

Lee County Board Of County Commissioners

Blue Sheet No. 20050720

Agenda Item Summary

1. **ACTION REQUESTED/PURPOSE:** Approve and execute the Proposal and Quote in the amount of \$1,269,833.00 from Seminole Gulf Railway LP for rehabilitation and widening of the Alico Road Crossing #3, installation of new signal at Alico Road Crossing #3, removal and replacement of track necessary to facilitate installation of two box culverts within the Alico Road Conveyance Ditch, and reconstruction and widening of Gator Road Crossing. Execute License Agreements for crossings at Gator Road and Haitian Road.

2. **WHAT ACTION ACCOMPLISHES:** Allows for the reconstruction of Crossing #3 on Alico Road, upsizing of box culverts under the railroad siding that crosses the Alico Road Conveyance Ditch, reconstruction of the Gator Road crossing to accommodate three lanes of traffic, and reconstruction of Haitian Road to allow access.

3. **MANAGEMENT RECOMMENDATION:** Approve and execute the Proposal and Quote and execute the License Agreements.

Departmental Category: 9 *C9D* 5. Meeting Date: *05-31-2005*

6. Agenda:
- Consent
  - Administrative
  - Appeals
  - Public
  - Walk-On

7. Requirement/Purpose: (specify)
- Statute
  - Ordinance
  - Admin. Code
  - Other

8. Request Initiated:  
 Commissioner \_\_\_\_\_  
 Department Transportation  
 Division \_\_\_\_\_  
 By: Scott Gilbertson, Director

9. Background:  
**Alico Road Crossing No. 3:**  
 On September 14, 1988, the Board of County Commissioners approved the Alico Road No. 3 Easement Agreement that facilitated the construction and maintenance of the railroad crossing on Alico Road between Alico Center Drive and Gator Road. That agreement also provided that the crossing shall be improved at the sole cost and expense of the County. This proposal and quote from Seminole Gulf Railway allows for rehabilitation and widening of the crossing and the installation of highway grade crossing protection and automatic warning devices. Total cost for the Alico Road No. 3 Crossing is \$1,086,950.00.  
**Miller Siding Box Culverts:**  
 This proposal and quote also includes costs to remove and replace track and roadbed necessary to facilitate the installation of two box culverts under the siding that previously served the Miller Brands distributor, J.J. Taylor, on the north side of Alico Road. These culverts are located within our conveyance ditch and require upsizing from the current pipe configuration. The cost associated with this work is \$78,918.00.  
**Haitian Road:**  
 Haitian Road north of Alico Road is currently a private road that is proposed to be dedicated to the County through a proposed MSBU. Lee County acquired title to underlying land encumbered by a railroad easement in March 2000. The County has requested a crossing agreement in order to reconstruct the connection of Haitian Road to Alico Road. This agreement is initially at no cost to the County but contemplates the County paying any costs associated with track installation at a later date. This agreement allows the County to remove a detour that has been in place since approximately September 2004.  
**Gator Road:**  
 Gator Road is currently a private road that is proposed to be reconstructed to County standards and dedicated to the County through a proposed MSBU. The County requested a crossing agreement for this crossing in order to realize a cost savings to the yet to be formed MSBU by incorporating this work with our Alico Crossing No. 3 work. The cost savings will be a result of the signals from the existing Alico Road Crossing No. 3 being reused at Gator Road and the cost of mobilization by Seminole Gulf being spread over all the proposed crossing work. The scope of this work is to widen the existing crossing to three lanes to accommodate one northbound lane and two southbound lanes. The cost associated with this work is \$103,965.00.  
 A payment schedule is included in the proposal and quote.  
 Funds are available in Account 20403030700.506540.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services	County Manager/P.W. Director
<i>[Signature]</i>	<i>[Signature]</i>	N/A	<i>[Signature]</i>	<i>[Signature]</i>	Analyst: <i>[Signature]</i> Risk: <i>[Signature]</i> Grants: <i>[Signature]</i> Mgr.: <i>[Signature]</i>	<i>[Signature]</i>

