

MEMORANDUM

TO: MAYOR AND CITY COMMISSION
FROM: CITY ATTORNEY'S OFFICE
DATE: August 3, 2020
RE: **Construction Agreement with CSX Transportation, Inc. for Construction Services Related to the Rail Crossing Located at County Line Road and US 92**

Attached for your consideration is a proposed Construction Agreement between CSX Transportation Inc., the City of Lakeland and Polk County for construction services related to the rail crossing located at County Line Road and US 92. This intersection has a documented need for a second northbound left-turn lane and dedicated northbound right-turn lane to facilitate traffic moving from County Line Road to US 92. The project will also include a new sidewalk on the east side of County Line Road to serve pedestrian traffic accessing Amazon, Publix and O'Reilly Auto Parts and other employment centers in the corridor. To accommodate the new turn lanes, the rail crossing must be widened and the gates and signals must be re-constructed at new locations.

This improvement was originally identified as a mitigation requirement in City Resolution No. 4698 relating to the former Lakeland Central Park DRI and the new developer of the site is required to advance \$1 million to the City to fully fund this project pursuant to the Development Agreement approved by the City Commission in June. The project is also included and partially funded in the Economic Development Transportation Project Fund Agreement between the City and the Florida Department of Transportation dated September 15, 2014.

Construction plans have been prepared by DRMP, Inc. on behalf of Public Works. CSX has reviewed these plans and approved them for construction. Under the attached Agreement, the City will reimburse CSX for their costs to construct the improvements related to the rail crossing. The City will hire a contractor to construct the roadway improvements. Upon completion of the project, the County will maintain the crossing at their expense.

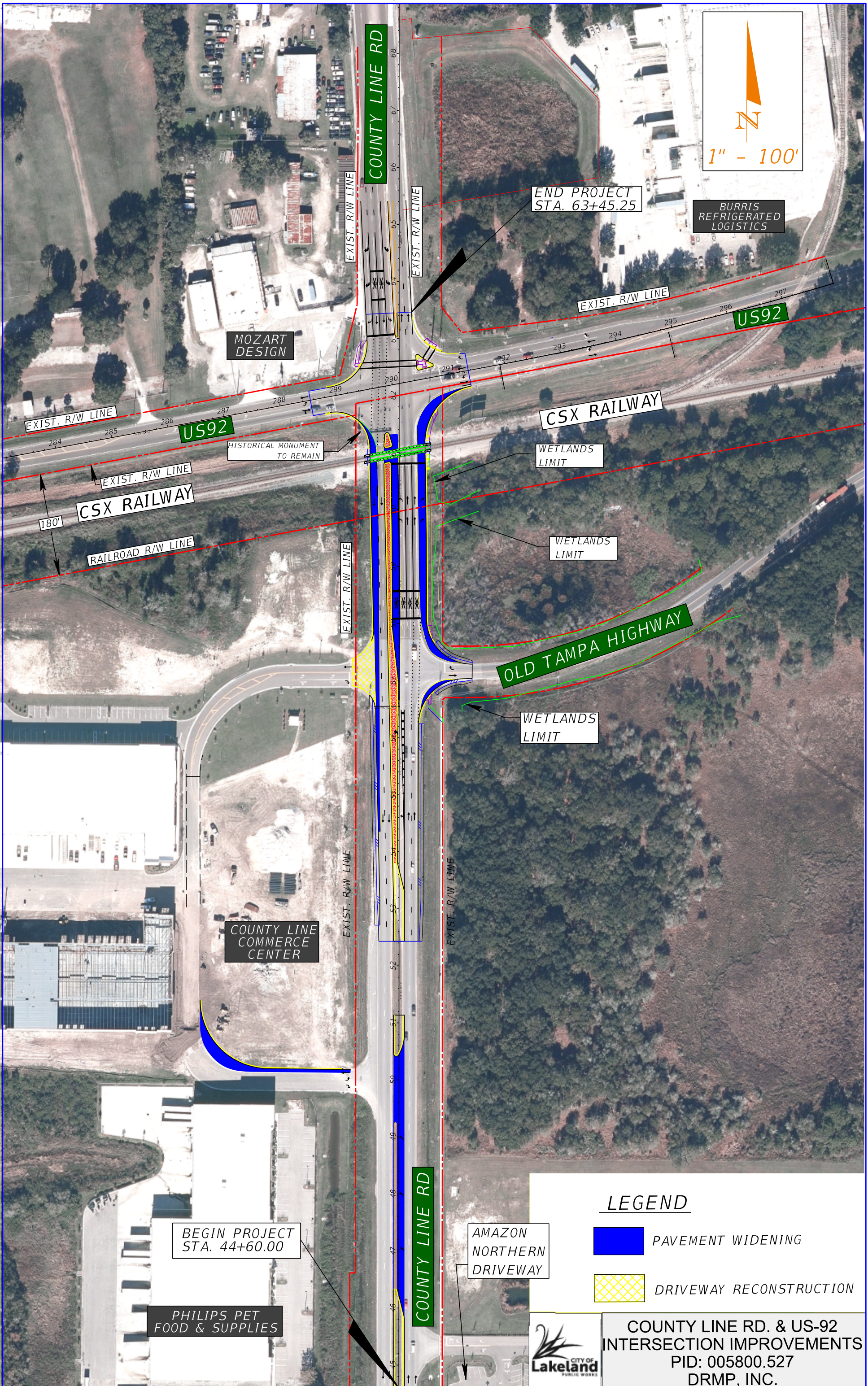
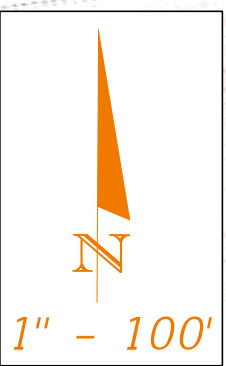
This project has several funding sources:

