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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: June 30, 2009

Agenda Item No. 8(P)(1)(F)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Resolution No. R-840-09

Subject: Resolution Authorizing the Public Works Department Director to Execute Railroad Preliminary Engineering Agreements for the Necessary Engineering Design Phase for Proposed Improvements to New or Existing Railroad Crossings Not to Exceed an Amount of $25,000.00

Recommendation

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing the Public Works Department (PWD) Director to execute on behalf of Miami-Dade County the Railroad Preliminary Engineering Agreements for the necessary engineering design phase for proposed improvements to new or existing railroad crossings not to exceed an amount of $25,000.00.

Scope

The Railroad Preliminary Engineering Agreement will be for specific improvements at crossings along County-maintained roadways Countywide.

Fiscal Impact/Funding Source

The fiscal impact will not exceed $25,000.00 for each crossing. New crossing costs will be paid by the Developer or by a roadway project funding source. Improvements to existing crossings will be funded through Secondary Gas Tax or the relevant roadway improvement project funding source to include Road Impact Fee (RIF), People's Transportation Plan (PTP) or General Obligation Bond (GOB). PTP and GOB funding will only be used when the work is incidental to approved road improvement projects for these programs.

Track Record/Monitor

The railroad companies are meeting the requirements of maintaining the crossings and railroad signals in a satisfactory manner and Miami-Dade County, Public Works Department's Project Manager, Mr. Modesto Nuñez, P.E., Utilities Coordinator will monitor the Agreements.

Background

There are approximately one hundred and seventy (170) railroad crossings (the road crosses the track or tracks) on Miami-Dade County (County) maintained roadways for which in most instances the railroad companies right-of-way pre-existed the roadway, thus agreements are in place to allow the road to be built and to outline the responsibilities. Also, in the same manner, an agreement is in place if the roadway existed prior to the tracks.

All improvements needed for new or existing railroad crossings requires an engineering phase which entails engineering plans based on existing field condition, survey, geometry of track (s) and roadway, calculation for quantities and finally, an estimate of cost.

In the past, railroad companies would accomplish the engineering design for improvements to new or existing crossings by utilizing their in-house staff and the cost was included or added to the construction costs that have previously been paid by the County; however, consultants are now being used, thus the railroad companies are requiring an agreement to cover the estimated reimbursable engineering design expenses to be deposited in advance covering said cost separately from the construction cost. These charges are being shifted from the existing crossing agreements to these new engineering design agreements which will serve as the new mechanism since these costs are no longer included in the previous crossing agreements. By separating the engineering phase from the construction phases, it would require submitting two (2) different agreements to the BCC for the same crossing; therefore, prolonging the approval time and ultimately the commencement of construction. Approving this resolution will expedite the improvement or construction of new railroad crossings by allowing the PWD Director to execute the engineering agreement with a limit not to exceed $25,000.00. In the event that any agreement is to exceed the aforementioned amount, it will require BCC approval as well as CITT approval for any PTP funded project.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: June 30, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(P)(1)(F)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Mayor's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(P)(1)(F)
6-30-09

RESOLUTION NO. **R-840-09**

RESOLUTION AUTHORIZING THE PUBLIC WORKS DEPARTMENT DIRECTOR TO EXECUTE RAILROAD PRELIMINARY ENGINEERING AGREEMENTS FOR THE NECESSARY ENGINEERING DESIGN PHASE FOR PROPOSED IMPROVEMENTS TO NEW OR EXISTING RAILROAD CROSSINGS NOT TO EXCEED AN AMOUNT OF $25,000.00; TO BE FUNDED THROUGH SECONDARY GAS TAX OR THE RELEVANT ROADWAY IMPROVEMENT PROJECT FUNDING SOURCE INCLUDING ROAD IMPACT FEE (RIF), PEOPLE'S TRANSPORTATION PLAN (PTP) OR BUILDING BETTER COMMUNITIES (BBC) GENERAL OBLIGATION BOND (GOB) FUNDS

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby authorizes the Public Works Department Director to execute Railroad Preliminary Engineering Agreements for the necessary engineering design phase for the proposed improvements to new or existing railroad crossings not to exceed an amount of $25,000.00 for each crossing in substantially the form attached hereto and made a part hereof; and to be funded through Secondary Gas Tax or the relevant roadway improvement project funding source including Road Impact Fee (RIF), People's Transportation Plan (PTP) or Building Better Communities (BBC) General Obligation Bond (GOB) Funds.

