

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: August 16, 2016

☒ Consent

☐ Regular

☐ Public Hearing

☐ Workshop

Department:

Submitted By: Engineering and Public Works

Submitted For: Roadway Production Division

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: a Grade Crossing Traffic Control Signal Agreement (Agreement) with South Central Florida Express, Inc. (SCFE) for the installation and signal maintenance of grade crossing traffic control devices at the SCFE mainline crossing on Rogers Road, Crossing Number 627737-G (Crossing).

**Summary:** Approval of the Agreement will allow for installation and maintenance of grade crossing traffic control devices at the Crossing. The SCFE will install these signals at no cost to Palm Beach County (County). The County will then pay 50 percent (50%) of the costs of signal maintenance fees for this Crossing which is classified as a Class III crossing. The annual maintenance cost for a Class III crossing is currently \$3,600.

District 6 (MRE)

**Background and Justification:** The SCFE requested that the County participate in adding traffic control devices at the crossing of their mainline track with Rogers Road due to an increase in traffic volumes and an increase in train speeds to 40 mph. The SCFE will install the signals at no cost to the County for the initial installation of the signals. The County will then pay 50 percent (50%) of the maintenance costs enumerated by the Florida Department of Transportation Schedule of Annual Cost of Automatic Highway Grade Crossing Traffic Control Devices, with respect to Class III signal protection, effective July 1, 2016, subject to future revisions. The current annual signal maintenance fees for a Class III crossing is \$3,600. Should the signals need to be relocated due to roadway improvements, the SCFE will be responsible for the entire cost of the relocation.

Roadway Production has reviewed this agreement and recommends approval.

**Attachments:**

1. Location Map
2. Agreements (3)

Recommended By:

Department Director

Date

Approved By:

Assistant County Administrator

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	\$1,800	\$1,800	\$1,800	\$1,800
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ -0-	*\$1,800	\$1,800	\$1,800	\$1,800
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes X No

Budget Account No:

Fund 1201      Dept 360      Unit 2270      Object 4607

Recommended Sources of Funds/Summary of Fiscal Impact:

County Transportation Trust Fund  
Railroad Crossing Maintenance

Annual signal maintenance fees are included in the FY 2016 budget. Subsequent year amounts are subject to BOCC approval of future budgets. \*The \$1,800 per year shown above is for the additional signal maintenance of grade crossing traffic control devices at the SCFE mainline crossing on Rogers Road.

C. Departmental Fiscal Review: Alice Kovalainen

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Luan Pong 7/21/16  
OFMB 7/20