- | | |
|---|-------------|
| 1. Infrastructure Agreement – Polk County | \$62,049.70 |
| 2. Economic Development Transportation Project Fund Agreement | \$1,421,583 |
| 3. Development Agreement – LCP Owner, LLC | \$1,000,000 |

CSX has estimated their reimbursable expenses for this crossing to be \$700,428. DRMP has prepared a road construction estimate of \$1,052,120 and the Construction Engineering & Inspection (CEI) expense is estimated to be \$150,000.

It is recommended that the City Commission approve the attached Construction Agreement with CSX Transportation, Inc. for construction services related to the County Line Road at US 92 rail crossing and authorize the appropriate City officials to execute the Agreement on behalf of the City.

Attachments



END PROJECT
STA. 63+45.25

BURRIS
REFRIGERATED
LOGISTICS

MOZART
DESIGN

EXIST. R/W LINE

US92

CSX RAILWAY

HISTORICAL MONUMENT
TO REMAIN

WETLANDS
LIMIT

CSX RAILWAY

180'

RAILROAD R/W LINE

WETLANDS
LIMIT

OLD TAMPA HIGHWAY

WETLANDS
LIMIT

COUNTY LINE
COMMERCE
CENTER

BEGIN PROJECT
STA. 44+60.00

PHILIPS PET
FOOD & SUPPLIES

AMAZON
NORTHERN
DRIVEWAY

LEGEND

 PAVEMENT WIDENING

 DRIVEWAY RECONSTRUCTION



COUNTY LINE RD. & US-92
INTERSECTION IMPROVEMENTS
PID: 005800.527
DRMP, INC.

CONSTRUCTION AGREEMENT

This Construction Agreement (“**Agreement**”) is made as of _____, 20____, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida (“**CSXT**”), the City of Lakeland, a Florida municipal Corporation (“**City**”) and Polk County, a body corporate and political subdivision of the State of Florida (“**County**”).

EXPLANATORY STATEMENT

1. City has proposed to construct, or to cause to be constructed, **County Line Road and US-92 intersection improvements. Track improvements include single track 80' timber and asphalt crossing upgrade to 120' concrete panel crossing. Signal improvements to include installation of (2) Cantilevers, (3) roadway gates, (1) PED gate, constant warning detection, 8x8 house with remote monitoring and power service. All in the City of Lakeland, Polk County, FL, Florida Zone, Lakeland Subdivision at DOT 624304R, MP A-857.03 (the “Project”).**
2. City has obtained, or will obtain, all authorizations, permits and approvals from all local, state and federal agencies (including City), and their respective governing bodies and regulatory agencies, necessary to proceed with the Project and to appropriate all funds necessary to construct the Project.
3. City acknowledges that: (i) by entering into this Agreement, CSXT will provide services and accommodations to promote public interest in this Project, without profit or other economic inducement typical of other City contractors; (ii) neither CSXT nor its affiliates (including their respective directors, officers, employees or agents) will incur any costs, expenses, losses or liabilities in excess of payments made to CSXT, by or on behalf of City or its contractors, pursuant to this Agreement; and (iii) CSXT retains the paramount right to regulate all activities affecting its property and operations.
4. It is the purpose of this Agreement to provide for the terms and conditions upon which the Project may proceed.

NOW, THEREFORE, 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. Project Plans and Specifications
 - 1.1 Preparation and Approval. Pursuant to Exhibit A of this Agreement, all plans, specifications, drawings and other documents necessary or appropriate to the design and construction of the Project shall be prepared, at City’s sole cost and expense, by

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City or CSXT or their respective contractors. Project plans, specifications and drawings prepared by or on behalf of City shall be subject, at CSXT's election, to the review and approval of CSXT. Such plans, specifications and drawings, as prepared or approved by CSXT, are referred to as the "**Plans**", and shall be incorporated and deemed a part of this Agreement. Plans prepared or submitted to and approved by CSXT as of the date of this Agreement are set forth in Exhibit B to this Agreement.

1.2 Effect of CSXT Approval or Preparation of Plans. By its review, approval or preparation of Plans pursuant to this Agreement, CSXT signifies only that such Plans and improvements constructed in accordance with such 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 City or any other persons of the Plans or improvements constructed in accordance with the Plans.

1.3 Compliance with Plans. The Project shall be constructed in accordance with the Plans.

2. Allocation and Conduct of Work

Work in connection with the Project shall be allocated and conducted as follows:

2.1 CSXT Work. Subject to timely payment of Reimbursable Expenses as provided by Section 4, CSXT shall provide, or cause to be provided, the services as set forth by Exhibit A to this Agreement. City agrees that CSXT shall provide all services that CSXT deems necessary or appropriate (whether or not specified by Exhibit A) to preserve and maintain its property and operations, without impairment or exposure to liability of any kind and in compliance with all applicable federal, state and local regulations and CSXT's contractual obligations, including, but not limited to, CSXT's existing or proposed third party agreements and collective bargaining agreements.

