

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

Meeting Date: November 17, 2020

☒ Consent      { } Regular  
{ } Public Hearing    { } Workshop

Department:      Engineering & Public Works  
Submitted By:     Engineering & Public Works  
Submitted For:    Roadway Production Division

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to:

- A) **adopt** a Resolution approving a facility encroachment agreement (Agreement) with CSX Transportation, Inc. (CSX) to accommodate fiber optic underground crossings required at the Haverhill Road railroad crossing, FDOT/AAR Crossing Number 628099B; and
- B) **approve** the Agreement with CSX required for Haverhill Road, north of Caribbean Boulevard to Bee Line Highway (Project).

**SUMMARY:** Adoption of the Resolution and approval of the Agreement will allow Palm Beach County (County) to place fiber optic underground crossings at the CSX railroad grade crossing on Haverhill Road required for the County's roadway improvement Project. The County will perform all work associated with the placement of the underground crossings for the Project. The County is required, by CSX, to pay a one-time encroachment fee of \$1,500 and an application review fee and tax of \$4,035.50 upon execution of the Agreement. The County is also responsible for any additional annual taxes and/or periodic assessments that could be levied as a result of the encroachment. District 7 (YBH)

**Background and Justification:** The County desires to construct, use and maintain the following described facilities, over, under or across property owned or controlled by CSX: one sub-grade fiber optic crossing, solely for the transmission of voice communication or other data only, via an optical waveguide, through a solid core of glass or plastic fiber material; and two empty conduits to be used for traffic signal communication purposes which are required for the Project.

**Attachments:**

1. Location Map
2. Resolution (4)
3. Agreement with Exhibit A and Invoice (4)

Recommended By: YBH/TEL

County Engineer

Date

10/15/2020

Approved By:

Assistant County Administrator

Date

10/15/20

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

<b>Fiscal Years</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>
<b>Capital Expenditures</b>	<u><b>\$ 5,536</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>
<b>Operating Costs</b>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>
<b>External Revenues</b>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>
<b>Program Income (County)</b>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>
<b>In-Kind Match (County)</b>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>
<b>NET FISCAL IMPACT</b>	<u><b>\$ 5,536</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>
<b># ADDITIONAL FTE</b>					
<b>POSITIONS (Cumulative)</b>					

Is Item Included in Current Budget?	Yes	X	No
Does this item include the use of federal funds?	Yes		No X

**Budget Account No:**

Fund 3502      Dept 361      Unit 1392      Object 6505

**Recommended Sources of Funds/Summary of Fiscal Impact:**

Road Impact Fee Fund - Zone 2  
Haverhill Rd/N. of Caribbean Blvd. to Bee Line Hwy

One-Time Encroachment Fee	\$1,500.00
Application Review Fee & Tax	<u>\$4,035.50</u>
Fiscal Impact	\$5,535.50

