



MEMORANDUM

January 26, 2010

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator *Eric*
Kevin E. Comstock, ITS Project Manager

SUBJECT: Facility Encroachment Agreement with CSX for the TOC Phase 3 Infrastructure and Upgrades Project

Purpose

The purpose of this memorandum is to present information to the Board of Mayor and Aldermen (BOMA) to consider entering into an agreement with CSX permitting installation of an aerial fiber optic telecommunications cable crossing the CSX rail line near First Ave South and South Margin St.

Background

The aerial fiber optic telecommunications cable provides for the communication with the traffic signals and CCTV cameras utilized by the TOC. The cable is replacing an existing undersized cable as part of the above referenced project and in anticipation of expanded ITS infrastructure in the future.

Financial Impact

A coordination fee, license fee and insurance totaling \$5,200 is required. This is non-recurring fee that will be paid from the project fund. (TDOT Locally Managed 80/20 Grant)

Recommendation

Staff recommends approval of this agreement.

FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, Made and effective as of November 30, 2009, by and between CSX TRANSPORTATION INC, a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and CITY OF FRANKLIN TENNESSEE, a municipal corporation, political subdivision or state agency, under the laws of the State of Tennessee, whose mailing address is 109 3rd Avenue South, Franklin, Tennessee 37064, 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 called "Facilities," over, under or across property owned or controlled by Licensor, at the below described location(s):

1. One (1) forty-eight count (48) aerial 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 Franklin, Williamson County, Tennessee, Nashville Division, Nashville Subdivision, Milepost 000-205.19, Latitude N35:55:24.5886, Longitude W86:51:50.9904;

hereinafter, collectively, called the "Encroachment," as shown on print(s) labeled Exhibit "B," attached hereto and made a part hereof; other details and data pertaining to said Facilities being as indicated on Exhibit "A," also 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 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 Facility Application Form and plan(s).

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 FOUR THOUSAND Dollars AND 00/100 U.S. DOLLARS (\$4,000.00) 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 (A.R.E.M.A. 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.

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 in the Encroachment 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 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 To the fullest extent permitted by State law (constitutional or statutory, as amended), Licensee hereby agrees to, 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, 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 when proven to have been caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual

construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad rail corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.

9.2 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 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, regardless of cause, 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.

9.3 To the fullest extent permitted by State law, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensor harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities; (b) any claim or liability arising under federal or state law dealing with either such sudden or nonsudden 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.

9.4 Notwithstanding Section 9.1, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities, whether or not such loss(es) result(s) in whole or part from Licensor's contributory negligence or joint fault.

9.5 Obligations of Licensee hereunder to release, indemnify and hold Licensor harmless 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.

9.6 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee 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.

9.7 Notwithstanding anything contained in this Agreement, the limitation of liability contained in the state statutes, as amended from time to time, shall not limit Licensor's ability to collect under the insurance policies required to be maintained under this Agreement.

10. INSURANCE:

10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of Commercial General Liability Insurance (CGL), naming Licensor, and/or its designee, as additional insured and covering liability assumed by Licensee under this Agreement. A coverage limit of not less than THREE MILLION AND 00/100 U.S. DOLLARS (\$3,000,000.00) Combined Single Limit per occurrence for bodily injury liability and property damage liability is currently required as a prudent minimum to protect Licensee's assumed obligations. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to Speed Code C907 at the address listed above.

10.2 If Licensee'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. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

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 Securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.

10.5 (A) 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 its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor, 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 01 96) 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, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. 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.

(B) At Licensor's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Licensee may pay Licensor, at Licensor's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Licensor's Railroad Protective Liability (RPL) Policy for the period of actual

construction. This coverage is offered at Licensor's discretion and may not be available under all circumstances.

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; FLAGGING:

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 (CSXT Form 7422).

11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facilities, to place watchmen, flagmen, inspectors or supervisors 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.

11.3 Subject to Licensor's consent and to Licensor's Railroad Operating Rules and labor agreements, Licensee may provide flagmen, watchmen, inspectors or supervisors during all times of construction, repair, maintenance, replacement or removal, at Licensee's sole risk and expense; and in such event, Licensor shall not be liable for the failure or neglect of such watchmen, flagmen, inspectors or supervisors.

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 complete and submit Licensor's Outside Party Number Request Form (Form # OP) by facsimile, to facsimile numbers: (904) 245-3692 and (904) 633-3450. Licensee may also scan and email a completed form to email

address: OP_Request@csx.com. A blank form, as well as additional instructions and information, can be obtained from Licensor's web site, via web link:
http://www.csx.com/fuseaction=aboutproperty_corridor%20#scheduling.