2.2 City Work. City shall perform, or cause to be performed, all work as set forth by Exhibit A, at City's sole cost and expense.

2.3 Conduct of Work. CSXT shall commence its work under this Agreement following: (i) delivery to CSXT of a notice to proceed from City; (ii) payment of Reimbursable Expenses (as provided by Section 4.1) as required by CSXT prior to the commencement of work by CSXT; (iii) issuance of all permits, approvals and authorizations necessary or appropriate for such work; and (iv) delivery of proof of insurance acceptable to CSXT, as required by Section 9. The initiation of any services by CSXT pursuant to this Agreement, including, but not limited to, the issuance of purchase orders or bids for materials or services, shall constitute commencement of work for the purposes of this Section. The parties intend that all work by CSXT or on CSXT property shall conclude no later than **eighteen months from the date of this agreement** unless the parties mutually agree to extend such date.

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3. Special Provisions. City shall observe and abide by, and shall require its contractors (“Contractors”) to observe and abide by the terms, conditions and provisions set forth in Exhibit C to this Agreement (the “Special Provisions”). To the extent that City performs Project work itself, City shall be deemed a Contractor for purposes of this Agreement. City further agrees that, prior to the commencement of Project work by any third party Contractor, such Contractor shall execute and deliver to CSXT Schedule I to this Agreement to acknowledge Contractor’s agreement to observe and abide by the terms and conditions of this Agreement.

4. Cost of Project and Reimbursement Procedures
 - 4.1 Reimbursable Expenses. City shall reimburse CSXT for all costs and expenses incurred by CSXT in connection with the Project, 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 CSXT’s consultants and subcontractors, and (6) CSXT labor in connection with the Project, together with CSXT labor overhead percentages established by CSXT pursuant to applicable law (collectively, “**Reimbursable Expenses**”). Reimbursable Expenses shall also include expenses incurred by CSXT prior to the date of this Agreement to the extent identified by the Estimate provided pursuant to Section 4.2.

 - 4.2 Estimate. CSXT has estimated the total Reimbursable Expenses for the Project as shown on Exhibit D (the “**Estimate**”, as amended or revised). In the event CSXT anticipates that actual Reimbursable Expenses for the Project may exceed such Estimate, it shall provide City with the revised Estimate of the total Reimbursable Expenses, together with a revised Payment Schedule (as defined by Section 4.3.1), for City’s approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses of such revised Estimate. CSXT may elect, by delivery of notice to City, to immediately cease all further work on the Project, unless and until City provides such approval and confirmation.

 - 4.3 Payment Terms.
 - 4.3.1 City shall pay CSXT for Reimbursable Expenses in the amounts and on the dates set forth in the Payment Schedule as shown on Exhibit E (the “Payment Schedule”, as revised pursuant to Section 4.2). CSXT agrees to submit invoices to City for such amounts and City shall remit payment to CSXT at the later of thirty (30) days following delivery of each such invoice to City or, the payment date (if any) set forth in the Payment Schedule.

 - 4.3.2 Following completion of the Project, CSXT shall submit to City a final invoice that reconciles the total Reimbursable Expenses incurred by CSXT against the total payments received from City. City shall pay to CSXT the amount by which

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Reimbursable Expenses exceed total payments as shown by the final invoice, within thirty (30) days following delivery of such invoice to City. In the event that the payments received by CSXT from City exceed the Reimbursable Expenses, CSXT shall remit such excess to City.

4.3.3 In the event that City fails to pay CSXT any sums due CSXT under this Agreement: (i) City 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 City: (A) to immediately cease all further work on the Project, unless and until City pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.

4.3.4 All invoices from CSXT shall be delivered to City in accordance with Section 16 of this Agreement. All payments by City 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 City:

CSX Transportation, Inc.
P.O. Box 530192
Atlanta, GA 30353-0192

4.4 Effect of Termination. City's obligation to pay to CSXT Reimbursable Expenses in accordance with Section 4 shall survive termination of this Agreement for any reason.

5. Appropriations City represents to CSXT that: (i) City has appropriated funds sufficient to reimburse CSXT for the Reimbursable Expenses encompassed by the Estimate attached as Exhibit D; (ii) City shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by City; and (iii) City shall promptly notify CSXT in the event that City is unable to obtain such appropriations.

6.

Temporary Construction Licenses. Insofar as it has the right to do so, CSXT hereby grants City a nonexclusive license to access and cross CSXT's property, to the extent necessary for the construction of the Project (excluding ingress or egress over public grade crossings), along such routes and upon such terms as may be defined and imposed by CSXT and such temporary construction easements as may be designated on the Plans approved by CSXT.

7. Permanent Easements. The City, at its sole cost and expense, shall procure all permanent easements. Insofar as it has the right to do so, CSXT shall grant, without warranty to the

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County, permanent easements for the use and maintenance of the Project wholly or partly on CSXT property as shown on the Plans approved by CSXT, if any, on terms and conditions and at a price acceptable to the parties and paid by the City. The City shall provide such documents to the County and/or CSX as may be required in order to obtain such permanent easements required for the Project.