C. Departmental Fiscal Review:                     

### III. REVIEW COMMENTS

**A. QFMB Fiscal and/or Contract Dev. and Control Comments;**

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

*[Signature]* 10/5/2020  
OFMB *10/5*

*[Signature]* 10/14/2020  
Contract Dev. and Control  
10-14-2020

**B. Approved as to Form  
and Legal Sufficiency:**

10/15/2003 for Liz Herman  
Assistant County Attorney

### C. Other Department Review:

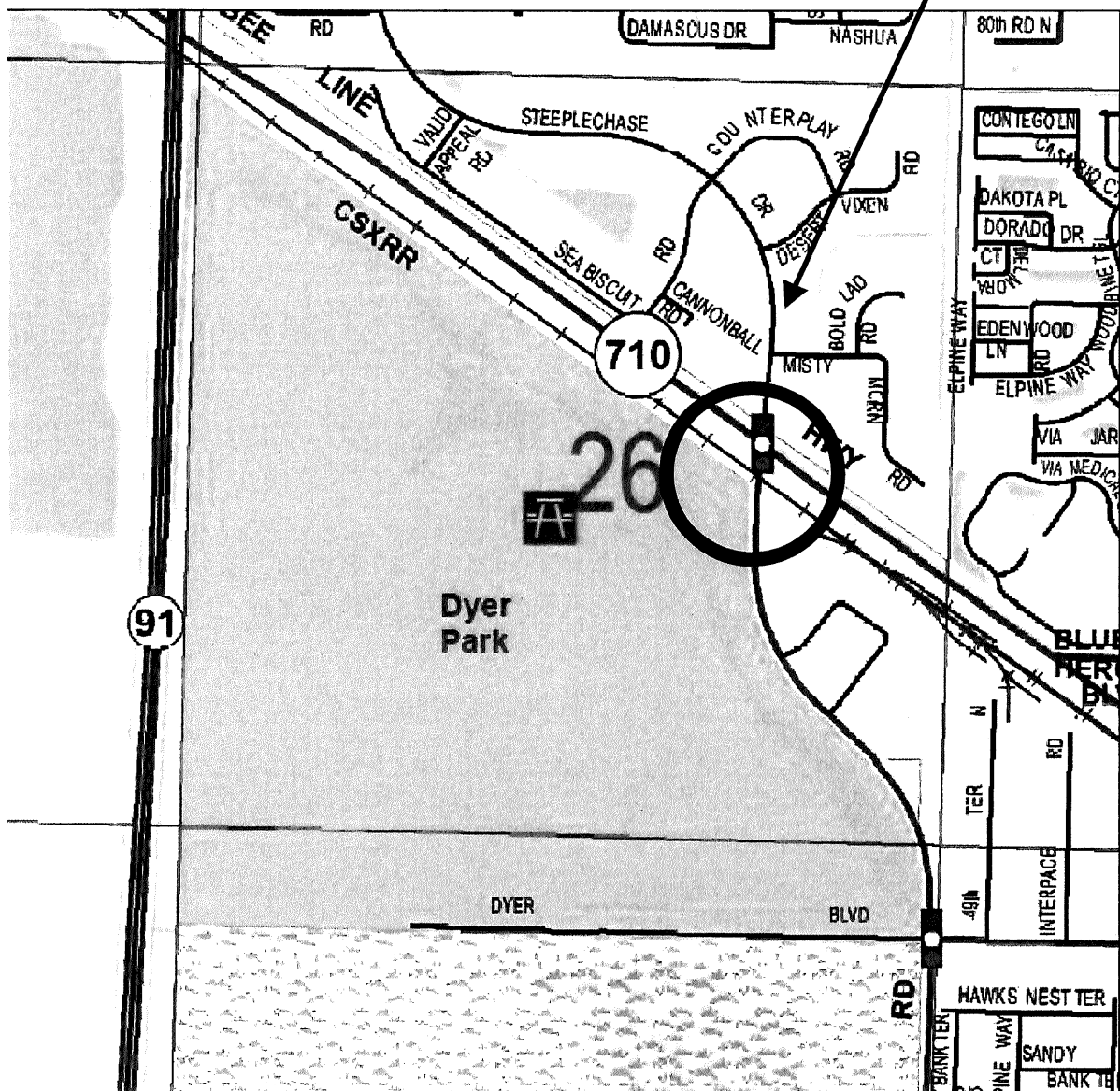
**Department Director**

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

## PROJECT LOCATION

# Haverhill Road at CSX Railroad

**FDOT/AAR CROSSING NUMBER 628099B**



## LOCATION SKETCH

**RESOLUTION NO. R2020\_\_\_\_\_**

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA AUTHORIZING EXECUTION OF A FACILITY ENCROACHMENT AGREEMENT WITH CSX TRANSPORTATION, INC. TO ACCOMMODATE FIBER OPTIC UNDERGROUND CROSSINGS REQUIRED AT THE HAVERHILL ROAD RAILROAD CROSSING FDOT/AAR NUMBER 628099B**

**WHEREAS**, Palm Beach County (County) has a roadway improvement project on Haverhill Road, north of Caribbean Boulevard to Bee Line Highway (Project), that impacts the CSX Transportation, Inc. (CSX) railroad crossing on Haverhill Road FDOT/AAR Crossing Number 628099B; and

