

COMMITTEE OF THE WHOLE SESSION

July 31, 2008

1/ The Board of Commissioners of the County of Allegan, State of Michigan met in the Board Room of the County Services Building in the Township of Allegan on July 31, 2008, at 9:30 a.m., as set; Chairman McNeal presiding.

The invocation was offered by District #3 Commissioner VanEck.

The Clerk led the board in the pledge of allegiance to the flag.

The following Commissioners were present:

DIST # 1	TERRY BURNS	DIST # 7	- EXCUSED -
DIST # 2	STEVE McNEAL	DIST # 8	TOM JESSUP
DIST # 3	PAUL VanECK	DIST # 9	FRITZ SPREITZER
DIST # 4	MARK DeYOUNG	DIST #10	JON CAMPBELL
DIST # 5	DEAN KAPENGA	DIST #11	- EXCUSED -
DIST # 6	MAX THIELE		

Public Participation – No Comments

2/ Chairman McNeal opened the meeting to public participation. As there were no comments from the public, he declared the meeting closed to public participation.

Minutes of July 17, 2008 Session – Adopt as Distributed

3/ Moved by Commissioner Campbell, seconded by Commissioner Kapenga to adopt the minutes of the July 17, 2008 session as distributed. Motion carried.

Agenda – Adopted

4/ Chairman McNeal called for any additions or amendments to the meeting agenda. There were none.

Moved by Commissioner VanEck, seconded by Commissioner DeYoung to approve the agenda as presented. Motion carried.

Emergency Management- FEMA Public Assistance Grant

5/ Administrator, Rob Sarro outlined the time sensitive nature of the grant request and recommended approval of the document as presented. Scott Corbin, Emergency Management Director, explained that the emergency declaration allows for public entities to request reimbursement for the costs of repairs attributable to the emergency. He explained that the reimbursement rate will not be 100% and for that reason, County requests will be made separately from the county road request and the request for repairing drains. Local municipalities are addressing their own grants. It was determined that the county is eligible and since he anticipates that the amount will exceed \$10,000, the request is being brought before the Board for approval. The deadline for submission is August 13, 2008.

Moved by Commissioner Campbell, seconded by Commissioner Burns to adopt the resolution immediately. Motion carried by roll call vote: Yeas – 9 votes. Nays – 0 votes. Absent – 2 votes. The following resolution is approved:

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**EMERGENCY MANAGEMENT—APPLY AND ACCEPT FEMA PUBLIC ASSISTANCE
GRANT FOR JUNE 6-12, 2008 FEDERAL DECLARATION**

BE IT RESOLVED that the Allegan County Board of Commissioners hereby approves the Emergency Management Department request to apply for, and accept when awarded, the Department of Homeland Security, Federal Emergency Management Agency Public Assistance Grant for eligible expenses, under federal declaration (FEMA-1777-DR,) incurred by the County for the period from June 6 - 12, 2008; and

BE IT FINALLY RESOLVED that the Board Chairman and the County Administrator are authorized to sign the necessary documents on behalf of the County and that the Budget and Finance Director is authorized to make the necessary budget adjustments to complete this action.

General Updates

6/ Performance Bonds: Rob Sarro began by stating that he recommends that the county not require performance bonds from the three vendors we regularly use for the Transportation project. Waiving the need for the performance bond will save the county money on this project and since these are vendors which we routinely use on other projects, we are familiar with their performance. He also addressed the Regional jail issue and stated the committee will meet August 5, 2008 at 1:00 p.m. in the Nederveld Room and invited those wanting information to attend that meeting.

Joint Meeting With City/Township: The joint meeting with Allegan Township and the City of Allegan will be held August 21, 2008, and he stated he has a commitment from Dr. Lynn Harvey to function as facilitator to help identify any issues or barriers which might prevent the groups from working together. Since the August 21 meeting date is a Board planning session, he would recommend that the planning session begin at 3:00 p.m. instead of 9:30 a.m. to make it more efficient to attend the joint meeting at 7:00 p.m. in the Board room.

Moved by Commissioner Campbell, seconded by Commissioner Spreitzer to amend the Board schedule and post the above stated meeting times. Motion carried.

Jail Project information dissemination: Rob described the "jail project portal" which will be on our website to make factual information available to the public on the jail project. Currently it is on the corrections portion of the Sheriff's web site.

Break – 11:10 a.m.

8/ Moved by Commissioner Kapenga, seconded by Commissioner Campbell to recess for ten minutes. The motion carried and the meeting was recessed at 11:10 a.m.

Upon reconvening at 11:27 a.m., the following Commissioners were present: Commissioner Burns, McNeal, VanEck, DeYoung, Kapenga, Thiele, Jessup, Spreitzer and Campbell. Absent – Commissioners Black and Jones.

Personnel (Status Quo and New Requests)

9/ Rob referenced the spreadsheets attached to the meeting agenda which addressed the personnel budget in relation to the total budget. He addressed the fact that the personnel budget increases have declined, largely due to moving to the new traditional health insurance and the increased usage of generic drugs. The county is fortunate in that the property values as a whole have not decreased, but the rate of growth in property values has dropped substantially. He will propose some possible options that will help us reach a balanced budget without the need for layoffs and service cuts. He reminded everyone that for the past two years we have brought our capital expenses into the general revenue fund budget. In the past, these costs have been covered outside the general revenues and getting these cost paid through general revenues is a huge accomplishment; a very positive and healthy approach to budgeting public funds.

Deb Daniels, Human Resources Director, addressed the requested personnel changes; new and reclassifications for personnel that were presented by department heads and elected officials. Some of the positions on the chart indicate recommendations that Administration is making; other positions may need more information before a recommendation can be made.

Employee Selection Process Policy #301 and Facilities Master Plan – Set to August 7, 2008 Planning Session

10/ Moved by Commissioner Thiele, seconded by Commissioner Kapenga to move items #4, Employee Selection Process Policy #301 and #5, Facilities Master Plan to the August 7, 2008 Planning Session agenda. Motion carried.