7. Permits At its sole cost and expense, City shall procure all permits and approvals required by any federal, state, or local governments or governmental agencies for the construction, maintenance and use of the Project, copies of which shall be provided to CSXT.

8. Termination
 - 8.1 By City. For any reason, City may, terminate this Agreement by delivery of notice to CSXT. City shall not be entitled to otherwise pursue claims for consequential, indirect or incidental damages or lost profits as a consequence of CSXT's default or termination of this Agreement or Work on the Project by either party.

 - 8.2 By CSXT. In addition to the other rights and remedies available to CSXT under this Agreement, CSXT may terminate this Agreement by delivery of notice to City in the event City or its Contractors fail to observe the terms or conditions of this Agreement and such failure continues more than ten (10) business days following delivery of notice of such failure by CSXT to City.

 - 8.3 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 Work. Accordingly, they agree that, in such instance a party may continue to perform Work until it has reached a point where it may reasonably and safely suspend the Work. City shall reimburse CSXT pursuant to this Agreement for the Work performed, plus all costs reasonably incurred by CSXT to discontinue the Work and protect the Work upon full suspension of the same, the cost of returning CSXT's property to its former condition, and all other costs of CSXT incurred as a result of the Project up to the time of full suspension of the Work. Termination of this Agreement or Work on the Project, for any reason, shall not diminish or reduce City'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 Work for any reason, CSXT's only remaining obligation to City shall be to refund to City payments made to CSXT in excess of Reimbursable Expenses in accordance with Section 4.

9. Insurance In addition to the insurance that City requires of its Contractor, City shall acquire or require its Contractor to purchase and maintain insurance in compliance with CSXT's insurance requirements attached to this Agreement as Exhibit F. Neither City nor Contractor

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shall commence work on the Project until such policy or policies have been submitted to and approved by CSXT's Risk Management Department.

10. Ownership and Maintenance

- 10.1 By County. County shall maintain and repair, at its sole cost and expense, all parts comprising the permanent aspects of the Project, as shown by the Plans, consisting of roadway pavement up to the outer ends of the railroad cross ties, sidewalks, guardrails, and curbs, in good and safe condition to CSXT's satisfaction. In the event County fails to do so after reasonable notice from CSXT (unless an emergency condition exists or is imminent in the opinion of CSXT that requires immediate action), CSXT may perform such maintenance and repair, at County's sole cost and expense.
- 10.2 By CSXT. CSXT shall maintain and repair the crossing surface between the ends of its cross ties and its signal facilities at the crossing, at County's sole cost and expense.
- 10.3 Alterations. County shall not undertake any alteration, modification or expansion of the Project, without the prior written approval of CSXT, which may be withheld for any reason, and the execution of such agreements as CSXT may require. CSXT may undertake alterations of its property, track or facilities and shall be reimbursed by County for the expenses incurred by CSXT with respect to the removal and restoration of the crossing in connections with such alteration.

11. Indemnification

- 11.1 Generally. To the maximum extent permitted by applicable law, and subject to the monetary and other limitations of liability set forth in Section 768.28, Florida Statutes, in the case of the City, City and its Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of CSXT, its affiliates, City or its Contractors), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of CSXT, its affiliates, City or its Contractors, and environmental damages and any related remediation brought or recovered against CSXT and its affiliates), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Contractors, City, and their respective agents, employees, invitees, contractors, or its contractors' agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto, or from their presence on or about CSXT's property. The foregoing indemnification obligation shall not be

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limited to the insurance coverage required by this Agreement, except to the extent required by law or otherwise expressly provided by this Agreement.

- 11.2 Compliance with Laws. City shall comply, and shall require its Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the Project. City's Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.
- 11.3 "CSXT Affiliates". For the purpose of this Section 11, CSXT's affiliates include CSX Corporation and all entities, directly or indirectly, owned or controlled by or under common control of CSXT or CSX Corporation and their respective officers, directors, employees and agents.
- 11.4 Notice of Incidents. City and its Contractor shall notify CSXT promptly of any loss, damage, injury or death arising out of or in connection with the Project work.
- 11.5 Survival. The provisions of this Section 11 shall survive the termination or expiration of this Agreement.
12. Independent Contractor The parties agree that neither City nor its Contractors shall be deemed either agents or independent contractors of CSXT. Except as otherwise provided by this Agreement, CSXT shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by City or City's Contractors, or the construction practices, procedures, and professional judgment employed by City or its Contractor to complete the Project. Notwithstanding the foregoing, this Section 12 shall in no way affect the absolute authority of CSXT to prohibit City or its Contractors or anyone from entering CSXT's property, or to require the removal of any person from its property, if it determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the Project exist.
13. "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.
14. 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.
15. 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

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Agreement by CSXT and the assumption of CSXT's assignee of CSXT's obligations under this Agreement, CSXT shall have no further obligation under this Agreement. City shall not assign its rights or obligations under this Agreement without CSXT's prior consent, which consent may be withheld for any reason.