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: 616-791-3218.

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 Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon the Facilities placement, or the presence of the Facilities in, on or along any Encroachment(s), including claims for punitive or special damages.

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 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) 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 Licensor shall refund to Licensee any overpayments collected, plus any taxes paid in advance; PROVIDED, however, such refund shall not be made when the cumulative total involved is less than One Hundred Dollars (\$100.00).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate
(each of which shall constitute an original) as of the effective date of this Agreement.

Witness for Licensor:

CSX TRANSPORTATION INC

By: _____

Print/Type Name: _____

Print/Type Title: _____

Witness for Licensee:

CITY OF FRANKLIN TENNESSEE

By: _____

Who, by the execution hereof, affirms that he/she has
the authority to do so and to bind the Licensee to the
terms and conditions of this Agreement.

Print/Type Name: _____

Print/Type Title: _____

Tax ID No.: _____

Authority under Ordinance or

Resolution No. _____

Dated _____



Statement of Fees

Page 1 of 1
Account/Contract CSX 639073
Customer Project No.
Date 11/30/2009

Customer

The City of Franklin, TN
109 3rd Avenue, South
Franklin, TN 37064

Fees - At - A - Glance

Amount Due \$ 5200.00

Fees Summary

Project Coordination Fee	\$ 150.00
License Fee	\$ 4000.00
Railroad Protective Liability Insurance- see attached note	\$ 1050.00
	\$

Total Current Fees \$ 5200.00

News You Can Use

CSX Federal ID No.
CSX Candian ID No.

54-6000720
1022382868

Please remit payment to:

CSX Transportation, Inc.
500 Water Street, J-180
Jacksonville, FL 32202
Attention: Rene Kurth

Questions? Contact:

904.633.1108



If because of State Statute/Law you cannot meet the monetary coverage limits required by CSXT as outlined in Section 10 of the Agreement, you must pay the total due listed on the Statement of Fees, which includes a 50% surcharge in the amount of \$350.00, which will be applied towards the RPL payment. If you can meet the monetary requirements, you may reduce the total amount due by \$350.00. Payment of the surcharge does not waive general liability insurance requirements it only compensates for less than required monetary coverage. You will still need to provide insurance documentation.



APPLICATION FOR WIRE OR CABLE LINES CROSSING OR PARALLELING PROPERTIES AND TRACK

Exhibit "A"
Sheet 1 of 2
CSXT File No. CSX-639073

Submit one original and one copy of both the application and drawing along with a \$750.00 nonrefundable Application Fee to CSX Transportation, Property Services J180, 500 Water Street, Jacksonville, FL 32202.

Application and plans must be approved and written authority received from the Railroad before construction is begun. Your proposal and construction must be in accordance with CSXT's Specifications, the National Electrical Safety Code, and any governing laws or regulations. Note: Specifications furnished in the Application Package are to be used as a guideline only. CSXT reserves the right to approve or decline any application.

PLEASE SIGN BEFORE COMPLETING:

I affirm the information I am furnishing in this application will comply with the NESC Standards and accurately reflects the proposed construction plans:

Agreement No.: CSX-639073

Signature: _____

Application Date: 5/21/2009

Project Owner Information:	<input type="checkbox"/> Check here if agreement should be mailed to this address
1. Complete <u>Legal Name of applicant as it would appear in a legal document (inaccurate information will delay your request):</u> <u>The City of Franklin, Tennessee</u>	
2. Company Contact Name: <u>Kevin Comstock</u> Title: <u>ITS Project Manager</u>	
3. Telephone: <u>(615) 550-6672</u> Fax: <u>(615) 791-3293</u> E-Mail: <u>kevinc@franklintn.gov</u> Company Emergency Contact Number (in case of derailment, fallen wire/pole, etc.): <u>615-791-3218</u>	
4. Street Address: <u>109 3rd Avenue South</u> City: <u>Franklin</u> State: <u>TN</u> Zip: <u>37064</u>	
5. Type of business: <input type="checkbox"/> Corporation (State of incorporation _____) <input type="checkbox"/> Partnership (Type and State of Partnership _____) <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Developer <input checked="" type="checkbox"/> Municipality <input type="checkbox"/> Other	

