RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO A FACILITY ENCROACHMENT AGREEMENT WITH CSX TRANSPORTATION, INC., AGREEMENT NO. CSX732432 AT VALUATION STATION 6483+44, MILEPOST 0WA-122.80, RELATIVE TO THE EAST BRAINERD SEWER BASIN COLLECTION SYSTEM REHABILITATION PROJECT, CONTRACT NO. W-10-004-801, IN THE AMOUNT OF FOUR THOUSAND SEVEN HUNDRED FIFTY DOLLARS ($4,750.00).

_____

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the Administrator for the Department of Public Works to enter into a Facility Encroachment Agreement with CSX Transportation, Inc., Agreement No. CSX732432 at Valuation Station 6483+44, Milepost 0WA-122.80, relative to the East Brainerd Sewer Basin Collection System Rehabilitation Project, Contract No. W-10-004-801, in the amount of $4,750.00.

ADOPTED: _____, 2013.

/mms

City of Chattanooga

Resolution/Ordinance Request Form

Date Prepared: July 15, 2013

Preparer: Dennis Malone **Department: Public Works**

Brief Description of Purpose for Resolution/Ordinance: **Res./Ord. #** _____ **Council District #** **4 & 6**

A Council Action is requested for the Administrator of the Department of Puiblic Works to enter into a Facility Encroachment Agreement with CSX Transportation, Inc., Agreement No. CSX732432, at Valuation Station 6483+44, Milepost 0WA-122.80, relative to the East Brainerd Sewer Basin Collection System Rehabilitation Project, Contract No. W-10-004-801, in an amount of $4,750.00

Name of Vendor/Contractor/Grant, etc.	**CSX Transportation, Inc.**	New Contract/Project? (Yes or No)	Yes
Total project cost	$ 4,750.00	Funds Budgeted? (YES or NO)	Yes
Total City of Chattanooga Portion	$ 4,750.00	Provide Fund	**6011**
City Amount Funded	$ 4,750.00	Provide Cost Center	K37113
New City Funding Required	$ 0	Proposed Funding Source if not budgeted	
City's Match Percentage	%	Grant Period (if applicable)	

List all other funding sources and amount for each contributor.

Amount(s)	Grantor(s)
$	

Agency Grant Number

CFDA Number if known

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

Existing twenty-seven inch (27") casing sub-grade pipeline crossing for saniarty sewer to be lined with 15MM cast in place pipe (CIPP) for rehabilitation. Funded with ISS Funds

Approved by: _____

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09

FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, Made and effective as of July 11, 2013, by and between CSX TRANSPORTATION, INC., a Virginia corporation and Lessee of properties of WESTERN & ATLANTIC RAILROAD, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and CITY OF CHATTANOOGA, a municipal corporation, political subdivision or state agency, under the laws of the State of Tennessee, whose mailing address is 1250 Market Street, Suite 2100, Chattanooga, Tennessee 37402, 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) existing twenty-seven inch (27") casing sub-grade pipeline crossing, solely for the conveyance of raw/treated sewage to be lined by 15MM cast in place pipe for rehabilitation, located at or near Chattanooga, Hamilton County, Tennessee, Atlanta Division, W And A Subdivision, Valuation Station 6483+44, Milepost 0WA-122.80, Latitude N34:59:52.78, Longitude W85:10:20.19;

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 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

(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 must contain a waiver of subrogation against CSXT and its Affiliates;

(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), naming Licensor, and/or its designee, as additional insured and in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement. 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 RenewalCOI@csx.com.

(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;

(iv) Such other insurance as Licensor may reasonably require.

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. 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/share/wwwcsx_mura/assets/File/Customers/Non-freight_Services/Property_Real_Estate/Outside_Party_Number_Request_Form.pdf.

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: _____.

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.

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) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement.

18.9 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., as Lessee of Properties of WESTERN & ATLANTIC RAILROAD

_____ By:_____

Print/Type Name:_____

Print/Type Title:_____

Witness for Licensee:

CITY OF CHATTANOOGA

_____ 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 _____.

EXHIBIT A

FORM CSXT #A01 03/30/09

CSX

Print Form

Reset Form

Mail To: CSX Transportation, Inc.
ATTN: Corridor Occupancy Services
500 Water Street, J-180
Jacksonville, FL 32202
Submittal Must Include Drawing(s) and Review Fee(s)

APPLICATION FOR FACILITY/UTILITY INSTALLATIONS

Application Date: _____

CSXT File/Agreement Number: CSX732432

SECTION 1: FACILITY OWNER INFORMATION — TO BE COMPLETED BY APPLICANT

Owner/Legal Company Identification (required)