Dr. J. Jacobson 8/14/16  
Contract Dev. and Control  
8/3/16 Ta

B. Approved as to Form and Legal Sufficiency:

Markus Smith 8/9/16  
Assistant County Attorney

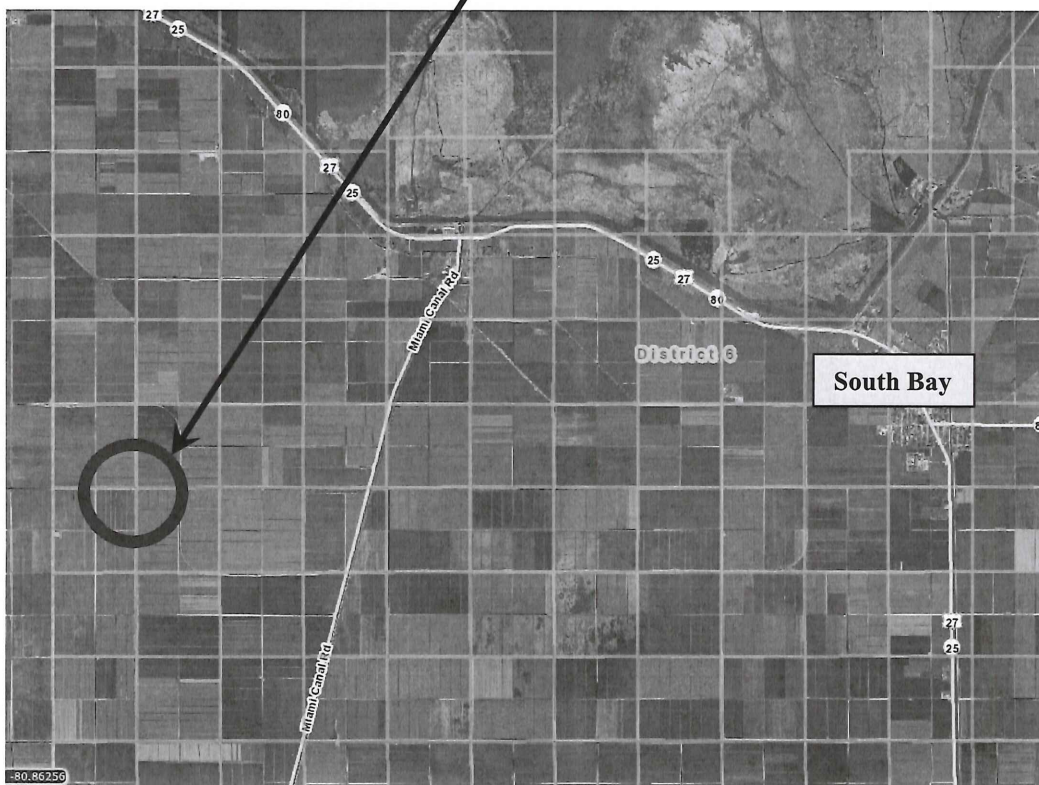
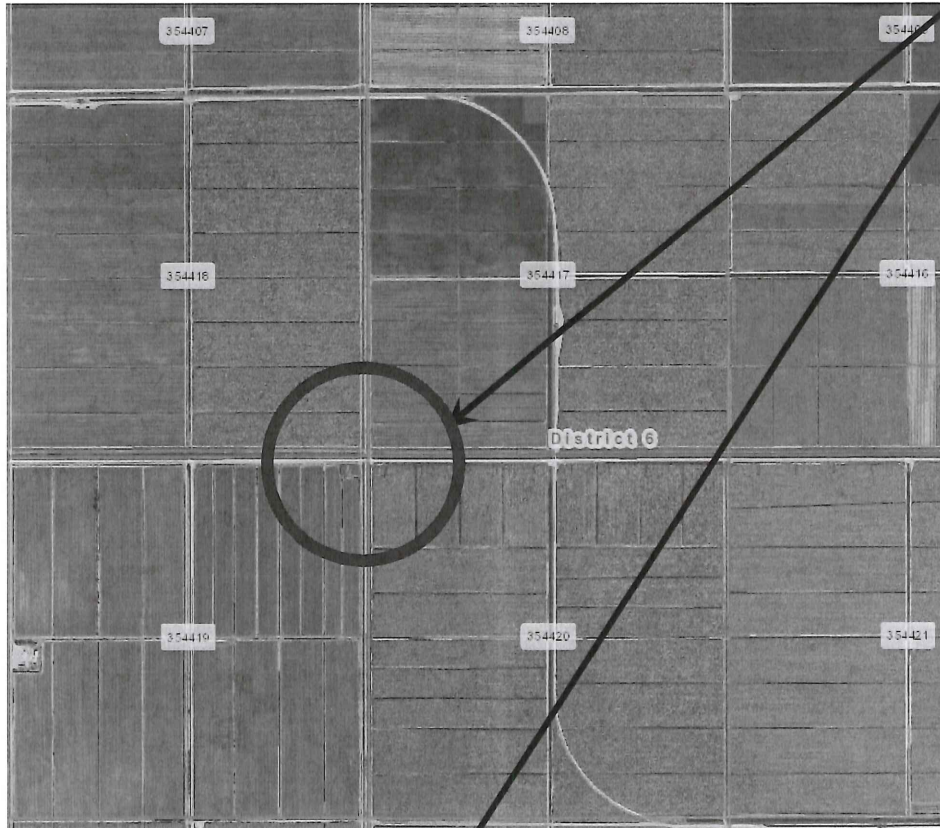
C. Other Department Review:

\_\_\_\_\_  
Department Director

This summary is not to be used as a basis for payment.

## PROJECT LOCATION

### Rogers Road at SCFE Railroad



## LOCATION SKETCH

**GRADE CROSSING TRAFFIC CONTROL SIGNAL AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_ day of \_\_\_\_\_, 2016, by and between the **South Central Florida Express, Inc.**, hereinafter called the "**SCFE**", and **Palm Beach County**, a political subdivision of the State of Florida, hereinafter called the "**COUNTY**" collectively known as "**PARTIES**".

**WITNESSETH:**

**WHEREAS**, the **PARTIES** have mutual interest in signal protection at Rogers Road FDOT/AAR Crossing Number 627737-G, on **SCFE'S** mainline, hereinafter called "**CROSSING**", located southwest of the City of South Bay in Palm Beach County; and

**WHEREAS**, Rogers Road is a **COUNTY** maintained road; and

**WHEREAS**, the increase in traffic volumes and the increase in train speeds to 40MPH through the area have caused a need for installing warning signals to serve as added safety precautions at the **CROSSING**; and

**WHEREAS**, the **PARTIES** have agreed that **Class III** automatic signal protection devices, hereinafter called "**SIGNALS**" shall be installed at the **CROSSING**; and

**WHEREAS**, the **PARTIES** will share equally, the annual expense of maintaining the **SIGNALS** at the **CROSSING** and the cost of maintaining any upgraded or replaced **SIGNALS** at the **CROSSING**.

