

IN THE MATTER OF THE CONSTRUCTION
OF THE GRADE SEPARATION
STRUCTURE CARRYING A BIKE PATH &
UTILITIES OVER THE TRACKS OF CSX
TRANSPORTATION, INC. IN THE CITY OF
KENT, PORTAGE COUNTY, OHIO.

AGREEMENT NO.: 14317
PID: 18466B

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2008 between the State of Ohio, acting by and through the Director of Transportation of the State of Ohio, as First Party, hereinafter referred to as the STATE; the City of Kent, as Second Party, hereinafter referred to as the CITY, and CSX Transportation, Inc., as the Third Party, hereinafter referred to as the COMPANY.

WITNESSETH:

WHEREAS, the STATE and the CITY propose to remove the existing grade separation structure carrying Crain Avenue over the tracks of the COMPANY at milepost BG117.03, and at the same location construct a new grade separation structure to carry a bike path & existing utility lines in the City of Kent, Portage County, and

WHEREAS, said construction requires the removal of the existing Crain Avenue grade separation structure and reconstruction of a new grade separation structure to separate the grades of track of the COMPANY and the bike path at the point hereinbefore mentioned. Said structure and the necessary approaches thereto are hereinafter referred to as the PROJECT; and

WHEREAS, no existing COMPANY grade crossings will be eliminated as a result of the proposed construction; and

WHEREAS, under such conditions, Chapter 5523 of the Revised Code of Ohio and other grade crossing elimination laws of the State of Ohio do apply to the PROJECT herein considered; and

WHEREAS, the Director of Transportation of the State of Ohio is empowered generally by Chapter 5501 of the Revised Code of Ohio to carry forward improvements of the type herein contemplated; and

WHEREAS, the Federal-Aid Highway Act of 1956, as amended, and Section 5531.03 of the Revised Code of Ohio have become effective, providing funds for the construction costs of projects such as is contemplated herein; and

WHEREAS, the CITY has by Ordinance No. 2005-154 passed on December 28, 2005 given its consent to the improvement herein contemplated, and has proposed to bear certain costs of the improvement and has agreed to maintain certain portions of the improvement, and

WHEREAS, it is desired by the parties hereto to carry out and accomplish the construction of the **PROJECT** over the tracks of the **COMPANY** at the point hereinbefore mentioned and to determine and agree upon the manner of doing said work and the portion of said work to be done by each of said parties respectively, and the proportion of costs and expenses to be paid by each of said parties, and the mode and time of payment therefore.

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, it is agreed between the parties as follows:

SECTION 1

The plans of the **STATE** for the said improvement are identified by title as follows:

"State of Ohio, Department of Transportation, POR-Crain Avenue (Crain Avenue Bridge Relocation), City of Kent, Portage **CITY**".

Before this agreement shall be in force and effect, the foregoing plans shall meet the approval of the parties hereto, and upon such approval shall become a part of this agreement by reference.

SECTION 2

The work to be done under this agreement and shown on the plans described under **SECTION 1** of this agreement consists of the construction of a new bike path/utility bridge at milepost BG117.03 over the tracks of the **COMPANY** and the necessary approaches thereto.

Said work will consist of removal of the existing Crain Avenue bridge and constructing a two-span rolled steel beam bridge with composite reinforced concrete deck on reinforced concrete semi-integral abutments with spread footing and reinforced concrete cap and column pier with spread footing. The structure will have span lengths of 100'-0" & 75'-0" center to center of bearings, with a minimum vertical clearance of 22.15' above top of rail, and a minimum horizontal clearance of 18.50'. The new bridge width will be 14'-0" face to face of curb with 1'-8" pedestrian railings.

The construction of the improvement and the necessary earth work to effect the clearances shown above, the grading, draining and paving of the improvement, the sodding, seeding and planting of slopes, the construction of guard rails, the settlement of claims for property purchased, appropriated or damaged by such construction, and the maintenance of railroad traffic and rearrangement and restoration of railroad facilities made necessary by the work herein contemplated, shall be considered as necessary items to be included as part of this improvement.