11. Commission Action:
- Approved
  - Deferred
  - Denied
  - Other

Rec. by CoAtty  
 Date:  
 Time:  
 Forwarded To:  
*Budget*  
*5/19/05 3:10pm*

RECEIVED BY  
 COUNTY ADMIN: *[Signature]*  
*5/19/05*  
 COUNTY ADMIN  
 FORWARDED TO: *[Signature]*  
*5/19/05*  
*4:37pm*



## **SEMINOLE GULF RAILWAY LP**

### **LEE COUNTY ALICO WIDENING PROJECT PROPOSAL AND QUOTE**

**May 10, 2005**

#### **TERMS OF PROPOSAL:**

Seminole Gulf Railway (SGLR) shall install new highway crossings as set forth herein. SGLR shall provide all labor, equipment, material, engineering and design for the following:

**Construction of new Alico # 3 Road Crossing;** Install sub-surface drainage, track structure, road base between rails and two feet outside of each rail, and new full depth highway grade crossing surface interface. Surface and align track to the north and east through the existing F.P.& L. crossing to facilitate the transition into the new Alico # 3 Crossing. This will require the removal, replacement and resurfacing of the existing F.P.& L. Crossing. Surface, and align track to the south and west through the existing Alico Center Road Crossing to facilitate the transition into the new Alico # 3 Crossing. This will require the removal, replacement and resurfacing of the existing Alico Center Road Crossing. All crossing resurfacing to include the installation of an SGLR approved crossing surface interface at all locations. After new eastbound side is installed and traffic shifted over, the existing crossing will be removed and replaced with new westbound lanes. The existing lights and gates will be moved to Gator Road. New lights, gates and cantilever signals will be installed at Alico # 3.

The County's responsibilities within the right-of-way of the Railroad, during all phases shall include, but are not limited to: all maintenance of traffic, road closures and openings, any poured concrete or asphalt roadway surface as desired by the County to interface as necessary with the railroad installed full depth highway crossing surface, highway marking, berms, medians, curbs, gutters, sidewalks, curb cuts, etc. County shall also provide all drainage and landscaping outside of the Railroad Crossing area as desired. The County shall furnish a certified Law Enforcement Officer to protect Railroad employees while road closures are in effect.

The Railroad's responsibilities include supervision and inspection of all work performed within the Railroad right-of-way, and is limited to Railroad related construction with the exception of actual Highway Grade Crossing surface installations. The Railroad shall also be responsible for the removal and replacement of the track structure and Signals where applicable.

All work performed within the right-of-way of the Railroad shall be performed under the direct supervision of a qualified Railroad Inspector. All methods and materials of construction for any work performed within the right-of-way of the Railroad shall be approved by the Seminole Gulf Railway Vice President of Construction and Maintenance and meet "Association of American Railroads" standards and shall comply with "American Railway Engineering and Maintenance-of-Way Association" (AREMA) standards. Work performed by others such as paving and/or poured concrete crossing interface installation, if applicable, shall meet or exceed manufacturer's specifications for its intended purpose.

The installation widening and construction of Alico # 3 Highway Grade Crossing as provided for in this proposal shall be governed by the terms of the Agreement dated September 14, 1988 where applicable.

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

THIS License AGREEMENT made as of this \_\_\_\_\_ day of \_\_\_\_\_ 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 has control of the underlying land at Gator Road associated with that Indenture, 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 (d). 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.

(e) 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, 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 approval 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 Phone:

**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: \_\_\_\_\_

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

**Gordon H. Fay  
President**

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

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

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

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

**Chairman**

**Deputy Clerk**

**It's**

**APPROVED AS TO FORM:**

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

**County Attorney**

**ACKNOWLEDGMENT OF LEE COUNTY**

STATE OF FLORIDA  
LEE COUNTY

The foregoing instrument was acknowledged before me this \_\_\_\_ day of, \_\_\_\_\_ 2005,  
by \_\_\_\_\_ 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 \_\_\_ day of \_\_\_\_\_, 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.

