



Engineering Services Committee Meeting Committee Room- 5/26/2009- 12:40 PM

ENGINEERING SERVICES

1. Motion to approve CSX-613700 Facility Encroachment Agreement. ☐ [Attachments](#)
2. Approve funding in the amount not to exceed \$100,000 to Duke's Root Control, the lowest responsive bidder, for the purpose of chemically treating the sewer lines against root intrusion. ☐ [Attachments](#)
3. Motion to approve an Option for the purposes of acquiring a Right-of-Way between George Victor Raley, Michael Dean Raley and Sally Harper Raley, as owners, and Augusta, Georgia, as optionee, in connection with the Marvin Griffin Road Project, (1,846 sq. ft.) in fee, from property located at: 1621 Marvin Griffin Road, private, at the purchase price of \$1,400.00. Also granted is one temporary construction easement. ☐ [Attachments](#)

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**Engineering Services Committee Meeting
5/26/2009 12:40 PM
CSX-613700 Facility Encroachment Agreement**

Department: Augusta Utilities Department

Caption: Motion to approve CSX-613700 Facility Encroachment Agreement.

Background: The Augusta Utilities Department will be constructing a 24 inch water main, along Gordon Highway, and will need to cross a section of railroad tracks owned by CSX.

Analysis: Discussions with CSX, and their engineers, have taken place. CSX has agreed to the crossing and provided their licensing document.

Financial Impact: \$6,400.00 (Includes \$2250 R/R Protective Liability Ins., \$4000 License Fee, and \$150 Project Scheduling Fee)

Alternatives: Not approve CSX-613700 Facility Encroachment Agreement and redesign project.

Recommendation: Approve CSX-613700 Facility Encroachment Agreement.

Funds are Available in the Following Accounts: G/L:511043410-5411120 J/L: 80310153-5411120

REVIEWED AND APPROVED BY:

**Finance.
Procurement.
Law.
Administrator.
Clerk of Commission**

PS - FORM 1001-G
REVISED APRIL 29, 2008
AGREEMENT NO. CSX613700

FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, Made and effective as of April 18, 2009, by and between CSX TRANSPORTATION, INC, a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and AUGUSTA COMMISSION, a municipal corporation, political subdivision or state agency, under the laws of the State of Georgia, whose mailing address is 360 Bay Street, Suite 180, Augusta, Georgia 30901, 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) eighteen inch (18") diameter sub-grade pipeline crossing, solely for the conveyance of potable water, located at or near Augusta, Richmond County, Georgia, Milepost YYG-9.38;

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).

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1.3 No additional structures or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Encroachment except upon prior separate written consent of Licensor.

2. ENCROACHMENT FEE; TERM:

2.1 Licensee shall pay Licensor a one-time nonrefundable Encroachment Fee of FOUR THOUSAND Dollars AND 00/100 U.S. DOLLARS (\$4,000.00) upon execution of this Agreement. Licensee agrees that the Encroachment Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Facilities or Encroachment.

2.3 This Agreement shall terminate as herein provided, but shall also terminate upon: (a) Licensee's cessation of use of the Facilities or Encroachment for the purpose(s) above; (b) removal of the Facilities; (c) subsequent mutual consent; and/or (d) failure of Licensee to complete installation within five (5) years from the effective date of this Agreement.

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part.

3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities, in a prudent, workmanlike manner, using quality materials and complying with any applicable standard(s) or regulation(s) of Licensor (A.R.E.M.A. Specifications), or Licensee's particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Encroachment.

3.2 Location and construction of Facilities shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.

3.3 All of Licensee's work, and exercise of rights hereunder, shall be undertaken at time(s) satisfactory to Licensor, and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto.

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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.

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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.

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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

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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.

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10. INSURANCE:

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

10.2 If Licensee's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Licensor, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensor's request shall be considered a default by Licensee.

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

10.5 (A) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensor; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor, Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition. Licensor reserves the right to demand higher limits.

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

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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.