Parks, Recreation & Tourism-CSX Purchase/Sale Agreement

11/ Moved by Commissioner VanEck, seconded by Commissioner DeYoung to approve this resolution as presented. Motion carried by roll call vote: Yeas – 9 votes. Nays – 0 votes. Absent – 2 votes. The following resolution is adopted:

PARKS, RECREATION AND TOURISM—APPROVE CSX PURCHASE SALE AGREEMENT

WHEREAS, on December 13, 2007 the Allegan County Board of Commissioners approved a Construction Agreement between Allegan County and CSX Transportation, Inc. of Jacksonville, Florida in order to move forward with Phase I of the New Richmond Bridge Park Project; and

WHEREAS, the next step to move forward with the project is the purchase of an easement from CSX Transportation necessary to access portions of the property previously leased from the State of Michigan; and

WHEREAS, the funding for this purchase would come from the \$30,000 Parks Acquisition/Development balance in the 2450 CIP Fund.

THEREFORE BE IT RESOLVED that the Allegan County Board of Commissioners hereby approves the request from the Parks, Recreation and Tourism Department to approve the Purchase Sale Agreement with CSX Transportation, Inc., J915, 301 West Bay Street, Jacksonville, Florida, 32202-5184, as attached, to purchase a non-exclusive bike and walking trail easement, over, across, along and through the Seller's real property located in the County of Allegan as shown on Exhibit A attached to the Agreement, for a purchase price, including insurance and closing costs, not to exceed \$20,500; and

BE IT FURTHER RESOLVED that the Board Chairman and the County Administrator are authorized to sign the necessary documents on behalf of the County and that the Budget and Finance Director is authorized to make the necessary budget adjustments to complete this action.

PURCHASE SALE AGREEMENT

THIS AGREEMENT, hereinafter called the "Agreement", made and entered into as of _____, 2008, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose address is c/o CSX Real Property, Inc. - J915, 301 West Bay Street, Jacksonville, Florida 32202-5184, hereinafter called the "Seller", and ALLEGAN COUNTY, whose address is 3255 122ND Avenue, Suite 102, Allegan, MI 49010, hereinafter called the "Buyer", provides:

1. **PURCHASE AND SALE:** Buyer hereby agrees to purchase from Seller and Seller agrees to sell to Buyer a non-exclusive bike and walking trail easement over, across, along and through Seller's property as shown on Exhibit A attached hereto and made a part hereof, hereinafter called the "Easement". The Easement is located at Allegan, County of Allegan, State of Michigan.

2. **PRICE:**

2.1 The purchase price for the Easement is FIFTEEN THOUSAND AND NO/100 U.S. DOLLARS (\$15,000.00) (hereinafter the "Purchase Price").

3. **DEPOSIT:**

3.1 A deposit in the amount of ONE THOUSAND AND NO/100 U.S. DOLLARS (\$1,000.00) (hereinafter the "Deposit") accompanies Buyer's execution of this Agreement. The balance of the Purchase Price shall be paid at settlement or closing of the transaction (hereinafter the "Closing"), in cash, by certified or cashier's check, or by other readily available funds acceptable to Seller.

3.2 The Deposit shall be applied to the Purchase Price at Closing. The Deposit shall be refunded to Buyer only in the event Buyer's Offer (as defined in Section 4.1) is not accepted by Seller as provided for in Section 4.1 or upon termination as provided for in Sections 7.2 and 13.4 hereof.

3.3 If Buyer fails to Close pursuant to Section 9 or perform in accordance with the terms hereof, Buyer agrees and consents that the Deposit may be forfeited to and retained by Seller, at Seller's sole option.

4. **OFFER, ACCEPTANCE, CONTRACT:**

4.1 Until accepted by Seller, Buyer's offer to purchase the Easement (hereinafter the "Offer") as evidenced by its execution and delivery of this Agreement shall be a firm offer for a period of ONE HUNDRED TWENTY (120) days from the date of this Agreement. Seller's acceptance of the Offer, to be evidenced by its execution of this Agreement, is expressly contingent upon Seller's corporate management approval(s). Failure of Seller to accept the Buyer's Offer and execute this Agreement within ONE HUNDRED TWENTY (120) days shall render the Offer null and void, and the Deposit shall be returned to Buyer.

4.2 This Agreement, when accepted by Seller, shall constitute a contract and the entire agreement between the parties hereto, and they shall not be bound by any terms, oral or written conditions, statements or representations not contained herein or attached hereto.

4.3 Neither the Buyer's Offer nor, upon its execution by all parties, this Agreement may be changed, altered or modified except by an instrument in writing signed by Buyer and Seller.

4.4 The Buyer's Offer and this Agreement shall be executed in duplicate, each of which may be treated as an original.

5. **CONTINGENCIES:**

5.1 This Agreement is contingent upon the following events, if any:

NONE.

6. DEED:

6.1 The conveyance of the Easement shall be by deed of easement, without warranty and only to the extent that Seller's title permits, and shall be expressly subject to: standard exceptions contained in title insurance binders; all existing roads, fiber optic facilities, and public utilities; reservations, exceptions, easements, restrictions and other matters of record; any Permitted Exceptions, as hereafter provided; any applicable zoning ordinances and subdivision regulations and laws; taxes and assessments, both general and special, which become due and payable after the date of conveyance; all matters that would be revealed by an appropriate ALTA/ACSM survey or by an inspection of the Easement; the items or matters identified in Section 10.1 of this Agreement; and all existing encroachments, ways and servitudes, howsoever created. The provisions of this Section shall survive Closing.

6.2 As early as practicable after execution of this Agreement by all parties, Seller will prepare and submit to Buyer, for Buyer's comments, a deed of easement in conformance with the terms of this Agreement to convey the Easement to Buyer. Buyer shall have a period of ten (10) business days after receipt of said deed of easement to examine same and notify Seller of any comments. If no comments are received within the ten (10) day period, Buyer shall be deemed to have approved the deed of easement in the form submitted. Seller shall have no obligation to modify the deed of easement to conform to Buyer's comments if the deed of easement otherwise conforms to the terms of this Agreement.

6.3 Title to the Easement shall be conveyed to:

County of Allegan
(a political subdivision of the State of Michigan)

IF A CORPORATION, STATE THE DATE AND STATE OF INCORPORATION; IF A PARTNERSHIP, STATE THE DATE AND STATE OF ITS CREATION, WHETHER IT IS A GENERAL OR LIMITED PARTNERSHIP, AND THE NAMES OF ALL GENERAL PARTNERS; IF A GOVERNMENTAL AGENCY, STATE THE CORRECT STATUTORY DESIGNATION; IF MORE THAN ONE INDIVIDUAL, STATE ANY DESIRED FORM OF CO-TENANCY: HUSBAND AND WIFE, JOINT WITH RIGHTS OF SURVIVORSHIP, COMMON, OR BY THE ENTIRETY.

