

MINUTES, LIMESTONE COUNTY COMMISSION, OCTOBER 10, 2018

The Limestone County Commission reconvened the meeting from October 1, 2018 at 10:00 a.m. today at the Washington Street Courthouse Annex, 310 West Washington Street, Athens, AL.

Present: Stanley Hill, Steve Turner, Jason Black, and Ben Harrison. Absent: None. Mark Yarbrough, Chairman presided.

MOTION was made by Jason Black and seconded by Stanley Hill to suspend the Rules of Order to approve an Agreement.

The Chairman asked if there was any discussion. There was no discussion. The Commission Clerk called the roll. Jason Black, aye; Stanley Hill, aye; Steve Turner, aye; and Ben Harrison, aye. Motion carries unanimously.

MOTION was made by Jason Black and seconded by Stanley Hill to approve the following CSX Transportation, Inc. Temporary Right of Entry Agreement, pending County Attorney approval.

CSX TRANSPORTATION, INC. **TEMPORARY RIGHT OF ENTRY AGREEMENT**

THIS AGREEMENT, Made and effective as of October 4, 2018, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "CSXT," and LIMESTONE COUNTY COMMISSION, a municipal corporation, political subdivision or state agency, under the laws of the State of Alabama, whose mailing address is 310 W. Washington St., Athens, Alabama 35611, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee has submitted a written request/application to CSXT requesting permission to enter CSXT's property located at or near Athens, Limestone County, Alabama, Nashville Division, S & N A North Subdivision, Milepost 000-298.66, N344353 Latitude W865815 Longitude hereinafter called ("Property,") for the purpose of performing one bridge inspection, as shown on Exhibit "A", attached hereto and made a part hereof (the "Project"); and

WHEREAS, CSXT is willing to grant to Licensee the limited right and permission to enter upon the Property for the limited purpose of performing the Project.

NOW THEREFORE, CSXT hereby grants to Licensee the right and permission to enter upon the Property for the purpose of performing said Project, subject to the terms and conditions set forth below:

1. **PROJECT**: The Project shall be performed at the entire cost and expense of Licensee, in accordance with good and sound engineering practices, to the satisfaction of CSXT's Division Engineer or his or her duly authorized representative ("Division Engineer") and in a manner to avoid accidents, damages, unnecessary delays to or interference with train traffic of CSXT. Prior to entry, Licensee shall notify the Division Engineer's representative and arrange for flagging protection in accordance with Sections 5 and 7 of this Agreement. Licensee shall not dig in the ballast line or within the tracks loading influence area, or otherwise disturb the track structure. Licensee and Licensee's employees, agents, contractors and other representatives (collectively, "Agents") shall maintain in their possession a copy of this Agreement at all times during their occupation of the Property.

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2. INDEMNITY:

2.1 Licensee hereby assumes risk of and agrees to indemnify, defend, protect and save CSXT and CSXT's Affiliates harmless with respect to any and all attorneys' fees, liability, claims, demands, payments, suits, actions, recoveries, penalties, costs, legal expenses, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages) for:

2.1.1 personal injury, including, but not limited to bodily injury to or death of any person or persons whomsoever, including the agents, servants, Affiliates or employees of the parties;

2.1.2 the loss or damage to any property whatsoever, including property owned or in the care, custody or control of the parties hereto or their respective Affiliates;

2.1.3 any environmental damage and any related remediation brought or recovered against CSXT or any of its Affiliates; and

2.1.4 any and all other losses or damages; caused from the presence of Licensee or its Agents on or about the Property, except to the extent any such losses or damages are attributable to the gross negligence, or intentional misconduct of CSXT or its Affiliates.

2.2 The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this Section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law. In the event that such court of competent jurisdiction finds that Florida statutory construction contract indemnity monetary limits apply to this Agreement with respect to Licensee's indemnification of CSXT and its Affiliates for liability caused in whole or in part by any act, omission or default by CSXT or its Affiliates, the parties hereto agree that such limit shall be equal to the limits (exclusive of deductibles) of the applicable insurance required by Sections 3 and 4 of this Agreement. The parties acknowledge and agree that this monetary limit, if required, bears a commercially reasonable relationship to this Agreement, in so far as, among other factors, the parties have taken into account the availability and cost of insurance and other risk transference devices, the scope of the Project, the risks associated with the Project, and the compensation and any other benefits exchanged between the parties in connection with this Agreement.

2.2.1 Licensee shall comply with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its presence or performance of any activity on the Property and agrees to indemnify, defend, and hold CSXT and its Affiliates harmless with respect to any fines, penalties, liabilities, or other consequences for its failure to so comply.

2.2.2 For the purpose of this Agreement, the term "Affiliates" includes all entities, directly or indirectly owned or controlled by, or under common control of a party or its respective officers, directors, employees and agents, and in the case of CSXT, includes CSX Corporation, CSXT and their Affiliates and their respective officers, directors, employees and agents.