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13. DEFAULT, BREACH, WAIVER:

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Article 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.

13.3 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

14. TERMINATION, REMOVAL:

14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the Facility from the Encroachment. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove the Facilities from the rail corridor of Licensor, unless the parties hereto agree otherwise, (b) restore the rail corridor of Licensor in a manner satisfactory to Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

15. NOTICE:

15.1 Licensee shall give Licensor at least thirty (30) days written notice before doing any work on Licensor's rail corridor, except that in cases of emergency shorter notice may be given. Licensee shall provide proper notification as follows:

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

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

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.

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17. TITLE:

17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Encroachment or segment of Rail Corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Rail Corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to others therein.

17.2 The term "license," as used herein, shall mean with regard to any portion of the Rail Corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Rail Corridor and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Rail Corridor that would impair Licensor's existing rights therein.

17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the Rail Corridor in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

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

17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.

17.6 Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Facilities.

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17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including without limitation, tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Facilities in or on any portion of the Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof or any other Licensor property.

17.8 In the event that any property of Licensor becomes subject to such Liens or Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

18. GENERAL PROVISIONS:

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

18.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

18.5 This Agreement shall be construed and governed by the laws of the state in which the Facilities and Encroachment are located.

18.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

18.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.

PS - FORM 1001-G
REVISED APRIL 29, 2008
AGREEMENT NO. CSX613700

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 Licensors 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 Licensors 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).

19. RESERVED:

20. RESERVED:

21. RIDERS:

21.1 The following Rider(s) is/are herewith attached and included herein:

☒ Telecommunication Cable or Fiber Optic Line

PS - FORM 1001-G
REVISED APRIL 29, 2008
AGREEMENT NO. CSX613700

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

Witness for Licensor:

CSX TRANSPORTATION, INC

By: _____

Print/Type Name: _____

Print/Type Title: _____

Witness for Licensee:

AUGUSTA 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: _____

Print/Type Title: _____

Tax ID No.: _____

Authority under Ordinance or

Resolution No. _____,

Dated _____.

PS - FORM 1001-G
REVISED APRIL 29, 2008
AGREEMENT NO. CSX613700

COMMUNICATIONS CABLE OR FIBER OPTIC LINE PROTECTION RIDER

This Rider is and shall be a part of Agreement No. CSX613700, and is incorporated therein.

1. No construction of any type pursuant or related in any way to this Agreement shall be commenced by Licensee, or by any agent, representative, contractor, subcontractor of Licensee, without Licensee first giving at least thirty (30) days written notice to the following Parallel Cable Occupier(s):

("MCI") ATTN: Investigations
Mr. Dean Boyers
Worldcom/MCI Telecommunications Corporation
2400 North Glenville Drive
Richardson, TX 75082-4354
Phone No. (800) 624-9675
or (972) 729-6016

(NOTE: WRITTEN NOTICE TO MCI IS ALSO REQUIRED)

2. The notice shall be accompanied by drawing(s) showing the general plan, elevation, details and methods of Licensee's proposed construction, and the location of Occupier(s)' cable or facilities in relation to Licensee's proposed construction.

3. Prior to any construction, Licensee must locate and identify, any existing cable, wire or fiber optic line (including any appurtenances thereto) of said cable occupier(s) traversing or located in, on, or immediately adjacent to the proposed Crossing, at Licensee's sole risk.

4. Any changes, alteration, relocation or protection of wire(s), cable(s) or facilities of such Occupier(s), required by said Occupier(s), shall be at Licensee's sole expense except as otherwise negotiated between Licensee and said Occupier(s).

5. Licensee shall be solely responsible and liable for any damage to (e.g., cutting, dislocating, etc.) said wire(s) or cable(s), and appurtenances thereto, resulting in any way from Licensee's exercise of rights or privileges under this Agreement.

6. Licensee shall defend, indemnify and hold Licensor harmless from any such damage claims and any relocation or protection costs of said Occupier(s).