The foregoing resolution was offered by Commissioner **Jose "Pepe" Diaz**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman **aye**
Jose "Pepe" Diaz, Vice-Chairman **aye**

Bruno A. Barreiro	**absent**	Audrey M. Edmonson	**aye**
Carlos A. Gimenez	**aye**	Sally A. Heyman	**aye**
Barbara J. Jordan	**aye**	Joe A. Martinez	**absent**
Dorrin D. Rolle	**aye**	Natacha Seijas	**aye**
Katy Sorenson	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 30th day of June, 2009. This resolution shall become effective as follows: (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, and (2) either i) the Citizens' Independent Transportation Trust (CITT) has approved same, or ii) in response to the CITT's disapproval, the County Commission re-affirms its award by two-thirds (2/3) vote of the Commission's membership and such reaffirmation becomes final.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Bruce Libhaber

5

Project: Miami, Miami-Dade County, FL

Jacksonville Division/

OP No. TBD

PRELIMINARY ENGINEERING AGREEMENT

This Preliminary Engineering Agreement (this **"Agreement"**) is made as of _____, 200__, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida ("CSXT"), and **Miami-Dade County Department of Public Works** , 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 installation of a**
(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 directly or indirectly related to safety or CSXT operations, property, or facilities, the Project is to be constructed, 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

1.1. Generally. The work to be done by CSXT under this Agreement shall consist of: (i) the preparation or review and approval of preliminary and final engineering and design plans, specifications, drawings, agreements and other documents pertaining to the Project, (ii) the preparation of cost estimates for CSXT's work in connection with the Project, and (iii) the review of construction cost estimates, site surveys, assessments, studies, agreements and related construction documents submitted to CSXT by Agency for the Project (collectively, the **"Engineering Work"**). Engineering Work may also include office reviews, field reviews, attending hearings and meetings, and preparing 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.

1.2. 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 the Project proposed to be 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 the Project constructed in accordance with the Plans.

2. Project Construction. Nothing contained in this Agreement shall be deemed to constitute CSXT's approval of or consent to the construction of the Project, which approval or consent may be withheld for any reason directly or indirectly related to safety or CSXT operations, property, or facilities. The Project if constructed is to be constructed, if at all, under a separate construction agreement to be executed by the parties at a future date.

3. Reimbursement of CSXT Expenses.

3.1. Reimbursable Expenses. Agency shall reimburse CSXT for all costs and expenses incurred by CSXT in connection with the Engineering Work, including, without limitation: (i) all out of pocket expenses, (ii) travel and lodging expenses, (iii) telephone, facsimile, and mailing expenses, (iv) costs for equipment, tools, materials and supplies, (v) sums paid to consultants and subcontractors, and (vi) labor, together with labor overhead percentages established by CSXT pursuant to applicable law (collectively, the "**Reimbursable Expenses**").

3.2. Estimate. CSXT has estimated the total Reimbursable Expenses for the Project to be approximately **$** (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.

3.3. Payment Terms.

3.3.1. 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. Agency shall pay CSXT for Reimbursable Expenses in the amount set forth in **CSXT Schedule PA** attached hereto, a copy of which shall accompany the advance payment. 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.

3.3.2. Following completion of all Engineering Work, CSXT shall reconcile the total Reimbursable Expenses incurred by CSXT against the total payments received from Agency and shall submit to Agency a final invoice if required. 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 will provide a refund of any unused deposits if the deposit exceeds the incurred Reimbursable Expenses for the Project.