6.4 The Deed of Easement shall contain one or more restrictive covenants or conditions, reading substantially as follows, to run with title to the Easement, and to be binding upon Buyer, Buyer's heirs, legal representatives and assigns, or corporate successors and assigns, or anyone claiming title to or holding the Easement through Buyer:

(A) Excluded from this grant are any and all rights of way for access, ingress or egress, whether by way of necessity, implication or otherwise, across, under or over adjoining properties of Seller. Buyer, its successors and assigns, agree not to connect unto or enter upon the bridge above or adjacent to the Easement.

(B) **FENCING:** Buyer, by the acceptance hereof, hereby covenants and agrees with Seller that Seller shall not be required to erect or maintain any fences, railings or guard rails along any boundary lines between the Easement and the adjacent land(s) of Seller or of any other company affiliated with Seller; or be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails or any part thereof; or be liable for any damage, loss or injury that may result by reason of the non-existence or the condition of any fences, railings or guard rails. Buyer assumes all liability and responsibility respecting fences, railings or guard rails, or the absence thereof.

Prior to any public use of the Easement, Buyer shall construct and maintain, at Buyer's sole cost and expense, an adequate and suitable fence along the boundary line of the Easement for so long as the railroad tracks exists on the bridge above the Easement. The fence shall be of a type satisfactory to Seller, which approval will not be unreasonably withheld, and reasonably sufficient to keep persons and vehicles from trespassing on Seller's adjoining property.

(C) **DRAINAGE:** Buyer, by acceptance of this deed, hereby covenants that it, its successors, heirs, legal representatives or assigns shall maintain the existing drainage on the Easement in such a manner as not to impair adjacent railroad operating property drainage and not to redirect or increase the quantity or velocity of surface water runoff or any streams into Seller's drainage system or upon the railroad operating property or other lands and facilities of Seller. If the Easement or existing drainage is modified or improved, Buyer agrees to construct and maintain, in accordance with all applicable statutes, ordinances, building and subdivision codes, covenants and restrictions, an adequate drainage system from the Easement to the nearest public or non-Seller

owned drainage or storm sewer system, in order to prevent the discharge of roof, surface, stream and other drainage waters upon railroad operating property or other adjacent lands and facilities of Seller, including, without limitation, discharge that may cause erosion or other impairment to the adjacent bridge piers.

(D) Buyer, by acceptance of this deed of easement, hereby covenants that it, its successors, and assigns, shall not at any time impair or interfere with the lateral or subjacent support of Seller's properties, structures, tracks or improvements on or adjacent to the Easement, or otherwise damage the same in any way.

(E) Buyer acknowledges that this deed of easement is made upon Buyer's solicitation and request, and was not in anyway initiated by Seller. Seller does not represent or warrant to Buyer any ownership or estate in the Easement or any specific title or interest in the Easement; and Buyer hereby releases Seller, its officers and agents, from any claim or demand resulting from this deed, or from any failure of or defect in Buyer's title to the Easement.

(F) Buyer acknowledges that the railroad bridge located above the Easement is constructed in such a manner that debris may fall on to the Easement below. Buyer, its successors and assigns, shall prior to commencement of any public use of a trail on the Easement, construct, at Buyer's sole cost and expense and for purposes of overhead protection, an adequate and suitable corrugated steel barrier above and along the width of the proposed trail, extending twenty feet outward of each side of the edge of the bridge above the Easement. The corrugated steel barrier shall be of a type satisfactory to Seller, and reasonably sufficient to keep debris that may fall from the Seller's bridge from landing on the trail located below. The trail and overhead barrier on the Easement shall be constructed and maintained in accordance with the plans for said improvements, which plans are on file in the respective offices of said parties. The pathway must be paved with a material suitable to Seller, and include appropriate fencing and signage to deter users from entering Seller's property. Said barrier shall thereafter be maintained by Buyer for so long as a railroad track and bridge exists on the surrounding railroad properties. Prior to the installation, maintenance, relocation, modification or removal of the trail, overhead barrier or other improvements on the Easement which may jeopardize the safety of Seller's railroad operations or otherwise interfere with Seller's operations, Buyer, its successors and assigns, shall notify Seller of the commencement of any such work and procure Seller's approval of such work, which shall not be unreasonably withheld, prior to the commencement of such work. Buyer shall provide to Seller the plans and specifications for the contemplated work and such other materials as Seller may reasonably require, including prior review and approval of overhead barrier. If Seller determines that the presence of a flagman is necessary during the performance of any such work to ensure the safe passage of train traffic, the cost of said flagman shall be borne by Buyer at its sole cost and expense

(G) If the maintenance, replacement, repair or inspection of Seller's railroad tracks or bridge requires the trail or overhead barrier on the Easement to be temporarily or permanently relocated or modified, or temporarily removed, Buyer, its successors and assigns, shall bear the cost and expense of the work to relocate, modify or temporarily remove the trail and/or overhead barrier.

(H) Buyer hereby assumes all risk of, and releases and waives any right to ask for or demand damages for or on account of, any loss of or damage to property of Buyer or any part thereof, including loss of or interference with any use thereof, on the easement area, whether caused by, arising out of or resulting from any fault, failure or negligence of Seller or otherwise. Buyer further assumes, releases, and agrees to protect, save harmless, defend and indemnify Seller from and against all claims and liability caused by, arising out of or resulting in any manner from the condition, presence, use or occupancy of the Easement, including the improvements and structures thereon, whether caused by, arising out of or resulting from any fault, failure or negligence of Seller or otherwise, for:

(i) All loss and damage to any property whatsoever, and the loss of or interference with any use or service thereof; and

(ii) All loss and damage on account of injury to or death of any person whomsoever, including but not limited to invitees, employees and contractors of the parties hereto and all other persons whomsoever on the Easement; and

(iii) All costs and expenses thereof (including reasonable attorneys' fees and court costs).

(I) Prior to commencement of occupation or use of the Easement, Buyer shall procure, and shall also maintain at all times, at its sole cost and expense, a self-funded commercial general liability insurance program. .

