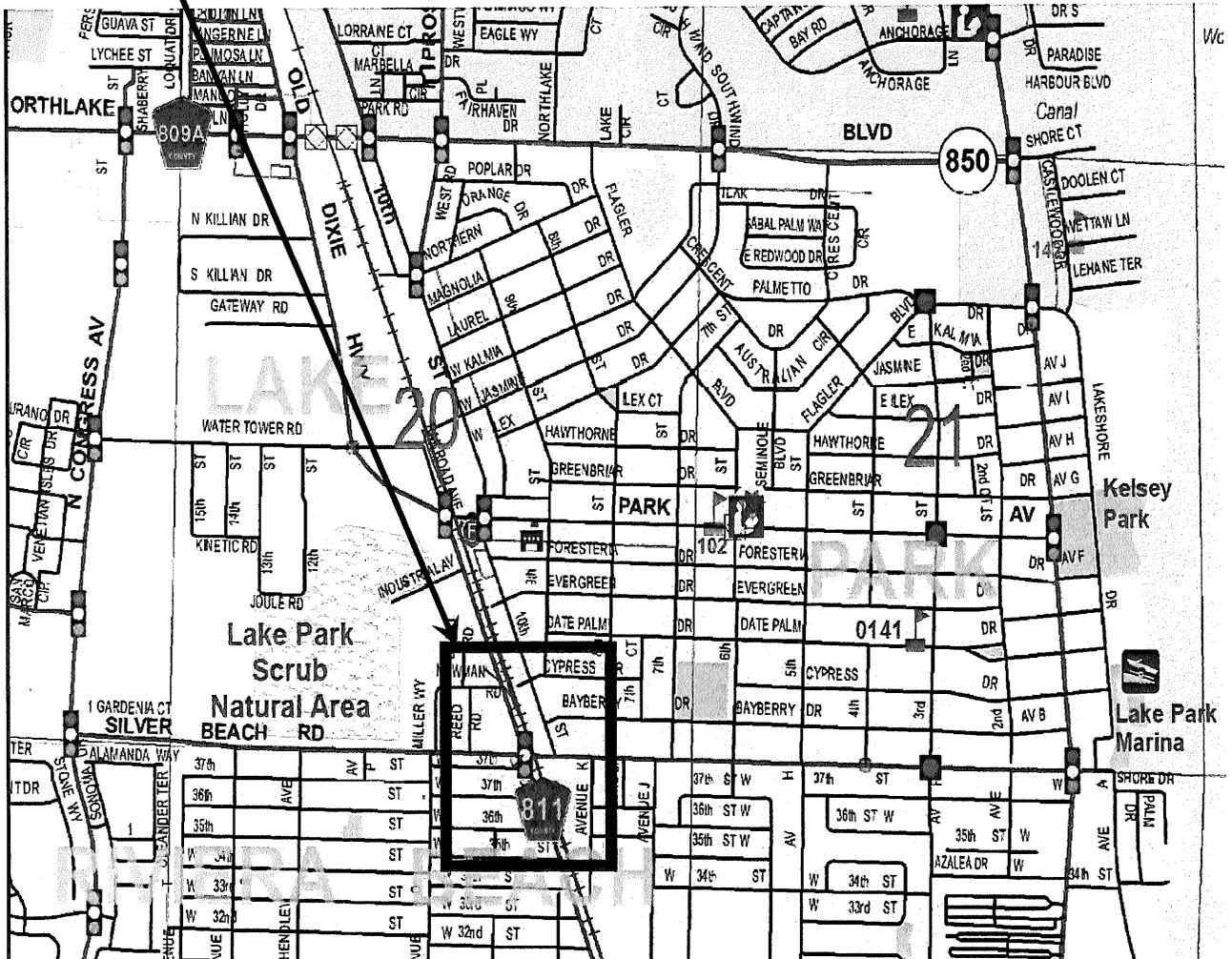


Background and Justification: (Continued from Page 1)