Engineer/Consultant Information:	<input checked="" type="checkbox"/> Check here if agreement should be mailed to this address
6. Company Name: <u>AECOM</u>	
7. Company Contact Name: <u>Brian Hall</u> Title: <u>Project Manager</u>	
8. Telephone: <u>(615) 313-0355</u> Fax: <u>(615) 244-8760</u> E-Mail: <u>brian.hall@aecom.com</u>	
9. Street Address: <u>220 Athens Way, Suite 200</u> City: <u>Nashville</u> State: <u>TN</u> Zip: <u>37228</u>	

Project Information:	(Note: Metric Information will <u>NOT</u> be accepted.)
10. Is this installation: <input type="checkbox"/> New <input type="checkbox"/> Revision to existing <input checked="" type="checkbox"/> Attachment to existing <input type="checkbox"/> Upgrade to existing	
11. If not a new installation, furnish existing Agreement Number: <u>N/A</u>	
12. If this installation is to be a supplement to your master (general) agreement, furnish: Agreement Number: <u>N/A</u> Date: <u>N/A</u>	
13. Your Reference Number: <u>N/A</u>	
14. Town Location: <u>Franklin</u> County: <u>Williamson</u> State/Province: <u>TN</u>	
15. Type of Crossing: <input type="checkbox"/> Electric <input type="checkbox"/> CATV <input type="checkbox"/> Telephone <input checked="" type="checkbox"/> Communications <input type="checkbox"/> Other (explain): _____	
16. Crossing is dedicated to: <input type="checkbox"/> Trunk <input type="checkbox"/> Distribution <input type="checkbox"/> Transmission <input checked="" type="checkbox"/> Other	
17. Conductor Material: <input type="checkbox"/> Copper <input type="checkbox"/> Aluminum <input checked="" type="checkbox"/> Fiber Optic & Fiber Count <u>96</u>	
18. <input type="checkbox"/> AC / <input type="checkbox"/> DC : Voltage: _____ No. of Phases: _____ Amperes: _____ Hertz: _____	
19. Maximum Voltage: <u>N/A</u> Maximum Current: <u>N/A</u>	
20. Maximum Fault to Ground: <u>N/A</u> 21. AWG Gauge: <u>N/A</u>	
21. Is this both a Crossing and Parallelism? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Project Information Cont'd:

22. Number of tracks to be crossed: 1 Angle of crossing 45 Degrees
23. Crossing location: 1,052 feet South (direction) from Railroad Milepost: 205
 If known: Valuation Station: N/A Valuation Map Number: N/A
 If known: Latitude/Longitude: 35.923497, -86.864164
 If known: Street Address of Crossing/Parallelism: N/A
24. Parallelism location: Beginning: N/A feet N/A (direction) from RR Milepost: N/A
 and Ending: N/A feet N/A (direction) from RR Milepost: N/A
25. Total length on Railroad R/W: 200' Length Crossing: 112' 60" Length Paralleling: N/A
26. Will line be located entirely within a public road right-of-way? Yes No
 ** If you answered yes, road name, number, and width of public right-of-way are required on drawing
 DOT/AAR Crossing Number: N/A
27. a) Will this occupancy connect to an existing facility within Railroad corridor? Yes No
 b) If Yes, name facility owner(s): MTEMC, AT&T
28. Number of Manholes N/A Handholes N/A Pull boxes N/A Other (describe) N/A
 to be located within Railroad corridor. Dimensions of ancillary structures are required on drawing.
29. Distance from manholes/handholes/pull boxes/other to nearest track: N/A
30. Number of: new poles existing poles 3 to be utilized Railroad R/W
31. Owner of existing poles to be utilized within Railroad R/W: MTEMC
32. Distance from butt of pole(s) utilized to nearest rail of track: 34' from pole 1, 39' from pole 2
33. **Underground facilities:** (For the purpose of this application, Conduit or Innerduct shall mean a single duct or pipe suitable for housing cables or wires).
 Total buried length on Railroad R/W: N/A If power, total number circuits: N/A
 Number of Conduit(s): N/A Total Filled Conduit(s): N/A Total Empty Conduit(s): N/A
 Number of Cables or Lines in each Conduit: N/A
 Number of Conductors in each Cable or Line: N/A
 Encasement material: N/A Outside diameter: N/A (over 4", See Pipeline specs.) Wall thickness: N/A
 Bury depth from base of rail to top of casing: N/A feet
 Bury depth on right of way, but not beneath tracks: N/A feet
 Bury depth below ditches: N/A feet
 Method of installation: N/A (Note: Directional boring is prohibited. See specs)
 Location of boring pits to adjacent track @ 90°: Launching Pit: N/A ft., Receiving Pit: N/A ft.
34. **Aerial facilities:**
 Total aerial length on Railroad R/W: 200' 60" If power, total number circuits: N/A
 Total number of CSX pole lines to be crossed: 0
 Type of wire supports: Existing Size: N/A False dead ends: N/A
 Height of wires above top of rail at 60° f: 26.5' feet Sag in Spans at 60° f: N/A
 Height of wires above Railroad communication and signal wires at 60° f: N/A feet