Owner's Complete Legal Company Name:	**City of Chattanooga**				
Legal Address (1):	**1250 Market Street, Suite 2100**				
Legal Address (2):					
City:	**Chattanooga**	State:	**TN**	Zip:	**37402**
Business Type:	☐ Corporation ☐ Limited Liability Company ☐ Limited Partnership ☑ Municipality ☐ Limited Liability Partnership ☐ General Partnership				
State of Incorporation:	**Tennessee**	Other Business Type - Describe:			

Billing Address

☑ *(Check box if same as above); if not, please complete below.*

Billing Address (1):					
Billing Address (2):					
City:		State:		Zip:	

Owner Contact Information

Contact Name:	**Ronald Simmons**	Contact Title:	Project Manager
Office Phone:	**423-643-5869** Ext.:	Mobile Phone:	423-421-4506
Email:	**simmons_ronald@chattanooga.gov**	Emergency Phone:	

SECTION 2: PROJECT CONTACT INFORMATION — TO BE COMPLETED BY APPLICANT

☑ ***Check here if address is the same as legal address above.***

☐ ***If not the same as above, check here if agreement should be mailed to this address.***

Project Engineer/Consultant/Agent Information

Engineer/Consultant/ Agent Company Name:	**Jacobs Engineering**				
Contact Name:	**Jason Cummings, P.E., C.P.E.S.C.**				
Mailing Address:	**9721 Cogdill Road, Suite 201**				
City:	**Knoxville**	State:	**TN**	Zip:	**37932**
Office Phone:	**865-966-1000**	Mobile Phone:	**865-740-6345**		
Email:	**jason.cummings@jacobs.com**				

CSX

Application for Facility/Utility Installation

SECTION 3: PROJECT INFORMATION/LOCATION — **TO BE COMPLETED BY APPLICANT**

Project Reference

Is this covered by an existing CSX permit/agreement or master agreement:

- ☐ Yes — Provide Agreement # and/or date:
- ☑ No

Is this project related to another transaction/project with CSX:

- ☑ Yes — Describe: **East Brainerd Rehab project has another crossing like this one. The other is 36-inch d**
- ☐ No

Provide utility owner project reference number:	

Project Scope

Check box to indicate type of installation request:

- ☐ New Installation Request
- ☑ Upgrade/Replacement/Relocation of Existing Facilities

Will proposed installation connect to an existing facility within railroad corridor:

- ☐ Yes — Provide name of connecting facility owner:
- ☑ No

Check all boxes that apply to indicate type of installation request:

- ☑ Sub-grade
- ☐ Aerial

If "Sub-grade," check all boxes that apply to indicate proposed method of installation:

- ☐ Jack & Bore
- ☐ Horizontal Directional Drill
- ☑ Other — Describe: **Cured in place pipe rehabilitation of 27-inch gravity sewer line**

Project Description

Description / Scope *(Include: purpose, scope of work, materials, equipment, geographic features, special conditions)*:

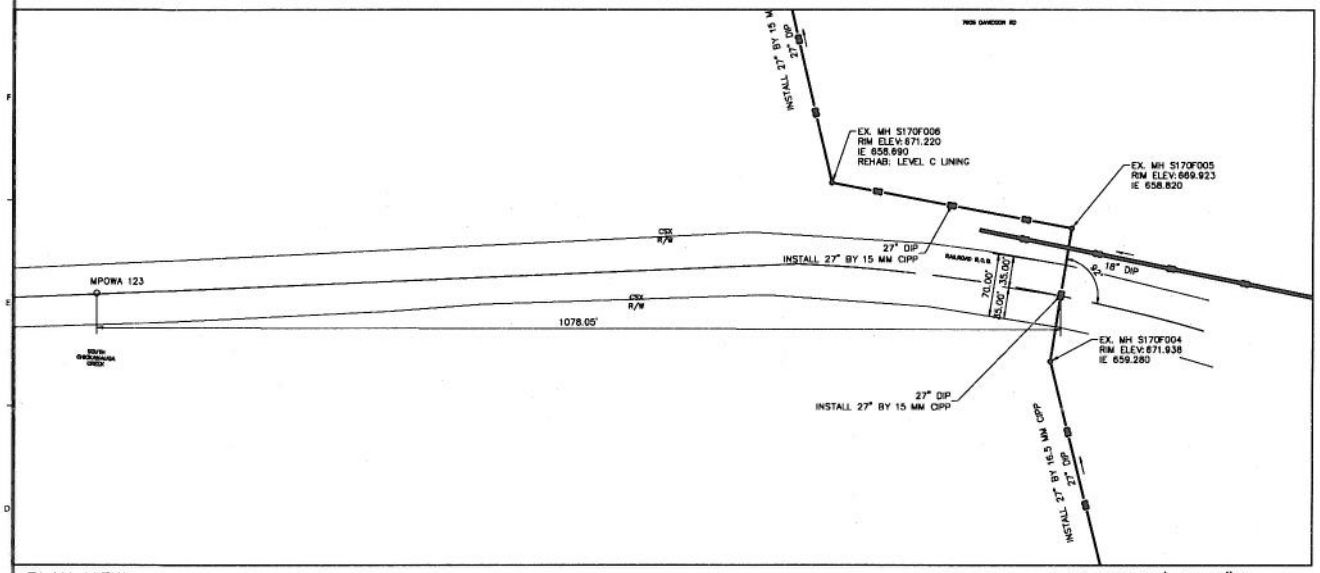
The existing 27-inch diameter gravity sewer located under the track is to be rehabilitated via cured in place pipe methods. This method is trenchless, but requires access to the manholes on either side on the CSX property.