**NOW, THEREFORE**, in consideration of the mutual undertaking as herein set forth, the **PARTIES** agree as follows:

1. The above recitals are true and correct and hereby adopted and incorporated herein.
2. There will be no costs to the **COUNTY** for the initial installation of the **SIGNALS**.
3. **SCFE** shall furnish the necessary materials and labor for the continued operation and maintenance of the **SIGNALS** and all such costs shall be borne by the **SCFE**, subject to Section 4 herein, so long as the **SCFE** or its successors or assigns shall operate the **SIGNALS**, or until it is agreed between the **PARTIES** that the **SIGNALS** are no longer necessary at the **CROSSING**, or until the **CROSSING** is abandoned, or other legal action taken to eliminate the **CROSSING** which shall cease operation and maintenance of the **SIGNALS** at the **CROSSING**.
4. The **COUNTY** will participate in the cost of maintaining the **SIGNALS** at the **CROSSING** and the cost of maintaining any upgraded or replaced **SIGNALS** at the

**CROSSING** in the amount of fifty percent (50%) of the cost enumerated by the Schedule of Annual Cost of Automatic Highway Grade Crossing Control Devices, with respect to Class III signal protection, effective July 1, 2016, subject to future revision, attached hereto as "Exhibit A" and by this reference made a part hereof, and any subsequent issues thereof and amendments thereto, as long as the **SIGNALS** are located at the **CROSSING**.

5. If the **SIGNALS** are no longer required at the **CROSSING**, they may be moved to another location, as agreed upon, and at the expense of the party requiring such removal and relocation.
6. If the **SIGNALS** are to be relocated as a result of roadway widening, roadway upgrades or any other instance that roadway improvements would warrant such relocation, the entire cost of the relocation shall be borne by SCFE.
7. Subject to annual appropriation by the then serving Board of County Commissioners, the **COUNTY** agrees to reimburse the SCFE for maintenance costs as provided for in Section 4 herein on an annual basis beginning September 7, 2016, and for each subsequent annual period therefrom. The SCFE will furnish an invoice for each annual period, which the **COUNTY** agrees to pay within sixty (60) days following receipt of the invoice. SCFE shall have the right to close the **CROSSING** if the **COUNTY** does not reimburse the SCFE for maintenance costs as provided in Section 7 of this Agreement within ninety (90) days after the **COUNTY** receives an invoice from the SCFE pursuant to Section 7 of this Agreement.
8. The SCFE agrees to indemnify and hold harmless the **COUNTY** against each and every claim, demand or cause of action that may be made or come against the **COUNTY** by reason of or any way arising out of any defect, imperfection, failure to repair, or failure to maintain, done, suffered or permitted in or about the **SIGNALS**, and also every claim, demand or cause of action against the **COUNTY** because the **CROSSING** may be in the Public Road System, on account of any defect, imperfection, failure to repair, or failure to maintain, done, suffered or permitted in or about the **SIGNALS** on account of any action or omission on the part of the SCFE in or about the **CROSSING**.
9. The SCFE covenants and agrees to indemnify and hold the **COUNTY** and all of its officers, agents, employees and contractors harmless from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect, omission or delay caused by the sole negligence of the SCFE during the performance of this Agreement.
10. If any existing contract exists between SCFE and either the **COUNTY** or a third party, by which this **CROSSING** is opened or maintained, or by which other crossing devices or highway signal devices are installed and maintained, then that contract shall remain in full force and effect. In the event of a conflict between this Agreement and any existing contract this Agreement shall govern.

#### 11. ATTORNEY'S FEES

The **PARTIES** shall bear their own costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms and conditions of this Agreement.

#### 12. ASSIGNMENT

In the event either of the **PARTIES** hereto desire an assignment of this Agreement, it shall be said **PARTIES** responsibility to obtain written acceptance of the assignment by the new party to the Agreement.

#### 13. THIRD PARTY BENEFICIARY

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the **PARTIES**.

#### 14. EFFECTIVE DATE

This Agreement will become effective upon execution by all **PARTIES**.

#### 15. TERMINATION

This Agreement may be terminated upon mutual agreement of the **PARTIES**.

#### 16. VENUE AND CHOICE OF LAW

This Agreement will be governed by the laws of the State of Florida. Any questions or matters arising under this Agreement as to validity, construction, enforcement, performance, or otherwise, shall be determined in accordance with the laws of the State of Florida. Venue for any action arising out of or in any way related to this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Palm Beach County, Florida.