Supplemental Fiber Optic Information (Must be Completed for Fiber Proposals):

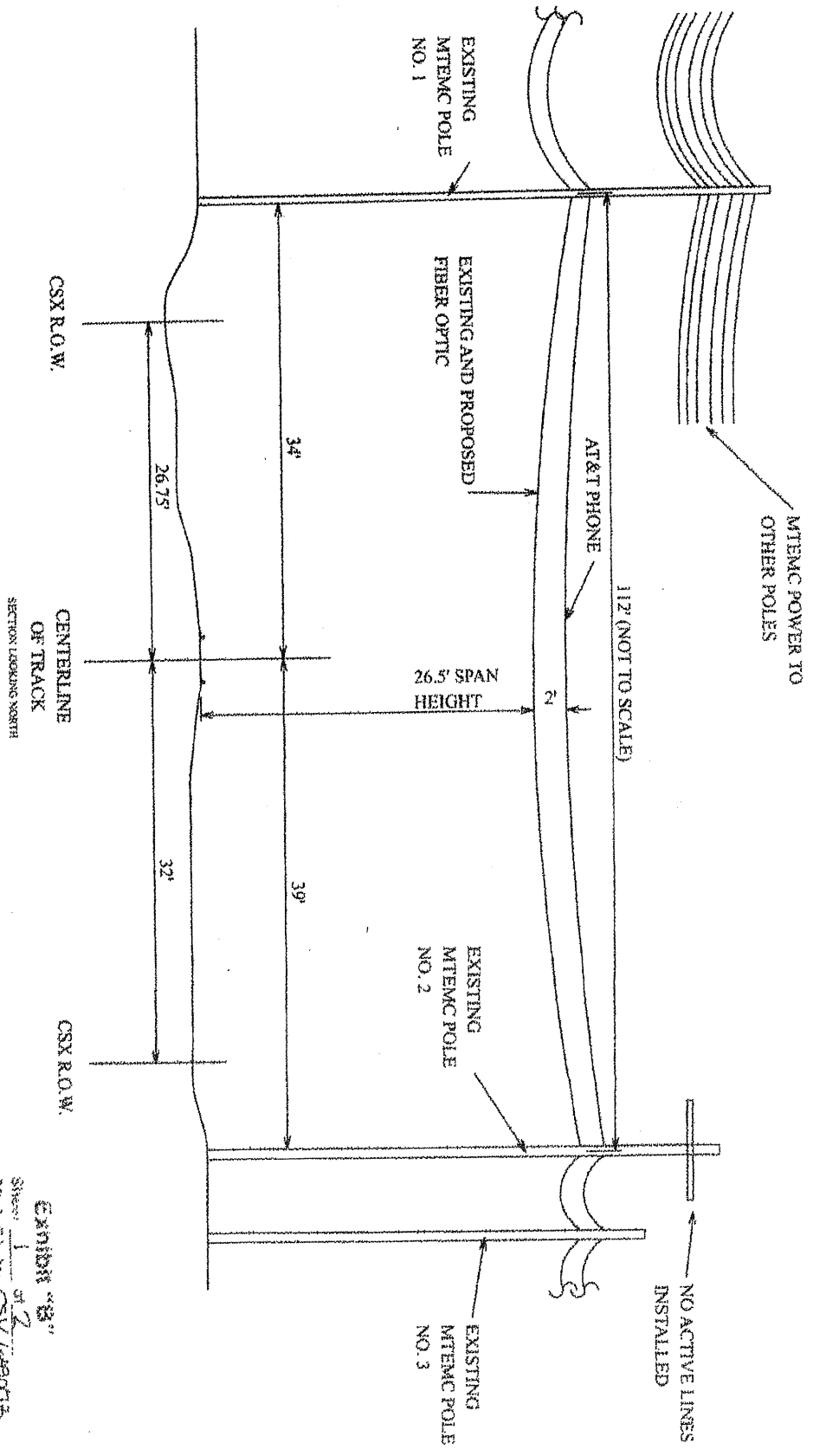
35. Identify each intended user of the conduit/cable: The City of Franklin, Tennessee
36. Entity performing construction: Not Yet Determined
37. Number of fibers per cable: 96 48