SECTION 3

Responsibility for the several necessary items of work shall be as follows:

- a. The following items shall be let in contract by the **STATE** after competitive bidding as provided by law, at **PROJECT** expense, subject to the provisions of this agreement:
 1. Construction of a new grade separation structure consisting of a two-span rolled steel beam bridge with composite reinforced concrete deck on reinforced concrete semi-integral abutments with spread footing and reinforced concrete cap and column pier with spread footings.

2. Grading, draining and paving the improvement, including constructing any necessary side drives and approaches.
 3. Sodding, seeding and planting of slopes.
 4. Erecting necessary guardrails.
 5. Removal of the existing Crain Avenue grade separation structure, including bridge beams and roadway deck.
- b. The following items shall be done or caused to be done by the COMPANY with its own forces, at PROJECT expense, subject to the provisions of this agreement.
1. Changes in communication and signal lines, interlocking and signal apparatus
 2. Provision of switch tenders, flagmen, watchmen and other protective services and devices to promote safety and insure continuity of train operations as may be necessary in connection with the work performed by the COMPANY's forces.

SECTION 4

Any work not specifically provided for in SECTION 3 shall be done by one of the parties hereto as may be mutually agreed upon from time to time during progress of the work, as provided for by the rules and regulations of the Federal Highway Administration as then in effect.

SECTION 5

All work to be done by the COMPANY under the provisions of this agreement shall be done in accordance with the plans described in SECTION 1, together with such other plans and specifications, detailed and supplementary thereto, as may be mutually agreed upon and as may be necessary to carry out the work fully in accordance with the intent of this agreement and in accordance with good engineering practice. All work to be done by the STATE shall be done in accordance with said plans and under the standard and supplemental specifications of the Department of Transportation in force on the date of the award of the contract, together with such special provisions as may be agreed upon by the parties hereto.

The STATE will require its contractor to use Railroad protective personnel to protect railroad traffic made necessary or occasioned by his operations, as set forth in special provisions to be approved by the parties hereto, which are more specifically set forth in the "Special Clauses in the Proposal" and which are included in this agreement by reference.

The COMPANY agrees to furnish the STATE's contractor at PROJECT expense, and the STATE shall require its contractor to use, such switch tenders, flag men, telegraph operators, pilots, watchmen or other protective services, and devices, other than engineering personnel, as in the opinion of the COMPANY are required to promote the safety and insure continuity of railroad traffic during the contractor's operations.

The COMPANY agrees to bill the STATE as a part of its regular force account work the actual cost for such protective services and devices, including the actual rate of pay, plus the amount paid for overtime, insurance, railroad retirement, vacation allowance, holidays, health and welfare, transportation, deadhead and turn around time, accounting and billing.

The STATE agrees to reimburse the COMPANY for said protective services and devices as a part of its regular force account work as set forth in this agreement.

SECTION 6

The STATE shall have general charge of the engineering work on the PROJECT, but the COMPANY shall provide such engineering services as the STATE may require. Nothing herein shall deny the COMPANY the right to place inspectors on work being done on its property or facilities. Preliminary engineering costs incurred by the COMPANY subsequent to November 30, 2004 may be charged against the PROJECT.

Construction engineering and inspection costs incurred by the COMPANY subsequent to the award of a construction contract by the STATE may be charged against the PROJECT.

SECTION 7

The STATE shall require its contractor at all times to use all reasonable care and diligence and to cooperate with the officials of the COMPANY in order to avoid accidents, damage or unnecessary delay to or interference with trains upon the tracks of the COMPANY.

Any of the COMPANY's equipment, such as work trains, locomotive cranes, cars or other rolling stock used on the work by the STATE's contractor in carrying out his contract shall not be chargeable to the parties hereto, but the STATE shall require the contractor to bear the cost of the rental of such equipment as part of the contract price for the work.

If at any time the STATE's contractor requires a temporary crossing over the COMPANY's tracks, the STATE shall require said contractor to arrange with the COMPANY for such crossing.

SECTION 8

It is understood that the construction costs of the PROJECT herein contemplated are to be financed from funds provided by the STATE and CITY expended in accordance with Federal regulations, that all plans, specifications, estimates of costs, awards of contracts, acceptance of work and procedure in general will at all times conform to all Federal laws, rules, regulations, orders and approvals applying to a Federal-Aid Project, and the STATE shall reimburse the COMPANY for construction costs and for preliminary and construction engineering costs in accordance with Federal-Aid Policy Guide 140(I) of the Federal Highway Administration or any subsequent amendments thereto, in such amounts and forms as are proper and eligible for payment from Federal-Aid highway funds. The COMPANY shall render its billings to the STATE in accordance with said rules and regulations, and further agrees to provide and furnish such itemized records of and substantiating data for such costs as may be necessary.