Project Location

City:	**Chattanooga**	County:	**Hamilton**	State:	**Tennessee**

Will facility installation be located entirely within public road right-of-way:

- ☐ Yes — Provide AAR/DOT Crossing Inventory Number of Road (posted at crossing):
- ☑ No



PLAN VIEW
NTS

LAT: 85° 10' 20.11"N
LONG: 34° 59' 52.80" W

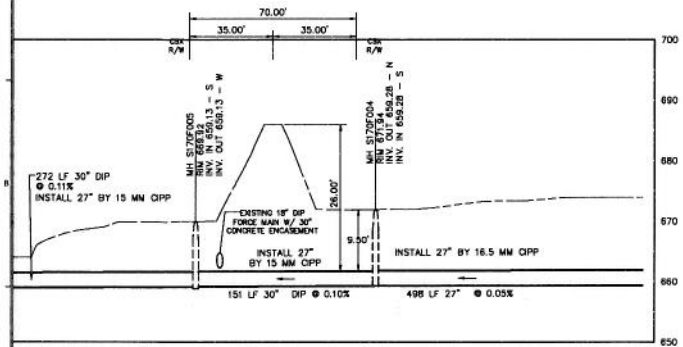
NOTES:

REFER TO ENGINEERING SPECIFICATION IN THE APPLICATION PACKAGE FOR ADDITIONAL INFORMATION AND GUIDANCE.

MANHOLES/HANDHOLES/POLES/PULL BOXES/OTHERS ARE NOT PERMITTED ON CSX R/W. CSXT Pipeline Spec. page 21, K); CSXT Wireline Spec. page 6, A); and CSXT Wireline Spec. page 7, A)ii)]

YOUR DRAWING MUST SHOW ALL SETS OF TRACKS PRESENT AT YOUR PROPOSED UTILITY CROSSING LOCATION.

LEGEND	
LETTER	DESCRIPTION
(a)	Distance from crossing to nearest actual mile post (feet from, MP 123). OR Distance from crossing to centerline of nearest public road intersection (include DOT crossing #)
(b)	Width of CSX R/W 70'
(c)	Distance of centerline of track to R/W
(d)	Total length of Pipe on CSX R/W [See CSXT Pipeline Spec. page 13, C),i), (f)] Approx. 70'
(e)	Distance to centerline of nearest track to face of pits or poles at a 90 Degree angle to track(s) N/A
(f)	Angle of crossing [See CSXT Pipeline spec. page 5, B),ii)] 92°
(g)	IF CONTENTS UNDER; PRESSURE: Distance of shut-off valves from centerline of nearest track(min. 2,000 from nearest track on each side of R/W) [See CSXT Pipeline Spec. page 20,i,(]) Not Applicable
(h)	Width of Launching and Receiving Pit Not Applicable
(i)	Length of Launching /Receiving Pit Not Applicable



PROFILE VIEW
NTS

NOTES;

REFER TO ENGINEERING SPECIFICATION IN THE APPLICATION PACKAGE FOR ADDITIONAL INFORMATION AND GUIDANCE

FOR JACK AND BORE INSTALLATIONS THE FOLLOWING NOTE IS REQUIRED ON THE DRAWING; "THE FRONT OF THE CASING PIPE SHALL BE PROVIDED WITH MECHANICAL ARRANGEMENTS OR DEVICES THAT WILL POSITIVELY PREVENT THE AUGER FROM LEADING THE PIPE SO THAT NO UNSUPPORTED EXCAVATION IS AHEAD OF THE PIPE." CSXT PIPELINE SPECS. PAGE 23, A),i)(C)

LOCATE CSX'S SIGNAL FACILITIES AND/OR WARNING DEVICES AT PROPOSED FACILITY CROSSING LOCATION, I.E. CANTILEVERS, FLASHERS, GATES AND SHOW CLEARANCES.