16. 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.
500 Water Street, J-301
Jacksonville, Florida 32202
Attention: Project Manager – Public Projects

If to City: City of Lakeland – Public Works Department
228 S. Massachusetts Avenue
Lakeland, FL 33801-5086
Attention: Heath Frederick, Public Works Director

With copy to: City Attorney
City of Lakeland
228 S. Massachusetts Avenue
Lakeland, Florida 33801

If to County: Chairman
Polk County Board of County Commissioners
P.O. Box 9005
Bartow, Florida 33830

With copy to: County Attorney
Polk County Board of County Commissioners
P.O. Box 9005, Drawer AT01
Bartow, Florida 33830

With copy to: Division Director
Polk County Roads and Drainage Division
P.O. Box 9005, Drawer GM01
Bartow, Florida 33830

17. Severability The parties agree that if any part, term or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or

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regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable.

18. 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.

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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.

CITY OF LAKELAND

BOARD OF POLK COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
H. William Mutz, Mayor

By: _____
W.C. Braswell, Chairman

Date: _____

ATTEST:

ATTEST:

Stacy M. Butterfield, Clerk to the Board

By: _____
Kelly S. Koos, City Clerk

By: _____
Print Name: _____
Title: _____

(SEAL)

Approved as to form and correctness:

Reviewed as to Form and Legal Sufficiency

By: _____
City Attorney

By: _____
County Attorney's office

CSX TRANSPORTATION, INC.

By: _____
J. Tod Echler
Chief Engineer – Design & Construction

EXHIBIT A
ALLOCATION OF WORK

Subject to Section 2.1, work to be performed in connection with the Project is allocated as follows:

- A. City shall let by contract to its Contractors:
 - 1. Maintenance of traffic and police protection as may be required for the duration of the project.
 - 2. Modification / widening of the roadway to include any clearing, grubbing, milling, paving and striping.
 - 3. Installation of roadway signs and pavement markings per MUTCD standards

- B. CSXT shall perform or cause to be performed:
 - 1. Changes in railroad communication and signal lines to include Installation of (2) Cantilevers, (3) roadway gates, (1) PED gate, constant warning detection, 8x8 house with remote monitoring and power service.
 - 2. Removal of existing 80' single track timber and asphalt crossing surface.
 - 3. Installation of new 120' single-track concrete panel crossing surface.
 - 4. Flagging services and other protective services and devices as may be necessary.
 - 5. Construction engineering and inspection to protect the interests of CSXT.

EXHIBIT B

PLANS AND SPECIFICATIONS

Plans, Specifications and Drawings:

As of the date of this Agreement, the following plans, specifications and drawings have been submitted by City to CSXT for its review and approval:

SHEET	DESCRIPTION	PREPARER	DATE
1	Coversheet	DRMP	2/11/20
6	Project Layout	DRMP	2/11/20
7	General Notes	DRMP	2/11/20
11	Roadway Plans	DRMP	2/11/20
14	Railroad Details	DRMP	2/11/20
24	Cross Sections	DRMP	2/11/20
35	Utility Adjustments	DRMP	2/11/20
38	Areas of Contractor Construction Support	DRMP	2/11/20
S-1	Signing and Pavement Marking Plans	DRMP	2/10/20
S-7	Signing and Pavement Marking Plans	DRMP	2/10/20
S-8	Signing and Pavement Marking Plans	DRMP	3/31/20
T-1	Signalization Plans	DRMP	2/10/20
T-5	Signalization Plans	DRMP	3/11/20
T-6	Signalization Plans	DRMP	1/31/20
T-7	Utility Location Plan	DRMP	1/31/20
T-8	Signal Head Location Plan	DRMP	1/31/20
T-9	Directional Bore Detail	DRMP	1/31/20
HO1	HO1	Wabtec	11/18/19

EXHIBIT C

CSXT SPECIAL PROVISIONS

DEFINITIONS:

As used in these Special Provisions, all capitalized terms shall have the meanings ascribed to them by the Agreement, and the following terms shall have the meanings ascribed to them below:

“CSXT” shall mean CSX Transportation, Inc., its successors and assigns.

“CSXT Representative” shall mean the authorized representative of CSX Transportation, Inc.

“Agreement” shall mean the Agreement between CSXT and City dated as of _____, as amended from time to time.

“City” shall mean the **City of Lakeland**

“City Representative” shall mean the authorized representative of **City of Lakeland**

“Contractor” shall have the meaning ascribed to such term by the Agreement.

“Work” shall mean the Project as described in the Agreement.

I. AUTHORITY OF CSXT ENGINEER

The CSXT Representative shall have final authority in all matters affecting the safe maintenance of CSXT operations and CSXT property, and his or her approval shall be obtained by the City or its Contractor for methods of construction to avoid interference with CSXT operations and CSXT property and all other matters contemplated by the Agreement and these Special Provisions.

II. INTERFERENCE WITH CSXT OPERATIONS

- A. City or its Contractor shall arrange and conduct its work so that there will be no interference with CSXT operations, including train, signal, telephone and telegraphic services, or damage to CSXT’s property, or to poles, wires, and other facilities of tenants on CSXT’s Property or right-of-way. City or its Contractor shall store materials so as to prevent trespassers from causing damage to trains, or CSXT Property. Whenever Work is likely to affect the operations or safety of trains, the method of doing such Work shall first be submitted to the CSXT Representative for approval, but such approval shall not relieve City or its

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Contractor from liability in connection with such Work.

