

THIS AGREEMENT, made and entered into this 23rd day of May, 1994 by and between CSX TRANSPORTATION, INC., a Virginia Corporation, whose address is 500 Water Street, Jacksonville, Florida 32202 hereinafter referred to as the Railroad; and NASSAU COUNTY, a political subdivision of the State of FLORIDA, whose address is P. O. BOX 1010, Fernandina Beach, Florida 32034; hereinafter referred to as the County:

WITNESSETH: That the Railroad, for and in consideration of One Dollar to it in hand paid by the County, the receipt whereof is hereby acknowledged, and of the covenants and agreements to be kept and performed by the County as hereinafter expressed, hereby grants or confirms to the County an easement or right-of-way, within the limits hereinafter set out, for constructing, improving and maintaining a highway or street crossing (including the usual appurtenances, such as approaches, paved roadway, curbs, gutters, sidewalks, shoulders, slopes, fills, cuts and drainage facilities) at grade across the right-of-way and track or tracks of the Railroad at Piney Island Road; Railroad Mile Post SMA-42.24; U.S. DOT/AAR 620809 J; near Fernandina Beach, Nassau County, Florida.

And the County hereby covenants and agrees in consideration of said agreement:

1(a). Said crossing shall be improved at the cost and expense of the County, but in a manner and of materials in all respects satisfactory to the Chief Engineer of the Railroad, and all incidental expenses necessarily incurred in connection therewith shall be borne by the County. After crossing improvements have been completed, the County shall maintain said crossing at its expense and in a manner in all respects satisfactory to said Chief Engineer, except, however, the Railroad shall maintain, but at the County's expense, the portion of said crossing between the rails of said track(s) and for two feet on the outside of each rail thereof.

(b). Simultaneously with the execution of this agreement by the County, the County hereby agrees to deposit with the Railroad the sum of \$XXXXXXXXXX being the estimated amount of the cost of the work to be performed by the Railroad and the materials to be furnished by the Railroad in connection with the construction of (i) a standard FULL DEPTH RUBBER CROSSING SURFACE, and (ii) automatic railroad grade crossing control devices; hereinafter called "Devices"; at the location described herein. In the event said deposit is less than the actual cost borne by the Railroad, the County shall also, upon receipt of a bill rendered by the Railroad, promptly pay such additional cost to the Railroad. In the event said deposit is in excess of the actual cost borne by the Railroad, the Railroad shall promptly refund the difference to the County. Upon completion of the crossing improvements, the Railroad shall furnish to the County a detailed statement showing the cost of all work and materials used for construction of said crossing and signals.

(c). After said devices have been placed in service, the Railroad will operate and maintain said devices, and the maintenance expense incident thereto shall be borne by the County. The County will pay to the Railroad, upon presentation of a bill at the end of each year as long as said devices remain in service, the current rate of \$1,404.00 for maintaining said devices. Rates for device maintenance will be reviewed periodically, if the rate should change, the amount billed will be revised accordingly. In addition to said sum for device maintenance to be paid by the County to the Railroad, the County will be obligated, within sixty days after receipt of an itemized bill from the Railroad, to (i) reimburse the Railroad for the cost of upgrading said devices to prevent obsolescence, and (ii) reimburse the Railroad for the cost of repairing, or replacing, said devices as a result of damages thereto, howsoever resulting.

(d). The County understands and agrees that said crossing shall not be open to public use until said railroad grade crossing traffic control devices have been placed in service.

2. The County will bear the cost of all temporary and permanent changes made necessary in the Railroad's signal wire line or other facilities, and in the wire line facilities of any utility that has compensable interest on the Railroad's right-of-way occasioned by the construction of said crossing and the occupancy of the Railroad's property.

3. The cost of all work performed by the Railroad (including flagging and engineering services, if any) and all materials furnished by the Railroad within the scope of this agreement to which the County is obligated to reimburse the Railroad for the cost thereof shall have surcharges added thereto in accordance with Federal-Aid Highway Program Manual Transmittal 129, dated April 25, 1975, in effect at the time the work is accomplished. All other accounting and reimbursement shall be in accordance with the Railroad's usual practice in effect for similar work at the time the Project is in progress.

