

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

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Meeting Date: February 1, 2011	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
Department:	<input type="checkbox"/> Public Hearing	<input type="checkbox"/> Workshop
Submitted By: Engineering and Public Works		
Submitted For: Engineering Services Division		
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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A preliminary engineering agreement to facilitate the preparation of plans and specifications for a repair to the Palmetto Park Road at the CSX Transportation Inc. railroad tracks.

SUMMARY: Approval of the preliminary engineering agreement at an estimated cost of \$6,500 will allow for the preparation of the design and specifications in order to raise the west set of railroad tracks to the same elevation as the east set of railroad tracks. The construction will provide a smoother ride over the tracks for vehicles traveling on Palmetto Park Road.

District 4 (MRE)

Background and Justification: Palm Beach County (County) has received complaints of a rough ride over the CSX Railroad (CSX) crossing just west of I-95 on Palmetto Park Road. The Engineering Department adjusted the pavement to correct this situation two years ago but the crossing needs attention again. In order to facilitate a longer lasting repair, we are requesting that CSX reconstruct the crossing to raise the west set of railroad tracks to the same level as the east set of railroad tracks for a smoother crossing. CSX will be hiring an engineer to produce a set of plans. They will bill Palm Beach County for those services. The County owns the license agreement for this crossing and by agreement is required to fund all activities associated with the crossing. The estimated cost of the design and specifications is \$6,500. It is anticipated that the construction will cost approximately \$51,500, work that the County is also required to fund.

This office has reviewed this agreement and recommends approval.

- Attachments:**
1. Location Map
 2. Agreements (3)

Recommended By: _____

Division Director	Date
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Approved By: Sy T. Webb _____

County Engineer	Date
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II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	6,500	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$6,500	-0-	-0-	-0-	-0-

ADDITIONAL FTE
POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes X No

Budget Account No:
Fund 1201 Dept 360 Unit 2270 Object 4607

Recommended Sources of Funds/Summary of Fiscal Impact:
County Transportation Trust Fund
Railroad Crossing Maintenance

C. Departmental Fiscal Review: . Shwillhit

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Construction cost are estimated at \$51,500.

N. Diaz 1/7/2011
OFMB
5/11
1/11
1/5/11

Dr. J. Javet 1/11/11
Contract Dev. and Control

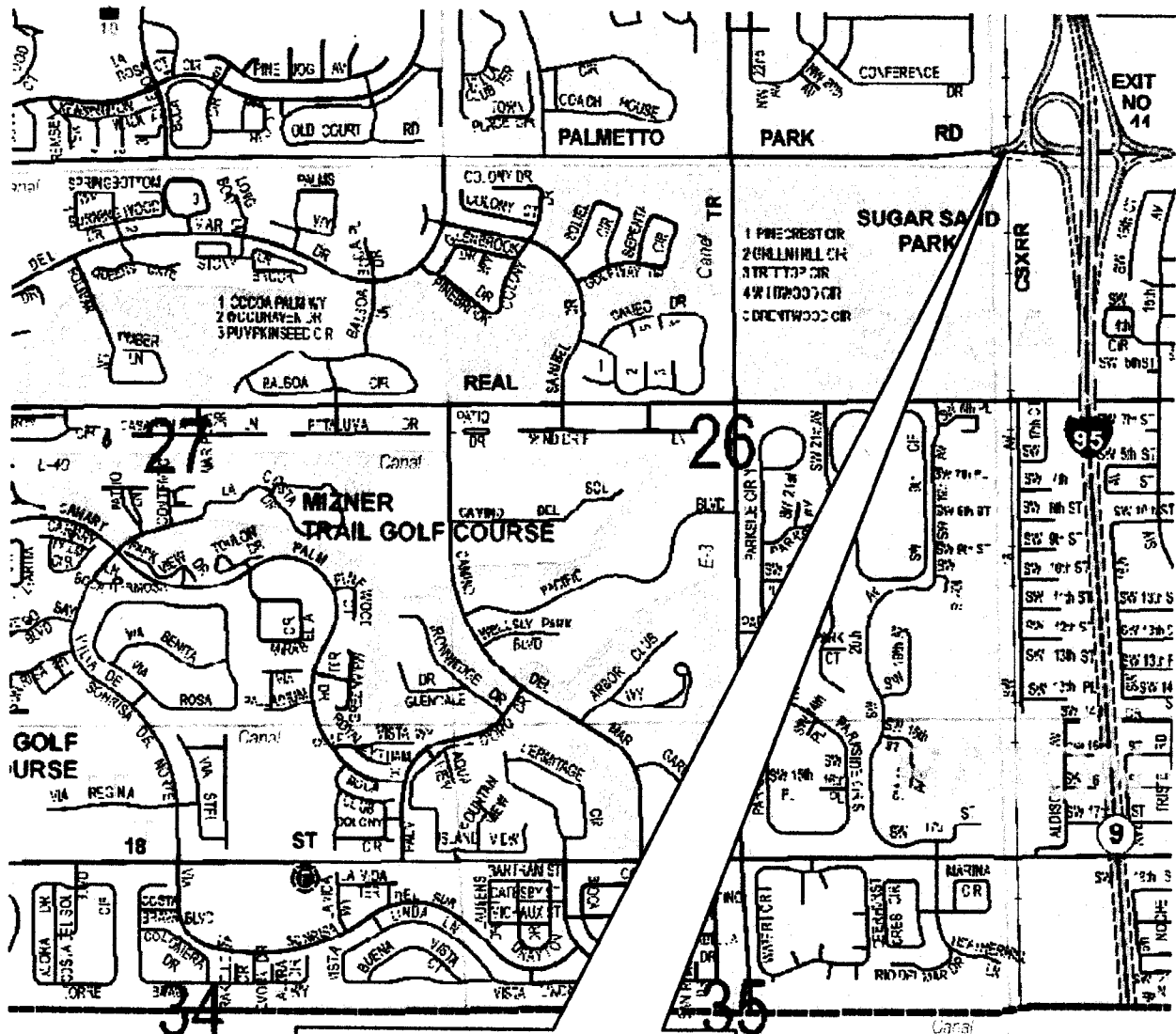
B. Approved as to Form and Legal Sufficiency:

Marken H. Pitt 1/25/11
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.



**PALMETTO PARK ROAD
AT THE CSX RAILROAD
CROSSING**

H. 26000

BLVD

MALCARY

Project:
Boca Raton, Palm Beach County, Florida
Palmetto Park Road, DOT No. 628 165 L, Milepost SX-995.95 (SFRC)
Repairs to Grade Crossing Surface.
CSXT OP# TBD

PRELIMINARY ENGINEERING AGREEMENT

This Preliminary Engineering Agreement (this "Agreement") is made as of _____, 2011, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida ("CSXT"), and PALM BEACH COUNTY, a body corporate and political subdivision of the State of Florida ("Agency").

EXPLANATORY STATEMENT

1. Agency wishes to facilitate the development of the proposed Preliminary Engineering for repairs to Palmetto Park Road grade crossing surface, to include the raising of the west track to match the elevation of the east track to provide a smooth vehicular transition over the crossing. (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, if at all, at no cost to CSXT, under a separate construction agreement to be executed by the parties at a future date.

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

1. **Scope of Work**
 - 1.1. **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.

Project:
Boca Raton, Palm Beach County, Florida
Palmetto Park Road, DOT No. 628 165 L, Milepost SX-995.95 (SFRC)
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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 **\$6,500** (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. Progress Payments In Arrears. Notwithstanding anything to the contrary set forth in this Agreement, Agency shall pay CSXT in arrears for its Reimbursable Expenses. CSXT shall request such payment by delivery of an invoice to Agency. Agency shall make such payment within sixty (60) days following delivery of the invoice to Agency. CSXT invoice information shall be included with the payment to identify the specific project and invoice.
 - 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:

Project:
Boca Raton, Palm Beach County, Florida
Palmetto Park Road, DOT No. 628 165 L, Milepost SX-995.95 (SFRC)
Repairs to Grade Crossing Surface.
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If to CSXT: CSX Transportation, Inc.
500 Water Street, J301
Jacksonville, Florida 32202
Attention: Hal A. Gibson,
Principal Engineer – Public Projects

If to Agency: Palm Beach County Engineering Department
ATTN: Tanya N. McConnell, P.E., Deputy County Engineer
P.O. Box 21229, West Palm Beach, FL 33416
(561) 684-4010

8. 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.
9. 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.
10. 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.
11. 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.
12. Access and Audit. The County shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours at CSXT's place of business. COUNTY has established the Office of Inspector General in Ordinance 2009-049, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of CSXT, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

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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.

PALM BEACH COUNTY, a Political
Subdivision of the State of Florida Board of
County Commissioners

CSX TRANSPORTATION, INC.

By: _____
Karen T. Marcus, Chair

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

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Clerk

(Seal)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

COUNTY ATTORNEY

APPROVED AS TO TERMS
AND CONDITIONS

Charles Rich
ENGINEER