3.3.3. 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.

3.4. 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.

4. 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.

5. Termination.

5.1. 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.

5.2. By CSXT. CSXT may terminate this Agreement (i) as provided pursuant to Section 3.3.3., or (ii) upon Agency's breach of any of the terms of, or its obligations under, this Agreement and such breach continues without cure for a period of ninety (90) days after written notification from CSXT to Agency of such breach.

5.3. 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 to immediately stop the Engineering Work. Accordingly, both parties agree that, in such instance a party may continue to perform Engineering Work until it has reached a point where it may reasonably and/or 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.

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

7. Notices. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered (i) on the expiration of three (3) days following mailing by first class U.S. mail, (ii) on the next business day following mailing by a nationally recognized overnight

carrier, or (iii) on the date of transmission, as evidenced by written confirmation of successful transmission, if by facsimile or other electronic transmission if sent on a business day (or if not sent on a business day, then on the next business day after the date sent), 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.
500 Water Street, J301
Jacksonville, Florida 32202
Attention: Hal Gibson

If to Agency: Miami Dade County
Public Works Department
111 NW 1st Street, Ste. 1510
Miami, FL 33128-1970
Attention: Modesto Nuñez

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.

8. 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.

9. 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.

10. 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.

Miami-Dade County

By: _____

Print Name: _____

Title: _____

CSX TRANSPORTATION, INC.

By: _____
Chuck E. Gullakson
Assistant Chief Engineer - Public Projects

CSXT Schedule PA

(Advance Payment – Construction Agreement)

PAYMENT SUBMISSION FORM

PROJECT INFORMATION

CSX OP No.: **TBD**

Description: **FL; Miami, Miami-Dade County; Installation of**

****

Payment is hereby provided in accordance with the terms of Section 3.3.1 Payment Terms of the Agreement dated _____, between Agency and CSXT.

****

A copy of this Payment Submission Form shall accompany all payments delivered by Agency to CSXT which shall be forwarded to the following address:

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

****

Payment due within ten (10) days of Agency's receipt of fully executed agreement

****

(All information below to be completed by Agency providing Payment)

Payment Date	Payment Amount	Check No.
_____	_____	_____

****

Date: _____

By: _____

Name: _____

Title: _____

Phone: _____

Email: _____

Please send copy of check to:
CSX Transportation
Hal Gibson Project
Principal Manager – Public Projects
500 Water Street J-301
Jacksonville, FL 32202

FLORIDA EAST COAST RAILWAY COMPANY
7411 Fullerton Street, Suite 300, Jacksonville, FL 32256
E-Mail: castone@feci.com
Direct Dial 904-538-6057
Facsimile 904-538-6494

C. A. Stone
Director, Engineering Services

APPLICATION FOR HIGHWAY CROSSING OVER/UNDER PROPERTIES AND TRACKS

1. Date of Application: _____
2. Applicant: _____
   Address: _____
   _____
   City: _____ State: ____ Zip: _____
3. Highway Agency: _____
   Address: _____
   _____
   City: _____ State: ____ Zip: _____
4. At Grade, Over or Under: _____
5. Public or Private: _____
6. Name Route Number of road: _____
7. New or reconstruction: _____
8. If reconstruction, date of existing agreement: _____
9. If reconstruction, current DOT/AAR Crossing Number: _____
10. Nearest municipality: _____
11. Crossing in the County of: _____
12. Location: (Prefix Milepost Feet Suffix) _____ _____ _____ _____
13. Next Crossing to the North: _____, Distance: _____
14. Next Crossing to the South: _____, Distance: _____
15. Closest Turnout to the North: _____, Distance: _____
16. Closest Turnout to the South: _____, Distance: _____
17. Number of tracks to cross: _____
18. Angle of intersection with tracks: _____
19. Track is curved or tangent: _____
20. Roadway is curved or tangent: _____
21. Track is in cut or fill: _____, If so height or depth: _____
22. Overhead Crossings: a) Clearance above top of rail: _____
    b) Length of span: _____
    c) Number of columns to be located on FEC Property: _____
    e) Distance face of closest column to nearest rail of closest track: _____