In connection with any construction or similar activities by Buyer on the easement area, Buyer shall provide or shall cause its contractor to provide, prior to commencement of any construction or similar activity, and shall maintain during the period of construction and all related activities, at no cost to Seller, a policy of Owner's Protective Liability Insurance designating Seller as insured, with a limit of not less than THREE MILLION U.S. DOLLARS (\$3,000,000.00) Combined Single Limit per occurrence for all bodily injury and property damage liability. If the construction or other activities involve an exposure to train operations on tracks of Seller, the insurance shall be written on the ISO/RIMA Form (ISO Form CG-00-35, or current) of Railroad Protective Insurance, with Pollution Exclusion Amendment (ISO Endorsement No. CG-28-31), having a limit of not less than FIVE MILLION U.S. DOLLARS (\$5,000,000.00) Combined Single Limit per occurrence for bodily injury and property damage and at least a TEN MILLION U.S. DOLLAR (\$10,000,000.00) aggregate limit during each annual policy period. The original protective liability policy shall be submitted to and approved by Seller's Director - Casualty Insurance, at the address of 500 Water Street (J-150), Jacksonville, Fla., 32202, prior to commencement of the construction or activities. In lieu of purchasing the required railroad protective liability insurance, Buyer, or its designated contractor, may elect to pay a \$3,000 fee to Seller to be included in Grantor's blanket railroad protective liability policy.

Seller may at any time request evidence of Buyer's self-funded insurance program and insurance purchased by Buyer's contractor to meet requirements of this section (I). Furnishing of insurance by Buyer shall not limit Buyer's liability under this Deed of Easement but shall be additional security therefor.

6.5 Seller shall except and reserve unto itself as Seller, its successors and assigns, the following easements, rights and interests:

EXCEPTING AND RESERVING unto Seller, its successors and assigns, the right to continue to occupy, possess and use the land upon which the Easement is imposed for any and all purposes consistent with Seller's operations and needs, including but not limited to, access to Seller's adjoining property and the construction, reconstruction, relocation, operation, maintenance, repair, replacement and removal of Seller's tracks, bridge and other facilities as now exist or which may in the future be located in, upon, over, under or across the Easement.

6.6 Seller may or may not have entered into general agreements with utility companies for utility crossing over or under the Easement. Such general agreements may require Seller to reserve a permanent easement for the utility. If Seller determines that the Easement has existing utilities constructed pursuant to such general agreements, Seller shall have the right to reserve an easement or easements for such utility crossing or crossings. The format for such a reserved utility easement shall be as follows:

RESERVING unto Seller, for itself, its successors and/or assigns, a perpetual in width, hereinafter the "Reserved Easement", upon and along, over, under or across as the case may be, the Premises, together with ancillary surface rights, for the purpose of maintaining, operating, inspecting, repairing, reconstructing, renewing and/or replacing existing overhead and/or underground wireline and or pipeline easements facilities and necessary appurtenances (poles, guys, anchors, ducts, fixtures, appliances) devoted solely to such existing overhead and underground wirelines and pipeline easement ten feet (10) usage, herein collectively the "Facility(ies)"; TOGETHER WITH the further rights to convey or assign said Reserved Easement, in whole or in part, and to lease, license or permit third parties to occupy the same solely for the Facility(ies).

6.7 The release of Seller's mortgage(s), if any, shall be included in the deed of easement or, at Seller's option, by separate instrument.

7. TITLE SEARCH, INSURANCE:

7.1 Buyer has the option of arranging and paying for such examination of title or title insurance on the Easement as Buyer may desire, at Buyer's sole cost.

7.2 Any defects in title (including, without limitation, those disclosed in Section 10.1 hereof or that might be revealed by an appropriate ALTA/ACSM survey and an inspection of the Easement, which render title unmarketable and which Buyer is unwilling to accept, must be reported to Seller in writing within thirty (30) days following Seller's acceptance of this Agreement. Within ten (10) days of receipt of Buyer's written objections, Seller shall advise Buyer in writing whether Seller is willing to attempt to remove or cure Buyer's objections, in which event the Closing may be postponed for a reasonable period of time to accomplish removal or cure of Buyer's

objections. If Seller advises Buyer that Seller is unwilling or ultimately unable to remedy Buyer's reported objections, Buyer may elect to (a) accept such title as Seller is willing to give, with such defects (hereafter "Permitted Exceptions"), without reduction in Purchase Price, or (b) terminate this Agreement by giving written notice to Seller within fifteen (15) days after receipt of Seller's advice. Upon such termination, the parties hereto shall be released from any and all further duties and obligations hereunder, including the duty to close and any liability for breach of any of the provisions hereunder, except that a) the indemnity provisions of Section 13.1 shall remain as an obligation of the Buyer and b) the Seller shall return the Deposit to Buyer within thirty (30) days of such termination. If Buyer does not give such termination notice, or elects to take title subject to Permitted Exceptions, the Closing shall take place within twenty-five (25) days after the aforementioned advice from Seller, or when required by Section 9.1 of this Agreement, whichever is later.

7.3 Buyer's failure to obtain a title examination, or to report to Seller any objections as required in Section 7.2, shall constitute a waiver by Buyer of any and all defects in title to the Easement and Buyer and Seller will proceed in accordance with the remaining terms of this Agreement. The provisions of this Section shall survive Closing.

8. SURVEY:

8.1 Immediately upon Buyer's execution of this Agreement, Buyer shall obtain a survey of the Easement conforming to ALTA/ACSM standards at Buyer's expense.

8.2 Within thirty (30) days after Buyer's execution of this Agreement, Buyer shall furnish Seller with three (3) copies of a metes and bounds description of the Easement, a 1.44 MB diskette in Wordperfect format of the description and three (3) prints of a survey plat acceptable to Seller and to the Recorder of Deeds for the County or City in which the Easement is located, certified to Buyer and Seller, for use by Seller in preparation of the deed of easement and other papers. If Seller does not accept Buyer's Offer by executing this Agreement, Seller shall reimburse Buyer for the cost of the survey, and Buyer shall thereupon assign all rights therein and copies thereof to Seller.

8.3 Buyer may elect not to secure a survey. In the absence of a survey, the Easement shall be described in the deed of easement and conveyed by reference to Exhibit "A" and Seller's railroad valuation maps. Seller disclaims any responsibility for the accuracy of any description based on Exhibit "A" and railroad valuation maps.

9. CLOSING:

9.1 Closing hereunder shall be held at any time within sixty (60) days following Seller's acceptance of this Agreement, at such time and place as Seller and Buyer shall mutually agree. If Buyer and Seller do not agree upon a time and place for Closing, Seller shall designate the time and place for Closing, which may not be earlier than sixty (60) days following Seller's acceptance of this Agreement. The time and date for Closing may be extended only by Seller in writing, time expressly being of the essence in this Agreement.

