

**Lee County Board Of County Commissioners  
Agenda Item Summary**

**Blue Sheet No. 20060329**

**1. ACTION REQUESTED/PURPOSE:** Authorize Chairwoman Hall to execute a Stipulation of Parties to convert the Gator Road highway-rail grade crossing to a public crossing.

**2. WHAT ACTION ACCOMPLISHES:** Agrees to the authorization of this new public crossing by the Florida Department of Transportation.

**3. MANAGEMENT RECOMMENDATION:** Staff recommends approval.

<b>4. Departmental Category:</b> 09 <span style="font-size: 2em; margin-left: 20px;"><b>C9A</b></span>		<b>5. Meeting Date:</b> <span style="font-size: 1.5em; margin-left: 20px;"><b>04-04-2006</b></span>
<b>6. Agenda:</b>	<b>7. Requirement/Purpose: (specify)</b>	<b>8. Request Initiated:</b>
<input checked="" type="checkbox"/> Consent	<input checked="" type="checkbox"/> Statute 335.141(1)	Commissioner _____
<input type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance _____	Department <u>Transportation</u>
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code _____	Division _____
<input type="checkbox"/> Public	<input type="checkbox"/> Other _____	By: <u>Scott Gilbertson</u>
<input type="checkbox"/> Walk-On		

**9. Background:**  
On May 31, 2005, Lee County approved the execution of a License Agreement with Seminole Gulf Railway, L.P. for the Gator Road crossing. This Stipulation of Parties is FDOT's acknowledgement and permission for this crossing to be converted from a private crossing to a public crossing.

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>S. Gilbertson</i> Date <u>3/17/06</u>		N		<i>AS</i> <u>3/20/06</u>	<i>RK</i> <u>3/22</u>	<i>JS</i> <u>3/21/06</u>	<i>WJ</i> <u>3/21/06</u>	<i>WJ</i> <u>3/21/06</u>	<i>J. Lavender</i> Date <u>3-17-06</u>

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY  
COUNTY ADMIN: *PK*

3-20-06

2:02

COUNTY ADMIN  
FORWARDED TO: *PK*

3/20/06

3/20

Rec. by CoAtty

Date: 3/20/06

Time: 11:05AM

Forwarded To:

*Co. Mgr.*  
3/20/06



Florida Department of Transportation

JEB BUSH  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0450

DENVER J. STUTLER, JR.  
SECRETARY

March 7, 2006

Mr. Don DeBerry  
Lee County Department of Transportation  
1500 Monroe Street  
Ft. Myers, FL 33901

Re: Stipulation of Parties for the Conversion of Gator Road Highway-Rail Grade Crossing to  
Public Crossing, Lee County

Dear Mr. DeBerry:

Please find enclosed four (4) Stipulations of Parties to convert the Gator Road highway-rail grade crossing to a public crossing. Please acquire the County's signature and return (overnight or certified) all four documents to:

Jan Bordelon  
Florida Department of Transportation  
Rail Office, MS 25  
605 Suwannee Street  
Tallahassee, FL 32399-0450

Thank you for your assistance in facilitating this process. If you have any questions concerning my request, please contact me at 850-414-4528.

Sincerely,

Jan Bordelon  
Rail Specialist

cc: Four (4) Stipulations of Parties

RECEIVED  
MAR 13 2006  
LCDO1

RECEIVED  
MAR 08 2006  
LCDO1

2006 MAR -9 PM 2:09  
RECEIVED BY  
LEE CO. ATTORNEY

**STIPULATION OF PARTIES FOR THE CONVERSION OF A PRIVATE  
HIGHWAY-RAIL GRADE CROSSING TO A PUBLIC CROSSING AT GATOR ROAD,  
GRADE CROSSING NUMBER 626492 P,  
LEE COUNTY**

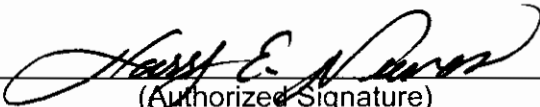
Lee County, hereinafter referred to as "COUNTY;" Seminole Gulf Railway, Inc. as General Partner of Seminole Gulf Railway L.P., hereinafter referred to as "RAILROAD;" and Florida Department of Transportation, hereinafter referred to as "DEPARTMENT;" by and through their undersigned representatives hereby file this Stipulation of Parties as follows:

1. The COUNTY has filed an application with the DEPARTMENT for a permit to open a public railroad-highway grade crossing pursuant to Section 335.141(1), Florida Statutes. A copy of the application is attached hereto and made a part hereof as EXHIBIT "A."
2. The crossing will be located over a rail line known as the RAILROAD's Baker Spur, located at approximately Station BL 55+65 in Lee County, Florida, as set forth on the plans attached hereto and made a part hereof as EXHIBIT "B."
3. The rail track at this location is classed as an industrial spur. The maximum train speed is set at 10 miles per hour.
4. Gator Road is a two-lane rural, local roadway into an industrial park.
5. The COUNTY has entered into a license agreement, hereinafter referred to as "AGREEMENT" with the RAILROAD, a copy of which is attached hereto and made a part hereof as EXHIBIT "C," to construct and maintain a highway grade crossing surface, to be in accordance with the DEPARTMENT's Standard Index No. 560, attached hereto and made a part hereof as EXHIBIT "D," and to install and maintain automatic highway-railroad grade crossing traffic control devices Type III, Class III, (Mast Mounted Flashing Lights and Gates), to be in accordance with the DEPARTMENT's Standard Index No. 17882 attached hereto and made a part hereof as EXHIBIT "E." The RAILROAD will provide the DEPARTMENT with the amended inventory data upon completion.

6. All work by the COUNTY shall be consistent with current Manual of Uniform Traffic Control Devices (MUTCD), American Association of State Highway and Transportation Officials (AASHTO) Policy, and the DEPARTMENT's Manual of Uniform Minimum Standards for Design, Construction, and Maintenance for Streets and Highways (Florida's Green Book).
7. The DEPARTMENT authorizes the opening of this new crossing as evidenced by the execution of this Stipulation provided that all conditions of the AGREEMENT (EXHIBIT "C") and Stipulation are met by the COUNTY and are so confirmed in writing to the DEPARTMENT by RAILROAD.
8. This Stipulation has been executed by all parties having an interest in this matter, and further, all parties waive hearing rights provided by Chapter 120, Florida Statutes, and request the DEPARTMENT to issue authority in accordance with Section 335.141(1), Florida Statutes, and Rule 14-57.012, Florida Administrative Code, with this Stipulation of Parties.

**(THIS CONCLUDES THE BODY OF THIS STIPULATION OF PARTIES)**

**SEMINOLE GULF RAILWAY, INC. - RAILROAD**

By:   
(Authorized Signature)

Printed Name: HARRY E. NEEVES

Attest: 

Date: 3/2/06

**LEE COUNTY - COUNTY**

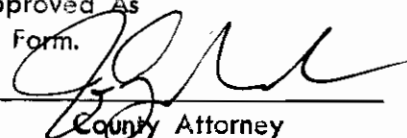
By: \_\_\_\_\_  
(Authorized Signature)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
(Authorized Official)

Date: \_\_\_\_\_

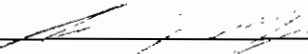
Approved As  
To Form.  
By   
County Attorney

**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
State Public Transportation Administrator

Date: \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION  
LEGAL REVIEW**

By:   
Attorney, FDOT

Date: 3-2-06



# EXHIBIT B

# MAPQUEST

★ [16500-16654] Gator Rd  
Fort Myers, FL 33912, US

MAPQUEST



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**LICENSE AGREEMENT  
FOR PUBLIC GRADE CROSSING  
SGLR STATION BL 55+65 (GATOR ROAD)**

THIS License AGREEMENT made as of this 31st day of May 2005 between SEMINOLE GULF RAILWAY, L.P., a Delaware Limited Partnership ("SGLR") and LEE COUNTY, a political subdivision of the State of Florida ("COUNTY").