In the event that delays or difficulties arise in securing necessary approvals or in securing necessary rights of way or settling damages or damage claims which, in the opinion of the STATE, render it impracticable to utilize funds from the current appropriation for the construction of the PROJECT, the STATE may serve formal notice of cancellation upon the CITY and COMPANY and this agreement shall, with the exception of the obligations set forth in the following sentence, become null and void. The STATE shall reimburse the COMPANY for all costs and expenses incurred by it at the request of the STATE, on account of the PROJECT prior to such cancellation, and shall restore the COMPANY's property to the condition existing prior to the initiation of the PROJECT construction.

SECTION 9

The COMPANY may bill the STATE monthly or periodically for its force account when costs exceed \$1,000. Progressive invoices may be submitted for work done during the previous month or period showing the portion of estimated cost completed. A final bill covering actual cost of work and showing all details shall be submitted to the STATE within ninety (90) days after completion of said work. The STATE shall pay all bills that have been approved within sixty (60) days after receipt thereof. The STATE may hold a retainer on all bills not to exceed eight percent (8%) until final payment. Final payment for all amounts due the COMPANY shall be paid by the STATE within sixty (60) days after the final audit has been made and approved.

SECTION 10

The CITY shall acquire or settle all property, property rights and all damages to property affected by the PROJECT. The cost of said property, property rights and damages to property shall be included as a part of the PROJECT expense.

The COMPANY, insofar as it has the legal right so to do, shall permit the STATE, the CITY and/or its contractor to enter upon lands owned or operated by the COMPANY to construct and occupy said highway facilities across its property with sufficient width to permit construction and maintenance of the PROJECT. The CITY and COMPANY shall enter into good faith negotiations for a price at which such rights may be conveyed to the CITY be consistent with the property interest determined by the Director of Transportation to be needed for the proposed improvement.

However, the price to be paid by the CITY to the COMPANY for said conveyances (representing the fair market value thereof plus damages, if any, to the residue) shall be as mutually agreed upon within nine (9) months from the date of occupancy by the STATE, the CITY and/or its contractor, and if agreement as to price is reached, an additional period of ninety (90) days shall be allowed for settlement, it being agreed however, that if no agreement as to price is reached within the aforesaid nine (9) month period, the CITY will within ninety (90) days thereafter institute an eminent domain proceeding authorized by law for the determination of the value of same. The provisions of this agreement shall survive the institution of such eminent domain proceeding.

The CITY shall furnish the plans and descriptions for any such conveyance. It is understood however, that the foregoing right of entry is a permissive use only, and this Section is not intended to convey or obligate the COMPANY to convey any interest in its land.

In case any action involving said improvement is brought by or against any party hereto, said party shall promptly notify the other parties of the pendency of such action.

SECTION 11

Each party hereto waives, but only against the others, any and all damages or right to claim damages to any of its property growing out of or in any way connected with the improvement herein contemplated, except as otherwise provided for in this agreement.

The STATE shall require of its contractor a bond, conditioned according to Section 5525.16 of the Revised Code of Ohio, in favor of the STATE and the CITY, and shall further require its contractor to take out before work is commenced, and keep in effect until work is completed and accepted, a policy of Railroad Protective Liability Insurance from an insurance company authorized to do business in the State of Ohio, to protect the COMPANY against loss or damage to property and injury to or death of persons, and against all claims, demands, expenses, suits or judgments arising because of, or resulting from the operations of the contractor, his subcontractor, agents or employees; such policy of insurance shall provide for a single limit in the amount of \$5,000,000.00 per occurrence and subject to that limit, an aggregate in the amount of \$10,000,000.00 for each annual period for all damages arising out of bodily injuries to or death of one or more persons and out of injury to or destruction of property including such property in the care, custody and control of the COMPANY.

The above insurance provisions are more specifically set forth in the "Special Clauses in the Proposal" which are included in this agreement by reference.