2.2.3 The provisions of this Section shall survive the termination or expiration of this Agreement.

3. GENERAL LIABILITY INSURANCE:

3.1 Licensee shall procure and maintain, at its expense: (i) statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which insurance must contain a waiver of subrogation against CSXT and its Affiliates, if permitted by state law; (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement; (iii) business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence; and (iv) such other insurance as CSXT may reasonably require. Upon request, Licensee shall provide CSXT with

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a copy of Licensee's applicable insurance policies. A policy endorsement naming CSXT, and/or its designee, as an additional insured and specifying such coverage shall be furnished to CSXT prior to the execution of this Agreement, and the required coverage will be kept in force until all of Licensee's obligations under this Agreement have been fully discharged and fulfilled, or until Licensee shall have been specifically released by a written instrument signed by an authorized officer of CSXT. Licensee shall also provide CSXT with a copy of the insurance policies. The insurance policies shall provide that the insurance carrier must give CSXT notice at least thirty (30) days in advance of cancellation of coverage, of any change in coverage, or of cancellation of the policy. Notwithstanding any provisions of this Section, the liability assumed by Licensee shall not be limited to the required insurance coverage.

4. RAILROAD PROTECTIVE LIABILITY INSURANCE:

In the event Licensee finds it necessary to perform surveying, 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 CSXT; and (b) procure and maintain during the period of construction or demolition operations, at no cost to CSXT, Railroad Protective Liability (RPL) Insurance, naming CSXT, 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 CSXT prior to commencement of such survey, construction or demolition. CSXT reserves the right to demand higher limits.

At CSXT's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Licensee may pay CSXT, at CSXT's current rate at time of request, the cost of adding any surveying, construction or demolition activities, to CSXT's blanket Railroad Protective Liability (RPL) Policy for the period of actual surveying, construction or demolition activities. This coverage is offered at CSXT's discretion and may not be available under all circumstances.

5. PRIOR NOTIFICATION: Licensee or Licensee's Agents shall notify CSXT at least 10 days prior to requiring entry on the Property and shall abide by the instructions of the Division Engineer, or his or her authorized representative. Licensee shall complete and submit CSXT's Outside Party Number Request Form (Form # OP) by facsimile, to facsimile numbers: (904) 245-3692. 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 CSXT's web site, via web link: http://www.csx.com/share/wwwcsx_mura/assets/File/Customers/Non-freight_Services/Property_Real_Estate/Outside_Party_Number_Request_Form.pdf

6. CLEARANCES: Neither Licensee nor Agents shall perform any Project or place or operate any equipment of Licensee or Agents at a distance closer than fifty (50) feet from the center of any track, without the prior approval of the Division Engineer. The Division Engineer may require protective services or such other services as deemed necessary or appropriate. Equipment shall be moved across CSXT's track(s) only at a public crossing unless prior arrangements have been made with the Division Engineer and a Private Crossing Agreement is fully executed and in place. Licensee and Agents shall take all precautions necessary to avoid interference with or damage to CSXT's property and signal and communication facilities during their performance of the Project.

7. PROTECTIVE SERVICES: If protective services, such as flagging protection, are required by CSXT, Licensee shall make arrangements with the Division Engineer to furnish such personnel, flagman or watchman, that in the Division Engineer's opinion may be necessary to protect the facilities and traffic of CSXT during the performance of the Project. Licensee shall give notice to Licensor by completing and

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submitting Licensor's Outside Party Number Request Form (Form # OP) by logging on to: <https://propertvoortal.csx.com/pub ps res/ps res/isf/public/index.faces> If you are new to the portal, please click the link to sign up.

8. PAYMENT FOR PROTECTIVE SERVICES: Payment shall be made by Licensee in accordance with the following designated option:

() **Option 1**: Licensee shall make an advance deposit of funds based on an estimate of the cost of protective or other services as determined by CSXT. The cost for CSXT's services shall then be assessed by CSXT against this advance deposit. Upon completion of the Project, any unused funding will be returned to Licensee. If CSXT's costs exceed the advance deposit(s), a request will be made to Licensee for additional funds or an invoice will be issued to Licensee for final payment. Licensee shall remit payment to CSXT within thirty (30) days of receipt of either a request for additional funds or an invoice.

(X) **Option 2**: Licensee shall promptly reimburse CSXT for the cost of protective or other services on an as-incurred basis, including all applicable surcharges, upon receipt of bill(s) therefore.

9. ENVIRONMENTAL: **This Agreement does not include and expressly excludes the performance of any site investigation activities designed to determine environmental conditions on, about or beneath the Property.** Precluded activities include performing soil borings for purposes other than geotechnical investigation, obtaining soil, sediment, groundwater and surface water samples, and conducting field or laboratory analyses of any soil, sediment, groundwater or surface water samples obtained from CSXT property to identify chemical composition or environmental condition. If any type of environmental investigation is desired, a separate right of entry agreement issued through CSXT's Environmental Department must be secured.