WHEREAS, SGLR owns the track, other Rail Facilities, and the exclusive use of the right-of-way under the Indenture dated the 17<sup>th</sup> Day of September 1973, between Alico Land Development (Grantor) and Fort Myers Southern Railroad (Grantee) ("~~Indenture~~"); ("~~the "Rail Facilities"~~"); and

WHEREAS, COUNTY anticipates control of the underlying land at Gator Road associated with that Indenture, and SGLR has agreed to grant COUNTY this license and permission as set forth in Section 3 of the Indenture to construct, maintain, use, and remove, to SGLR's specifications a highway crossing at grade over and across the right of way and track of the SGLR's Baker Spur, located at approximately Station BL 55+65 in Lee County, Florida, as outlined in red on Exhibit "A" attached hereto and made a part hereof (all and any part of said crossing or any appurtenances thereto shall hereinafter be referred to as the "Crossing"); and

WHEREAS, SGLR desires to be responsible for and to manage, contract for, and control certain construction described herein that is required by COUNTY relating to the Crossing; and

WHEREAS, SGLR is willing to grant COUNTY a License to construct, improve, maintain and use the Crossing, upon and subject to the terms, conditions and limitations set forth in this License Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, and intending to be legally bound, the parties agree as follows:

1. SGLR, insofar as it has the legal right to do so, and in consideration of Ten dollars (\$10.00) and other valuable consideration, in hand paid by COUNTY, the receipt of which is hereby acknowledged and upon execution of this agreement, and in consideration of the covenants and conditions hereinafter stated on the part of the COUNTY to be kept and performed, hereby permits COUNTY to construct, improve, use, maintain, repair, renew, and ultimately remove the Crossing across and over the said tracks, and right-of-way of SGLR including the appurtenances, such as approaches, paved roadway, curbs, gutters, sidewalks, shoulders, drainage, slopes, fills and crossing protection, over and across the



right of way and track of SGLR at the location aforesaid; provided however, that SGLR reserves the right to perform all work related to track and crossing surface construction and installation, including work related to any future construction maintenance, repair, installation, renewal or removal the crossing. The crossing shall be located at approximately Station BL 55+65 in Lee County, Florida, as more fully shown in Exhibit A (all and any part of said public crossing or any appurtenances thereto shall be referred to herein as the "Crossing"); and

2. (a) COUNTY shall pay to SGLR, upon execution of this Agreement, the sum of Three Thousand Five Hundred Dollars (\$3,500.00) and further agrees to pay any legal fees and expenses, as reimbursement for the costs and expenses incident to the preparation and review of this Agreement, including any exhibits attached hereto.

(b) SGLR agrees to perform the Crossing surface construction and signal relocation and installation for the total lump sum cost of One Hundred and Three Thousand, Nine Hundred and Sixty Five (\$103,965.00) Dollars (the "Project Cost"), which covers all work to be performed and all materials to be furnished by SGLR in connection with the construction of the Crossing and signals. COUNTY agrees to pay the Project Cost to SGLR as set forth in this agreement paragraph 2 (c). The Project Cost is based on costs associated with the relocation of and reuse of appropriate portions of the existing crossing signal system from Alico Road Crossing # 3 together with new material as needed and installing a new Highway Grade Crossing surface that meets SGLR specifications and approval between the rails of said track and on the outside of each rail thereof exclusive of paving up to and through the crossing, drainage pipe improvements or extensions, signs and guard rail installation, and exclusive of approach road construction on Railroad property and maintenance of traffic, which is to be performed by others under contract to COUNTY.

(c) Payment by the COUNTY to SGLR of the Project Cost shall be as follows: COUNTY shall pay SGLR upon execution of this agreement fifty percent (50%) of the project costs. The balance of the project costs shall be paid by COUNTY to SGLR upon receipt of a final invoice to be sent to the COUNTY at the completion of the project.

(d) COUNTY shall pay SGLR an annual signal and gate system maintenance fee of \$ 2,820.00. The signal and gate maintenance fee will be payable annually by the COUNTY starting as of the completion date of the Signal and gate installation. These fees will cover incidental maintenance and crossing signal inspections and Federal and State regulatory tests. Specific maintenance or capital expenditures, and all repairs related to damage of improvements, or crossing renewal projects costing more than \$500.00 shall be paid for by

COUNTY prior to commencement of such projects or in the case of damage, upon invoicing to COUNTY by SGLR. The maintenance fee set forth in this section shall be adjusted each year commencing as of one year from of the completion date of the Signal and gate installation in accordance with changes in the Consumer Price Index - All Urban Consumers for the South, Population 50,000-450,000 (1982-1984=100). The final index figure for the calendar year 2003 shall be the base period for adjustments. The adjustments shall be made by calculating the percent of increase in the index figure between the base period and the calendar year prior to the year being adjusted.

3. (a) The Crossing shall be public, and shall be located, constructed and maintained in exact accordance with Exhibit A, and no departure shall at any time be made therefrom except upon permission in writing granted by SGLR; provided, however, that if any commission or other regulatory body duly constituted and appointed in compliance with the laws of the State of Florida and competent jurisdiction, has by ruling or other general order determined and fixed the manner and means of construction, maintenance, repair, alteration, renewal, relocation or removal thereof, then said ruling or general order shall prevail for the Crossing. Supervision over the location of the construction work, inspection of the repair, alteration, renewal, relocation and removal of the Crossing shall be subject to the approval of SGLR, or its successors or assigns.

(b) The construction, improvement, maintenance, repair, alteration or removal of the Crossing shall be done under such general conditions, including access to the site, as will be satisfactory to the SGLR, and as will not interfere with the proper and safe use, operation and enjoyment of the property of the SGLR by SGLR, or its successors or assigns.

(c) SGLR shall perform such construction, improvement, maintenance of the Crossing on SGLR's property as it may determine is required for the safe operation and maintenance of the properties of SGLR and its lessees. If necessary to protect the property, traffic, patrons, or employees of SGLR, or any other person from damage or injury, SGLR may with reasonable notice to COUNTY at any time make such repairs and furnish such material therefor as it deems adequate and necessary, all at the sole cost and expense of COUNTY. Any costs incurred by SGLR pursuant to this paragraph shall be reimbursed to SGLR by COUNTY within thirty (30) days of receipt of an invoice from SGLR.

(d) The Crossing shall include adequate drainage facilities necessary or appropriate for the prevention of flooding or any other kind of water damage in the general area, and said drainage facilities shall be installed, repaired, maintained and cleaned at all times at the sole risk, cost and expense of COUNTY. Unless otherwise agreed upon

between the parties, all such work to be performed on SGLR's property shall be performed by SGLR.

(e) SGLR's right of supervision over the location of the construction or maintenance work and inspection of the Crossing from time to time thereafter shall extend for such distance on each side of the Crossing as may, in SGLR's judgment, be necessary to support and sustain the tracks and roadbed of SGLR and which will cover adequate sight preview of the Crossing by approaching trains. COUNTY agrees to keep the right of way clear of trees and other growth at its sole cost to the satisfaction of SGLR for a distance of 250 feet each side of the Crossing centerline for the entire width of the right of way of SGLR.

4. (a) COUNTY, at its own cost and expense, when performing any work in connection with the Crossing shall request SGLR to furnish any necessary inspectors, flagmen or watchmen for the protection of any person or property, including persons not parties hereto and their property. SGLR shall be notified at least three (3) weeks in advance of the performance of any work in connection with the Crossing.

(b) In addition to, but not in limitation of any of the foregoing provisions, if at any time SGLR should deem it necessary to place inspectors, flagmen, or watchmen for the protection of any person or property, during the construction, maintenance, repair, alteration, renewal, or removal of the Crossing, SGLR shall have the right to place such inspectors, flagmen, or watchmen, or other persons at the sole cost and expense of the COUNTY. Upon receipt of a bill from SGLR, COUNTY shall promptly pay the SGLR the full cost and expense of such inspectors, flagmen, or watchmen. The furnishing or failure to furnish inspectors, flagmen, or watchmen or other persons by SGLR under this paragraph, however, shall not release COUNTY from any and all other liabilities assumed by COUNTY under the terms of this Agreement, including its obligations under Section 8 hereof.