\_\_\_\_\_ 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(e) 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(e) 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"**



## EXHIBIT "A"

DATE: May 10, 2005

SCALE: NO SCALE

Gator Road



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



SGLR \_\_\_\_\_  
RDAGMT 78+23.6

**LICENSE AGREEMENT FOR PUBLIC GRADE CROSSING  
SGLR STATION BL 78+23.6 (HAITIAN ROAD)**

THIS LICENSE AGREEMENT made as of this \_\_\_\_\_ day of \_\_\_\_\_, 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, the Indenture provides for the granting of Railroad Crossings to the underlying successor land owners; and

WHEREAS, COUNTY acquired ownership to certain underlying land on March 9, 2000, by Warranty Deed (In Lieu of Condemnation) from Alico Mining, Inc., as Grantor, as recorded in O.R. Book 03230, at Pages 3603-3607, of the Public Records of Lee County, Florida; and

WHEREAS, COUNTY represents that it has continuously owned the land described in the Warranty Deed (In Lieu of Condemnation) from Alico Mining, Inc., as Grantor, as recorded in O.R. Book 03230, at Pages 3603-3607, of the Public Records of Lee County, Florida, since acquiring title on March 9, 2000, and that there are no other parties who have an ownership or possessory interest in or to the underlying land; and

WHEREAS, 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 crossing at grade over and across the right of way and track of the SGLR's Baker Spur, located at approximately station BL 78+23.6 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 is willing to accord to COUNTY the license and permission as requested, but only upon and subject to the terms, conditions and limitations set forth in this License Agreement.

WHEREAS, SGLR agrees to grant a License to COUNTY, and COUNTY agrees to accept said License for an initial term (the “**Initial Term**”) beginning as of the date of execution of this License agreement, (the “**Commencement Date**”) and continuing conterminous with the Indenture dated the 17<sup>th</sup> Day of September 1973.

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. (a) 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 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 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.

(b) COUNTY agrees that in lieu of construction of a railroad crossing and upon execution of this license, that COUNTY will immediately upon written notice from SGLR construct such a crossing at COUNTY's sole cost and expense,. SGLR agrees that upon execution of this license agreement that it will permit the COUNTY at it's sole cost and expense to construct a "highway only" crossing, subject to the following conditions:

(i) Such highway surface to be constructed with a finished elevation that will permit future installation of a rail highway crossing at the current "top-of-rail" elevation of the existing rail line to the immediate west of the crossing, and

(ii) Such construction shall permit SGLR unlimited access to it's own right-of-way from each side of Haitian Road.

(iii) COUNTY shall, as compensation for the privilege to build at the date of this agreement, a highway only crossing, grant to SGLR the permanent right to cross at any point with culverts and track structure the COUNTY's drainage facility that as of the date of this Agreement parallels SGLR's right-of-way along the entire North side of Alico Road.

(c) SGLR reserves the right to install, at COUNTY's entire cost and expense, new and/or additional track or tracks across the crossing. In such event, SGLR shall have the right and is hereby granted the privilege of removing any paving or other highway surface from the crossing to the extent necessary for the track construction. Upon completion of the track construction, SGLR will, at COUNTY's entire cost and expense restore the crossing including, if deemed necessary by SGLR, installation of signals. Thereafter, SGLR will maintain, at COUNTY's expense, the portion of the crossing between the rails of said track or tracks and for two feet on the outside of each rail thereof exclusive of paving, and any Signals that may be installed. SGLR reserves the right to perform all work at COUNTY's entire cost and expense, including but not limited to, all labor and materials furnished by SGLR in performing such work, including any expense incurred in protecting trains, persons using the Crossing, or other property. If required by SGLR, COUNTY shall pay the estimated cost of work to be performed by SGLR in advance. Any paving, construction, and drainage work requested on the SGLR's property which relates to access to the crossing shall be an additional cost payable by the COUNTY. Any such additional work requested by COUNTY will also be an additional cost payable by COUNTY.

(d) Reimbursement for the legal and other costs and expenses incident to the preparation and

review of this License Agreement including any Exhibits attached hereto has been waived.

(e) All property use fees relative to the granting of this License shall not apply.

2. (a) The Crossing shall be located, constructed and maintained in exact accordance with standard practice and approval by the Chief Engineer of SGLR, and no departure shall be made at any time 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 Crossing is public and open to travel only under the terms granted by SGLR herein.