party, CSX. The Court further held that FDOT could not invoke the Statute's sovereign immunity to preclude or limit FDOT's indemnity obligation under the railroad crossing agreement because the liability limits in the Statute applied only to *tort* claims. Following the Court's decision, the FDOT was to address the issue with the State legislature, which did not happen this past session. In the meantime, FEC has repeatedly refused requests to revise its standard agreement to modify the indemnity provision, yet the County is obligated to fund the work that is the subject of the agreement. Further, the County requires the work to complete its Project. Pursuant to the Contract Development PPM, the Department has obtained approval of the indemnity provision from Risk Management. In light of the Court's decision, staff requests a waiver of the Contract Development PPM for this agreement, approval of the agreement, and a waiver of the Contract Development PPM for all future agreements with FEC that are in substantially similar form. Staff will review and revise the Contract Development PPM, as appropriate.

SILVER BEACH ROAD RAILROAD CROSSING

DOT/AAR CROSSING NUMBER 272389V



LOCATION SKETCH

LICENSE AGREEMENT

THIS LICENSE AGREEMENT hereinafter called "Agreement" effective as of the _____ day of _____, 2017, is between FLORIDA EAST COAST RAILWAY, L.L.C. (Address: 7150 Philips Highway, Jacksonville, Florida 32256), a Florida limited liability company, hereinafter called "RAILWAY" and, PALM BEACH COUNTY, a Political Subdivision of the State of Florida, hereinafter called "COUNTY".

WITNESSETH:

WHEREAS, the COUNTY has requested the RAILWAY widen the existing at grade public road crossing at the RAILWAY'S milepost 293+3620; and

WHEREAS, the RAILWAY, in consideration of the covenants and conditions hereinafter set forth to be performed and kept by the COUNTY, is agreeable to permitting the COUNTY to use, maintain, repair, renew and ultimately remove the widened at-grade public road crossing across and over the tracks, right of way and property of RAILWAY, at milepost 293+3620', more particularly described in Exhibit A attached hereto and incorporated herein by reference as the "CROSSING SITE".

NOW, THEREFORE, for the covenants contained herein and other good and valuable consideration of the granting of this Agreement by the RAILWAY, the COUNTY covenants and agrees with the RAILWAY as follows:

1. RAILWAY hereby permits the COUNTY to construct use, maintain, repair, renew, and ultimately remove the CROSSING SITE under the terms and conditions set forth herein.
2. The CROSSING SITE includes but is not limited to, the track structure, any railroad crossing warning signs, crossing surfaces and automatic crossing warning devices which are, or

might be, located within or adjacent to the above-described location, provided that the construction of the CROSSING SITE shall be done by RAILWAY as provided in this Agreement and further provided that, notwithstanding rights to the COUNTY granted herein, RAILWAY reserves the right to perform all work required on RAILWAY'S property including construction, drainage, lighting and vegetation management, in which event the COUNTY shall pay the RAILWAY the entire cost and expense of labor, materials and equipment furnished by RAILWAY in performing such work. The status of the COUNTY is that of a licensee and not lessee, granting the COUNTY the right to use the CROSSING SITE as specified herein.

3. The CROSSING SITE shall be used for public at-grade road crossing purposes only and no utility, including telecommunications facilities, pipes, wires, cables, or other line or structure shall be placed in, on or over the CROSSING SITE without the previous consent in writing of the RAILWAY. COUNTY further agrees that it will at all times keep the CROSSING SITE, together with the additional portions of the RAILWAY'S right-of-way within 325 feet of the northerly and southerly limits or boundaries of the CROSSING SITE, clear of any vegetation or other growth greater than two (2) feet in height on each side of the tracks at the sole expense of the COUNTY and without cost to RAILWAY, or lien upon RAILWAY'S property.

4. This Agreement is for an initial term of one (1) year and shall continue in effect thereafter from year to year, subject to termination by the RAILWAY or COUNTY upon sixty (60) days prior written notice.