5. If COUNTY desires or is required by SGLR to revise, renew, add to, alter or relocate the Crossing or Signals in any manner whatsoever, it shall submit plans to SGLR and obtain its written approval thereto before any work or alteration of the structure is performed. SGLR reserves the right to make reasonable adjustments in its charges in connection with any such work.

6. SGLR shall have the right from time to time, at the sole cost and expense of COUNTY, to take up and replace all or any part of the Crossing or Signals in order to

maintain, repair or renew facilities of SGLR within the Crossing and to bill COUNTY for all costs therefor.

7. SGLR shall have the right at all times to paramount use of the track(s) and right of way at the Crossing, and COUNTY shall exercise all reasonable care in the use of the Crossing and shall require COUNTY's officers, employees and agents and others permitted hereunder to use the Crossing, likewise to use all reasonable care in the use of the Crossing.

8. (a) The sole responsibility for protecting the aforesaid Crossing from the standpoint of safety and the duty of otherwise policing the Crossing shall rest exclusively on COUNTY at all times and under all circumstances. COUNTY shall take or cause to be taken such precautionary measures as may be necessary to avoid injury to or death of persons or damage to or destruction of property at the Crossing. In addition, COUNTY shall erect, maintain, and renew, at the sole cost and expense of COUNTY, appropriate signs or notices, satisfactory to SGLR, and consistent with Federal and State standards which shall alert the public to the existence of the crossing.

(b) If SGLR should at any time, and from time to time, request COUNTY to take any other reasonable measures to protect the Crossing (either new or additional), COUNTY, at its sole cost and expense, shall promptly cause the measures requested and directed by SGLR to be taken. In the event COUNTY fails promptly to do so, SGLR may, at its option, take such measures, and COUNTY hereby agrees to pay in the first instance or to reimburse SGLR for the cost and expense thereof.

(c) COUNTY's obligation to indemnify SGLR Entities shall not be construed to protect SGLR Entities from their own negligence, and shall be subject to the limitation set forth in Section 768.28 Florida Statutes; provided, however, if COUNTY, at its sole discretion purchases insurance covering the said liability with limits in excess of the statutory limits, COUNTY's obligation shall extend up to but shall not exceed the limits of that insurance. Notwithstanding any provision contained herein, COUNTY agrees to reimburse SGLR and CSXT for all cost and expenses for any damage, including settlement, to the land and/or facilities of SGLR and CSXT resulting from COUNTY's use of the Crossing.

(d) Any contractors employed by COUNTY to perform any work on the land area relating to this License or any work relating to any other provisions of this License shall be required by COUNTY to sign the indemnification agreement attached hereto as Exhibit "B", and to provide the following insurance:

(i) Any contractor employed by the COUNTY shall agree to carry, with respect to the operations it or any of its subcontractors performs on or about the right-of-way of the Seminole Gulf Railway, the following insurance coverage: Railroad Protective liability insurance with per occurrence limit of not less than Two Million Dollars (\$2,000,000) and aggregate limit of not less than Six Million Dollars (\$ 6,000,000) written on the ISO form. The policy is to name Seminole Gulf Railway LP, as the named insured, and shall name as additional insured CSX Transportation, Inc. The original policy for Railroad Protective liability insurance must be provided to Seminole Gulf Railway LP, prior to the commencement of any work on Railroad property.

(ii) Comprehensive liability including contractual liability with a combined single limit of Five Million Dollars (\$5,000,000) aggregate. The policy shall contain endorsement GC2417 (Contractual Liability) and shall not exclude underground work. Seminole Gulf Railway LP and CSX Transportation, Inc. shall be included as named additional insured.

(iii) Auto liability with a combined single limit of not less than One Million Dollars (\$1,000,000). Seminole Gulf Railway LP and CSX Transportation, Inc. shall be included as named additional insured.

(iv) Workers compensation and employers liability with standard limits of liability. The policy is to contain a waiver of subrogation against Seminole Gulf Railway and CSX Transportation, Inc.

Such policies of insurance shall be endorsed to provide thirty (30) days' notice to each name insured by the insurance company before any reduction to or cancellation of the policies. SEMINOLE GULF RAILWAY LP shall be furnished with a certificate of insurance for the coverage provided for herein indicating conformance to the foregoing, prior to the commencement of any work on Railroad property.

All contractors, employees of a contractor, or entity working on or about Seminole Gulf Railway's right-of-way, must be certified to work on Railroad rights-of-way under the "Roadway Workers Protection Act" as mandated by the Federal Government (Federal Railroad Administration Part 214, Title 49, Code of Federal Regulations, Part 214 Amended. Authority: 49 U.S.C. Chs. 210-213; 49 CFR 1.49.) Training for compliance with the above requirements can be provided by "Roadway Workers Training, Inc.", Jacksonville Florida 904-296-8088.

(e) COUNTY is currently self-insured. If at any time during the term of this License Agreement COUNTY fails to maintain its formal self-insured status, it shall obtain insurance coverage as outlined in paragraph 8 (d) above.

9. COUNTY will be responsible for any settlement caused to the roadbed, right of way and /or tracks, facilities and appurtenances of SGLR, arising solely or as a result of the Crossing, and COUNTY agrees to pay to SGLR, on demand, the full cost and expense of repairing or restoring SGLR's facilities.

10. Upon termination of this License agreement or upon the removal or abandonment of the Crossing, all the rights of the COUNTY hereunder shall cease and terminate, and this instrument shall thereupon terminate without any liability on the part of either party to the other party except only as to any charges and liability accrued prior thereto, and the obligation of COUNTY at SGLR's request to remove its Crossing from SGLR's property. All property of SGLR shall be restored in good condition and to the satisfaction of the SGLR. If COUNTY fails or refuses to remove its Crossing and appurtenances under the foregoing conditions, SGLR shall be privileged to do so at the cost and expense of COUNTY.

11. As part of the consideration of this License Agreement, COUNTY covenants and agrees that no assessments, taxes or property charges of any kind shall be made against SGLR or its property by reason of this Agreement or the construction of the Crossing of COUNTY. COUNTY further covenants and agrees to pay SGLR, promptly upon itemized bills rendered therefore the full amount of any assessments, taxes including if applicable, but not limited to, sales and use taxes or charges of any kind which may be levied, charged, assessed or imposed against SGLR or its respective property by reason of the construction and maintenance of the Crossing or any fees or charges related thereto. COUNTY agrees to pay all sales and use taxes if applicable, which may be due for any changes, fees or other payments made to SGLR under this Agreement.

12. (a) The rights conferred hereby shall be the privilege of COUNTY only, and no assignment or transfer hereof shall be made without the consent and agreement in writing of SGLR being first had and obtained.

(b) In the event COUNTY desires to transfer the crossing to any other person, firm or corporation or Government entity, COUNTY shall provide thirty (30) days' prior written notice of such transfer to SGLR. Upon receipt of such notice, SGLR may

terminate this Agreement immediately upon notice delivered to COUNTY unless such transfer provides that the receiving entity shall assume without limitation all obligations of the COUNTY under this agreement.

(c) Despite any transfer of this License by COUNTY in violation of paragraphs 12(a) and 12(b), COUNTY will retain all liability including that which would otherwise be transferred to the transferee of the License.

13. The burden of obtaining all permits and approvals which may be necessary or appropriate shall be upon COUNTY and shall be at the sole risk, cost and expense of COUNTY whose responsibility it shall be to comply with all Federal, State, and Local laws and assume all cost and expense and responsibility in connection therewith, without any liability whatsoever on the part of the SGLR, and COUNTY hereby agrees to indemnify, protect and save harmless SGLR therefrom, to the extent permitted by Florida law. SGLR will cooperate with COUNTY in making application for all permits and approvals which may be necessary or appropriate.