4. During such time that the Railroad performs improvements, maintenance or repairs to said crossing, the County will, and at the directions of the Railroad, either close said crossing to traffic or provide flagging protection (and temporary detour, if deemed necessary) at the County's expense.

5(a). The Railroad reserves the right at any time, if it so desires, to construct an additional track or tracks across said crossing; in such event, the Railroad shall have the right and is hereby granted the privilege to remove any paving from said crossing to the extent necessary for the construction of said track or tracks and, upon completion of the trackage construction, the Railroad will, but at the County's entire cost and expense, add additional crossings; thereafter, the Railroad will, but at County's expense, maintain the portion of said crossings between

the rails of said track or tracks and for two feet on the outside of each rail thereof. In the event relocation of signals is required due to construction of said track or tracks, the cost thereof shall also be borne by the County.

(b). The Railroad also reserves the right at any time, if it so desires, to remove (abandon) any trackage located within the limits of said crossing; in such event the Railroad shall have the right and is hereby granted the privilege to remove any paving from said crossing to the extent necessary for the removal of said trackage and, upon completion of said trackage removal, the Railroad will restore said crossing at the County's expense.

6. In consideration for the rights hereby granted, it is expressly agreed that the Railroad shall not at any time or in any manner be assessed with the cost or any part of the cost of the construction and maintenance of any improvement constructed now or at any time in the future on or adjacent to said crossing.

7. The County understands that this Agreement does not allow the County to install or permit the installation of any other utility within the limits of the crossing described herein.

8. The County agrees to save harmless the Railroad, its successors and assigns from any and all claims, including reasonable attorney's fees, arising out of any suit, on account of personal injuries or damage to property of whatever nature arising during construction, reconstruction or on account of improper or faulty drainage arising out of said construction or reconstruction of said crossing which is the result of the County's sole negligence to the extent permitted by Law.

9(a). The County will require its contractor to purchase at no cost to the Railroad and to maintain until work on the crossing and approaches is completed and accepted, Railroad Protective Liability Insurance in a combined single limit of \$2,000,000.00 for all personal injury and property damage per occurrence, subject to an aggregate limit of \$6,000,000.00 per annual policy period. The policy of insurance shall name the Railroad as the named insured, address 500 Water Street, Jacksonville, Florida 32202, and the original policy shall be sent to Railroad's Casualty Insurance Department for approval and filing prior to contractor's entry on the job site. The policy shall be written on the ISO/RIMA (CG 00 3S 11 85) with Pollution Exclusion Amendment (CG 28 31 11 85), endorsement deleting Common Policy Conditions (CG 99 01) if Common Policy Conditions are included in the policy and Broad Form Nuclear Exclusion (IC 00 21).

(b). The County shall also require any contractor(s) to procure and maintain throughout construction or reconstruction of said crossing a Commercial General Liability Policy on a form no more restrictive than the latest edition of the Commercial General Liability Policy filed by the Insurance Services Office and must

include: minimum limits of \$2,000,000.00 per occurrence and \$6,000,000.00 aggregate for bodily injury liability and a minimum limit of \$2,000,000.00 for property damage liability or \$6,000,000.00 aggregate. The Railroad and the County are specifically named as additional insureds. The Railroad requires proof of said insurance be sent to Railroads Casualty Insurance Department, for approval prior to any work being performed in CSX Transportation, Inc. Right-of-Way.

10. It is understood and agreed that this Easement Agreement shall not be binding until it has been authorized or ratified by a proper ordinance or resolution of the NASSAU COUNTY BOARD OF COUNTY COMMISSIONERS, a certified copy of which ordinance or resolution is attached hereto and made a part hereof.

IN WITNESS WHEREOF the parties hereto have executed these presents in duplicate the day and year first above written.

Witnesses for RAILROAD:

*[Signature]*  
*SD Gray*

CSX TRANSPORTATION, INC:

By *[Signature]* (L.S.)  
C. L. HARDY, ASST. CHIEF ENGR.,  
PUBLIC & PASSENGER PROJECTS.

Witnesses for COUNTY:

*[Signature]*  
*[Signature]*

NASSAU COUNTY, FLORIDA:

By *[Signature]* (L.S.)  
Attest *[Signature]* (SEAL)  
Clerk