PLAN
FOR
AUGUSTA-RICHMOND COUNTY

PROPERTY LOCATED IN THE 125th G.M.D.
AUGUSTA - RICHMOND COUNTY, GEORGIA
SCALE: 1" = 50'
OCTOBER 15, 2008
RECEIVED TELEPHONICALLY AT 11:00AM

PREPARED BY:
JAMES G. SWIFT & ASSOCIATES
CONSULTING ENGINEERS
1206 INTERSTATE PARKWAY - AUGUSTA, GA. - 30909
Phone: (706) 866-8803

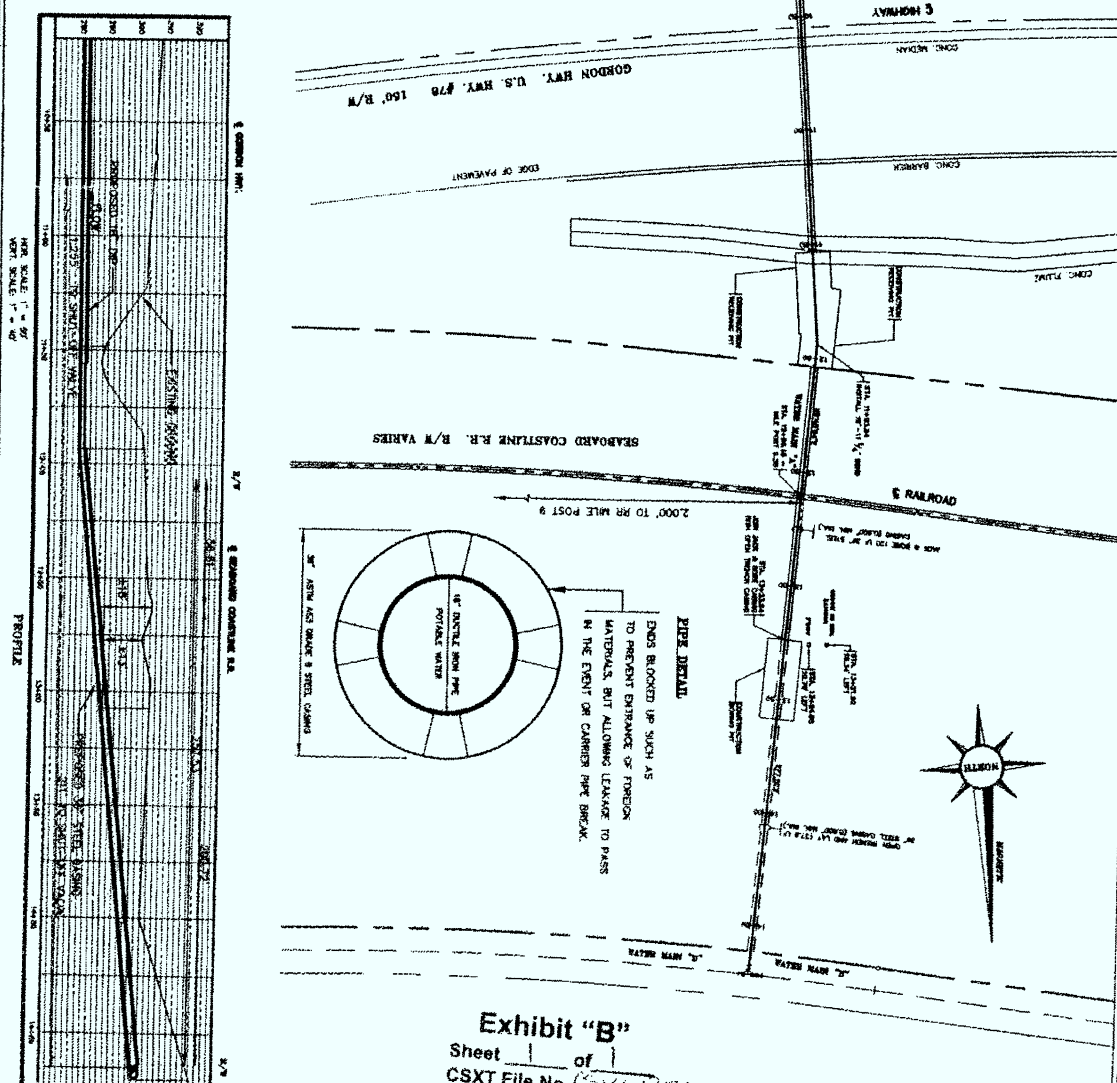
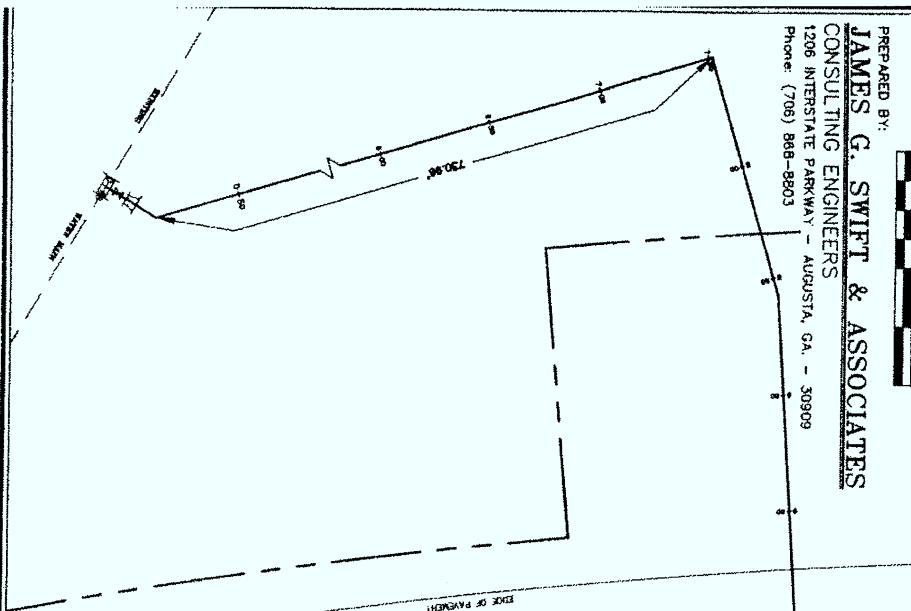
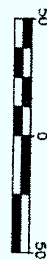