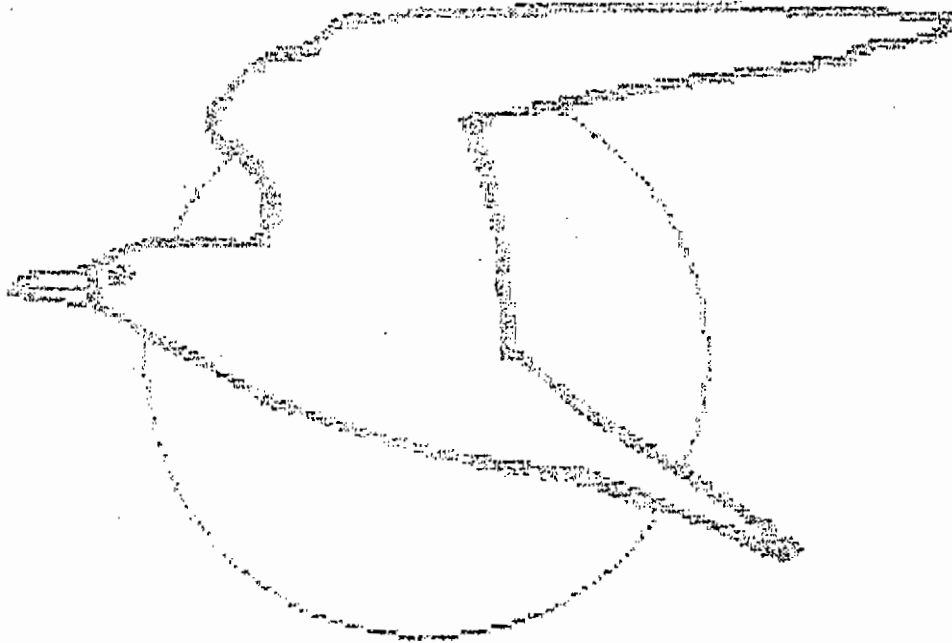
14. The terms of this License Agreement shall be binding and effective upon the parties hereto, and unless and until terminated, as hereinbefore provided, this License Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns, subject however, to the provisions of Section 12 hereof.

15. All notices which may or are required to be given, or served or sent by any party to the other parties pursuant to this License Agreement shall be in writing and shall be deemed to have been properly given or sent, if hand delivered or mailed by registered or certified mail, return receipt requested, with postage prepaid. Each notice shall be mailed as aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice shall be deposited in the mail properly addressed and, in any event, upon receipt by the addressee. Until any party notifies the others of any new address, such notices shall be addressed as follows:

**If to SGLR:**  
Seminole Gulf Railway, L.P.  
4110 Centerpointe Drive Suite 207  
Fort Myers, Florida 33916  
Attn.: Vice President, Engineering & Real Estate  
Phone: (239) 275-6060

**If to COUNTY:**

Lee County Government  
Board of County Commissioners  
PO Box 398  
Fort Myers, FL 33902-0398  
Attn: Public Works Director, and  
Director, Department of Transportation



**IN WITNESS WHEREOF**, the parties hereto have caused this License Agreement to be duly executed and delivered as of the day and year first above written.

**WITNESSES FOR SGLR:**

**SEMINOLE GULF RAILWAY, L.P.**  
**By it's General Partner,**



**SEMINOLE GULF RAILWAY, INC.**

By: Jay A. Salas

By: Gordon H. Fay

**Gordon H. Fay  
President**

**Attest: Charles Green  
Clerk Of The Courts**

**BOARD OF COUNTY COMMISSIONERS OF  
LEE COUNTY, FLORIDA**

By: Inoa Pierce  
**Deputy Clerk**

By: William H. ...  
**Chairman**



**APPROVED AS TO FORM:**

By: D. L. Owen  
**County Attorney**

**ACKNOWLEDGMENT OF LEE COUNTY**

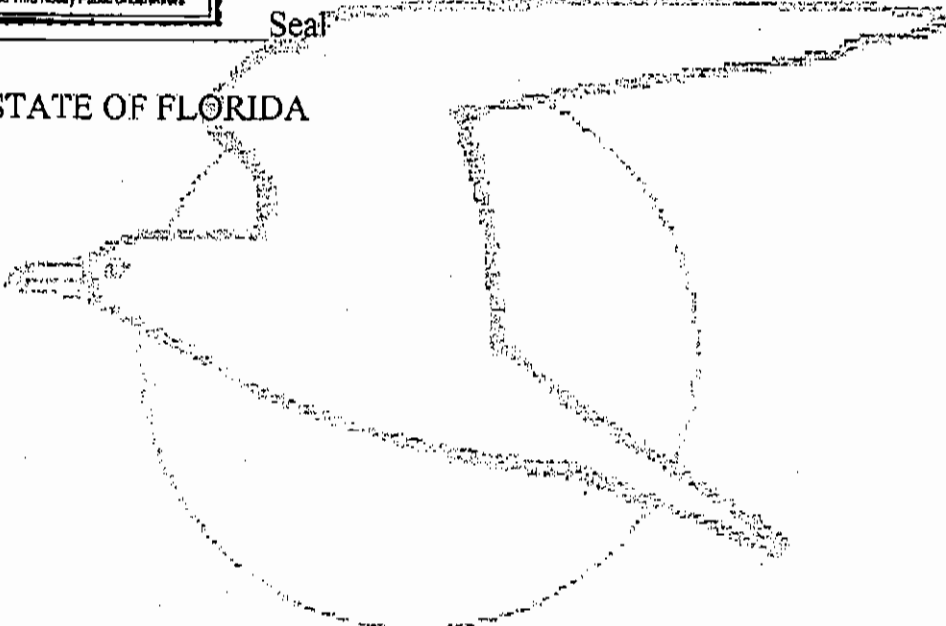
STATE OF FLORIDA  
LEE COUNTY

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of, MAY  
2005, by Douglas St. Cury is personally known to me and who is personally known to me as  
the Chairman of the Board of County Commissioners of Lee County, on behalf of the  
County.



Seal

NOTARY STATE OF FLORIDA

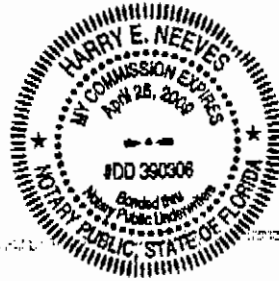


**ACKNOWLEDGMENT OF  
SEMINOLE GULF RAILWAY, L.P.**

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of JUNE, 2005 by Gordon H. Fay, who is personally known to me and who did take an oath as President of Seminole Gulf Railway, Inc., on behalf of the Corporation, in its capacity as general partner of Seminole Gulf Railway, L.P.

*Harry E. Neeves* Seal



**RELEASE AND INDEMNIFICATION**

FOR VALUE RECEIVED, and in consideration of being authorized by Seminole Gulf Railway L.P., a Delaware limited partnership ("SGLR") to enter upon the property of SGLR in the performance of the contract between the undersigned contractor (the "CONTRACTOR") and Lee County, Florida ("COUNTY"), with respect to the construction which traverses the railroad lines of SGLR (the "Construction") pursuant to the License Agreement attached hereto as Exhibit "A" (the "Agreement"), the undersigned, intending to be legally bound, agree as follows:

1. CONTRACTOR will comply with all the obligations of Licensee with respect to construction and maintenance of the Crossing under the Agreement, including, without limitation, the provisions of Paragraph 2 thereof.
2. CONTRACTOR acknowledges and appreciates the risks and danger assumed and attendant upon the exercise of the permission granted hereunder, and assumes all risk of injury (including death) to itself, its officers, employees and agents, or to its property, occurring or arising while or resulting from being upon or about the property of Licensor, regardless of Licensor's fault or negligence.