10. POSSESSION:

10.1 Buyer shall obtain use of the Easement at the time of Closing, subject to the limitations of Article 6, all Permitted Exceptions, all existing occupancies or limitations, and to all leases and licenses (which shall be retained by Seller).

11. ANNUAL TAXES; RENTS; LIENS; CHARGES:

NOT APPLICABLE

12. TAXES ON TRANSFER; CLOSING COSTS:

12.1 Buyer shall pay all transfer taxes, however styled or designated, all documentary stamps, recording costs or fees or any similar expense in connection with this Agreement, the conveyance of the Easement or necessary to record the deed of easement

12.2 If any state or local governmental authority requires, presently or in the future, the payment of any sales, use or similar tax upon the sale, acquisition, use or disposition of any portion of the Easement, (whether under statute, regulation or rule), Buyer assumes all responsibility for and shall pay the same, directly to said

authority, and shall hold Seller harmless from such tax(es) and any interest or penalty thereon. Seller shall cooperate (at no expense to Seller) with Buyer in the prosecution of any claim for refund, rebate or abatement of said tax(es).

12.3 Seller shall pay the cost of recording any release of Seller's mortgage(s) or lien(s). In the event Buyer finances any portion of the Purchase Price (whether through third parties or from Seller), Buyer shall pay all costs thereof, including recordation, intangible taxes, etc.

13. BUYER'S RIGHT OF ENTRY, ENVIRONMENTAL AND OTHER INSPECTIONS:

13.1 During the term of this Agreement, and prior to Closing, Buyer and/or its agents shall be permitted to have access to the area subject to the Easement, subject to the rights of any tenant, licensee, utility or other third party occupying any portion of the Easement, in order to make surveys, make measurements, conduct environmental or engineering tests (including drilling and coring for preconstruction soil analysis), and to make such physical inspections and analyses thereof as Buyer shall deem necessary; PROVIDED, however, that Buyer hereby assumes all risks of such entry and agrees to defend, indemnify and save Seller harmless from and against any claim, cost or expense resulting from any damage to or destruction of any property (including the Easement or any improvements thereon) and any injury to or death of any person(s), arising from the acts or omissions of Buyer or its agents in the exercise of this right-of-entry. Buyer agrees to do no act which would encumber title to the Easement in exercising this right-of-entry. Any drilling and coring holes shall be filled upon completion of testing.

13.2 Buyer shall give Seller ten (10) days prior written notice of any entry onto the Premises under this Section 13 and provide Seller with a schedule and scope of work for each of the activities Buyer proposes to undertake during such entry. Upon receipt of the foregoing, Seller reserves the right, in Seller's sole discretion, to terminate this Agreement or if Seller permits the testing, Seller reserves the right to monitor and approve all procedures in the conduct of any environmental assessments, tests, studies, measurements or analyses performed by or for Buyer in, on, to or with respect to the Premises. Buyer agrees to test the Premises in conformation with the Minimum Sampling Requirements set forth in Exhibit B, attached hereto and made a part hereof. *(IF THE R-4 APPROVAL FROM MANAGER ENVIRONMENTAL REMEDIATION DOES NOT INCLUDE "EXHIBIT B" AS AN ATTACHMENT, PLEASE DELETE THE PRIOR SENTENCE FROM THE PSA). Buyer shall provide in any contract or bids for site assessment or environmental inspections of the Premises a "confidentiality clause", limiting disclosure of the results and any report only to Buyer (or to Seller, upon request), and an "insurance clause," requiring the company selected by the Buyer to perform the work to produce a certificate of insurance naming the Seller and Buyer as additional insured with the following coverage and limits:

- General Liability (CGL) insurance with coverage of not less than TWO MILLION DOLLARS (\$2,000,000) Combined Single Limit per occurrence for bodily injury and property damage.
- In addition to the above-described CGL insurance, if Buyer will undertake, or cause to be undertaken, any construction or demolition activity within fifty (50) feet of any Railroad track or any Railroad bridge, trestle or tunnel, then Buyer shall also purchase, or cause to be purchased, a policy of Railroad Protective Liability (RPL) insurance, naming Railroad as the insured, with coverage of not less than FIVE MILLION DOLLARS (\$5,000,000) Combined Single Limit per occurrence, with an aggregate of TEN MILLION DOLLARS (\$10,000,000). Such policy must be written on ISO/RIMA form of Railroad Protective Insurance – Insurance Services Offices Form No. CG 00 35, including Pollution Exclusion Amendment CG 28 31. At Railroad's option, in lieu of purchasing RPL insurance (but not CGL insurance), Buyer may pay Railroad a Construction Risk Fee, currently THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500), and thereby be relieved of any obligation to purchase said RPL insurance.
- Worker's Compensation Insurance as required by the state in which the Work is to be performed. This policy shall include Employers' Liability Insurance with a limit of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence. Unless prohibited by law, such insurance shall waive subrogation against Railroad.
- Automobile Liability Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering all owned, non-owned and hired vehicles.

Buyer shall also keep Seller fully apprised of the progress of, and procedures followed with respect to, all such environmental work; and fully cooperate with all reasonable requests of Seller in undertaking and carrying out such work. Buyer shall prepare split samples (which may then be separately tested at Seller's sole option and cost) for delivery to Seller and shall deliver to Seller, at no cost to Seller, within five (5) days after receipt, copies of all results, assessments, reports and studies, whether of an environmental nature or otherwise, resulting from any tests or inspections conducted by Buyer pursuant to this Section 13 or otherwise in accordance with this Agreement. At or before Closing, Buyer shall provide Seller a reliance letter from Buyer's consultant, in form and substance reasonably acceptable to Seller, granting Seller the right to rely on the environmental data and reports generated as part of buyer's environmental due diligence, including without limitation, any Phase I and Phase II Environmental Site Assessment Reports. The reliance letter shall not impose any additional limitations or restrictions on Seller's reliance on said data and reports except as may be specified within the report documents themselves.

13.3 Buyer acknowledges that Seller makes no guarantee, representation or warranty regarding the physical or environmental condition of the Easement, and Seller expressly disclaims any and all obligation and liability to Buyer regarding any defects which may exist with respect to the condition of the Easement.