5. COUNTY shall pay an annual license fee in advance to RAILWAY of **\$5,000.00** (Five Thousand Dollars), for use of the CROSSING SITE, The license fee shall be increased each year on the anniversary date of this Agreement, commencing on the anniversary date of the second year of this Agreement, by the product of the annual license fee in effect for the preceding year

multiplied by one hundred percent (100%) of the percentage increase, if any, in the Consumer Price Index(1967=100), issued by the Bureau of Labor Statistics of the U.S. Department of Labor (CPI), or 3%, whichever is greater. The base CPI will be the CPI for the month of the year preceding the applicable anniversary date of this Agreement by ninety (90) days. No adjustment will be made for decreases in the CPI.

6. The provisions and stipulations of this Agreement are a part of the consideration of the construction and licensing of the CROSSING SITE, and in the event the COUNTY, shall fail to comply with any of the covenants and conditions required to be performed by COUNTY, then, at the option of the RAILWAY, this Agreement shall be terminated with full legal rights and remedies retained by the RAILWAY, including but not limited to the right to reenter, repossess, and remove the CROSSING SITE if it shall elect to do so.

7. The COUNTY shall grant forthwith to the RAILWAY necessary permits for the installation, construction, erection, repair and maintenance of any of the RAILWAY-owned or maintained facilities described in this Agreement. If the COUNTY fails to promptly grant the RAILWAY necessary permits, the COUNTY shall bear all additional expense incurred by the RAILWAY attributable to such failure, including costs due to slow ordering of trains. The COUNTY shall promptly pay such amounts upon billing by the RAILWAY.

8. Unless otherwise specified, the cost of installation, construction, maintenance and replacement of all facilities at the CROSSING SITE, including but not limited to the crossing structure and railroad and highway devices, whether performed by the COUNTY or RAILWAY, shall be the sole responsibility of the COUNTY.

9. The RAILWAY shall install the warning devices, including the fixed signs, flashing lights, bells and gates (collectively the "WARNING DEVICES"), at the CROSSING SITE at the

sole cost of the COUNTY. The WARNING DEVICES are a Type IV Class IV installation as defined in the Florida Department of Transportation Schedule of Signal Installations by Type and Class attached hereto as Exhibit C. Installation costs are estimated to be **\$423,320.00** as shown on the estimates for signal installation attached hereto as Exhibit B and incorporated by reference.

In addition, COUNTY shall pay unto RAILWAY annually the annual cost of maintenance of said WARNING DEVICES as provided in the Florida Department of Transportation's SCHEDULE OF ANNUAL COST OF AUTOMATIC HIGHWAY GRADE CROSSING TRAFFIC CONTROL DEVICES, as may in the future be revised or amended, a copy of which is attached hereto as Exhibit C and incorporated herein by reference.

The WARNING DEVICES will be owned by the RAILWAY and shall remain at the CROSSING SITE until the RAILWAY decides that they are no longer needed or should be replaced, or until other legal requirements are imposed which shall eliminate or substantially change their operations.

10. The RAILWAY shall replace the existing two-track 42' wide Type "T" concrete grade crossing surfaces with new two-track 74' wide Omni Type "ECR" concrete grade crossing surface (the "SURFACE") along with other improvements as shown on the drawing, attached hereto as part of Exhibit A, in accordance with Florida Department of Transportation Standard Specifications for Road and Bridge Construction, Index No. 560, as may be amended, at the sole cost of COUNTY. Installation costs are estimated to be **\$219,578.25** as shown on the estimates for crossing installation attached hereto as Exhibit B and incorporated by reference. When the RAILWAY determines that the replacement of the SURFACE is more economical than its continued maintenance, the RAILWAY shall have the exclusive option to replace the SURFACE with a comparable or improved structure. The replacement costs of the new SURFACE shall be

the sole responsibility of the COUNTY. The COUNTY shall, at its sole expense, maintain and replace the remainder of the road inside the RAILWAY'S right-of-way, plus any paving which may be located between the ends of the ties. If such work is required due to replacement of the SURFACE, the COUNTY shall perform such work in accordance with the time and operational requirements of RAILWAY. The COUNTY will give prior notice to RAILWAY of all work to be performed by it at or near the CROSSING SITE and no such work shall be performed by COUNTY without the prior approval of RAILWAY. All work performed by the COUNTY shall be conducted at such times and in such manner as to not interfere or impede the operations of RAILWAY. The RAILWAY shall provide a construction watchman at said CROSSING SITE while work is being performed by the COUNTY, under the provisions of this Agreement, at the sole expense of the COUNTY.