Railroad Use Only:

Division NASHVILLE Subdivision NASHVILLE No. of Crossings: 1
 Absolute No.: 11794 Valuation Section/Map No.: _____
 Valuation Station: _____
 Milepost: 000 205.19

Roadmaster No.: _____ Contr. Type: FLEX Fiber? NO

REFER TO CSX VALUATION MAP 11794
 FOR MORE DETAILED R.O.W INFORMATION



CROSS SECTION OF FIBER OPTIC CROSSING OF
 CSX RAILROAD AT 1ST AVE AND S WARDEN ST

THE CITY OF FRANKLIN
 WILLIAMSON COUNTY, TENNESSEE

AECOM

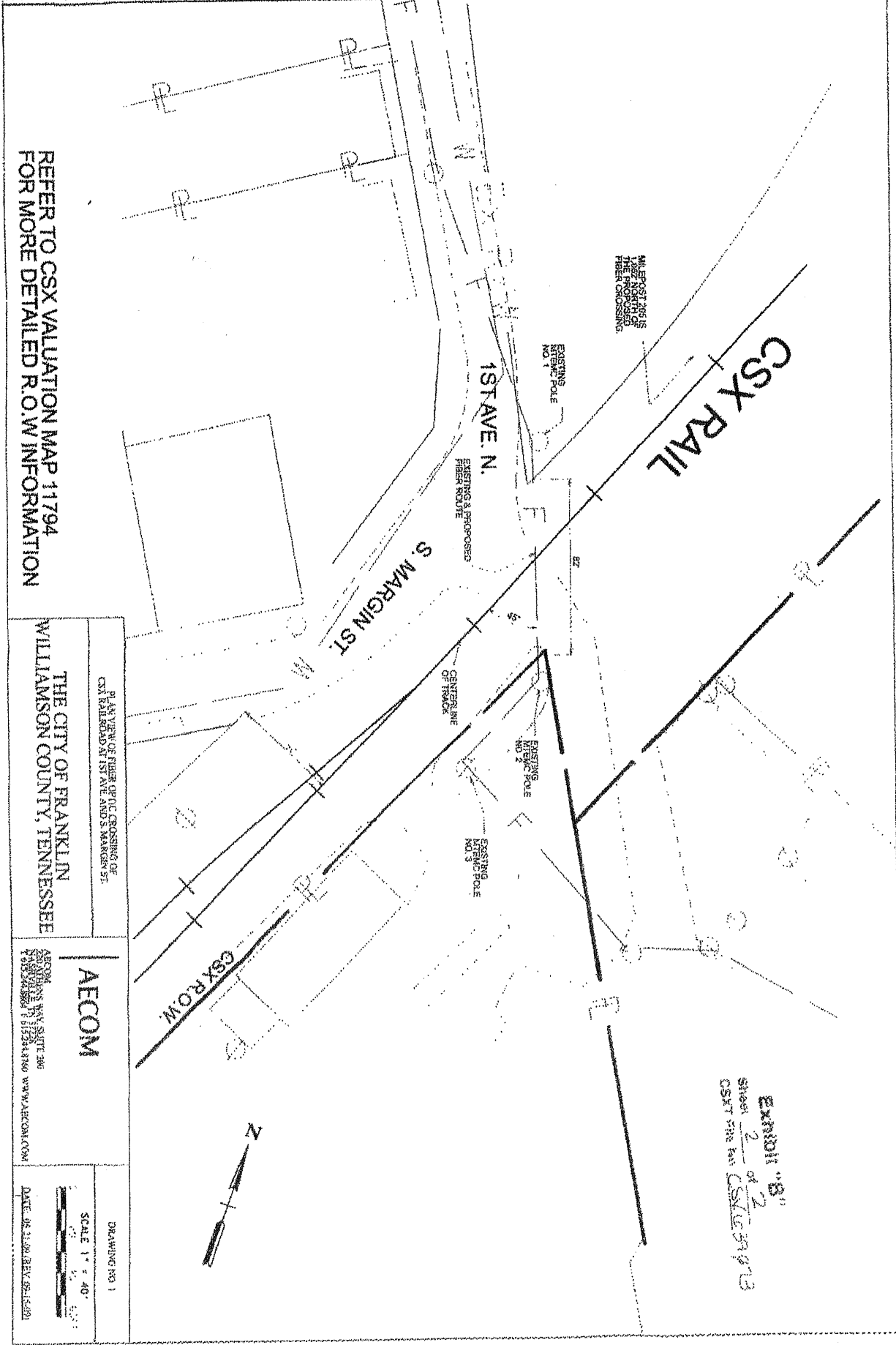
4000
 WARDEN AVENUE, SUITE 200
 FRANKLIN, TN 37067
 TEL: 615.791.1100 FAX: 615.791.1101
 WWW.AECOM.COM