- B. If conditions arising from or in connection with the Project require that immediate and unusual provisions be made to protect train operation or CSXT's property, City or its Contractor shall make such provision. If the CSXT Representative determines that such provision is insufficient, CSXT may, at the expense of City or its Contractor, require or provide such provision as may be deemed necessary, or cause the Work to cease immediately.

III. **NOTICE OF STARTING WORK.** City or its Contractor shall not commence any work on CSXT Property or rights-of-way until it has complied with the following conditions:

- A. Notify CSXT in writing of the date that it intends to commence Work on the Project. Such notice must be received by CSXT at least ten business days in advance of the date City or its Contractor proposes to begin Work on CSXT property. The notice must refer to this Agreement by date. If flagging service is required, such notice shall be submitted at least thirty (30) business days in advance of the date scheduled to commence the Work.
- B. Obtain authorization from the CSXT Representative to begin Work on CSXT property, such authorization to include an outline of specific conditions with which it must comply.
- C. Obtain from CSXT the names, addresses and telephone numbers of CSXT's personnel who must receive notice under provisions in the Agreement. Where more than one individual is designated, the area of responsibility of each shall be specified.

IV. **WORK FOR THE BENEFIT OF THE CONTRACTOR**

- A. No temporary or permanent changes to wire lines or other facilities (other than third party fiber optic cable transmission systems) on CSXT property that are considered necessary to the Work are anticipated or shown on the Plans. If any such changes are, or become, necessary in the opinion of CSXT or City, such changes will be covered by appropriate revisions to the Plans and by preparation of a force account estimate. Such force account estimate may be initiated by either CSXT or City, but must be approved by both CSXT and City. City or Contractor shall be responsible for arranging for the relocation of the third party fiber optic cable transmission systems, at no cost or expense to CSXT.
- B. Should City or Contractor desire any changes in addition to the above, then it shall make separate arrangements with CSXT for such changes to be accomplished at the City or Contractor's expense.

V. HAUL ACROSS RAILROAD

- A. If City or Contractor desires access across CSXT property or tracks at other than an existing and open public road crossing in or incident to construction of the Project, the City or Contractor must first obtain the permission of CSXT and shall execute a license agreement or right of entry satisfactory to CSXT, wherein City or Contractor agrees to bear all costs and liabilities related to such access.
- B. City and Contractor shall not cross CSXT's property and tracks with vehicles or equipment of any kind or character, except at such crossing or crossings as may be permitted pursuant to this section.

VI. COOPERATION AND DELAYS

- A. City or Contractor shall arrange a schedule with CSXT for accomplishing stage construction involving work by CSXT. In arranging its schedule, City or Contractor shall ascertain, from CSXT, the lead time required for assembling crews and materials and shall make due allowance therefore.
- B. City or Contractor may not charge any costs or submit any claims against CSXT for hindrance or delay caused by railroad traffic; work done by CSXT or other delay incident to or necessary for safe maintenance of railroad traffic; or for any delays due to compliance with these Special Provisions.
- C. City and Contractor shall cooperate with others participating in the construction of the Project to the end that all work may be carried on to the best advantage.
- D. City and Contractor understand and agree that CSXT does not assume any responsibility for work performed by others in connection the Project. City and Contractor further understand and agree that they shall have no claim whatsoever against CSXT for any inconvenience, delay or additional cost incurred by City or Contractor on account of operations by others.

VII. STORAGE OF MATERIALS AND EQUIPMENT

City and Contractor shall not store their materials or equipment on CSXT's property or where they may potentially interfere with CSXT's operations, unless City or Contractor has received CSXT Representative's prior written permission. City and Contractor understand and agree that CSXT will not be liable for any damage to such materials and equipment from any cause and that CSXT may move, or require City or Contractor to move, such material and equipment at City's or Contractor's sole expense. To minimize the possibility of damage to the railroad tracks resulting from the unauthorized use of equipment, all grading or other construction equipment that is left parked near the tracks

unattended by watchmen shall be immobilized to the extent feasible so that it cannot be moved by unauthorized persons.

VIII. CONSTRUCTION PROCEDURES

A. General

1. Construction work on CSXT property shall be subject to CSXT's inspection and approval.
2. Construction work on CSXT property shall be in accord with CSXT's written outline of specific conditions and with these Special Provisions.
3. Contractor shall observe the terms and rules of the CSXT Safe Way manual, which City and Contractor shall be required to obtain from CSXT, and in accord with any other instructions furnished by CSXT or CSXT's Representative.

B. Blasting

1. City or Contractor shall obtain CSXT Representative's and City Representative's prior written approval for use of explosives on or adjacent to CSXT property. If permission for use of explosives is granted, City or Contractor must comply with the following:
 - a. Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of City or Contractor.
 - b. Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way train radios.
 - c. No blasting shall be done without the presence of an authorized representative of CSXT. At least 10 days' advance notice to CSXT Representative is required to arrange for the presence of an authorized CSXT representative and any flagging that CSXT may require.
 - d. City or Contractor must have at the Project site adequate equipment, labor and materials, and allow sufficient time, to (i) clean up (at City's expense) debris resulting from the blasting without any delay to trains; and (ii) correct (at City's expense) any track misalignment or other damage to CSXT's property resulting from the blasting, as directed by CSXT Representative, without delay to trains. If City's or Contractor's actions result in delay of

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any trains, including Amtrak passenger trains, City shall bear the entire cost thereof.