**WHEREAS**, the County requires fiber optic underground crossings as a part of the Project; and

**WHEREAS**, the County will perform the work for the associated fiber optic underground crossings; and

**WHEREAS**, the County desires to construct, use and maintain the below described facilities, over, under or across property owned or controlled by CSX at the below described location(s):

1. One sub-grade fiber optic crossing, solely for the transmission of voice communication or other data only, via an optical waveguide, through a solid core of glass or plastic fiber material, located at or near Riviera Beach, Palm Beach County, Florida, Jacksonville Division, Miami Subdivision, Milepost SX-963.12, Latitude N26:47:13., Longitude W80:07:09.;
2. Two empty conduits to be used for traffic signal communication purposes, located at or near Riviera Beach, Palm Beach County, Florida, Jacksonville Division, Miami Subdivision, Milepost SX-963.12, Latitude N26:47:13., Longitude W80:07:09.; and

**WHEREAS**, pursuant to the Agreement, the County is required to pay to CSX a one-time encroachment fee of \$1,500 and an application review fee and tax of \$4,035.50 upon execution of this Agreement. The County is also responsible for any additional annual taxes and/or periodic assessments that could be levied as a result of the encroachment.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY FLORIDA, THAT:**

1. The foregoing recitals are hereby reaffirmed and ratified.
2. The Mayor of the Board of County Commissioners is authorized to execute the facility encroachment railroad agreement with CSX, as herein described.
3. This RESOLUTION shall take effect immediately upon adoption.

RESOLUTION NO. R2020

November 17, 2020

The foregoing Resolution was offered by Commissioner \_\_\_\_\_ who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

District 1:	_____
District 2:	Gregg K. Weiss _____
District 3:	_____
District 4:	Robert S. Weinroth _____
District 5:	_____
District 6:	Melissa McKinlay _____
District 7:	_____

The Mayor thereupon declared the Resolution duly passed and adopted this 17<sup>th</sup> day of November, 2020.

PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

ATTEST:

SHARON R. BOCK  
CLERK & COMPTROLLER

BY: \_\_\_\_\_  
Deputy Clerk

S E A L

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: YBH/TEL  
Yelizaveta B. Herman,  
Assistant County Attorney

**FACILITY ENCROACHMENT AGREEMENT**

THIS AGREEMENT, made and effective as of \_\_\_\_\_, 2020, 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, a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose mailing address is 2300 North Jog Road, West Palm Beach, Florida 33411, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct (unless previously constructed and designated as existing herein), use and maintain the below described facility(ies), hereinafter, collectively, called "Facilities," over, under or across property owned or controlled by Licensor at the below described location(s):

1. One (1) sub-grade fiber optic crossing, solely for the transmission of voice communication or other data only, via an optical waveguide, through a solid core of glass or plastic fiber material, located at or near Riviera Beach, Palm Beach County, Florida, Jacksonville Division, Miami Subdivision, Milepost SX-963.12, Latitude N26:47:13., Longitude W80:07:09.;
2. Two (2) empty conduits to be used for traffic signal communication purposes, located at or near Riviera Beach, Palm Beach County, Florida, Jacksonville Division, Miami Subdivision, Milepost SX-963.12, Latitude N26:47:13., Longitude W80:07:09.;

hereinafter, called the "Encroachment," as shown on print(s) labeled Exhibit "A," attached hereto and made a part hereof;

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

**1. LICENSE:**

- 1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:
- (A) Licensor's present and future right to occupy, possess and use its property within the area of the Encroachment for any and all purposes;
  - (B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and
  - (C) Compliance by Licensee and its agent or contractor ("Licensee's Contractor") with the terms and conditions herein contained;

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

1.2 The term Facilities, as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached Exhibit A.

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

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

2.1 Licensee shall pay Licensor a one-time nonrefundable Encroachment Fee of ONE THOUSAND FIVE HUNDRED AND 00/100 U.S. DOLLARS (\$1,500.00) upon execution of this Agreement. Licensee agrees that the Encroachment Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

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

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

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part.