SECTION 12

The work provided for in this agreement shall be commenced by the parties hereto within thirty (30) days from the latter of the following: (1) the date on which this agreement becomes effective, (2) the date on which the COMPANY has been notified by the STATE to proceed or (3) the date on which all funds necessary therefore on the part of the STATE have been properly certified and made available; and it shall be completed within a reasonable time thereafter. Buying and assembling of materials shall be construed as compliance with the foregoing thirty (30) day provision.

All obligations of the STATE provided for in this agreement which require the expenditure of funds by the STATE shall terminate at the end of the present biennium, being June 30, 2009. If construction covered under said agreement is not complete by June 30, 2009, it is the expressed intention of the parties to renew said obligations for one successive biennium period; with the renewal period beginning July 1, 2009 and ending no later than June 30, 2011; until such time as construction covered under said agreement is complete. Said renewal is conditioned upon the STATE determining future appropriations will permit the STATE to renew said obligations.

All financial obligations of the STATE as provided for in this agreement are subject to the provisions of Section 126.07 of the Ohio Revised Code.

SECTION 13

Upon completion of the PROJECT herein contemplated the CITY shall at its own cost and expense, maintain, repair and renew, or by agreement with others provide for the maintenance, repair and renewal of the bridge structure and surfaces, approach grades and all other highway facilities constructed or changed under the terms of this agreement. The COMPANY will permit access onto its property to perform said maintenance and shall at its own cost and expense, maintain, repair and renew all of its facilities constructed or changed under the terms of this agreement.

The COMPANY will not be vested with any rights of ownership of the bridge structure, and will not have a duty to maintain the bridge structure, and will not, if the structure ceases to be a part of the highway system, have a duty to remove the facility from the COMPANY right of way.

The COMPANY shall have the right to attach to the portion of said structure, where it crosses the property of the COMPANY, such signal, electric and communication wires as may be requisite or useful in the operation of the COMPANY; any such attachments which are not a part of the PROJECT shall be made and maintained by the COMPANY at its own expense. No such attachments shall be made without the approval by the STATE of the COMPANY's detailed plans.

SECTION 14

This agreement does not intend to cover all relations between the STATE and CITY as other agreements will cover such other understandings.

This agreement shall be for the benefit of the parties hereto only and no person, firm or corporation shall acquire any rights whatsoever by virtue of this agreement, except the STATE, CITY and COMPANY and the successors and assigns of the COMPANY.

SECTION 15

The Federal Highway Administration's Federal-Aid Policy Guide 646(B) classifies this PROJECT in Classification No. 2 resulting in no ascertainable benefits to the COMPANY. The Parties signatory to this agreement accepts this classification as applicable in this instance. The COMPANY's contribution shall be zero dollars.

SECTION 16

The COMPANY agrees to adhere to the requirements of Ohio Ethics law as provided by Section 102.04 of the Ohio Revised Code. O.R.C. Section 102.04(A) prohibits a state official or employee from receiving compensation, other than from his own agency, for personal services rendered in a case, proceeding application, or other matter before any state agency. O.R.C. Section 102.04(B) prohibits state officials and employees from selling goods or services to state agencies, except by competitive bidding.

It is understood by the parties that non-elected state officials and employees may qualify for an exemption under Section 102.04(D), if (1) the agency with which the official or employee seeks to do business is an agency other than the one with which he serves; and, (2) prior to rendering personal services or selling or agreeing to sell goods or services, the official or employee files an O.R.C. Section 102.04(D) statement with the Ohio Ethics Commission, the agency with which he serves, and the agency with which he seeks to do business. The statement must include a declaration that the non-elected state official or employee disqualifies himself for a period of two years from any participation in his official capacity as a board or commission member in any matter involving any official or employee of the agency with which he seeks to do business.

It is expressly understood and agreed to by the parties that a failure by the COMPANY to file a declaration statement as required under O.R.C. Section 102.04(D), may be considered by the STATE, a breach of material condition of this agreement and the STATE may, if it so elects, void this agreement.

SECTION 17

In carrying out this contract, the COMPANY shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, or Vietnam-era veteran status. The COMPANY will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, disability, age, or Vietnam-era veteran status.

Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.