Exhibit "B"
Sheet 1 of 1
CSXT File No. CSX6137001



**Engineering Services Committee Meeting
5/26/2009 12:40 PM
Duke's Root Control**

Department: Utilities

Caption: Approve funding in the amount not to exceed \$100,000 to Duke's Root Control, the lowest responsive bidder, for the purpose of chemically treating the sewer lines against root intrusion.

Background: Much of the city's sewer infrastructure is made of clay pipe, which is subject to root intrusion at the location of the joints. The roots enter the pipe and cause the sewer to back up and not work properly. In most cases these lines are located in areas where it is not practical to replace them and therefore it is necessary to chemically treat them on a regular basis through a preventative maintenance program. The current preventative maintenance method involves chemically treating the sewer line which protects it against root intrusion for a period of approximately two years.

Analysis: The quantities in the bid were much higher than it is anticipated is needed for the remainder of the year considering the late date. Although the bid was for \$155,200, it is anticipated that \$100,000 will be more than sufficient to complete the maintenance needs for the remainder of the year.

Financial Impact: Funds are available in the utilities operating budget.

Alternatives: None Recommended.

Recommendation: Approve funding in the amount not to exceed \$100,000 to Duke's Root Control, the lowest responsive bidder, for the purpose of chemically treating the sewer lines against root intrusion.