13.4 If Buyer is unwilling to accept the environmental condition of the Easement as a result of the studies and tests conducted by Buyer pursuant to Sections 13.1 and 13.3, Seller's and/or Buyer's sole and exclusive remedy shall be to terminate this Agreement and refund the Deposit to the Buyer. Under no circumstances shall Seller be required to correct, remedy or cure any condition or environmental contamination of the Easement, which Buyer's tests and studies may reveal, as a condition to Closing or other performance hereunder.

13.5 If Buyer elects not to secure environmental tests or inspections, or if Buyer does not elect to terminate after receipt of test results, Buyer shall take the Easement "as is" at Closing, regardless of the cause or date of origin of such condition, and also hereby releases all rights or claims against Seller relating to such condition or for any costs of remediation or cure of any environmental condition.

13.6 The provisions of this Article 13 shall survive Closing.

14. SUBDIVISION APPROVAL; ZONING:

14.1 Any subdivision approval needed to complete the transaction herein contemplated shall be obtained by Buyer at Buyer's sole risk, cost, and expense. Seller shall cooperate with Buyer in obtaining said approval, to the extent necessary or required, but Buyer shall reimburse Seller for any and all charges, costs and expenses (including portions of salaries of employees of Seller assigned to such project) which Seller may incur in such cooperation.

14.2 Seller makes no guarantee or warranty that any subdivision approval will be granted and assumes no obligation or liability for any costs or expenses if same is not approved.

14.3 Costs and expenses shall include all fees, costs and expenses, including reasonable attorneys' fees, of obtaining subdivision plats, or filing same with the applicable governmental body(ies), or recordation thereof, including attorneys' fees, and all other related and/or associated items.

14.4 Seller makes no guarantee, warranty or representation as to the permissibility of any use(s) contemplated by Buyer under existing zoning of the Easement or as to any ability to secure any rezoning for Buyer's use.

15. BROKER'S FEES:

15.1 Buyer and Seller each represent and warrant to the other that neither has introduced into this transaction any person, firm or corporation who is entitled to compensation for services as a broker, agent or finder. Buyer and Seller each agree to indemnify the other against and hold the other harmless from any and all commissions, finder's fees, costs, expenses and other charges claimed by real estate brokers or sales persons by, through or under the indemnifying party.

15.2 Seller shall be under no obligation to pay or be responsible for any broker's or finder's fees, commissions or charges in connection with handling this transaction, or Closing.

16. ASSIGNMENT, LIMITS, SURVIVAL:

16.1 This Agreement may not be assigned by Buyer without the prior written consent of Seller.

16.2 As limited above, this Agreement shall be binding upon the parties, their successors and assigns, or upon their heirs, legal representatives and assigns, as the case may be.

16.3 Any provision calling for obligations continuing after Closing shall survive delivery of the deed of easement and not be deemed merged into or replaced by any deed of easement, whether or not the deed of easement so states.

17. DEFAULT:

17.1 If Buyer fails to perform this Agreement within the time specified (including payment of the Deposit), all money paid by Buyer may be retained by or for the account of Seller as agreed-upon liquidated damages, consideration for the execution of this Agreement and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under Agreement.

17.2 In the event of default by Seller, Buyer shall have the right either to receive an immediate return of the Deposit and any reasonable expenses incurred pursuant to this Agreement as full liquidated damages, or to seek specific performance of this Agreement. Buyer shall promptly notify Seller of the remedy selected by Buyer.

17.3 "Default" shall include not only the failure to make prompt payment of any sums due under this Agreement but also the failure to perform any other acts required under this Agreement.

18. NOTICES:

18.1 Notice under this Agreement shall be in writing and sent by Registered or Certified Mail, Return Receipt Requested, or by courier, express or overnight delivery.

18.2 The date such notice shall be deemed to have been given shall be the date of receipt, the first calendar day after the date sent by courier, express or overnight ("next day delivery") service, or the third calendar day after the date of the postmark on the envelope if mailed, whichever occurs first.

18.3 Notices to Seller shall be sent to:

CSX Transportation, Inc.
c/o CSX Real Property, Inc. - J915
301 West Bay Street
Jacksonville, FL 32202-5184
Attn: Ms. Betty D. Jones

Notices to Buyer shall be sent to:

County of Allegan
Attn: Kevin Ricco
3255 122nd Avenue, Suite 102,
Allegan, MI 49010

18.4 Any party hereto may change its address or designate different or other persons or entities to receive copies by notifying the other party in a manner described in this Section.

19. RULES OF CONSTRUCTION:

19.1 In this Agreement, all singular words shall connote the plural number as well as the singular and vice versa, and the masculine shall include the feminine and the neuter.

19.2 All references herein to particular articles, sections, subsections or clauses are references to articles, sections, subsections or clauses of this Agreement.

19.3 The headings contained herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

19.4 Each party hereto and its counsel have had the opportunity to review and revise (or request revisions of) this Agreement, and therefore any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement or any exhibits hereto or amendments hereof.

20. TIME OF ESSENCE:

20.1 Time shall be considered of the essence both to the Buyer and the Seller for all activities undertaken or required pursuant to this Agreement.

21. BUYER'S CONSTRUCTION:

21.1 Prior to Buyer's construction of the bike path/walkway, Buyer shall submit to Seller for Seller's approval, which approval shall not be unreasonably withheld, a complete and final set of construction plans for the bike path/walkway and overhead barrier, detailing methods of construction, clearances from Seller's railroad track and adjacent bridge pier, drainage, slopes and any other engineering details that Seller may deem appropriate for Seller to evaluate for the integrity and safety of Seller's overhead railroad operations. The work shall be performed in accordance with Seller's operating and engineering policies and standards in effect at the time.

21.2 Buyer shall notify Seller ten (10) days in advance of the onset of construction of the path/walkway. If Seller determines that the presence of a flagman is necessary during the construction phase to ensure the safe passage of train traffic, the cost of said flagman shall be borne by Buyer at its sole cost and expense.

21.3 Neither review nor approval of any of the construction plans for the bike path/walkway and overhead barrier or other materials related thereto shall constitute a representation or warranty by Seller that such either are complete or suitable for their intended purpose or comply with applicable laws, ordinances, codes and regulations, it being expressly agreed by Buyer that Seller assumes no responsibility or liability whatsoever to Buyer or to any other person or entity for such completeness, suitability or compliance.

21.4 The provisions of this Section 21 shall survive the closing under this Agreement.

IN WITNESS WHEREOF, the Buyer has caused this Agreement to be signed, and dated the first date written above in duplicate, each of which shall be considered an Original.