- e. City and Contractor shall not store explosives on CSXT property.
2. CSXT Representative will:
- a. Determine the approximate location of trains and advise City or Contractor of the approximate amount of time available for the blasting operation and clean-up.
 - b. Have the authority to order discontinuance of blasting if, in his or her opinion, blasting is too hazardous or is not in accord with these Special Provisions.

IX. MAINTENANCE OF DITCHES ADJACENT TO CSXT TRACKS

City or Contractor shall maintain all ditches and drainage structures free of silt or other obstructions that may result from their operations. City or Contractor shall provide erosion control measures during construction and use methods that accord with applicable state standard specifications for road and bridge construction, including either (1) silt fence; (2) hay or straw barrier; (3) berm or temporary ditches; (4) sediment basin; (5) aggregate checks; and (6) channel lining. All such maintenance and repair of damages due to City's or Contractor's operations shall be performed at City's expense.

X. FLAGGING / INSPECTION SERVICE

- A. CSXT has sole authority to determine the need for flagging required to protect its operations and property. In general, flagging protection will be required whenever City or Contractor or their equipment are, or are likely to be, working within fifty (50) feet of live track or other track clearances specified by CSXT, or over tracks.
- B. City shall reimburse CSXT directly for all costs of flagging that is required on account of construction within CSXT property shown in the Plans, or that is covered by an approved plan revision, supplemental agreement or change order.
- C. City or Contractor shall give a minimum of 10 days' advance notice to CSXT Representative for anticipated need for flagging service. No work shall be undertaken until the flag person(s) is/are at the job site. If it is necessary for CSXT to advertise a flagging job for bid, it may take up to 90-days to obtain this service, and CSXT shall not be liable for the cost of delays attributable to obtaining such service.

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- D. CSXT shall have the right to assign an individual to the site of the Project to perform inspection service whenever, in the opinion of CSXT Representative, such inspection may be necessary. City shall reimburse CSXT for the costs incurred by CSXT for such inspection service. Inspection service shall not relieve City or Contractor from liability for its Work.
- E. CSXT shall render invoices for, and City shall pay for, the actual pay rate of the flagpersons and inspectors used, plus standard additives, whether that amount is above or below the rate provided in the Estimate. If the rate of pay that is to be used for inspector or flagging service is changed before the work is started or during the progress of the work, whether by law or agreement between CSXT and its employees, or if the tax rates on labor are changed, bills will be rendered by CSXT and paid by City using the new rates. City and Contractor shall perform their operations that require flagging protection or inspection service in such a manner and sequence that the cost of such will be as economical as possible.

XI. UTILITY FACILITIES ON CSXT PROPERTY

City shall arrange, upon approval from CSXT, to have any utility facilities on or over CSXT Property changed as may be necessary to provide clearances for the proposed trackage.

XII. CLEAN-UP

City or Contractor, upon completion of the Project, shall remove from CSXT's Property any temporary grade crossings, any temporary erosion control measures used to control drainage, all machinery, equipment, surplus materials, falsework, rubbish, or temporary buildings belonging to City or Contractor. City or Contractor, upon completion of the Project, shall leave CSXT Property in neat condition, satisfactory to CSXT Representative.

XIII. FAILURE TO COMPLY

If City or Contractor violate or fail to comply with any of the requirements of these Special Provisions, (a) CSXT may require City and/or Contractor to vacate CSXT Property; and (b) CSXT may withhold monies due City and/or Contractor; (c) CSXT may require City to withhold monies due Contractor; and (d) CSXT may cure such failure and the City shall reimburse CSXT for the cost of curing such failure.

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EXHIBIT D

INITIAL ESTIMATE ATTACHED

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ACCT. CODE : 709 - 0

Form Revision
10/07/19

ESTIMATE SUBJECT TO REVISION AFTER: 6/1/2021 **DOT NO.:** 624304R
CITY: Lakeland **COUNTY:** Polk **STATE:** FL
DESCRIPTION: County Line Road and US-92 intersection improvements. Track improvements include single track 80' timber and asphalt crossing upgrade to 120' concrete panel crossing. Signal improvements include Installation of (2) Cantilevers, (3) roadway gates, (1) PED gate, constant warning detection, 8x8 house with remote monitoring and power service.
ZONE: Florida **SUB-DIV:** Lakeland **MILE POST:** A-857.03
AGENCY PROJECT NUMBER: Polk County - 5800.527

PRELIMINARY ENGINEERING:

212	Contracted & Administrative Engineering Services	\$	-
	Subtotal	\$	-

CONSTRUCTION ENGINEERING/INSPECTION:

212	Contracted & Administrative Engineering Services	\$	30,600
	Subtotal	\$	30,600

FLAGGING SERVICE: (Contract Labor)