Funds are Available in the Following Accounts: 506043410-5223222

REVIEWED AND APPROVED BY:

**Finance.
Procurement.
Law.
Administrator.
Clerk of Commission**

Cover Memo

Item # 2

Invitation to Re-Bid

Sealed re-bids will be received at this office until Thursday, March 19, 2009 @ 11:00 a.m. for furnishing:

Re-Bid Item 09-041A Sewer Line Chemical Root Control for Utilities Department

Re-Bids will be received by Augusta, GA Commission hereinafter referred to as the OWNER at the offices of:

Geri A. Sams
Procurement Department
530 Greene Street - Room 605
Augusta, Georgia 30901
706-821-2422

Re-BID documents may be obtained at the office of Augusta, GA Procurement Department, 530 Greene Street – Room 605, Augusta, GA 30901. Documents may be examined during regular business hours at the offices of Augusta, GA Procurement Department. No bid will be accepted by fax, all must be received by mail or hand delivered.

The local bidder preference program is applicable to this project. To be approved as a local bidder and receive bid preference on an eligible local project, this certificate and a copy of your local business license must be submitted with your bonafide bid package.

No Re-Bid may be withdrawn for a period of **90** days after time has been called on the date of opening. **A 10% Bid bond is required to be submitted in a separate envelope so marked along with the bidders' qualifications; a 100% performance bond and a 100% payment bond will be required for award.**

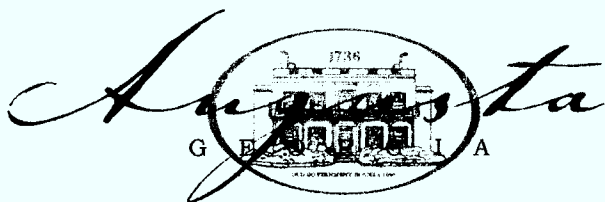
Bidders will please note that the number of copies requested; all supporting documents including financial statements and references and such other attachments that may be required by the bid invitation are material conditions of the bid. Any package found incomplete or submitted late shall be rejected by the Procurement Office. Any bidder allegedly contending that he/she has been improperly disqualified from bidding due to an incomplete bid submission shall have the right to appeal to the appropriate committee of the Augusta commission. Please mark BID number on the outside of the envelope.

Bidders are cautioned that sequestration of BID documents through any source other than the office of the Procurement Department is not advisable. Acquisition of BID documents from unauthorized sources placed the bidder at the risk of receiving incomplete or inaccurate information upon which to base his qualifications.

GERI A. SAMS, Procurement Director

cc:	Tameka Allen	Interim Deputy Administrator
	Drew Goins	Utilities
	Ellie Hazel	Utilities

Bid Item #09-041A Sewer Line Root Canal For the City of Augusta - Utilities Department Bid Opening: Thursday, March 19, 2009 @ 11:00 a.m.							
Vendors	ABC Plumbing & Septic Old Oak Plantation 102 N. Knotty Court Forsyth, GA 31029	Municipal Sales 68 Park Road Queensbury, NY 12804	Douglas Products Sanitary Sewer Div 1550 E. Old 210 Hwy Liberty, MO 64068	Duke's Root Control 1020 Hiawatha Blvd W Syracuse, NY 13204	Jet-Vac Sewer Equip 5746 Broad Street Sumter, SC 29154	M&T Sewer Root Control 2525 Liberty Landing Road Liberty, MO 64068	
Bid Amount				\$155,200.00			
Bid Bond				Yes			
Conflict of Interest Form				Yes			
Contractor Affidavit and Agreement				Yes			
Subcontractor Affidavit				Yes			
Statement of Non Discrimination				Yes			
LSB Good Faith Efforts				Yes			
LSB Subcontractor/ Supplier Utilization Plan				Yes			
Non-Collusion Affidavit of Bidder/Offoror				Yes			
Non-Collusion Affidavit of Subcontractor				Yes			



UTILITIES DEPARTMENT

MEMORANDUM

TO: *sjl* Drew Goins, Interim Director – Augusta Utilities Department *CSG*
Steve Little, CPA, Assistant Director – Finance and Administration, AUD

FROM: Ellie Hazel, Administrative Services Manager, AUD *YMH*
Rusty Doggette, Sewer Services Manager, AUD

SUBJECT: Sewer Line Root Control Bid (Bid Item #09-041A)
BID RECOMMENDATION (2009)

DATE: March 25, 2009

Attached is the Bid Tabulation for the Sewer Line Root Control bid, Bid Item #09-041A. It is our recommendation that the bid be awarded to Duke's Root Control. Duke's Root Control was the only bidder who met the compliance qualifications and the Utilities Department's Specifications.