WITNESS(ES):

COUNTY OF ALLEGAN

_____ (SEAL)

NOTICE OF SELLER'S ACCEPTANCE

Buyer's Offer to purchase the Easement is accepted by Seller this ____ day of _____, 2008

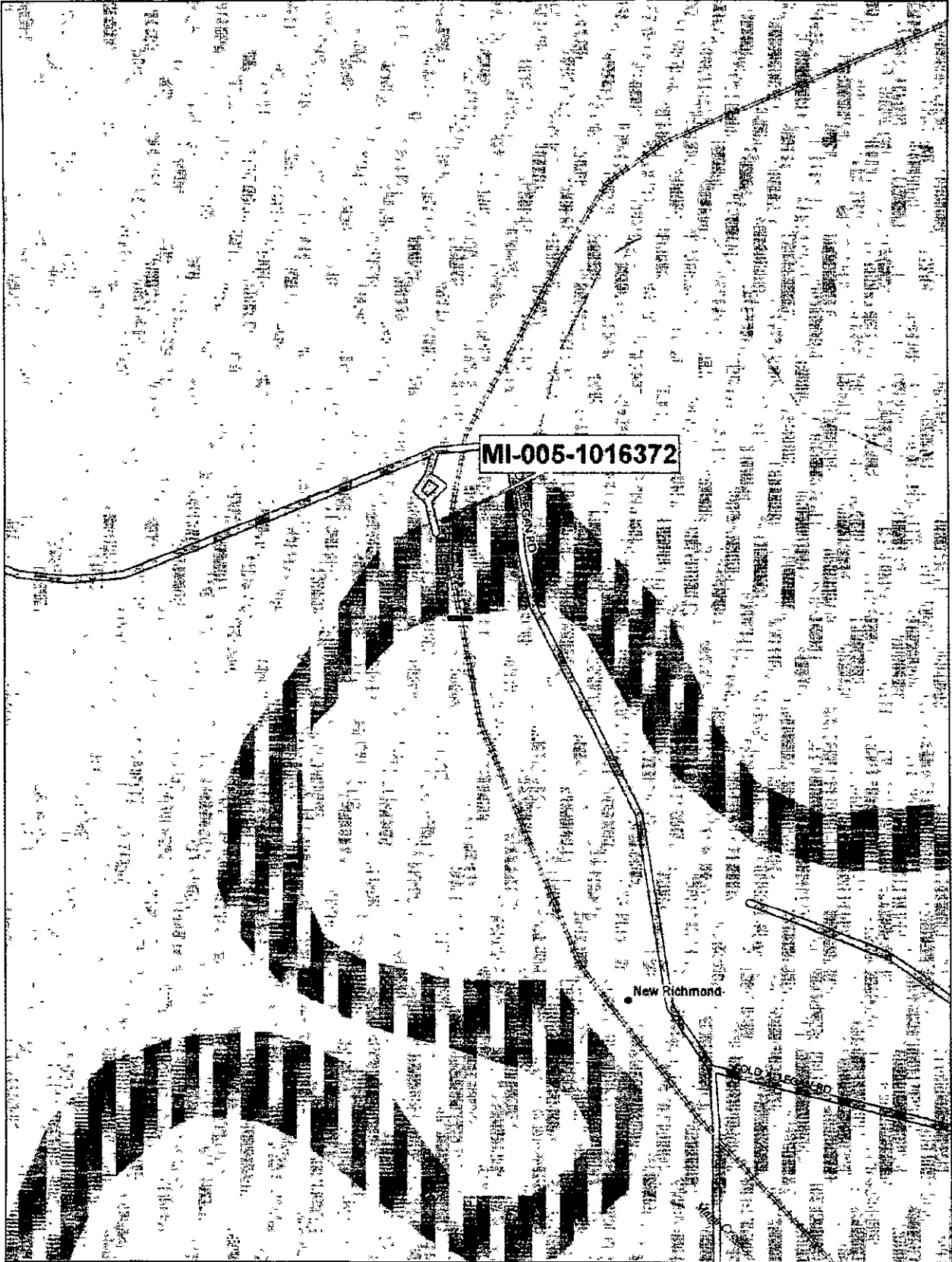
WITNESS(ES):

CSX TRANSPORTATION, INC.

By: _____

Title: _____

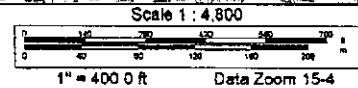
Exhibit A



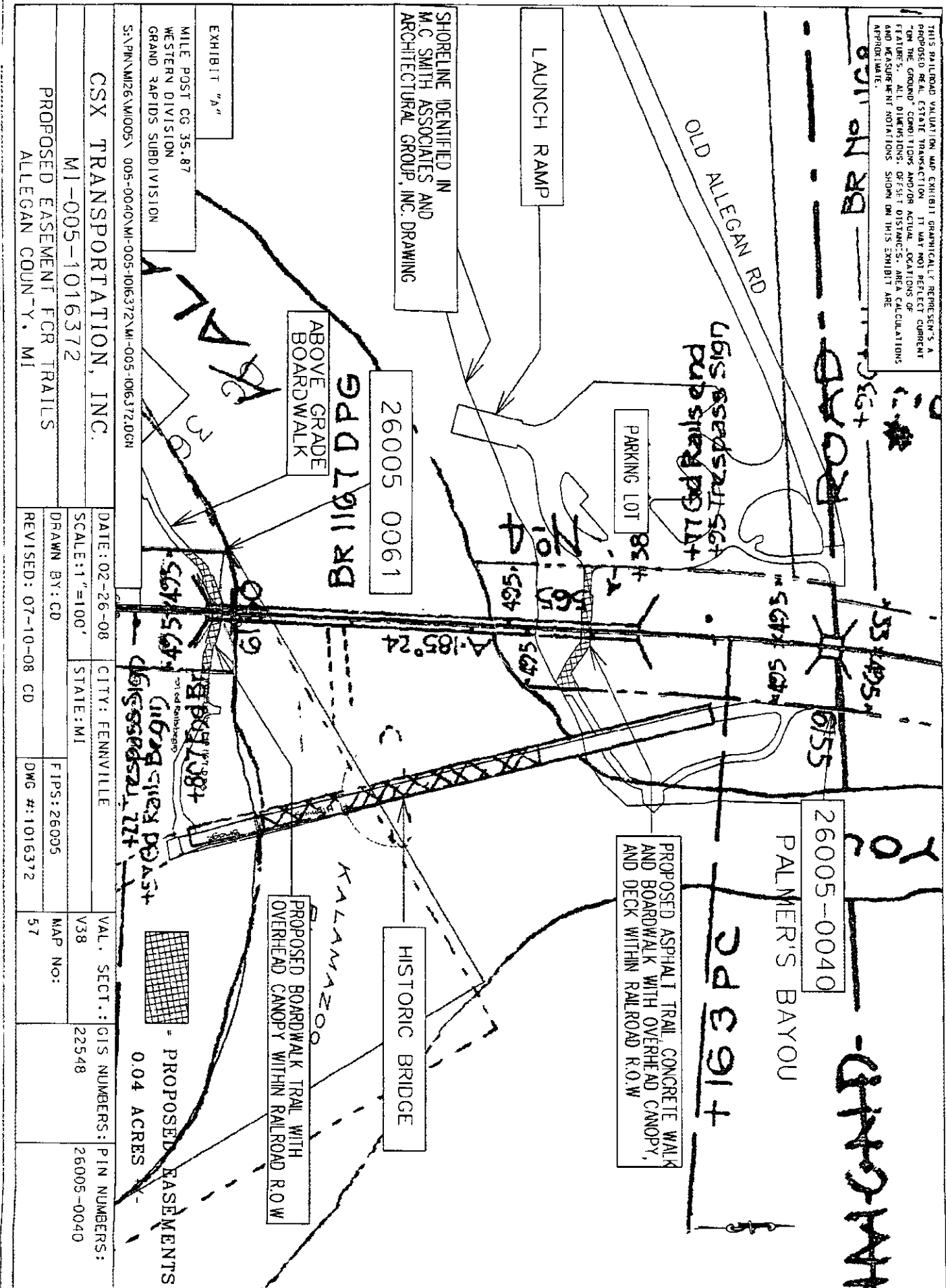
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www.delorme.com