#### 17. SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

18. EXHIBIT(S)

The Exhibit(s) attached to this Agreement are incorporated fully into this Agreement by this reference.

19. CAPTIONS

The captions and section designations contained in this Agreement are for convenience only and shall have no substantive meaning.

20. MODIFICATIONS TO AGREEMENT

None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument duly executed by the **PARTIES** to this Agreement.

21. PUBLIC RECORDS

The **PARTIES** to this Agreement shall have access to public records pursuant to Chapter 119, Florida Statutes. The **COUNTY** reserves the right to unilaterally cancel this Agreement for refusal by **SCFE** to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement.

22. ACCESS AND AUDITS

The **PARTIES** shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Agreement. The **PARTIES** shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the **PARTIES** place of business.

23. NON-DISCRIMINATION.

The **PARTIES** warrant and represent that all employees are treated equally during employment without regard to race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

24. INSPECTOR GENERAL

The **COUNTY** has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's

authority includes but is not limited to the power to review past, present and proposed **COUNTY** contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of **SCFE**, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

## 25. NOTICES

Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, or sent by recognized overnight courier (such as Federal Express) in a postage-prepaid envelope, and addressed as follows:

If to **SCFE**

**South Central Florida Express, Inc**  
900 South W. C. Owen Avenue  
Clewiston, FL 33440  
**Attn: Sam Mallo**

If to the **COUNTY**

**Palm Beach County Engineering Department**  
P.O. Box 21229  
West Palm Beach, FL 33416  
**Attn: Tanya N. McConnell, P.E., Deputy Director**  
(561) 684-4010

**(INTENTIONALLY LEFT BLANK)**



IN WITNESS WHEREOF, the **PARTIES** hereto have made and executed this Agreement as of the day and year first above written.

COUNTY: **Palm Beach County, Florida**

A Political Subdivision of the State of Florida

BOARD OF COUNTY COMMISSIONERS

COMPANY: **South Central Florida Express, Inc.**

By: \_\_\_\_\_  
Jarrett Mankin

By: \_\_\_\_\_  
Mary Lou Berger, Mayor

Signed: \_\_\_\_\_

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

Title: \_\_\_\_\_  
Director – Real Estate

ATTEST:

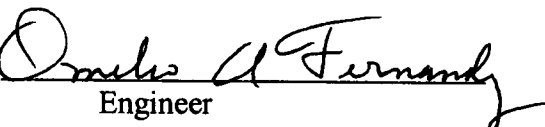
By: SHARON R. BOCK  
Clerk & Comptroller

Attest: \_\_\_\_\_

BY: \_\_\_\_\_  
Deputy Clerk

S E A L

APPROVED AS TO TERMS &  
CONDITIONS:

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

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**RAILROAD GRADE CROSSING TRAFFIC CONTROL DEVICES**  
**ANNUAL MAINTENANCE COSTS**

725-080-41  
RAIL  
OGC - 07/16

FINANCIAL PROJECT NO.	ROAD NAME OR NUMBER	COUNTY NAME	PARCEL & RAW NUMBER	FAP NUMBER

COMPANY NAME: \_\_\_\_\_

A. FDOT/AAR XING NO.: \_\_\_\_\_ RR MILE POST TIE: \_\_\_\_\_

B. TYPE SIGNALS PROPOSED \_\_\_\_\_ CLASS \_\_\_\_\_ DOT INDEX: \_\_\_\_\_

**SCHEDULE OF ANNUAL COST OF AUTOMATIC  
HIGHWAY GRADE CROSSING TRAFFIC CONTROL DEVICES**

Annual Maintenance Cost Exclusive of Installation

<u>CLASS</u>	<u>DESCRIPTION</u>	<u>COST*</u>
I	2-Quadrant Flashing Lights with One Track	\$2,386.00
II	2-Quadrant Flashing Lights with Multiple Tracks	\$3,158.00
III	2-Quadrant Flashing Lights and Gates with One Track	\$3,600.00
IV	2-Quadrant Flashing Lights and Gates with Multiple Tracks	\$4,520.00
V	3 or 4-Quadrant Flashing Lights and Gates with One Track	\$7,116.00
VI	3 or 4-Quadrant Flashing Lights and Gates with Multiple Tracks	\$8,930.00

AUTHORITY: FLORIDA ADMINISTRATIVE RULE 14-57.011  
Public Railroad-Highway Grade Crossing Costs

EFFECTIVE DATE: July 22, 1982

GENERAL AUTHORITY: 334.044, F.S.

SPECIFIC LAW IMPLEMENTED: 335.141, F.S.

\*This schedule will become effective July 1, 2016 and will be reviewed every 5 years and revised as appropriate based on the Consumer Price Index for all Urban Consumers published by the U.S. Department of Labor.