3. CONTRACTOR, for itself and for its successors and assigns, agrees to release, indemnify, defend and save harmless Licensor and CSX Transportation, Inc. ("CSXT") and their respective officers, employees, agents, successors and assigns, from and against all damages, losses, claims, demands, suits, costs or expenses, including counsel fees, which Licensor or CSXT may suffer or sustain, or be subject to, directly or indirectly, for personal injury, death or property damage suffered by anyone whomsoever (including Licensor, CSXT and CONTRACTOR) and arising out of or caused either wholly or in part by the work performed on Licensor's property by the undersigned, regardless of the fault, failure or negligence of Licensor or CSXT.

4. In conformance with Section 725.06 Florida Statutes, to the extent it applies to this indemnity, the specific consideration given for the promises of the CONTRACTOR set forth in this Release and Indemnification is the right granted CONTRACTOR to perform work on SGLR's property, together with One Dollar (\$1.00) in hand paid by Licensor to CONTRACTOR, receipt whereof is hereby acknowledged, and the adequacy of which CONTRACTOR accepts as completely fulfilling the obligations of Licensor under the requirements of Section 725.06 Florida Statutes.

5. CONTRACTOR agrees to obtain the insurance specified in paragraph 8(c) of the Agreement. If any such insurance shall be provided on a claims-made basis, then in addition to the coverage requirements specified in paragraph 8(c) of the Agreement, CONTRACTOR agrees to make every effort to maintain similar insurance for at least two years following completion of the construction or maintenance of the Crossing. If the insurance is terminated for any reason, CONTRACTOR agrees to purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with construction of the Utility.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed this \_\_\_\_ day of \_\_\_\_\_, 2005.

ATTEST:

CONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT "B"**

**ACKNOWLEDGMENT OF CSX TRANSPORTATION, INC.**

CSXT Transportation, Inc. as lessor of certain railroad property to Seminole Gulf Railway, LP pursuant to the Lease Agreement, which leasehold interests include the property that is described in this Agreement (the "Agreement") to which Consent is appended, hereby consents to Seminole Gulf Railway LP entering into this Agreement and consents to the occupancy of the Subject Property for the purpose and on the terms described in the Agreement. Nothing contained in this Consent shall make, or be deemed to make, CSXT a party to this Agreement.

WITNESS FOR CSXT:

CSXT TRANSPORTATION, INC.

\_\_\_\_\_

By: \_\_\_\_\_

Its:

(Corporate Seal)

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me

this \_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_,

as \_\_\_\_\_ of CSX Transportation, Inc., on behalf of the Corporation, who is

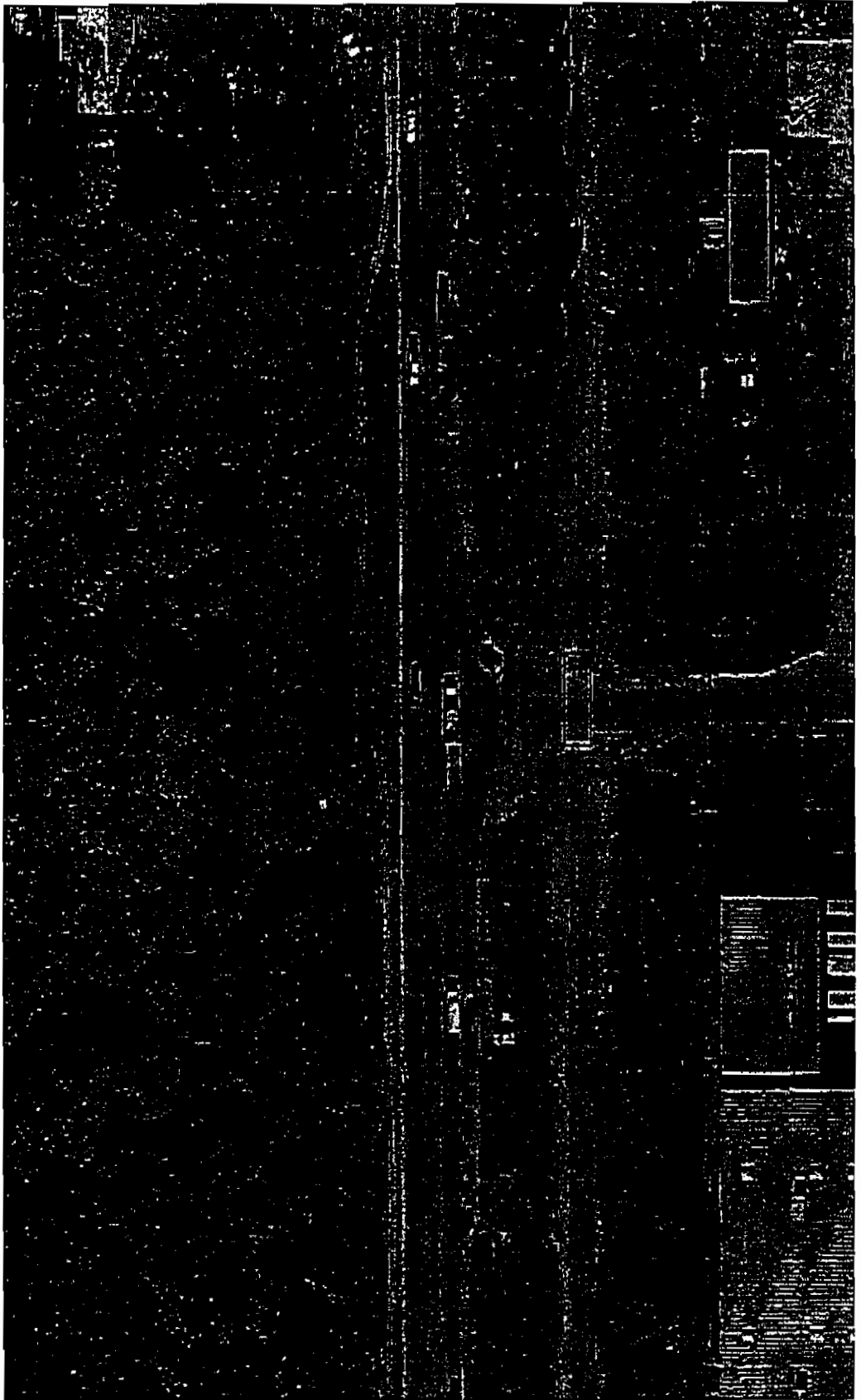
personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

My commission expires:

(Affix Seal)