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

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

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

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

3.4 In the installation, maintenance, repair and/or removal of said Facilities, Licensee shall not use explosives of any type or perform or cause any blasting without the separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to the Facilities, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.

3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Facilities, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

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

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

3.9 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to the Facilities or Encroachment.

3.10 In the event it becomes necessary for the Licensee to deviate from the approved Exhibit, Licensee shall seek prior approval from Licensor, or when applicable, an official field representative of Licensor permitted to approve changes, authorizing the necessary field changes and Licensee shall provide Licensor with complete As-Built Drawings of the completed work. As-Built Drawings shall be submitted to Licensor in either electronic or hard copy form upon the substantial completion of the project and upon Licensor's request.

3.11 In the event of large scale maintenance/construction work to railroad bridges Licensee is required to protect power lines with insulated covers or comparable safety devices at their costs during construction/maintenance for safety of railroad employees.

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

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



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

4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

## 5. MARKING AND SUPPORT:

5.1 With respect to any subsurface installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:

- (A) support track(s) and roadbed in a manner satisfactory to Licensor;
- (B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and
- (C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.

5.2 After construction or maintenance of the Facilities, Licensee shall:

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

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support resulting from Licensee's work within the Encroachment area for a period of two (2) years after completion of installation.

## 6. TRACK CHANGES:

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

6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

**7. FACILITY CHANGES:**

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

7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facilities (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before such change. After approval, the terms and conditions of this Agreement shall apply thereto.

**8. INTERFERENCE WITH RAIL FACILITIES:**

8.1 Although the Facilities/Encroachment herein permitted may not presently interfere with Licensor's railroad or facilities, in the event that the operation, existence or maintenance of said Facilities, in the sole judgment of Licensor, causes: (a) interference (including, but not limited to, physical or interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner, with the operation, maintenance or use of the rail corridor, track(s), structures, pole line(s), devices, other property, or any appurtenances thereto; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly make such changes in its Facilities or installation, as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect the Facilities, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to the Facilities, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

**9. RISK, LIABILITY, INDEMNITY:**

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

9.1 Subject to and to the fullest extent permitted by Florida Statute 768.28 , Licensee hereby agrees to assume any and all liability, loss, claim, suit, damage, charge or expense on account of death or injury to any person whomsoever, and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in connection with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT to the extent caused by a third party.

9.2 Licensee's Contractor shall be responsible for all damages, delays or injuries and all suits, actions or claims brought on account of damages or injuries resulting from the Licensee's Contractors' operations within or adjacent to Licensor's rail corridor and property.

9.3 Use of Licensor's rail corridor involves certain risks of loss or damage as a result of the rail operations. Notwithstanding Section 9.1, Licensee, subject to and to the fullest extent permitted by Florida Statute 768.28, expressly assumes all risk of loss and damage to Licensee's Property or the Facilities in, on, over or under the Encroachment, including loss of or any interference with use or service thereof, including electrical field creation, fire or derailment resulting from rail operations. For this Section, the term "Licensee's Property" shall include property of third parties situated or placed upon Licensor's rail corridor by Licensee or by such third parties at request of or for benefit of Licensee.

9.4 Subject to and to the fullest extent permitted by Florida Statute 768.28, Licensee assumes all responsibility for: (a) all claims, costs and expenses, as a consequence of any sudden or non-sudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with Licensee's use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities, except to the extent caused by a third party; (b) any claim or liability arising under federal or state law dealing with either such sudden or non-sudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facilities leakage except to the extent caused by a third party.

9.5 Subject to and to the fullest extent permitted by Florida Statute 768.28, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's negligent or wrongful failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities.

9.6 The respective obligations of Licensee and Licensee's Contractor hereunder shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensor, as well as any railroad that operates over the rail corridor on which the Encroachment is located, and the officers, employees and agents of each.