10. CLAIMS: Licensee shall, or shall require Agents, to promptly notify the Division Engineer of any loss, damage, injury or death arising out of or in connection with the Project.

11. REMEDIATION: It is understood and agreed that, upon completion of the Project, the Property shall be left in a condition satisfactory to Division Engineer or his or her duly authorized representative.

12. SAFETY:

12.1 All personnel entering the Property must comply with CSXT safety rules and requirements to include, without exception, the wearing of hard hats and approved safety shoes and safety glasses with side shields. Anyone not in compliance with these rules and regulations will be asked to leave the Property.

12.2 Before performing any work authorized by this Agreement, 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.

13. TERM: This Right-of-Entry Agreement and the permission conferred and the license granted by it does not constitute a grant of permanent easement and shall terminate upon completion of the Project or at midnight, April 4, 2019, whichever occurs first, unless extended in writing by CSXT. In the

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event Licensee fails to comply with terms and provisions of this Agreement, Licensee agrees to pay and agrees that CSXT shall be entitled to recover costs and expenses incurred by CSXT, including legal fees and expenses, to enforce the terms of this Agreement.

14. SEVERABILITY: The parties agree that if any part, term or provision of the Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable. If any provision or any part of a provision of the Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable law, ordinance, rule or regulation, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

15. ENTIRE AGREEMENT: This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter.

16. NOTICES: All notices, consents and approvals required or permitted by this agreement shall be in writing and shall be deemed delivered; upon personal delivery, upon the expiration of three (3) business days following mailing by U.S. first class mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the Licensee at the address above, and to Licensor at the address shown on Page 1, c/o CSXT Contract Administration, J180; or at such other addresses as either party may designate by delivery of prior notice to the other party .

17. TERMINATION: CSXT shall have the right at any time and at its sole discretion to terminate this Agreement upon notice to Licensee.

18. WAIVER: If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.

19. GOVERNING LAW: VENUE: This Agreement shall be governed by and construed under the laws of the State of Alabama, without regard to the choice of law provisions thereof. Venue for any action arising from, or brought to enforce, this Agreement, shall vest exclusively in the state or federal courts located in Alabama, and the parties agree to submit to the personal jurisdiction of any state or federal court located in Alabama.

20. NO ASSIGNMENT: Notwithstanding anything to the contrary contained in this Agreement, Licensee shall not permit Agents to enter the Property without first requiring Agents to agree in writing to comply with all of the terms of this Agreement. Notwithstanding the foregoing, Licensee shall continue to be responsible for insuring that Agents comply with all of the terms and conditions of this Agreement and shall indemnify and hold CSXT harmless for any damages described in Section 2 above caused in whole or in part by such subcontractor. Assignment of this Agreement to any party other than Agents in accordance with this Section shall not be permitted except upon the prior written consent of CSXT, which consent may be granted or withheld at CSXT's sole discretion. This Agreement shall be binding upon the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the effective date of this Agreement.

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Witness for CSXT:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: Senior Manager of
Environmental & Property Management

Witness for Licensee:

LIMESTONE COUNTY COMMISSION

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: Mark Yarbrough

Print/Type Title: Chairman

The Chairman asked if there was any discussion. County Engineer Marc Massey explained this agreement is requesting permission from CSX Transportation to enter CSXT's property located on Huntsville Brownsferry Road, for the purpose of performing bridge inspections over the train tracks. The Commission Clerk called the roll. Jason Black, aye; Stanley Hill, aye; Steve Turner, aye; and Ben Harrison, aye. Motion carries unanimously.

Tom Hill, Limestone County Economic Development President, asked the Commission to consider a 10-year tax abatement for North Alabama Laserfab Inc.

Items were discussed for the October 15, 2018 agenda.

Chairman Yarbrough announced a Public Hearing scheduled for October 15th in conjunction with the regular commission meeting to receive comments relative to the proposed action to renew the Mediacom cable franchise agreement. Mediacom representatives Lee Beck, Chris Lord and Dedrick Stephens were present to answer questions. Commissioners wanted to know what Mediacom would do to ensure more rural residents had access to internet and cable services.

Commissioner Stanley Hill said the bridge on Redus Hollow Road has reopened. He cautioned drivers to watch for crews working in his district.

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Commissioner Steve Turner said a joint project with the city of Athens to repave Mooresville Road at the turn lanes of Rolling Vista Drive and Grove Hill Lane is complete.

Commissioner Jason Black said his crews have been installing more driveway tile, which he said was indicative of growth in his district.

Commissioner Ben Harrison said crews are still working on Witty Mill Road. He also said he's been unable to complete a round of bush hogging, but added the roads are looking good because of the County's weed spraying program.

Adjourned at 10:25 a.m.