This bid submittal has received only two bids. Duke's Root Control and Municipal Sales were the only two bid companies who submitted a bid for the product we requested. Municipal Sales did not complete their required paperwork and therefore their bid was deemed non-compliant by the Procurement Department.

Thank you!

Augusta Utilities Administration
360 Bay Street – Suite 180 - Augusta, GA 30901
(706) 312-4154 – Fax (706) 312-4123
WWW.AUGUSTAGA.GOV

**Bid Item #09-041A
Sewer Line Root Canal
For the City of Augusta - Utilities Department
Bid Opening: Thursday, March 19, 2009 @ 11:00 a.m.**

Vendors	ABC Plumbing & Septic Old Oak Plantation 102 N. Knotty Court Forsyth, GA 31029	Municipal Sales 68 Park Road Queensbury, NY 12804	Douglas Products Sanitary Sewer Div 1550 E. Old 210 Hwy Liberty, MO 64068	Duke's Root Control 1020 Hiawatha Blvd W Syracuse, NY 13204	Jet-Vac Sewer Equip 5746 Broad Street Sumter, SC 29154	M&T Sewer Root Control 2525 Liberty Landing Road Liberty, MO 64068
Bid Amount		Non-Compliant Failed to Properly Execute the Subcontractor Affidavit, Non- Collusion Affidavit of Bidder/Offeror and the Non- Collusion Affidavit of Subcontractor Forms				
Bid Bond						
Conflict of Interest Form						
Contractor Affidavit and Agreement						
Subcontractor Affidavit						
Statement of Non Discrimination				Yes		
LSB Good Faith Efforts				Yes		
LSB Subcontractor/ Supplier Utilization Plan				Yes		
Non-Collusion Affidavit of Bidder/Offeror				Yes		
Non-Collusion Affidavit of Subcontractor				Yes		

Duke's Root Control
1020 Hiawatha Blvd. West
Syracuse, NY 13204-1131
Attn: Bill Anderson

The Nelson Agency
511 Creekside Court
Oswego, IL 60543

ROOT-X
P.O. Box 7626
Salem, OR 97303
Attn: Janty Yaqoub

M & T Sewer Root Control
2525 Liberty Landing Rd.
Liberty, MO 64068-9497

Jet-Vac Sewer Equip.
5746 Broad Street
Sumter, SC 29154
Attn: Grace

Douglas Products
Sanitary Sewer Division
1550 E. Old 210 Highway
Liberty, MO 64068

C M Rogers & Sons Inc
1978 Phillips Road
Lithonia, GA 30058
Attn: April Rogers

ABC Plumbing & Septic
Old Oak Plantation
102 N. Knotty Court
Forsyth, GA 31029
Attn: Troy Wilson

Municipal Sales
68 Park Road
Queensbury, NY 12804
Attn: Mark Reynolds

Drew Goins
Augusta Utilities Department

Ellie Hazel
Augusta Utilities Department

Yvonne Gentry
Augusta DBE Office

Bid Item #09-041A
Sewer Line Chemical Root Control
For Augusta Utilities Department
Re-Bid Due Thur 3/19/09 @ 11:00AM
Item # 2

Bid Item # 09-041A Cost \$ _____

#	Company Name	Complete Mailing Address	Date	Spec #	Initials	Mailed by
1	Utility Services Authority, LLC Attn: Chris Lamb 532 NW Mercantile Place, Ste 113 Port St. Lucie, FL 34986	772-344-9339	3/10/09		SP	U.S.
2		772-344-9340 Fax				
3						
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User: Mills, Phyllis Organization: City of Augusta, GA (Augusta Commission)