DATE: May 10, 2005

SCALE: NO SCALE

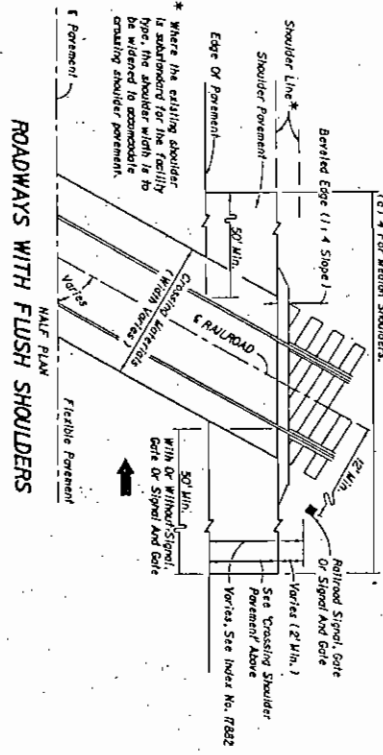
Gator Road



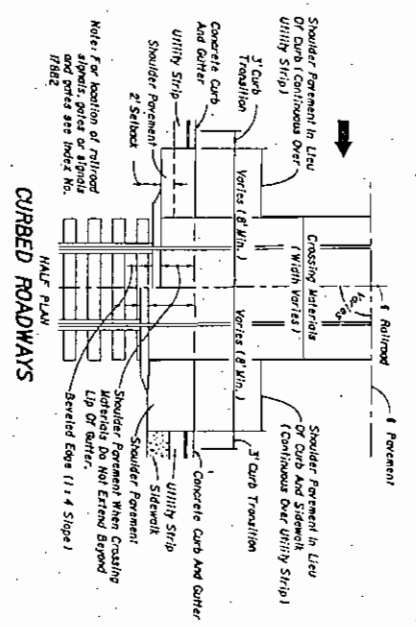
**EXHIBIT "A"**

**Seminole Gulf Railway LP**  
 4110 Centerpointe Drive, Suite 207  
 Fort Myers, FL 33916

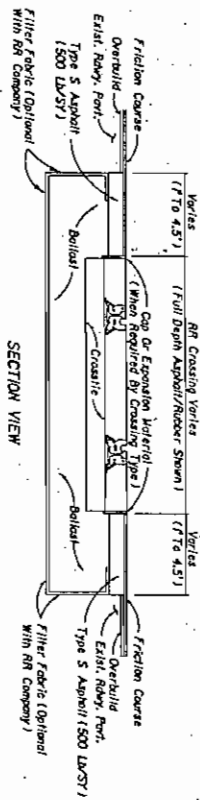
Crossing Shoulder Pavement (Except Area Occupied By Crossing Surface Material)  
 (a) To Shoulder Line For Outside Shoulders Less Than 8' Wide.  
 (b) To 8' Minimum Width For Outside Shoulders 8' Or Wider.  
 (c) To Approach Shoulder Pavement Width.  
 (d) 4' For Median Shoulders.



ROADWAYS WITH FLUSH SHOULDERS



CURBED ROADWAYS



TYPICAL FLEXIBLE PAVEMENT REPLACEMENT AT PANEL RR CROSSINGS

CROSSING SURFACES	
Type	Definition
C	Concrete
R	Rubber
RA	Rubber/Asphalt

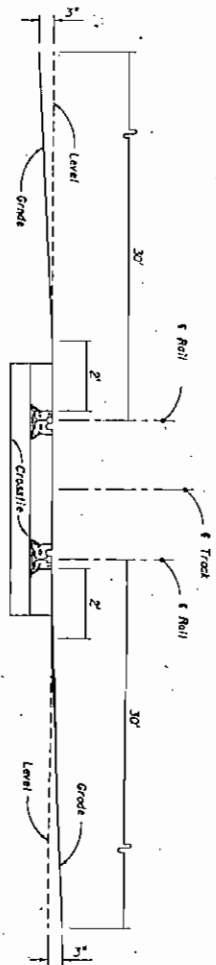
STOP ZONE FOR RUBBER CROSSING	
Design Speed (mph)	Zone Length (Distance From Stop)
45 Or Less	250'
50 - 55	350'
60 - 65	500'
70	600'

- Notes:
- Type R Crossings are NOT to be used for multiple track crossings within zones for an existing or scheduled future vehicle stop. Zone lengths are derived above.
  - Single track Type R Crossings within the zones on the right may be used unless engineering or safety considerations.

General Notes

- The Railroad Company will furnish and install all track bed (ballast), crushed rock, crossing surface panels and accessory components. All pavement materials, including that through the crossing, will be furnished and installed by the Department or its contractor. Utility structures are the responsibility of the contractor.
- When a railroad grade crossing is located within the limits of a highway construction project, a transition pavement will be maintained at the approaches of the crossing to reduce vehicular impacts to the crossing. The transition pavement will be maintained as appropriate to prevent the crossing from low clearance vehicles and vehicular impacts until the construction project is completed and the final highway surface is constructed.
- The Central Rail Office will maintain a list of currently used Railroad Crossing Products and will periodically distribute the current list to the District Offices as the list is updated.
- The Railroad Company shall submit engineering drawings for the proposed crossing surface type to the Construction Project Engineer and/or the District Rail Office for concurrence along with the List of Railroad Crossing Products. The approved engineering drawings of the crossing surface type shall be made a part of the installation agreement.
- Structures shall be constructed through the crossing between approach sidewalks of the crossing. Sidewalks shall be constructed with appropriate material to allow unobstructed travel through the crossing in accordance with ADA requirements.
- All details shall be installed in accordance with Index No. SR and Section 300 of the Standard Specifications.

VERTICAL ROADWAY ALIGNMENT THROUGH A RAILROAD CROSSING



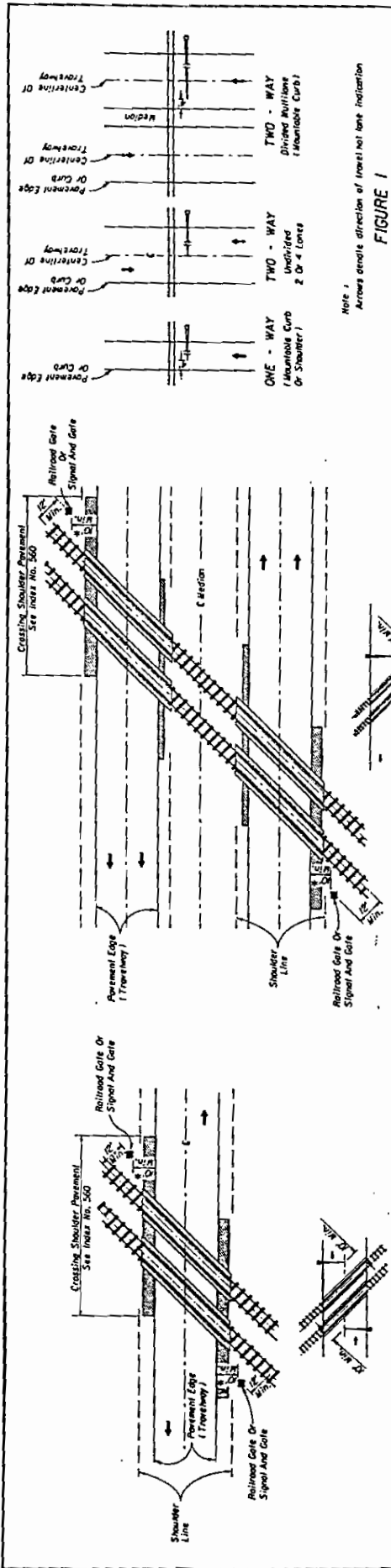
To prevent low-clearance vehicles from becoming caught on the tracks, the crossing surface should be at the same plane as the top of the rails for a distance of 2 feet outside the rails. The surface of the highway should also not be more than 3 inches higher or lower than the top of the nearest rail of a panel, 30 feet from rail unless track super-elevation makes a different level appropriate. Vertical curves should be used to transition from the highway grade to a level plane at the elevation of the rails. Rails that are not at a level plane at top approach sections that is not level, will necessitate a site specific analysis for rail elevations.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