(c) The construction, 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 Rail Facilities by SGLR, or its successors or assigns.

(d) SGLR shall perform such maintenance of the Crossing at the full cost and expense of COUNTY, as it may determine is required for the safe operation and maintenance of the right-of-way of SGLR, COUNTY and the lessees of each party hereto. If necessary to protect the right-of-way, traffic, patrons, or employees of SGLR, or any other person from damage or injury, SGLR may with or without 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 ten (10) days of receipt of a bill from SGLR.

(e) 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 by and at the sole risk, cost and expense of COUNTY. All such work to be performed on SGLR's right-of-way shall be performed by SGLR.

(f) 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.

3. (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 right-of-way. 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 right-of-way, 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.

4. If COUNTY desires or is required by SGLR to revise, renew, add to, alter or relocate the Crossing 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.

5. 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 in order to maintain, repair or renew facilities of SGLR within the Crossing and to bill COUNTY therefor.

6. 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 the greatest 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 the greatest care in the use of the Crossing.

7. (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 rail facilities or right-of-way 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, setting forth the fact that the Crossing exists.

(b) In addition to the requirements of Section 1(c), if requested by SGLR, COUNTY shall also, at its sole risk, cost and expense, erect, maintain, repair and renew appropriate gates and barricades on both sides of the Crossing satisfactory to SGLR, which shall be suitably situated and shall be kept closed at all times except for use by SGLR to prevent unauthorized access to the right of way of SGLR.

(c) If SGLR should at any time, and from time to time, request COUNTY to take any other measures to protect the Crossing (either new or additional) including, but not limited to, the installation

and maintenance of automatic warning lights and gates, 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 or reimburse SGLR for the full cost and expense thereof including the cost of maintenance thereof.

8. (a) It is understood between the parties hereto that the existence of the Crossing involves some risk, and COUNTY, as part of the consideration for this License Agreement, hereby releases and waives any right to ask for or demand damages for or on account of loss of or injury to the Crossing or other property of COUNTY that is over, under, upon or in the property or facilities of SGLR, including the loss of or interference with service or use of the Crossing and whether attributable to the fault, failure or negligence of SGLR or otherwise.

(b) COUNTY also covenants and agrees to, and shall at all times, indemnify, protect and save harmless SGLR from and against all cost or expense resulting from any and all losses, damages, detriments, suits, claims, demands, costs and charges which SGLR may directly or indirectly suffer, sustain or be subjected to by reason of or on account of the construction, presence, use, maintenance, alteration, renewal, relocation or removal of said crossing in, on or about the premises of SGLR, or be suffered or sustained by other persons or corporations, including COUNTY, its employees and agents who may seek to hold SGLR liable therefor, and whether attributable to the fault, failure or negligence of SGLR or otherwise.

(c) If a claim or action is made or brought against any party and for which another party may be responsible hereunder in whole or in part such other party shall be notified and permitted to participate in the handling or defense of such matter.

(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.

(f) The insurance hereinbefore specified shall also be carried by any contractors or sub-contractors of COUNTY until all work required to be performed under the terms of the agreement is satisfactorily completed as evidenced by the formal approval of SGLR. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a breach of agreement.

9. COUNTY will be responsible for any settlement caused to the roadbed, right of way and/or tracks, facilities and appurtenances of SGLR, arising out of the use or existence 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 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 the construction of the Crossing of COUNTY; COUNTY further covenants and agrees to pay SGLR, promptly upon bills rendered therefor the full amount of any assessments, 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. COUNTY agrees to pay all sales and use taxes 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. In the event of a transfer of the property of the COUNTY, provided use of the property transferred shall remain the same as it was at the time of execution of this agreement, and provided the new owner of the property assumes, in writing, all of the covenants, requirements, conditions and provisions contained herein, the SGLR shall grant a transfer of this license.

(b) The Crossing provides convenient access to property of COUNTY. In the event COUNTY transfers such property to any other person, firm or corporation, COUNTY shall provide thirty (30) days' prior written notice of such transfer to SGLR.