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

9.8 Notwithstanding anything contained herein to the contrary, Section 9 shall not be construed as a waiver of any sovereign immunity beyond the limits set forth in Florida Statute 768.28. Furthermore, this section is not intended to nor shall it be interpreted as limiting or in any way affecting any defense Licensee may have under Florida Statute 768.28.

## 10. INSURANCE:

10.1 Licensee is a political sub-division of the State of Florida subject to the limitations of Florida Statutes 768.28 as amended. Licensee shall maintain a fiscally prudent liability program with regard to its obligations under this Agreement. Nothing herein shall serve as a waiver of sovereign immunity.

Should Licensee contract with a third-party to perform any service related to this Agreement, Licensee shall require the third-party (Licensee's Contractor) to provide the following minimum insurance and to have such insurance policies in force prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement. The evidence of insurance coverage shall require endorsement to provide for thirty (30) days' notice to Licensee and Licensors, or their designees, prior to cancellation or modification of any policy. Licensee shall mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, Licensee shall send certificates to [RenewalCOI@csx.com](mailto:RenewalCOI@csx.com)

- (i) Statutory Workers' Compensation and Employer's Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00).
- (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) in combined single limits for bodily injury and property damage per occurrence and covering the contractual liabilities assumed under this Agreement and naming Licensors, and/or its designee, as additional insured.
- (iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence naming Licensors, and/or its designee, as additional insured.
- (iv) The insurance policies must contain a waiver of subrogation against CSXT and its Affiliates, except where prohibited by law. All insurance companies must be A. M. Best rated A- and Class VII or better.
- (v) Such other insurance as Licensors may reasonably require.
- (vi) Licensee shall require its contractors to meet minimum insurance requirements above when performing work in relation to this agreement. Licensee will review contractor's insurance certificates to confirm requirements are met. Licensors may request a copy of the insurance certificate.

10.2 If Licensee's Contractor's existing CGL policy (ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee's Contractor. Said CGL policy shall be written on a "per occurrence" basis.

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

10.4 To the extent permitted by law and without waiver of the sovereign immunity of Licensee, securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.

10.5 In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensor; and (b) require Licensee's Contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor,

i) Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 04 13) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition. Licensor reserves the right to demand higher limits.

OR

ii) The CGL policy shall include endorsement ISO CG 24 17 and the Auto Liability Policy shall include endorsement ISO CA 20 70 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsements are not included, RPL insurance must be provided.

10.6 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

## **11. GRADE CROSSINGS; PROTECTION SERVICES:**

11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's contractor to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensor.

11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facilities, to place watchmen, flagmen, or field construction managers for protection of operations of Licensor or others on Licensor's rail corridor at the Encroachment, and to keep persons, equipment or materials away from the track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

**12. LICENSOR'S COSTS:**

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or wire changes shall also be paid by Licensee.

12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.

12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

**13. DEFAULT, BREACH, WAIVER:**

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Article 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.

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

**14. TERMINATION, REMOVAL:**

14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the Facility from the Encroachment. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove the Facilities from the rail corridor of Licensor, unless the parties hereto agree otherwise, (b) restore the rail corridor of Licensor in a manner satisfactory to Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

**15. NOTICE:**

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

a. For non-emergencies, Licensee shall submit online via the CSX Property Portal from Licensor's web site, via web link:  
[https://propertyportal.csx.com/pub\\_ps\\_res/ps\\_res/jsf/public/index.faces](https://propertyportal.csx.com/pub_ps_res/ps_res/jsf/public/index.faces)

b. For emergencies, Licensee shall complete all of the steps outlined in Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee shall also call and report details of the emergency to Licensor's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Licensor needs to contact Licensee concerning an emergency involving Licensee's Facility(ies), the emergency phone number for Licensee is: 561-684-4150.

15.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licensor at the address shown on Page 1, c/o CSXT Contract Management, J180; or at such other address as either party may designate in writing to the other.

15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

**16. ASSIGNMENT:**

16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensor's prior written consent to any assignment of Licensee's interest herein; said consent shall not be unreasonably withheld.