**RAILROAD CROSSINGS**

DESIGNED BY	DATE	APPROVED BY	DATE
DRAWN BY	NO.	REVISION	DATE
CHECKED BY	NO.	NO.	DATE

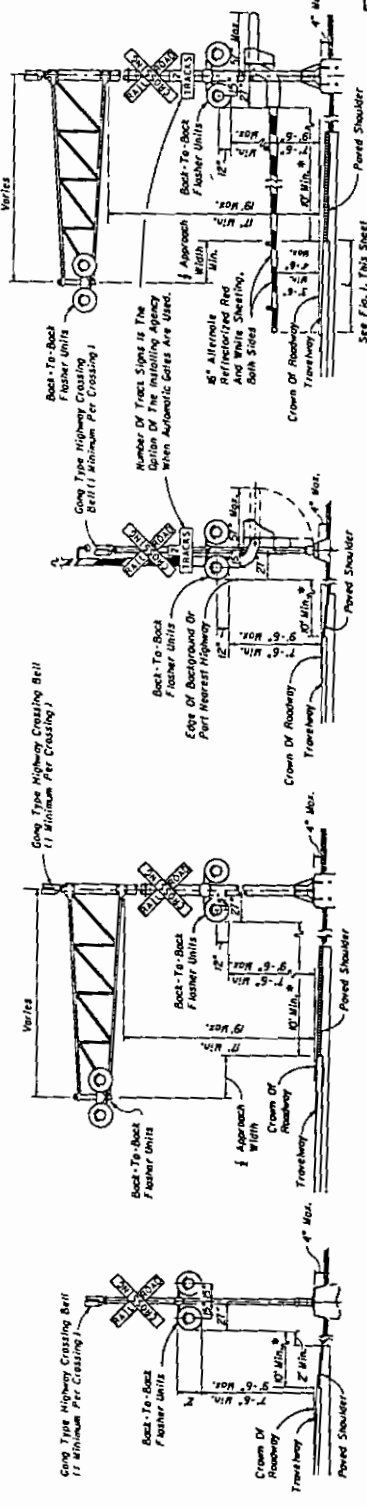
560



**FIGURE 1**  
Gate Length Requirements  
See Note 6 Sheet 3

**SIGNAL PLACEMENT AT RAILROAD CROSSING (2 - LANE DESIGN)**

**SIGNAL PLACEMENT AT RAILROAD CROSSING (4 - LANE DESIGN)**



**TYPE I**

**TYPE II**

**TYPE III**

**TYPE IV**

\* When it is desired impracticable the control device can be located as close as 2' from the edge of a paved shoulder but not less than 6' from the edge of the near traffic lane.

Note 1  
Two separate foundations may be required for signals, one for each side, depending on type of equipment used.

**General Notes**

- No overhead is provided for signals however, some form of impact attenuation device may be specified for certain locations.
- Advance flasher to be installed when and where indicated.
- Top of foundation shall be no higher than 4" above finished shoulder grade.
- Type of traffic control device
  - I Flashing signals
  - II Flashing signals with cantilever
  - III Flashing signals with gate
  - IV Flashing signals with cantilever & gate
- Class of traffic control device
  - I Flashing signals - one track
  - II Flashing signals - multiple tracks
  - III Flashing signals and gates - one track
  - IV Flashing signals and gates - multiple tracks

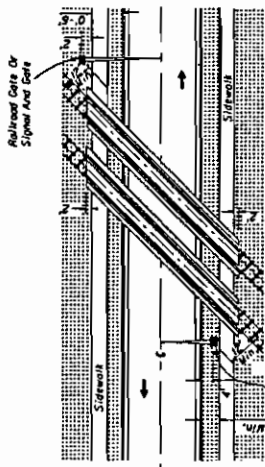
Note 1  
Arrows denote direction of travel not lane indication

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
TRAFFIC DESIGN

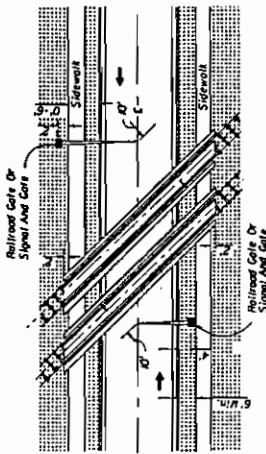
**RAILROAD GRADE CROSSING TRAFFIC CONTROL DEVICES**

DESIGNED BY	DATE	APPROVED BY	DATE
DRAWN BY	1-78	PROJECT NO.	17882
CHECKED BY	1-78	SHEET NO.	1 OF 4





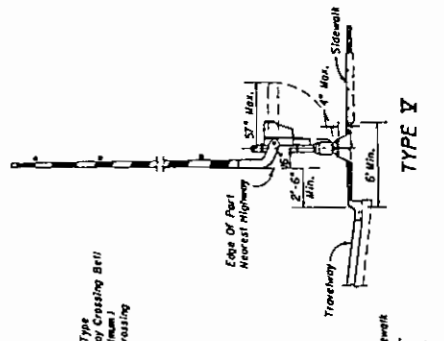
ACUTE ANGLE (AND RIGHT ANGLE)  
SIGNAL PLACEMENT AT RAILROAD CROSSING  
(2 LANES, CURB & GUTTER)



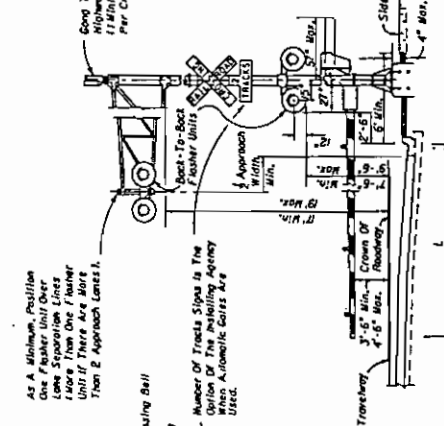
OBTUSE ANGLE  
SIGNAL PLACEMENT AT RAILROAD CROSSING  
(2 LANES, CURB & GUTTER)

GENERAL NOTES

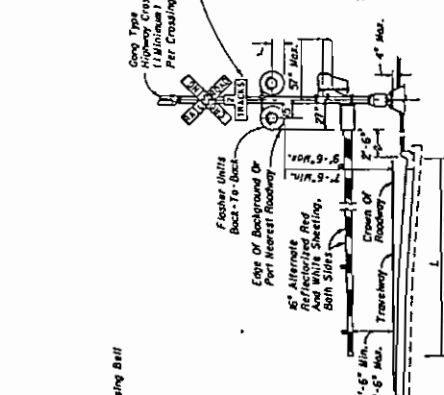
1. The location of flashing signals and stop lines shall be established based on the minimum sight triangle for the design speed of the vehicle (see appropriate traffic codes).
2. Where plans call for railroad traffic control devices to be installed at grade crossings, the minimum approach width shall be 27'-0".
3. Location of railroad traffic control device is based on the distance available between face of curb & sidewalk, 0' to 6'-0". Locate device outside sidewalk, 6' to 8'-0". Locate device inside face of curb and sidewalk.
4. Stop line to be perpendicular to edge of roadway, parallel to gate when present.



