

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: October 3, 2006 Consent [X] Regular [ ]  
Public Hearing [ ]

Submitted By: Water Utilities Department  
Submitted For: Water Utilities Department

I. EXECUTIVE BRIEF

**Motion and title:** Staff recommends motion to approve: Two (2) Pipeline Crossing Agreements with CSX Transportation, Inc. for construction of utility pipelines across an existing railroad right-of-way.

**Summary:** The Department is in the process of constructing a network of water and wastewater transmission mains to serve the Beeline Community Development District. Construction of the Phase III Northern Region Utility Improvement Project necessitates installing both water and wastewater pipelines at two (2) separate locations within CSX Transportation's railroad right-of-way. The first crossing is located along the South Florida Water Management District C-18 Canal near the intersection with State Road 710 (on the south side). The other crossing is located along Innovation Drive, just west of State Road 710. During the Department's utility coordination efforts, CSX Transportation requested the County execute a separate Pipeline Crossing Agreement for each location. These Agreements require the County to reimburse CSX a license fee of \$16,000 (\$4,000 per pipeline), plus a Railroad Protective Liability Insurance Fee (\$4,500 per agreement), for a total of \$25,000. Both Agreements have a term of 25 years.

(WUD Project No. 05-061)

District 1

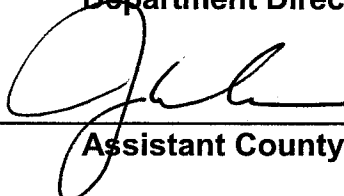
(MJ)

**Background and justification:** On February 15, 2005 the County entered into an agreement (R2005-0366) with the Beeline Community Development District (District) to acquire the District's exclusive utility service area, utility system assets (exclusive of the District's potable water and wastewater plants, which will be decommissioned), and customer base. Construction of the transmission mains required to serve the District necessitates crossing a railroad owned by CSX Transportation at two separate locations. CSX has agreed to allow these crossings subject to license and insurance fees totaling \$25,000.

**Attachments:**

1. Two (2) Originals of the Pipeline Crossing Agreement for the C-18 Canal Crossing
2. Two (2) Originals of the Pipeline Crossing Agreement for the Innovation Drive Crossing
3. Location Map

Recommended By:  9/18/06  
Department Director Date

Approved By:  10-2-06  
Assistant County Administrator Date



## PIPELINE CROSSING AGREEMENT

THIS AGREEMENT, Made and effective as of September 11, 2006, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and PALM BEACH COUNTY WATER UTILITIES DEPARTMENT, a municipal corporation, political subdivision or state agency, under the laws of the State of Florida, whose mailing address is 8100 Forest Hill Boulevard, West Palm Beach, Florida 33413, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct, use and maintain pipeline crossings, hereinafter called "Pipeline," under or across property owned or controlled by Licensor at or near Palm Center, County of Palm Beach, State of Florida, Auburndale Subdivision, listed below, hereinafter collectively called the "Crossing," as shown on print of Drawing(s) No. CSX-056113, dated June 14, 2006, attached hereto and made a part hereof; other details and data pertaining to said Pipeline being as indicated on Applications Form(s), dated June 15, 2006, also attached hereto and made a part hereof;

- 1 a pipeline solely for the transmission of raw/treated sewage located at Valuation Station 9706+33, Milepost SX-949.88;
- 2 a pipeline solely for the transmission of potable water located at Valuation Station 9706+42, Milepost SX-949.88.

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

### 1. LICENSE:

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

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

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

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

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

1.2 The term Pipeline, as used herein, shall include only the pipes, ducts, casing, vents, manholes, connectors, fixtures, appliances and ancillary facilities devoted exclusively to the transmission usage above within the Crossing, and as shown on attached Application Form.

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

## **2. LICENSE FEE; TERM:**

2.1 In lieu of annual payments and in consideration of Licensor's waiver of future fee increases, Licensee shall pay Licensor a one-time nonrefundable License Fee of EIGHT THOUSAND AND 00/100 U.S. DOLLARS (\$8,000.00) upon execution of this Agreement. Licensee agrees that the License Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

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

2.3 This Agreement shall terminate (1) September 5, 2031, or (2) as herein provided, but shall also terminate upon (a) default, (b) Licensee's cessation of use of the Pipeline or Crossing for the purpose(s) above, (c) removal of the Pipeline, (d) subsequent mutual consent, and/or (e) failure of Licensee to complete installation within 5 (five) 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 Pipeline and appurtenances, and/or maintenance thereof, or for any public works project of which said Pipeline is a part.

## **3. CONSTRUCTION, MAINTENANCE AND REPAIRS:**

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove said Pipeline, 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) and Licensee's particular industry, and/or any governmental or regulatory body having jurisdiction over the Crossing or Pipeline.

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

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

3.4 In the installation, maintenance, repair and/or removal of said Pipeline, 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 Pipeline, 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 Pipeline, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

3.7 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Crossing, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

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

3.9 Up to the amount as provided for the waiver of sovereign immunity in Section 768.28, Florida Statutes (which at the time of the execution of this Agreement is \$100,000 per person/\$200,000 per incident) as may be amended from time to time, 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 Pipeline.

#### **4. PERMITS, LICENSES:**

4.1 Before any work hereunder is performed, or before use of the Crossing 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) (20 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 as Licensor may approve.

5.2 After construction or maintenance of Pipeline, Licensee shall:

- (A) Restore said 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 Pipeline or related facilities.

5.3 Up to the amount as provided for the waiver of sovereign immunity in Section 768.28, Florida Statutes (which at the time of the execution of this Agreement is \$100,000 per person/\$200,000 per incident) as may be amended from time to time, Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Crossing area 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 right-of-way and property necessitate any change of location, height or depth of Pipeline or Crossing, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in Pipeline or Crossing 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. PIPE CHANGES:**

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

7.2 If Licensee undertakes to revise, renew, relocate or change all or any part of Pipeline (including any change in circumference, diameter or radius of pipe or carrier pipe, change in operating pressure, 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 any such change is made. After approval the terms and conditions of this Agreement shall apply thereto.

**8. INTERFERENCE WITH RAIL FACILITIES:**

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

8.2 Without assuming any duty hereunder to inspect Licensee's Pipeline, Licensor hereby reserves the right to inspect same and to require Licensee to undertake necessary repairs, maintenance or adjustments to Pipeline, 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 Up to the amount as provided for the waiver of sovereign immunity in Section 768.28, Florida Statutes (which at the time of the execution of this Agreement is \$100,000 per person/\$200,000 per incident) as may be amended from time to time, Licensee hereby assumes, and shall 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, presence, existence, repair, maintenance, replacement, operations, use or removal of