11. The COUNTY agrees, acknowledges, and understands that the RAILWAY reserves the right to make any changes at any future time in its existing tracks or other facilities, including the installation, maintenance, and operation of any additional track or tracks or other facilities on its right-of-way at the CROSSING SITE. The COUNTY agrees to bear the total expense of any changes or additions to the pavement and traffic signal devices, the SURFACE, the WARNING DEVICES or other railroad signalization equipment or new structure at the CROSSING SITE, whether these changes or additions are required by law or order of any public or judicial authority, done voluntarily by the RAILWAY, or requested by the COUNTY.

12. The COUNTY agrees that it will install, maintain, and replace all necessary drainage facilities to prevent the accumulation of surface water due to the existence of the CROSSING SITE. Such facilities must first be approved by the RAILWAY and any governing bodies having jurisdiction thereof and operation of the facilities shall also be subject at all time to their approval.

An additional license agreement may be required by the RAILWAY, depending upon the location of such drainage facilities and type, size, depth and other specifications of the proposed facilities, as submitted to the RAILWAY.

13. Lighting facilities adequate to comply with the requirements of the laws of the State of Florida covering illumination of the road crossing shall be installed, maintained, and replaced at or near this CROSSING SITE by and at the sole cost of COUNTY.

14. Facilities at or near the CROSSING SITE that are not specifically covered by this Agreement, including but not limited to pedestrian walkways, may not be constructed by COUNTY, at or near the CROSSING SITE without the prior written approval of RAILWAY, which approval is in RAILWAY'S sole discretion. The cost and liability for such facilities, including but not limited to claims for personal injury or death or damage to property of any person or persons whomsoever, shall be the sole responsibility of COUNTY.

15. If at any time RAILWAY, at COUNTY'S request performs work required to be performed by COUNTY, the cost and liability for such work, including but not limited to claims for personal injury or death or damage to property of any person or persons whomsoever, shall be the sole responsibility of COUNTY.

16. The COUNTY further covenants to pay the RAILWAY, within thirty (30) days after presentation of the same, all bills submitted by RAILWAY including maintenance bills as set forth in Paragraph 9 above and all bills for electricity for the CROSSING SITE if same are provided by RAILWAY.

17. At the termination of this Agreement for any cause, or upon termination of the COUNTY'S use of the CROSSING SITE as herein described, all rights of the COUNTY shall terminate and the COUNTY shall remove, under the RAILWAY'S supervision and direction, at

COUNTY'S entire cost and expense, said road and all non-RAILWAY-owned improvements placed upon the RAILWAY'S right-of-way and restore the ground to its original condition.

18. The COUNTY shall indemnify, defend, and hold harmless RAILWAY for assessments or other charges of any kind whatsoever against the RAILWAY at any time for any portion of public improvements installed on or within two hundred (200) feet of the CROSSING SITE arising out of the existence of the CROSSING SITE.

19. The COUNTY shall not in any way, or at any time, interfere with or obstruct RAILWAY'S right-of-way, the movement of RAILWAY'S trains and other railroad operations, or interfere with the RAILWAY'S use thereof, or the use thereof by RAILWAY'S assigns, invitees, lessees or licensees.

20. To the extent permitted by law the COUNTY acknowledges the waiver of sovereign immunity for liability in tort contained in Florida Statutes Section 768.28 and acknowledges that such statute permits actions at law against the COUNTY to recover damages set forth in such statute for injury or loss of property, personal injury, or death caused by the negligence or wrongful act or omission of an employee of the COUNTY while acting within the scope of the employee's office or employment under circumstances in which the COUNTY, if a private person, would be liable under general laws of this State.