16.2 Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Licensee shall give Licensor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.4 Licensor expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensor's underlying property interests in the Encroachment, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensor, at its option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensor for any loss, cost or expense Licensor may incur as a result of Licensee's failure to obtain said consent.

## 17. TITLE:

17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Encroachment or segment of Rail Corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Rail Corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to others therein.

17.2 The term "license," as used herein, shall mean with regard to any portion of the Rail Corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Rail Corridor and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Rail Corridor that would impair Licensor's existing rights therein.



17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the Rail Corridor in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

17.4 RESERVED.

17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.

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

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

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

## 18. GENERAL PROVISIONS:

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

18.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have

no effect upon the validity or enforceability of each other separate division, or any combination thereof.

18.5 This Agreement shall be construed and governed by the laws of the state in which the Facilities and Encroachment are located.

18.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

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

18.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by laws, statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement.

18.9 Within thirty (30) days of an overpayment in a cumulative total amount of One Hundred Dollars (\$100.00) or more by Licensee to Licensor, Licensee shall notify Licensor in writing with documentation evidencing such overpayment. Licensor shall refund the actual amount of Licensee's overpayment within 120 days of Licensor's verification of such overpayment.

**19. CONTRACTOR'S ACCEPTANCE:**

19.1 Licensee shall observe and abide by, and shall require Licensee's Contractors to observe and abide by the terms, conditions and provisions set forth in this Agreement. Prior to any commencement of work under this Agreement by Licensee's Contractor, Licensee shall require Licensee's Contractor to execute and deliver to Licensor the Contractor Acceptance form attached hereto as Schedule A to acknowledge Licensee's Contractor's agreement to observe and abide by terms and conditions of the Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective and duly authorized officers the day and year first written above.

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Print/Type Name: \_\_\_\_\_  
Print/Type Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Witness for Licensor: \_\_\_\_\_

**PALM BEACH COUNTY, BY ITS  
BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Mayor: Dave Kerner

ATTEST:

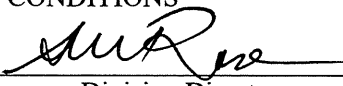
SHARON R. BOCK  
CLERK & COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: /s/Yelizaveta B. Herman  
Assistant County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS

By:   
Division Director  
KS

Schedule “A”

CONTRACTOR’S ACCEPTANCE

This Amendment is and shall be a part of Agreement No. CSX890473, and is incorporated therein.

To and for the benefit of CSX TRANSPORTATION, Inc. (Licensor”) and to induce Licensor to permit Contractor on or about Licensor’s property for the purposed of performing work in accordance with the Agreement dated \_\_\_\_\_, 2020, between Licensee and Licensor, Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to Sections 3, 9, 10 of the Agreement.

Witness for Licensor:  
  
\_\_\_\_\_

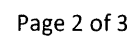
CSX TRANSPORTATION INC.  
  
By: \_\_\_\_\_  
  
Print/Type Name: \_\_\_\_\_  
  
Print/Type Title: \_\_\_\_\_

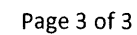
Witness for Licensee’s Contractor  
  
\_\_\_\_\_

\_\_\_\_\_  
LICENSEE’S CONTRACTOR  
  
By: \_\_\_\_\_  
Who, by the execution hereof, affirms that  
he/she has the authority to do so  
  