23. Underground Crossing:

    a) Track Carried By: _____

    b) Design standards followed: _____

24. Utility installation required by this project: _____

    _____

    _____

    _____

25. Utility relocation required by project: _____

    _____

    _____

    _____

26. Lane shifts account maintenance of traffic: _____

    _____

27. Plans for the proposed installation shall be submitted to and meet the approval of the FEC. Design and materials are to be in strict accordance with FEC Engineering Standard 310 Highway/Railway Crossings. The original and three (3) copies of this form shall be submitted, accompanied by four (4) prints of a drawing prepared in accordance with FEC Engineering Standard 300 Engineering Submittals and Processing.

28. If application is approved, Applicant understands the agreement for this crossing will make Applicant responsible for all costs incurred by FEC incidental to the installation and maintenance of the crossing and further agrees to assume all liability for accidents or injuries, which arise as a result of this installation.

29. If application is approved, Applicant understands the agreement for this crossing will require Applicant to carry, with respect to the operations it or any of its contractors or subcontractors perform, ISO RIMA Form railroad protective liability insurance policy in the name of FEC providing for a limit of not less than five million dollars ($5,000,000), per occurrence, and, subject to that limit for each person, a total limit of five million dollars ($5,000,000) for all damages arising out of bodily injury to or death of two or more persons in any one accident, and regular protective property damage liability insurance providing for a limit of not less than five million dollars ($5,000,000) for all damages arising out of injury to or destruction of property in any one accident and, subject to that limit per accident, a total limit of five million dollars ($5,000,000) for all damages arising out of injury to or destruction of property during the policy period.

30. Application processing fee of $ is enclosed with this application: _____

31. Authorized official making application: Signature: _____

    Name: _____

    Title: _____

    Phone: _____, Fax: _____

Questions concerning the application process may be directed to:

Joseph L. Schonder
Manager – Engineering Services
phone: 904-538-6056
fax: 904-538-6494
email: schonder@feci.com

MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

Legislative Notes

Agenda Item: **8(P)1(F)**

File Number: **091711**

Committee(s) of Reference: **Board of County Commissioners**

Date of Analysis: **June 15, 2009**

Type of Item: Engineering Agreement

Summary

This resolution authorizes the Public Works Department (PWD) director to execute Railroad Preliminary Agreements for the necessary engineering design phase for proposed improvements to new or existing railroad crossings not to exceed an amount of $25,000.

Background and Relevant Information

There were 4 crossings that were rehabilitated in the last two 2 years, through Resolutions 606-70; 809-82; 1584-84 and 203-75 for $75,620; $67,558; $32,175 and $64,880. The engineering cost was not separated, it was included as part of the construction cost, because the railroad companies performed these duties with in-house personnel.

According to PWD staff:

> There are other type of agreements such as the opening of a new railroad crossing and/or the upgrade of an existing railroad crossing due to a roadway widening. In this respect, there were 5 crossings that required engineering in the last 2 years; 2 were paid by the developer, through Resolutions 1233-07 and 315-09; and the other 3 were paid by the County, through Resolutions 318-06, 684-06 and 685-06 in the amounts of $8,616, $11,068 and $11,676. Of the 5, 3 were new crossings and 2 were widening due to roadway projects.

The amount of $25,000 stated in the resolution will fluctuate based on the type of improvement needed, the width of the right-of-way and future increases in construction costs. However, there are currently 80 crossing agreements between the two railroad companies and Miami-Dade County dating to December 7, 1926. According to PWD staff, it is anticipated that all will require engineering costs at the time the crossings require rehabilitation or widening. **Staff anticipates 7 to 8 People's Transportation Plan projects in the next five years.**

Prepared by: Michael Amador-Gil