CASING PIPE ENDS MUST BE SEALED. CSXT PIPELINE SPECS. PAGE 19, E)

YOUR DRAWING MUST SHOW ALL SETS OF TRACKS PRESENT AT THE PROPOSED UTILITY CROSSING LOCATION.

LEGEND		CSXT Pipeline Spec. Reference
LETTER	DESCRIPTION	
(a)	Distance of centerline of track to R/W 35'	
(b)	Distance from base of rail to top-of-casing [See CSXT Pipeline Spec page 6, C)] 26'	
(c)	Distance from base of ditch to top of casing [See CSXT Pipeline Spec. page 6, C)] 9.5'	
(d)	Total length of pipe on CSX R/W [See CSXT Pipeline Spec. page 13, C), i), (f)] 70'	
(e)	distance to centerline of nearest track to face of pits at a 90 Degree angle to track(s) Not Applicable	
(f)	Distance from top of vent pipe to ground surface (4' minimum required) [See CSXT Pipeline Spec, page 20, F)] Not Applicable	
(g)	Distance from centerline of track to vent pipe at 90 degree angle to track(s) [See CSXT Pipeline Spec. page 20,F)] Not Applicable	
(h)	Theoretical Embankment Line Starts 10' from centerline of track and extends away from track at a slope of 1.5' over 1' down [See CSXT Pipeline Spec. page 13, C), i), (f)] Existing Conditions Remain	
(i)	Carrier pipe diameter 27"	
(j)	Casing pipe diameter Not Applicable	
(k)	Depth of Launching/Receiving Pit Not Applicable	

PIPELINE CONTENTS DETAILS			
	Commodity Size:	27" Gravity Sewer	
	Maximum Operating Pressure:	0 psi (Not Force Main)	
	Is Commodity Flammable:	No	
CARRIER/CASING PIPE DETAILS			
		Carrier Pipe	
Page 13,C),4i7,D)	Pipe Material:	Styrene (cast in place)	Not Applicable
Page 13,C),4i7,D)	Material Specifications & Grade:	Existing to Remain	Not Applicable
Page 13,C),4i7,D)	Specified Minimum Yield Strength:		
	Nominal Size Outside Diameter (inches):	27"	Not Applicable
Page 14,0,(,D)	Wall Thickness (inches):	15 mm	Not Applicable
Page 13,C),4i7,D)	Type of Seam:	None	Not Applicable
Page 13,C),4i7,D)	Type of Joints:	None	Not Applicable
Page 18,v)	Tunnel Liner Plates Required:	Yes X No	
	Cathodic Protection:	Yes X No	
	Protective Coating:	Yes X No	
	Temp. Track Support or Rip-Rap Req.:	Yes X No	Must describe and show on drawings:

JACOBS
4510 Turtlecreek Road
Suite 110
Chattanooga, TN 37421 • 423.899.2013

EAST BRAINERD SANITARY SEWER REHABILITATION

CITY OF CHATTANOOGA, TENNESSEE

REV	DATE	REVISION DESCRIPTION
1	4/18/2013	INITIAL ISSUANCE

THIS LINE IS ONE INCH LONG WHEN PLOTTED FULL SCALE

THIS DRAWING MUST BE USED IN CONJUNCTION WITH THE APPLICABLE OR GOVERNING TECHNICAL SPECIFICATIONS AND OTHER CONTRACT DOCUMENTS.

PROJECT NO: C6061100
DATE: 4-18-2013
DESC. LEAD: JCC | DESIGNER: REE | CHECKER:
SHEET TITLE: CIVIL
CSX RAILROAD CROSSING
CSX732432
SHEET: CSX DETAIL CSX732432

PLOT DATE: 4/26/2013
BY: EVERENRE
LAST SAVED: 4/26/2013
CREATED: 4/18/2013

CSX

Statement of Fees

Page	1 of 1
Account/Contract	CSX732432
Customer Project No.	
Date	7/11/2013

Customer

CITY OF CHATTANOOGA
1250 MARKET STREET, SUITE 2100
CHATTANOOGA, TN 37402

Fees - At - A - Glance

Amount Due	**$**	**4750.00**

Fees Summary

One-Time License Fee	$	4000.00
Railroad Protective Liability (Article 10.5)	$	750.00

Total Current Fees	**$**	**4750.00**

News You Can Use

CSX Federal ID No. 54-6000720
CSX Canadian ID No. 105203095 RC 0001
CSX Quebec ID No. 1022434469 IC 0001

Please remit payment to:

CSX Transportation, Inc.
6737 Southpoint Dr. S., J180
Jacksonville, FL 32216
Attention: Melanie Perea

Questions? Contact:

melanie_perea@csx.com
904.279.3946