NAME: \_\_\_\_\_  
  
TITLE: \_\_\_\_\_  
  
DATE: \_\_\_\_\_

**CSX Transportation (CSX) General Notes (Horizontal Directional Drill (HDD)):**

- 1) CSX owns its right-of-way for the primary purpose of operating a railroad, and shall maintain unrestricted use of its property for current and future operations. In the event that relocation of facilities becomes necessary to accommodate the movement of rail traffic, Licensee, at its sole risk and expense, shall be required to relocate and/or remove facilities from the rail corridor of Licensor within a time frame mutually agreed.
- 2) CSX's consent applies to the design and construction of the utility located solely in the right-of-way owned by CSX and assures that CSX and AREMA Standard Specifications are met for tracks owned by others over which CSX operates. It is the utility Owner's (Applicant) responsibility to get permission from the property owner that is other than CSX to access and construct on their property.
- 3) Refer to the CSX's "Interim Guidelines for Horizontal Directional Drilling (HDD) Under the Property and Tracks(s) of CSX Transportation, INC." revised April 3, 2018, "Design & Construction Standard Specifications Pipeline Occupancies" revised June 5, 2018 and "Design & Construction Standard Specifications Wireline Occupancies" revised December 16, 2016.
- 4) CSX's signal facilities and/or warning devices at proposed facility crossing, i.e. cantilevers, flashers, and gates are to be located prior to installation.
- 5) No entry or construction on CSX's railroad corridor is permitted until the utility encroachment review and approval process is completed, you are in receipt of a fully executed License agreement and you have obtained authority from the local Road Master.
- 6) A bore plan and fraction mitigation plan (reference CSX' Bore Template and Fraction Mitigation Plan(s)), if not provided and approved during the application review, must be submitted to CSX's representative for review and approval prior to construction.
- 7) Drilling fluid with bentonite additive is required.
- 8) Once the bore enters CSX's property, the work must be continuous until drilling is complete and the pipe is pulled in place and the bore must be tracked constantly, with the location and depth marked every 10 feet.
- 9) Casing pipe ends must be sealed to prevent entrance of foreign materials and all drill heads are required to be on site for expected and unexpected soil conditions.
- 10) Dry and wet bores (jetting) are not allowed.
- 11) Trailing rods must be utilized for all back reaming.
- 12) At locations where open cut is permitted on CSX's right-of-way and/or railroad corridor, contractor must comply with CSX's D&C Standard Specifications section 4.1.7 Open Cut. Please reference this guidance for instructions on restoring site.
- 13) Soil that cannot be used or disposed on CSX's right-of-way must be properly disposed at a CSX approved disposal facility.
- 14) No entry or construction on CSX's railroad corridor is permitted until the utility encroachment review and approval process is completed, you are in receipt of a fully executed License agreement and you have obtained authority from the local Road Master.
- 15) Abandoned pipelines shall be removed or completely filled with cement grout, compacted sand, or other methods, as approved by CSX. Abandoned manholes and other structures shall be removed to a minimum depth of 2 feet below finished grade and completely filled with cement grout, compacted sand, or other methods as approved by CSX.
- 16) Pipeline encroachment shall be prominently marked at both sides of the CSX's property lines by durable, weatherproof signs located over the centerline of the pipe in accordance with CSX's D&C Standard Specifications.
- 17) If required, a dewatering plan in accordance with CSX's D&C Standard Specifications will be submitted to the CSX representative for review and approval prior to any dewatering operations.
- 18) Blasting is not permitted on CSX's property.
- 19) CSX does not grant or convey an easement for this installation.







Invoice

Date

5/12/2020

Customer

Palm Beach County Board of County Commissioners  
2300 N. Jog Road - 3rd Floor West  
West Palm Beach, FL 33411

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

Fees-At-A-Glance

Amount Due

U.S. Dollars \$

5535.50

Fees Summary

Application Review Fee	\$	3,950.00
Railroad Protective Liability		
License Fee	\$	1,500.00
Sales Tax*	\$	85.50
Money on File		

\* Florida Sales tax applies to the license fee

Total Current Fees in U.S. dollars

\$

5,535.50

CSX Federal ID No.

54-6000720

CSX Canadian ID No.

105203095 RC 0001

CSX Quebec ID No.

1022434469 IC 0001

Please remit payment to: CSX Transportation, Inc.

Legal Address:

500 Water Street, J180

Jacksonville, FL 32202

Questions? Contact:

Mailing Address:

500 Water Street, J180

Jacksonville, FL 32202

[Eric.Horton@csx.com](mailto:Eric.Horton@csx.com)

904.279.3806