DRAWING NO. 2

VERTICAL: N.T.S.
 HORIZONTAL: SCALE 1" = 8'

DATE: 09/21/09 (BY: JLS)

EXHIBIT "B"
 SHEET 1 OF 2
 CIV. ENGR. NO. 21697-015



REFER TO CSX VALUATION MAP 11794 FOR MORE DETAILED R.O.W. INFORMATION

THE CITY OF FRANKLIN
WILLIAMSON COUNTY, TENNESSEE

AECOM

AECOM
1505 DAKOTA AVE
MEMPHIS, TN 38154
WWW.AECOM.COM

DRAWING NO. 1
SCALE 1" = 40'
DATE: 09/25/09 REV: 09/25/09

SAMPLE CGL CERTIFICATE

CERTIFICATE OF LIABILITY INSURANCE				DATE (MM/DD/YY)	
PRODUCER		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE			
The Licensee/Lessee/Industry identified in the agreement must be the named insured. CSXT will not accept the contractor's CGL certificate.		THIS CERTIFICATE DOES NOT AMEND, EXTEND OR COVERAGE AFFORDED BY THE POLICIES BELOW. COMPANIES AFFORDING COVERAGE			
PHONE:	FAX:	COMPANY A	COMPANY B	COMPANY C	
INSURED					
COVERAGES		The amount in this "Each Occurrence" box must be at least \$3,000,000.00; or the amount in this box combined with the "Each Occurrence" coverage of any Excess Liability must be at least \$3,000,000.00.			SIR May Apply TO THE INSURED NAMED OR CONDITION OF ANY SUED OR MAY PERTAIN, TERMS, EXCLUSIONS AND
THIS IS TO CERTIFY ABOVE FOR THE CONTRACT OR OF THE INSURANCE CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE	PAID CLAIMS.				
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	EFF DATE	LIMITS	
A	GENERAL LIABILITY			GENERAL AGGREGATE	\$
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			PRODUCTS - COMP/OP AGG	\$
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR			PERSONAL & ADV INJURY	\$
	<input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT			EACH OCCURRENCE	\$
				FIRE DAMAGE (ANY ONE FIRE)	\$
				MED EXP (ANY ONE PERSON)	\$
	AUTOMOBILE LIABILITY			COMBINED SINGLE LIMIT	\$
	<input type="checkbox"/> ANY AUTO			BODILY INJURY (PER PERSON)	\$
	<input type="checkbox"/> ALL OWNED AUTOS			BODILY INJURY (PER ACCIDENT)	\$
	<input type="checkbox"/> SCHEDULED AUTOS			PROPERTY DAMAGE	\$
	This box should contain the following: "CSX Transportation, Inc. is included as an additional insured. This certificate applies to all contracts/agreements between the named insured and CSXT."			AUTO ONLY - EA ACCIDENT	\$
				OTHER THAN AUTO ONLY:	\$
				EACH ACCIDENT	\$
				AGGREGATE	\$
				EACH OCCURRENCE	\$
				AGGREGATE	\$
				RETENTION	\$
	WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY			WC STATUTORY LIMITS	\$
	THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL			OTHER	\$
				EL EACH ACCIDENT	\$
				EL DISEASE-POLICY LIMIT	\$
				EL DISEASE-EA EMPLOYEE	\$
DESCRIPTIONS OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS					
CERTIFICATE HOLDER			CANCELLATION		
CSX TRANSPORTATION, INC. 500 WATER STREET, J-180 JACKSONVILLE, FL 32202			SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE MODIFIED, CANCELLED, OR NOT RENEWED, THE ISSUING INSURER SHALL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN.		
			AUTHORIZED REPRESENTATIVE		

This provision is required per the terms of the agreement. The following provision is not acceptable on the certificate:

"Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company its agents or representatives."