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Planholders List

Member Name City of Augusta, GA (Augusta Commission)**Bid Number** ITB-09-041A-0-2009/PJM**Bid Name** Sewer Line Chemical Root Control**1 Document(s) found for this bid**

4 Planholder(s) found.

Add Planholder

Supplier Name 	Phone	Fax	Doc Count	Attributes	Programs	Actions
Construction Journal, Ltd.	8007855165	8005817204	1			Documents
Interline Brands dba Sexauer	9545584743	9545584743	1			Documents
Shrieve Chemical Group	2813674226	2812922014	1			Documents
USA Blue Book	8005481234	8476893030	1			Documents

Page 1 of 1

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**Engineering Services Committee Meeting
5/26/2009 12:40 PM
OPTION FOR RIGHT-OF-WAY AND EASEMENT**

Department: LAW

Caption: Motion to approve an Option for the purposes of acquiring a Right-of-Way between George Victor Raley, Michael Dean Raley and Sally Harper Raley, as owners, and Augusta, Georgia, as optionee, in connection with the Marvin Griffin Road Project, (1,846 sq. ft.) in fee, from property located at: 1621 Marvin Griffin Road, private, at the purchase price of \$1,400.00. Also granted is one temporary construction easement.

Background: The property owners have agreed to convey a certain right-of-way and easement to Augusta, Georgia, for the Marvin Griffin Road Improvement Project.

Analysis: The purchase of the referenced property is necessary for the project.

Financial Impact: The costs necessary for this purchase will be covered under the project budget.

Alternatives: Deny the Motion

Recommendation: Approve the Motion

Funds are Available in the Following Accounts: 323041110-5411120 296823603-5411120

REVIEWED AND APPROVED BY:

Clerk of Commission

AUGUSTA, GEORGIA
OPTION FOR RIGHT-OF-WAY

GEORGIA, RICHMOND COUNTY

Received of Augusta, Georgia, the sum of one (\$1.00) dollar, the receipt whereof is hereby acknowledged, and in consideration of the benefits derived by me from the proposed project mentioned herein, I bind myself, my heirs, executors and assigns as follows:

If the said Augusta, Georgia, shall within 60 days after date hereof, pay me the sum of \$ 1,400.00, then the undersigned agrees to execute and deliver to Augusta, Georgia, fee simple title and easements to the land owned by the undersigned, which is shown reflected in color on the right-of-way map attached hereto and made a part hereof by reference, to be used for highway purposes on the MARVIN GRIFFIN ROAD IMPROVEMENT PROJECT, being Project Parcel 13, (Tax Map 134, Parcel(s) 001-02), consisting of 1,846 sq. ft. in fee, more or less, and N/A sq. ft. of permanent construction and maintenance easement, more or less, and 1,049 sq. ft. of temporary construction easement, more or less, on project MARVIN GRIFFIN ROAD IMPROVEMENT.

*****SPECIAL PROVISION*****

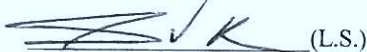
The said parcel of land as above indicated is shown upon plans on file in the office of Augusta Engineering, Augusta, Georgia, said plans being identified as the MARVIN GRIFFIN ROAD IMPROVEMENT PROJECT.

Witness my hand and seal this 14 day of May, 2009.

Signed, Sealed and Delivered
in the presence of:

Unofficial Witness

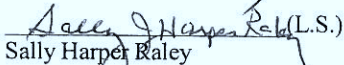
NOTARY PUBLIC

 (L.S.)

George Victor Raley

 (L.S.)

Michael Dean Raley

 (L.S.)

Sally Harper Raley

Accepted by:
AUGUSTA, GEORGIA

Administrator

DATE _____

Project Parcel 13
(Tax Map 134, Parcel No. 001-02.)

INITIALS _____

My Commission Expires
June 28 2011