THIS RAILROAD VALUATION MAP EXHIBIT GRAPHICALLY REPRESENTS A PROPOSED REAL ESTATE TRANSACTION. IT MAY NOT REFLECT CURRENT "ON THE GROUND" CONDITIONS AND/OR ACTUAL LOCATIONS OF FEATURES. ALL DIMENSIONS, OFFSET DISTANCES, AREA CALCULATIONS AND MEASUREMENT NOTATIONS SHOWN ON THIS EXHIBIT ARE APPROXIMATE.



CSX TRANSPORTATION, INC.
 M1-005-1016372
 PROPOSED EASEMENT FOR TRAILS
 ALLEGAN COUNTY, MI

DATE: 02-26-08
 SCALE: 1"=100'
 DRAWN BY: CD
 REVISED: 07-10-08 CD

CITY: FENNVILLE
 STATE: MI
 FIPS: 26005
 DMG #: 1016372
 MAP NO: 57

VAL. SECT.: V38
 GIS NUMBERS: 22548
 PIN NUMBERS: 26005-0040
 PROPOSED EASEMENTS
 0.04 ACRES

Public Participation – No Comments

12/ Chairman McNeal opened the meeting to public participation and as there were no comments from the public, he declared the meeting closed to public participation.

Recess to Closed Session – Corrections Officer’s Collective Bargaining Agreement

13/ Moved by Commissioner Spreitzer, seconded by Commissioner Jessup to recess to closed session to discuss the collective bargaining agreement regarding the Corrections Officers. Motion carried by roll call vote: Yeas – 9 votes. Nays – 0 votes. Absent – 2 votes. The meeting was recessed at 12:30 p.m.

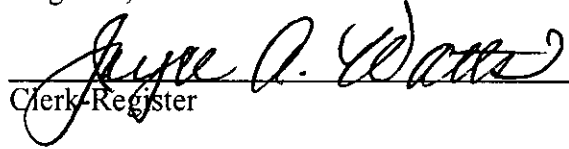
C L O S E D S E S S I O N

Reconvene/Roll Call

14/ Upon reconvening at 12:42 p.m., the following Commissioners were present: Commissioner Burns, McNeal, VanEck, DeYoung, Kapenga, Thiele, Jessup, Spreitzer and Campbell. Absent – Commissioners Black and Jones.

Adjourn until August 7, 2008 at 9:30 A.M.

15/ Moved by Commissioner Thiele, seconded by Commissioner VanEck to adjourn until August 7, 2008 at 9:30 a.m. Motion carried and the meeting was recessed at 12:45 p.m.


Clerk-Register

All gan County B ard of C ommissioners



County Services Building
3283 – 122nd Avenue
Allegan, MI 49010
269-673-0203 Main Office
269-686-5331 Main Fax
<http://www.allegancounty.org>

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Larry "Casey" Jones, Vice Chairman

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tburns@
allegancounty.org

DISTRICT 2

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smcneal@
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jcampbell@
allegancounty.org

DISTRICT 11

Larry "Casey" Jones
269-664-5362
lcjones@
allegancounty.org

BOARD PLANNING SESSION-AGENDA

Thursday, July 31, 2008 - 9:30 a.m.
Board Room - County Services Building

Revised 7/31/08

[Click here](#) for the full packet: 1.95 MB

9:30 a.m. OPENING PRAYER: Commissioner VanEck

PLEDGE OF ALLEGIANCE:

ROLL CALL:

PUBLIC PARTICIPATION:

APPROVAL OF MINUTES: July 17, 2008

ADDITIONAL AGENDA ITEMS:

APPROVAL OF AGENDA:

DISCUSSION ITEMS:

- 1) Emergency Management—apply and accept FEMA Public Assistance Grant for June 6-12, 2008, Federal Declaration (47-898)
- 2) General Updates
- 3) Personnel (Status Quo & New Requests)
- 4) Employee Selection Process Policy #301 (Revision - ADH Hiring Process)
- 5) Facilities Master Plan
- 6) Parks, Recreation and Tourism—approve CSX purchase sale agreement (47-541)

OTHER ITEMS:

PUBLIC PARTICIPATION:

CLOSED SESSION:

- 1) Correction Officers—Collective Bargaining Agreement

ADJOURNMENT: Thursday, August 7, 2008 @ 9:30 A.M. @ BOARD ROOM -
COUNTY SERVICES BUILDING, COUNTY SERVICES COMPLEX @ DUMONT.

Mission Statement

"The Allegan County Board of Commissioners shall plan, develop, and evaluate the necessary policies and resources to ensure our county continues to progress and prosper"

July 31, 2008

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