SECTION 18

COMPANY agrees to comply with all applicable state and federal laws regarding drug-free workplace. COMPANY shall make a good faith effort to ensure that all COMPANY employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

IN WITNESS WHEREOF, the parties hereunto have caused this agreement to be duly executed in duplicate as of the day and year first above written.

THE STATE OF OHIO

By _____
James G. Beasley, P.E., P.S.
Director of Transportation

THE CITY OF KENT

By _____
Print Name _____
Title _____

By _____
Print Name _____
Title _____

By _____
Print Name _____
Title _____

CSX TRANSPORTATION, INC.

By _____
Print Name _____
Title _____

**PORTAGE COUNTY
POR-CRAIN AVENUE; PID 18466B
CSX TRANSPORTATION INC.;
Milepost BG-117.03
CSX OP# OH0439**

SPECIAL CLAUSES IN THE PROPOSAL

The bidder, if awarded the contract for this improvement agrees:

1. To cooperate at all times with the local officials of the railroad company.
2. To use all reasonable care and diligence in the work in order to avoid accidents, damage or unnecessary delay to, or interference with the trains and other property of the railroad company.
3. To conduct his work in a manner satisfactory to the Chief Engineer of the railroad company or his authorized representative, to perform his work in such manner and at such time as not to unnecessarily interfere with the movements of trains or railroad traffic, and to hold his work at all times open to inspection of railroad company inspectors.
4. To cooperate with a public utility, railroad or other organizations having occasion to do work on or in connection with the improvement.
5. To avoid unnecessary use of railroad property without written permission of the railroad company and to leave railroad roadbed and property in a condition acceptable to the Chief Engineer of the railroad company.
6. To execute a bond conditioned according to Section 5525.16 of the Revised Code of Ohio, in favor of the State of Ohio and the City of Kent, and further to carry insurance of the following kinds and amounts:

a) Railroad Protective Liability Insurance.

In addition to the above, he shall furnish evidence to the highway department that, with respect to the operations he or any of his sub-contractors perform, he has provided for and in behalf of CSX Transportation Inc. in the amount of \$5,000,000 per occurrence and subject to that limit per occurrence, an aggregate limit in the amount of \$10,000,000 for each annual period.

The above railroad protective policy of insurance shall conform to the Railroad Liability requirements prescribed by the Federal Highway Administration in Federal-Aid Policy Guide 23 CFR 646A as amended. The insurer must be rated B+ or better by A.M. Best Company, Inc.

The corporate name and address of the "Named Insured" as listed on the policy shall be as follows:

CSX Transportation, Inc.
500 Water Street, C-907
Jacksonville, FL 32202

The description of operations must appear on the Declarations, must match the project description in this agreement and must include the appropriate MP and/or OP number as identified at the top of pg. 1

The job location must appear on the Declarations page and must include the city, state and appropriate highway name/number.

The name and address of the prime contractor must appear on the Declarations.

The name and address of the Department must be identified on the Declarations as the "Involved Governmental Authority or Other Contracting Party."

Endorsements that **must** be included:

- Pollution Exclusion Amendment – CG 28 31 (not required with CG 00 35 01 96 and newer versions)
- Delete Common Policy Conditions – Section E. Premiums

Other endorsements/forms that will be accepted are:

- Broad Form Nuclear Exclusion – Form IL 00 21
- 30-day Advance Notice of Non-renewal or cancellation
- Required State Cancellation Endorsement
- Quick Reference or Index Form CL/IL 240

Endorsements/forms that are NOT acceptable are:

- Any Pollution Exclusion Endorsement except CG 28 31
- Any Punitive or Exemplary Damages Exclusion
- Any other endorsement/form not specifically authorized above.
- Any type of deductible policy

The number of trains operating through the improvement is estimated to be:

 0 Passenger trains per day @ miles per hour.

 Freight trains per day @ miles per hour.

Additional Terms

1. Contractor must submit its original insurance policies and two (2) copies and all notices and correspondence regarding the insurance policies to:

Donna Melton
CSX Corporation
500 Water Street – C907
Jacksonville, FL, 32202
Phone: 904-359-1247
FAX: 904-245-2833
Email: donna_melton@csx.com

- 2 Neither Agency nor Contractor may begin work on the Project until it has received CSXT's written approval of the required insurance policies.