70	Labor (Conductor-Flagman)	0	Days @	\$ -	\$	-
50	Labor (Foreman/Inspector)	40	Days @	\$504.00	\$	20,160
70	Additive 150.40% (Transportation Department)				\$	-
50	Additive 149.50% (Engineering Department)				\$	30,139
230	Expenses (Engineering Department)	40	Days @	\$ 75.00	\$	3,000
230	Expenses (Transportation Department)	0	Days @	\$ -	\$	-
	Subtotal				\$	53,299

SIGNAL & COMMUNICATIONS WORK: **\$ 364,734**

TRACK WORK: **\$ 188,119**

PROJECT SUBTOTAL: **\$ 636,752**

900	<u>CONTINGENCIES:</u>	10.00%	\$	63,675
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PROJECT TOTAL: *****
\$ 700,428

CURRENT AUTHORIZED BUDGET: *****
\$ -

TOTAL SUPPLEMENT REQUESTED: *****
\$ 700,428

DIVISION OF COST:

Agency	100.00%	\$	700,428
Railroad	0.00%	\$	-

NOTE: Estimate is based on FULL CROSSING CLOSURE during work by Railroad Forces.

This estimate has been prepared based on site conditions, anticipated work duration periods, material prices, labor rates, manpower and resource availability, and other factors known as of the date prepared. The actual cost for CSXT work may differ based upon the agency's requirements, their contractor's work procedures, and/or other conditions that become apparent once construction commences or during the progress of the work

Office of Chief Engineer Public Projects--Jacksonville, Florida

Estimated prepared by: J. Hudgins STV Inc	Approved by: KSW CSXT Public Project Group
DATE: 06/01/20	REVISD: 01/00/00 DATE: 06/09/20

EXHIBIT E

PAYMENT SCHEDULE

Advance Payment in Full

Upon execution and delivery of notice to proceed with the Project, City 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 City. City shall make such additional deposit within 30 days following delivery of such invoice to City.

EXHIBIT F

INSURANCE REQUIREMENTS

I. Insurance Policies:

City and Contractor, if and to the extent that either is performing work on or about CSXT's property, shall procure and maintain the following insurance policies:

1. Commercial General Liability coverage at their sole cost and expense with limits of not less than \$5,000,000 in combined single limits for bodily injury and/or property damage per occurrence, and such policies shall name CSXT as an additional named insured. The policy shall include endorsement ISO CG 24 17 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsement is not included, railroad protective liability insurance must be provided as described in item 4 below.
2. Statutory Worker's Compensation and Employers Liability Insurance with limits of not less than \$1,000,000, which insurance must contain a waiver of subrogation against CSXT and its affiliates (if permitted by state law).
3. Commercial automobile liability insurance with limits of not less than \$1,000,000 combined single limit for bodily injury and/or property damage per occurrence, and such policies shall name CSXT as an additional named insured. The policy shall include endorsement ISO CA 20 70 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsement is not included, railroad protective liability insurance must be provided as described in item 4 below.
4. Railroad protective liability insurance with limits of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate annual limit of \$10,000,000, which insurance shall satisfy the following additional requirements:
 - a. The Railroad Protective Insurance Policy must be on the ISO/RIMA Form of Railroad Protective Insurance - Insurance Services Office (ISO) Form CG 00 35.
 - b. CSX Transportation must be the named insured on the Railroad Protective Insurance Policy.
 - c. Name and Address of Contractor and City must appear on the Declarations page.
 - d. Description of operations must appear on the Declarations page and must match the Project description.

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- e. Authorized endorsements must include the Pollution Exclusion Amendment - CG 28 31, unless using form CG 00 35 version 96 and later.
 - f. Authorized endorsements may include:
 - (i). Broad Form Nuclear Exclusion - IL 00 21
 - (ii) 30-day Advance Notice of Non-renewal or cancellation
 - (iii) Required State Cancellation Endorsement
 - (iv) Quick Reference or Index - CL/IL 240
 - g. Authorized endorsements may not include:
 - (i) A Pollution Exclusion Endorsement except CG 28 31
 - (ii) A Punitive or Exemplary Damages Exclusion
 - (iii) A "Common Policy Conditions" Endorsement
 - (iv) Any endorsement that is not named in Section 4 (e) or (f) above.
 - (v) Policies that contain any type of deductible
5. All insurance companies must be A. M. Best rated A- and Class VII or better.
6. The CSX OP number or CSX contract number, as applicable, must appear on each Declarations page and/or certificates of insurance.
7. Such additional or different insurance as CSXT may require.

II. Additional Terms

1. Contractor must submit the original Railroad Protective Liability policy, Certificates of Insurance and all notices and correspondence regarding the insurance policies to:

Insurance Department
CSX Transportation, Inc.
500 Water Street, C-907
Jacksonville, FL 32202

OR

insurancedocuments@csx.com

2. Neither City nor Contractor may begin work on the Project until it has received CSXT's written approval of the required insurance.

SCHEDULE I

CONTRACTOR'S ACCEPTANCE

To and for the benefit of CSX Transportation, Inc. ("CSXT") and to induce CSXT to permit Contractor on or about CSXT's property for the purposes of performing work in accordance with the Agreement dated _____, 20__, between **the City of Lakeland, Polk County** and CSXT, Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to Exhibits C and F to the Agreement, and Sections 3, 9 and 11 of the Agreement.

Contractor: _____

By: _____

Name: _____

Title: _____

Date: _____

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