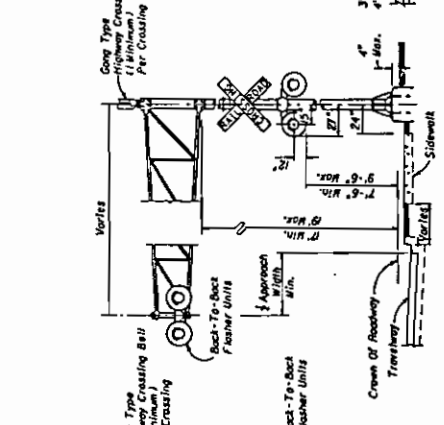
TYPE V



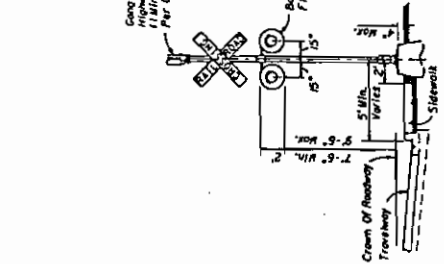
TYPE IV



TYPE III



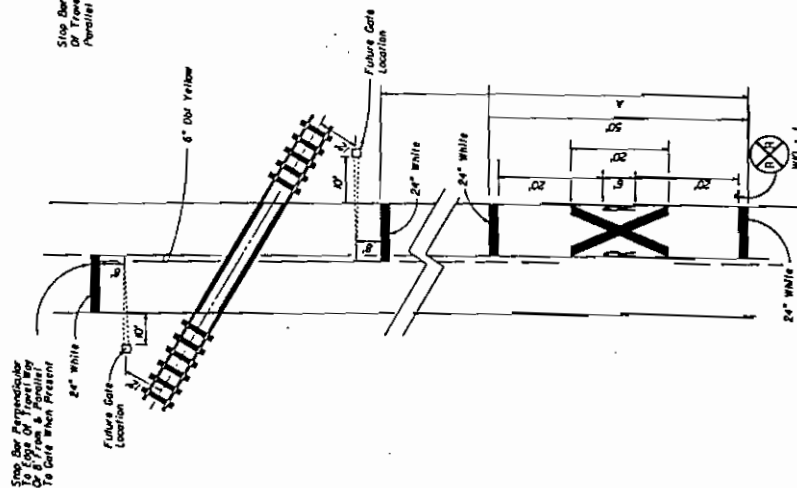
TYPE II



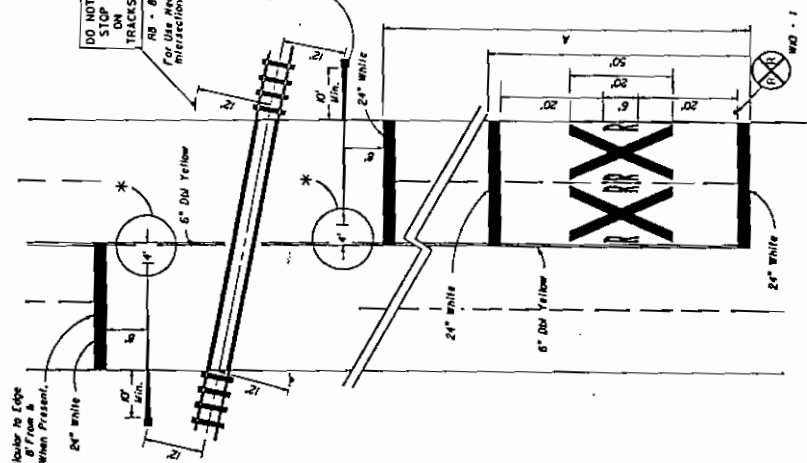
TYPE I

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION TRAFFIC DESIGN			
<b>RAILROAD GRADE CROSSING TRAFFIC CONTROL DEVICES</b>			
DESIGNED BY:	DATE:	SCALE:	NO.:
BY:	1-78	AS SHOWN	17882
CHECKED BY:	1-78	CD	2 of 4

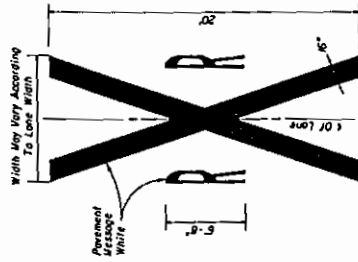
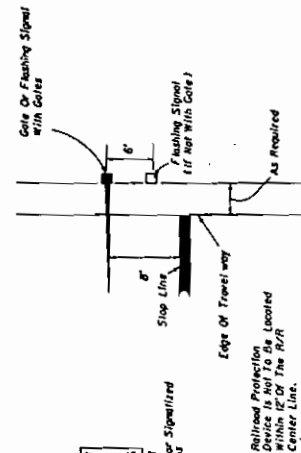
**RAILROAD CROSSING AT  
TWO (2) - LANE ROADWAY**



**RAILROAD CROSSING AT  
MULTI-LANE ROADWAY**



**RELATIVE LOCATION OF CROSSING TRAFFIC  
CONTROL DEVICES**



**NOTES:**

1. When computing pavement message quantities do not include concrete lines.
2. Placement of sign WD-1 in a residential or business district, where low speeds are prevalent, the WD-1 sign may be placed a minimum distance of 300 feet from the crossing. Where street intersections occur between the R/R pavement message and the tracks an additional WD-1 sign and additional pavement message should be used.
3. Recommended location for sign RPA-36, CD Urban & 300 Rural in advance of the crossing.
4. A portion of the pavement markings symbol should be directly opposite the WD-1 sign.
5. Recommended location for RPA-38 A or B signs, CD Urban and 300 Rural. See Index R155 for sign details.
- \* 6. Gate Length Requirements

For two-way undivided sections:  
The gate should extend to within 1' of the center line. On multilane approaches the maximum gate length may not reach to within 1' of the center line. For these cases, the distance from the gate to the center line shall be a maximum of 4'.

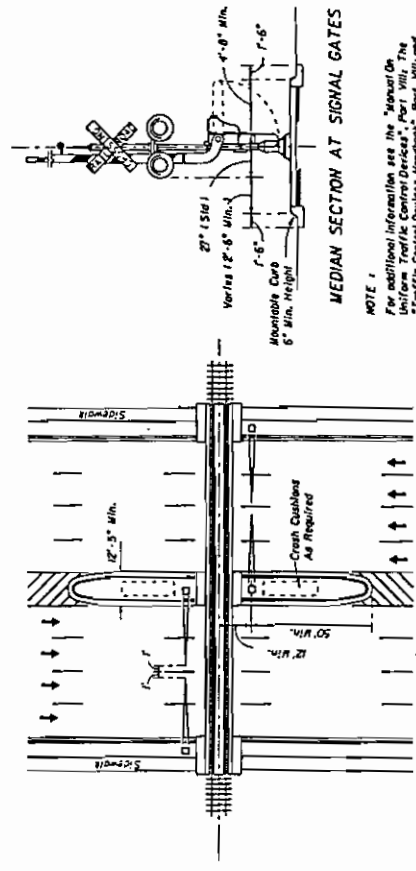
For one-way or divided sections:  
The gate shall be of sufficient length such that the distance from the gate tip to the inside edge of pavement is a maximum of 4'.

SPEED MPH	A - IN FT	B - IN FT
60	250	250
55	450	450
50	375	375
45	300	300
40	225	225
35	150	150
30	100	100
URBAN	50	50

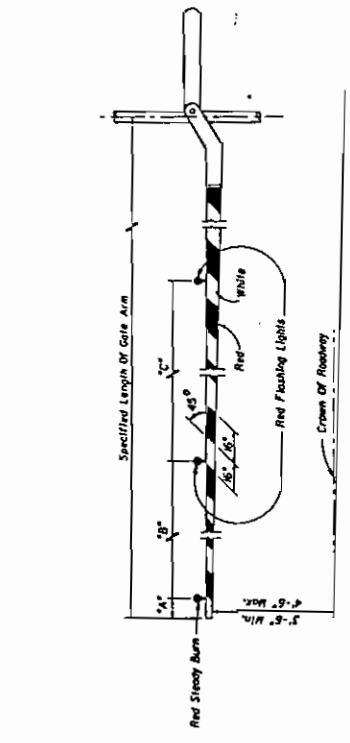
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
TRAFFIC DESIGN

**RAILROAD GRADE CROSSING  
TRAFFIC CONTROL DEVICES**

DESIGNED BY: [Signature]  
CHECKED BY: [Signature]  
DATE: 3 OF 4  
PROJECT NO: 17882



**MEDIAN SIGNAL GATES FOR  
MULTI LANE UNDIVIDED URBAN SECTIONS**  
(THREE OR MORE DRIVING LANES IN ONE DIRECTION, 45 mph OR LESS)



**RAILROAD GATE ARM LIGHT SPACING**

Specified Length Of Gate Arm	Dimension "A"	Dimension "B"	Dimension "C"
14 Ft.	6"	36"	5'
16-17 Ft.	8"	36"	5'
18-19 Ft.	10"	4'	5'
20-23 Ft.	12"	4'	5'
24-28 Ft.	16"	5'	5'
29-31 Ft.	16"	6'	7'
32-34 Ft.	16"	7'	7'
35-37 Ft.	16"	8'	9'
38 And Over	16"	10'	10'

**MEDIAN SECTION AT SIGNAL GATES**

NOTE:  
For additional information see the "Manual On  
Uniform Traffic Control Devices", Part VIII, The  
"Traffic Control Devices Handbook", Part VIII and  
AASHTO "A Policy On Geometric Design Of Streets  
And Highways".

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
TRAFFIC DESIGN

**RAILROAD GRADE CROSSING  
TRAFFIC CONTROL DEVICES**

DESIGNED BY: [Signature]  
CHECKED BY: [Signature]  
DATE: 4 OF 4  
PROJECT NO.: 17882