Certificate must be provided which evidences the following coverages and lists the Certificate Holder as:

CSX Transportation, Inc.
500 Water Street, C-907
Jacksonville, FL 32202

Commercial General Liability: as required by the Department's Construction and Material Specification, Section 107.12, and lists CSX Transportation, Inc. as additional insured.

Automobile Liability: Limits of minimum of \$1,000,000 per occurrence, and lists CSX Transportation, Inc. as additional insured.

(b) General Insurance Requirements

The insurance hereinbefore specified shall be with an acceptable insurance company authorized to do business in the State of Ohio, and shall be taken out before execution of the Contract by the Director and kept in effect until all work required to be performed under the terms of the contract is satisfactorily completed as evidenced by the formal acceptance by the State. Such policies shall include thirty (30) days canceling notice. The cost of insurance hereinbefore specified in subsection (a) will be a specific bid item.

Notwithstanding the Department's Construction and Material Specification No. 107.12 "Evidence" as above set forth shall consist of furnishing the Director of Transportation three (3) certified copies of the railroad policy.

7. To indemnify, defend, and hold CSXT and its affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of CSXT, its affiliates, the State or the Contractor), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of CSXT, its affiliates, the State or the Contractor, and environmental damages and any related remediation brought or recovered against CSXT and its affiliates), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Contractor, the State, and their respective agents, employees, invitees, contractors, or its contractor's agents, employees or invitees in the performance of work in connection with the project or activities incidental thereto, or from their presence on or about CSXT's property. The foregoing indemnification obligation shall not be limited to the insurance coverage required in paragraph 6 above
8. The Railroad company will assign, at the sole cost and expense of the Department, railroad flaggers or other protective services and devices as necessary to insure the safety and continuity of the work to be performed as a part of this contract. Said services and devices will be provided when necessary, as determined by the railroad company, because of any of the Contractor's operations over, under or adjacent to tracks over which trains are operating. The provision of such protective personnel and devices does not relieve the Contractor from the liability of payment for damage caused by his operations.

Such protection will be required when men or equipment are working within clearances limits of 25 feet of a rail or when work being performed adjacent to operating tracks may present hazards to tracks, train operation, or when equipment does or may infringe upon such limits.

The Contractor will not be permitted to operate any of his own equipment on railroad tracks except under an acceptable arrangement with the railroad company. Such equipment and the operation of such equipment, or equipment rented from the railroad company, shall be arranged for by the Contractor with the railroad and the cost for its use, including protection or railroad traffic, shall be borne by the Contractor.

The Contractor shall notify the following named individual for each railroad company at least 30 days, or as directed by the authorized representative of the Railroad, in advance of starting any work which might require protection:

Mr. Dave Fette, Regional Director R/W Construction
CSX Transportation, Inc.
1717 Dixie Highway, Suite 400
Fort Wright, KY 41011 - 2785
Telephone: (859) 344- 8137

The Contractor shall notify the railroad at least 5 working days in advance of suspending or ceasing operations that require a flagger.

Railroad protective personnel assigned to the project will be responsible for notifying the Engineer upon arrival at the job site on the first working day that protective services begin and on the last day that he performs such services. This will be required for each separate period that such services are provided. The Engineer will document such notification in the project diary.

The Contractor will be responsible for protective services provided at his request and not utilized due, in the opinion of the Engineer, to a change in the Contractor's construction schedule or if it is determined by the Engineer that the requested services were not necessary. The actual costs for such protective services so assessed to the Contractor will be deducted from the Contract.

The decision of the Director of Transportation shall be final in the event of controversy as to the necessity for any protection services provided and not utilized by the Contractor as described in the preceding paragraph.

9. To pay the railroad or owning company for any changes, requested for his convenience, to railroad property, facilities, wire, fiber optic and/or pipe lines other than shown on the plans for the project.
10. If at any time the contractor desires a temporary crossing of the railroad's tracks, he shall make a request for a temporary crossing from the railroad. If approved, he shall arrange with the railroad company, execute its regular form of private grade crossing agreement covering the crossing desired, paying all construction, maintenance, removal, protection and other costs.