(c) Despite any attempt by COUNTY to transfer this license in violation of paragraphs 12(a) and 13(b), COUNTY will retain all liability including that which would otherwise be transferred to the transferee of this 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, and COUNTY hereby agrees to indemnify, protect and save harmless SGLR therefrom.

14. This Agreement with the rights granted herein may be terminated at any time for any reason or for breach of any paragraph provided herein. COUNTY will vacate said premises and remove said Crossing therefrom at any time at the will of SGLR, upon One Hundred and Eighty (180) days' written notice given to COUNTY and restore, under supervision of SGLR, the said tracks and rights of way to their original condition, but at the expense of the COUNTY, or in default thereof, SGLR may perform such work at the sole cost and expense of COUNTY. Upon such termination this License Agreement and the permission and privileges hereby granted shall absolutely cease and terminate subject to the provisions of Section 10 thereof.

15. 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 13 hereof.

16. COUNTY understands that this Agreement does not allow COUNTY to install or permit installation of any utility within the limits of the Crossing.

17. 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: V. P., Engineering & Real Estate (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 Transp.



**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: \_\_\_\_\_

**Gordon H. Fay**

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

**President**

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

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

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

By: \_\_\_\_\_  
**Deputy Clerk  
Chairman**

**It's**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
County Attorney

**ACKNOWLEDGMENT OF LEE COUNTY**

STATE OF FLORIDA  
LEE COUNTY

The foregoing instrument was acknowledged before me this \_\_\_\_ day of, \_\_\_\_\_  
2001, by \_\_\_\_\_ 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 \_\_\_ day of \_\_\_\_\_, 2001 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.

\_\_\_\_\_ 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(e) 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(e) 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"



1 inch = 200 ft.

**NOTES:**

1. UNABLE TO DETERMINE THE SOUTHERN EXTENTS OF THE EXISTING EDGE OF PAVEMENT OF HAITIAN ROAD DUE TO DEBRIS PILE COVERING ROAD. DEBRIS PILES LIES INSIDE PARCEL 122.
2. LAST DAY OF FIELD WORK, OCTOBER 29, 2004.
3. EXHIBIT MAPPING BASED ON SPECIFIC PURPOSE SURVEYS EXHIBIT "A" & EXHIBIT "B" PRODUCED BY THIS FIRM DATED XX-XX-XX.

**NOTE:**

EXHIBIT MAPPING BASED ON SPECIFIC PURPOSE SURVEYS EXHIBIT "A" & EXHIBIT "B" PRODUCED BY THIS FIRM DATED XX-XX-XX.

