint Drive, S., J-180
Jacksonville, FL 32216
Attention: Rene Kurth

Questions? Contact:

Rene_Kurth@csx.com
904.279-3860

Risk Management Contract Review

Contract Name	Facility Encroachment Agreement with CSX Transportation, Inc.						
Bid/Contract#		Granicus	15-230	PID #	PID No. 001030A		
Department	Eng & Tech Svcs	Project Mgr	Ken Jacobs			Date In	10/1/2015
Contract Mgr	Ken Jacobs	RUSH?	n	Pre-Review?		Date Out	10/1/2015
Purchasing Contact		Term		Amount	\$2,550.00		
Type of Contract (select both)	Access/Easement		Non-Purchasing		Method of Review	Choose an item.	
Limitation of Liability?		Indemnification Language?		If PE to PE, \$768.28?			

Required Coverages	Add'l Language / Exclusions	Limits	Justification
Choose an item.			***** Pinellas Ins Req*****
Choose an item.			
Choose an item.			
Choose an item.			
Choose an item.			
Choose an item.			
Choose an item.			
Choose an item.			

Discussed scope & suggested insurance requirements with	
---	--

Date/Time/Comments :
Pinellas County Self Insured Letter and Certificate of Insurance Prepared and provided as evidence of coverage pursuant to CSX Insurance Requirements.

NOTES:
Facility Encroachment Agreement with CSX Transportation, Inc. for the installation of fiber optic cable along the South Belcher Road Intelligent Transportation System Project from Druid Road to Park Boulevard.
County PID No. 001030A

Reviewed By	GWHITE	Date	10/1/2015
-------------	--------	------	-----------

<input checked="" type="checkbox"/> Ready for Signature	Authorized By Virginia E. Holscher, Director
---	---

From: [Celeste, Merry E](#)
To: [Kurth, Rene](#); [Insurance Documents](#)
Cc: [Meador, Robert C](#); [Kimm, Bunita L](#); [Pemberton, Christy D](#)
Subject: RE: S Belcher Rd ATMS - CSX Agreement
Date: Friday, October 16, 2015 12:42:27 PM

Thanks so much Rene for the response.

Merry Celeste
Pinellas County ETS
(727) 464-3185

mceleste@pinellascounty.org

All government correspondence is subject to the public records law.

From: Kurth, Rene [mailto:Rene_Kurth@csx.com]
Sent: Friday, October 16, 2015 12:24 PM
To: Celeste, Merry E; [Insurance Documents](#)
Cc: Meador, Robert C; Kimm, Bunita L; Pemberton, Christy D
Subject: RE: S Belcher Rd ATMS - CSX Agreement

Good afternoon Mary:

Our attorney has not changed her position on the request.

Rene Kurth | CSX Real Property, Inc.

Contract Specialist | Bldg. 1 J180 | 6737 Southpoint Drive South | Jacksonville, Florida 32216

Office 904-279-3817

Email rene_kurth@csx.com

From: Celeste, Merry E [<mailto:mceleste@co.pinellas.fl.us>]
Sent: Thursday, October 15, 2015 3:48 PM
To: Celeste, Merry E; Kurth, Rene; [Insurance Documents](#)
Cc: Meador, Robert C; Kimm, Bunita L; Pemberton, Christy D
Subject: RE: S Belcher Rd ATMS - CSX Agreement

Good Afternoon Rene: Would you please provide a response to question directly below.

Thanks,

Merry Celeste
Pinellas County ETS
(727) 464-3185

mceleste@pinellascounty.org

All government correspondence is subject to the public records law.

From: Celeste, Merry E
Sent: Wednesday, October 07, 2015 11:56 AM
To: 'Kurth, Rene'; [Insurance Documents](#)
Cc: Meador, Robert C; Kimm, Bunita L; Pemberton, Christy D

Subject: RE: S Belcher Rd ATMS - CSX Agreement

Hi Rene: I should probably restate the request below to ask if CSXT's position has changed regarding the request to remove the requirement that the County indemnify CSXT, which is in conflict with County Resolution No. 06-70. Your previous responses regarding same for this type agreement were that you were not able to modify. Please advise.

Thank you,

Merry Celeste
Pinellas County ETS
(727) 464-3185
mceleste@pinellascounty.org

All government correspondence is subject to the public records law.

From: Celeste, Merry E
Sent: Tuesday, October 06, 2015 2:46 PM
To: 'Kurth, Rene'
Cc: Meador, Robert C; Kimm, Bunita L; Pemberton, Christy D
Subject: FW: S Belcher Rd ATMS - CSX Agreement
Importance: High

Hi Rene: As we've requested in the past, I need to again request on this agreement that the indemnification language in Section 9.1 of the attached agreement be revised to remove the requirement that the County indemnify CSXT, which is in conflict with County Resolution No. 06-70. We respectfully request that CSXT revise Section 9.1 by either removing the requirement that the County indemnify CSXT, or modify Section 9.1 to reflect that each party be responsible for its own acts of negligence. The contractor that we hire to perform the work is required to indemnify both the County and CSXT. Please advise at your earliest convenience.

Thank you,

Merry Celeste
Pinellas County ETS
(727) 464-3185
mceleste@pinellascounty.org

All government correspondence is subject to the public records law.

From: Meador, Robert C
Sent: Tuesday, September 22, 2015 5:26 PM
To: Kimm, Bunita L
Cc: Celeste, Merry E; Jacobs, Kenneth A; Washburn, Thomas E
Subject: S Belcher Rd ATMS - CSX Agreement

Bunny,

The CSX agreement you have for execution is for aerial crossing of fiber optic cable. The cable will be inside conduit which will be attached to the underside of the bridge over the RR and Cross

Bayou. All applicable information is attached.

Thanks,
Rob

Robert C. Meador, P.E.
Senior Engineer
Pinellas County Transportation Management
22211 U.S. 19 N. /Bldg 1
Clearwater, FL 33765
Phone: (727) 464-8851
Fax: (727) 464-8908
rmeador@pinellascounty.org

This email transmission and any accompanying attachments may contain CSX privileged and confidential information intended only for the use of the intended addressee. Any dissemination, distribution, copying or action taken in reliance on the contents of this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above CSX email address. Sender and CSX accept no liability for any damage caused directly or indirectly by receipt of this email.