11. **Methods and procedures for performing work on property of CSX Transportation, Inc. must be approved by:**

David J. Fette, Regional Director Right of Way Construction
CSX Transportation, Inc.
1717 Dixie Highway, Suite 400
Fort Wright, KY 41011-2785
Phone: (859) 344-8137

End of Special Clauses

From: James Bowling
To: Richard.Behrendt@dot.state.oh.us
CC: Daniel.Depto@dot.state.oh.us; James.Kinnick@dot.state.oh.us; Jim SILVE...
Date: 7/29/2008 1:56 PM
Subject: Re: Fw: CSX Agreements for POR - Crain Ave., PID 18466

Rich,

The Law Director and I have reviewed the CSX agreements. I have listed my comments below:

Fairchild Avenue over CSX:

- Portage County is and will be the owner of the proposed structure. They are paying a portion of the local share and are reviewing and approving the plans. Therefore they should be a fourth party to the agreement. In my review of the agreement, references to the County being a party to the project should be added in Sections 8, 10, 13 and 14, signatory page and the Special Clauses in the Proposal.

- In Section 2 the structure span lengths are 135'-6", 59'-3" & 56'-0" per the stage 2 plans. Also 1'-6" deflector parapet is also included on the right side.

Bike Path & Utilities over CSX:

- Section 13 last sentence I believe STATE should be replaced with CITY.... "No such attachments shall be made without the approval by the STATECITY of the company's detailed plans."

The law directors's comments questions with my responses are shown below, please let me know if I misstated anything in the responses.

Thanks

Jim

>>> Jim SILVER 7/29/2008 10:01 AM >>>

Jim, I have given these agreements a review and have the following questions and comments:(Actually, my comments apply to all three agreements, and since all of the agreements follow the same format and paragraph numbering, I will just make one comment that applies to all three agreements)....

1. Section 1, third paragraph: How do we know when everyone has "signed off" on the plans? Should the language state was constitutes acceptance of the plans? - We will receive letters from the RR and ODOT stating that the project is approved. The RR's are currently reviewing the plans.

2. Section 7, third paragraph: Shouldn't we have language that says " the railroad shall permit temporary crossings", butthe state will require the company to arrange said crossings with the company? - Currently the plan is designed so the contractor will not have to cross CSX's tracks. ABC is different. I will forward your comment to ODOT on ABC.

3. Section 10, first paragraph: Is there a word left out after the first 8 words? That first phrase.." The city shall acquire or settle all property" makes no sense to me. It's the word settle that throws me off. - I interpret this to mean that we will provide access to all the properties. "Settle" could mean that we use our powers of immanent domain and quick take a property that is not acquired, but we have access.

4.Section 10, paragraph two: Doesn't it make sense to include the property interest description referred to in the final sentence of this paragraph? Or at least have a date set when this interest can be established? It would be nice to have the easement and work areas described now if that's possible'. - This is done so as not to hold up the construction of the project. We are currently getting the legal documents together, however it is a much longer process with the railroads.

5. Sections 13 and 15. Is it safe to assume that that the exchange for paragraph 15 was the statement in 13 that the railroads shall, "at their own cost and expense maintain, repair and renew all of its facilities constucted or changed under the terms of this agreement'????? Was this the solution for the new retaining wall??? - Yes, in part. The remainder of the items negotiated are shown in red.

That's about it. Jim S.

>>> <Richard.Behrendt@dot.state.oh.us> 7/28/2008 9:06 AM >>>

Jim,

I had sent the following email w/attachments initially to you on 6/24, with a response from you the following week indicating that you had just returned from vacation, and would get back to me the week after that - However, I have not received anything back from you since...

Can you advise on the status of your review of these Agreements?, and provide either your acceptance of the Agreements, or note any changes requested...

Dan/Mark: Can either one of you confirm that the milestones listed in ELLIS remain on track? specifically, Stage 3 plans complete by 10/2/09; Plan package to CO on 1/12/09 and Sale date of 5/20/09...

Thanks...