**LEGEND:**

C/L = CENTERLINE

(F) = PRELIMINARY STATIONING PER COONER & ASSOCIATES SPECIFIC PURPOSE SURVEY DATED 11-23-04

O.R.B. = OFFICIAL RECORD BOOK

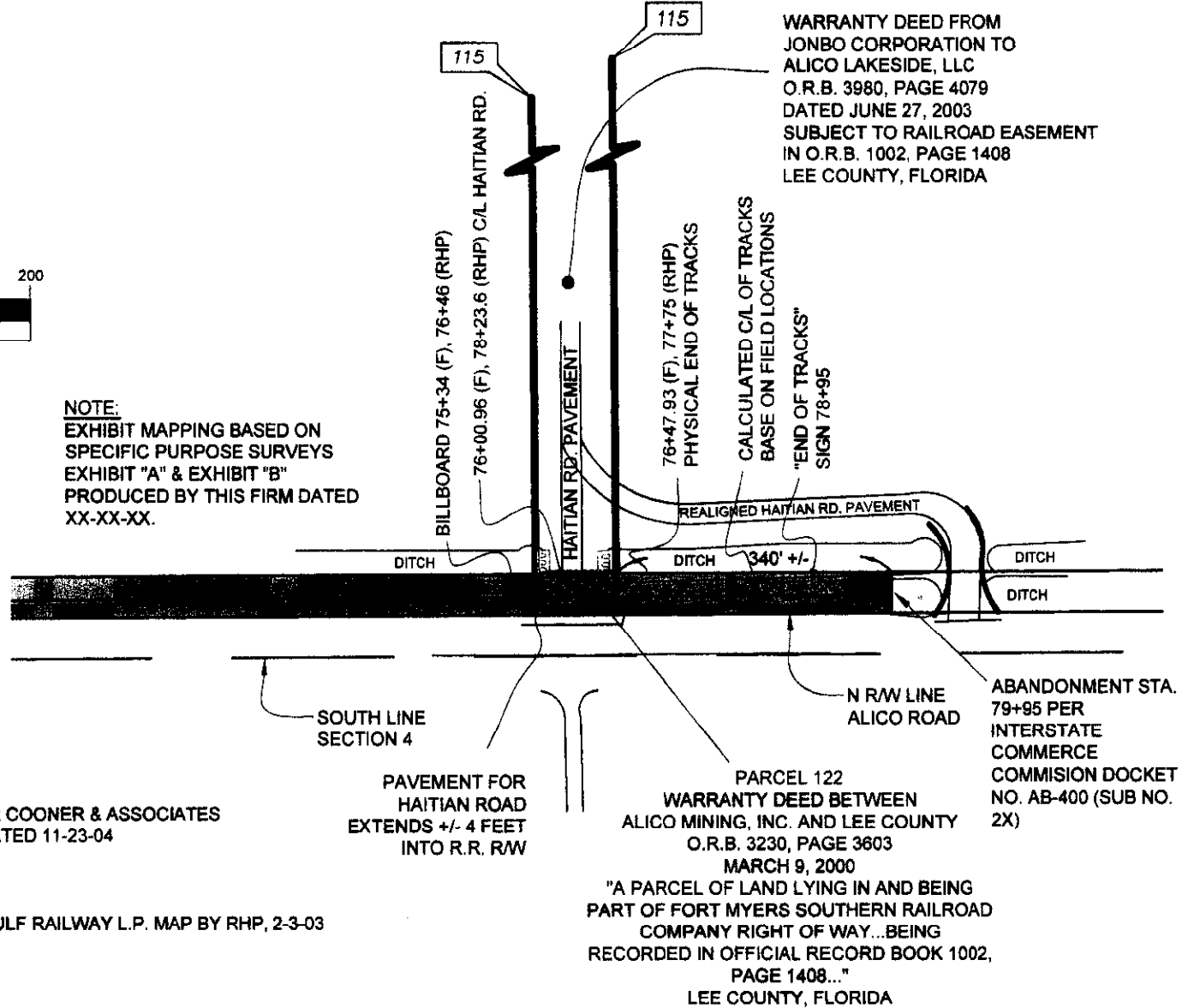
(RHP) = STATIONING PER SEMINOLE GULF RAILWAY L.P. MAP BY RHP, 2-3-03

R.R. = RAILROAD

RW = RIGHT-OF-WAY

STA. = STATIONING

= MONUMENTATION FROM SPECIFIC PURPOSE SURVEY. SEE EXHIBIT "A".



WARRANTY DEED FROM  
 JONBO CORPORATION TO  
 ALICO LAKESIDE, LLC  
 O.R.B. 3980, PAGE 4079  
 DATED JUNE 27, 2003  
 SUBJECT TO RAILROAD EASEMENT  
 IN O.R.B. 1002, PAGE 1408  
 LEE COUNTY, FLORIDA

PARCEL 122  
 WARRANTY DEED BETWEEN  
 ALICO MINING, INC. AND LEE COUNTY  
 O.R.B. 3230, PAGE 3603  
 MARCH 9, 2000

"A PARCEL OF LAND LYING IN AND BEING  
 PART OF FORT MYERS SOUTHERN RAILROAD  
 COMPANY RIGHT OF WAY...BEING  
 RECORDED IN OFFICIAL RECORD BOOK 1002,  
 PAGE 1408..."  
 LEE COUNTY, FLORIDA

**THIS IS NOT A SURVEY**

EXHIBIT "A"



**JEFFREY C. COONER AND ASSOCIATES, INC.**

SURVEYING AND MAPPING

3900 COLONIAL BLVD., SUITE 4, FORT MYERS, FLORIDA 33912

PHONE: (239)277-0722 FAX: (239)277-7179 EMAIL: SURVEYING@COONER.COM