Rich Behrendt
Program Mgr./State Rail Coordinator
Ohio Department of Transportation
1980 West Broad St.
Columbus, Ohio 43223
Phone: 614-387-3097
FAX: 614-466-0158
email: richard.behrendt@dot.state.oh.us
----- Forwarded by Richard Behrendt/RealEstate/CEN/ODOT on 07/28/2008 08:53 AM -----

Richard Behrendt/RealEstate/CEN/ODOT
06/24/2008 09:52 AM

To

BowlingJ@kent-ohio.org

cc

Mark Thomas/Production/D04/ODOT@ODOT, James
Kinnick/Production/D04/ODOT@ODOT, Daniel Depto/Production/D04/ODOT@ODOT
Subject
CSX Agreements for POR - Crain Ave., PID 18466

Jim,

Attached are proposed Agreements for CSX for the Crain Ave. bridge. Agreements were initially forwarded to CSX in November, 2006, but with the lapse of time, and the passing of the last biennium in June of '07, plus revised Special Clauses developed since then, we thought it prudent to forward more up-to-date Agreements.

There are two Agreements being provided as requested by CSX: 18466A for the new Fairchild Avenue bridge, and 18466B for the new bike path/utility bridge (CSX felt that this would aid them in being able to track and equate costs more accurately to the appropriate structure).

Please review and let me know of any comments or concerns - I'd like to get these out to CSX by early next week if possible.

Note that CSX will not sign any agreement until after submission of Stage 3 / Final drawings, and shows that all technical concerns that are raised by Larry Shaw are addressed/shown on the drawings...

Thanks...

Rich Behrendt
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From: City of Tallmadge

Per our meeting of Tuesday, July 14, 2008, I am proceeding on writing a grant through the Local Government Services and Regional Grant Program for potential funding for the sharing of local government services. This grant would specifically provide funds to do a feasibility study that addresses whether and in what manner communities may combine and /or collaborate on their respective provision of local government services.

To qualify for the grant we need eight communities to commit to the project. Therefore, could you please provide a letter of commitment which simply states that your community is a participant in the Regional Cooperative Grant Program Feasibility Study Program with the City of Tallmadge.

As you know, the Regional Cooperative Study Group identified approximately 25 topics of possible regional cooperation. We have selected three topics from the larger lists that we might be able to reasonable study in a short time or at least fill out a reasonable application. The three topics are as follows:

Civil Service Testing – The primary discussion would center on the use of joint testing and yearly testing for a variety of common positions within the various communities. The discussion would also center around the legalities of such an effort and what might need to be changed in the Ohio Revised Code to allow such an effort. Time and monetary savings will also be examined.

Joint Sharing of Equipment – The primary discussion would involve an inventory of the communities various equipment as well as what type of equipment or services each community contracts for such as tub grinding or sewer camera services. The discussion would center on the sharing of equipment and operating personnel and how to coordinate that effort and the calculation of savings involved.

Regional Police Shooting Range – The City of Tallmadge is in the process of acquiring a site with an existing shooting range. The idea is to upgrade the facility and possible make it into a regional shooting range and training facility. The discussion in the application will center on the economies associated with a regional facility compared to local sites, the ability to train with multi-jurisdictions., etc.

While these topics are somewhat unrelated, we are trying to frame them as three of the most reasonable topics to examine with potential collaboration benefits. The application is due July 29, 2008 by 5:00pm. I will keep you posted as to the application. Please note that if we are successful in obtaining funding, the feasibility study will be completed with the assistance of Mr. John Hoornbeek, Director, Center for Public Administration and Public Policy at Kent State University.

The grant application requires eight communities to work together to obtain 100 percent funding up to \$80,000.00. Therefore, the City of Tallmadge has passed the necessary ordinance authorizing the Mayor to apply for funds on behalf of the City. In addition each participating community must provide a letter of support from either the Mayor or the President of the Trustees. I realize that is somewhat difficult to provide a letter when there is no defined application. However, the time constraints are such that is not possible to provide the written narrative prior to your letter of support.

Thank you for your cooperation.

Could you please provide a letter of commitment that your community is a participant in the Regional Collaborative Grant Program Feasibility Study with the City of Tallmadge.



CITY OF KENT, OHIO

OFFICE OF THE MAYOR

July 28, 2008

RE: Regional Cooperative Grant Program Feasibility Study Program

To Whom It May Concern:

Please accept this letter as confirmation of the City of Kent's commitment to explore ways to improve government collaboration by participating in the Regional Cooperative Grant Program Feasibility Study Program led by the City of Tallmadge.

Sincerely,

John H. Fender
John H. Fender
Mayor