The COUNTY will include in any contract which it may let for the whole or part of any work to be performed hereunder by or for the COUNTY, each and every one of the terms and conditions included on the document entitled "FLORIDA EAST COAST RAILWAY, L.L.C. INSURANCE REQUIREMENTS" attached hereto and made a part hereof as Exhibit D.

21. (a) COUNTY, at their own cost and expense, when performing any work in connection with the CROSSING SITE shall request RAILWAY to furnish any necessary construction

watchmen for the protection of RAILWAY'S employees, property and train operations. RAILWAY shall be notified at least one (1) week in advance of the performance of any work in connection with the CROSSING SITE.

(b) In addition to, but not in limitation of any of the foregoing provisions, if at any time RAILWAY should deem it necessary to place construction watchmen for the protection of any person or property, during the construction, maintenance, repair, alteration, renewal, or removal at the CROSSING SITE, RAILWAY shall have the right to place such construction watchmen, or other persons at the sole cost and expense of the COUNTY. Upon receipt of a bill from RAILWAY, COUNTY shall promptly pay RAILWAY the full cost and expense of such construction watchmen. The furnishing or failure to furnish construction watchmen, or other persons by the RAILWAY 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 Paragraph 20 hereof. The COUNTY shall give the RAILWAY one (1) week's advance written notice when it or its contractor or anyone claiming under this Agreement proposes to enter upon the CROSSING SITE to perform work under this Agreement in order that proper warning may be provided for trains. In emergency situations COUNTY shall give the RAILWAY telephonic notice. The COUNTY further agrees that at all times its personnel or agents are on the property of the RAILWAY, they will be accompanied by a RAILWAY representative and any cost involved will be borne by the COUNTY.

22. After the SURFACE and WARNING DEVICES have been installed and all other work to be performed by the RAILWAY under this Agreement have been completed and found to be in satisfactory working order by the RAILWAY, the RAILWAY shall furnish to the COUNTY an invoice showing the final total cost of material, labor and equipment furnished by the RAILWAY,

in accordance with the estimate of said cost to the COUNTY to be **\$680,898.25** set forth in Exhibit B and COUNTY shall pay such invoice no later than sixty (60) days from the date thereof.

23. Installation, maintenance and replacement of any and all railroad advance warning signs and pavement markings on any road approaching the CROSSING SITE shall be the sole responsibility and expense of the COUNTY.

24. The COUNTY shall promptly pay RAILWAY all charges for replacement, repair or otherwise of the track structure, SURFACE and WARNING DEVICES within sixty (60) days of the date of invoice. Failure to promptly pay to RAILWAY amounts billed as due under this Agreement shall constitute default by the COUNTY.

25. The COUNTY hereby acknowledges that it has been notified that its personnel will or may be working in an area containing active fiber-optic transmission cable as well as other cables and other facilities.

26. If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

27. This Agreement will be governed by the laws of the State of Florida. It constitutes the complete and exclusive statement of the Agreement between the parties which supersedes all proposals, oral or written, and all other communications between the parties related to the subject matter of this Agreement. Any future change or modification of this Agreement must be in writing and signed by both parties.

28. It is understood by and between the respective parties hereto that this Agreement cancels and supersedes any other license agreements between the RAILWAY and COUNTY with

respect to the matters contained herein, and more specifically, the existing license agreement between the RAILWAY and COUNTY dated August 27, 1968.

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

Florida East Coast Railway, LLC

BOARD OF COUNTY COMMISSIONERS

By: _____

By: _____
Paulette Burdick, Mayor

Signed: _____

Date: _____

Attest: _____
Assistant Secretary

ATTEST:
By: SHARON R. BOCK
Clerk & Comptroller

Date: _____

BY: _____
Deputy Clerk

S E A L

APPROVED AS TO TERMS &
CONDITIONS:

By: 
1/17

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
County Attorney

LICENSE AREA

November 28, 2016

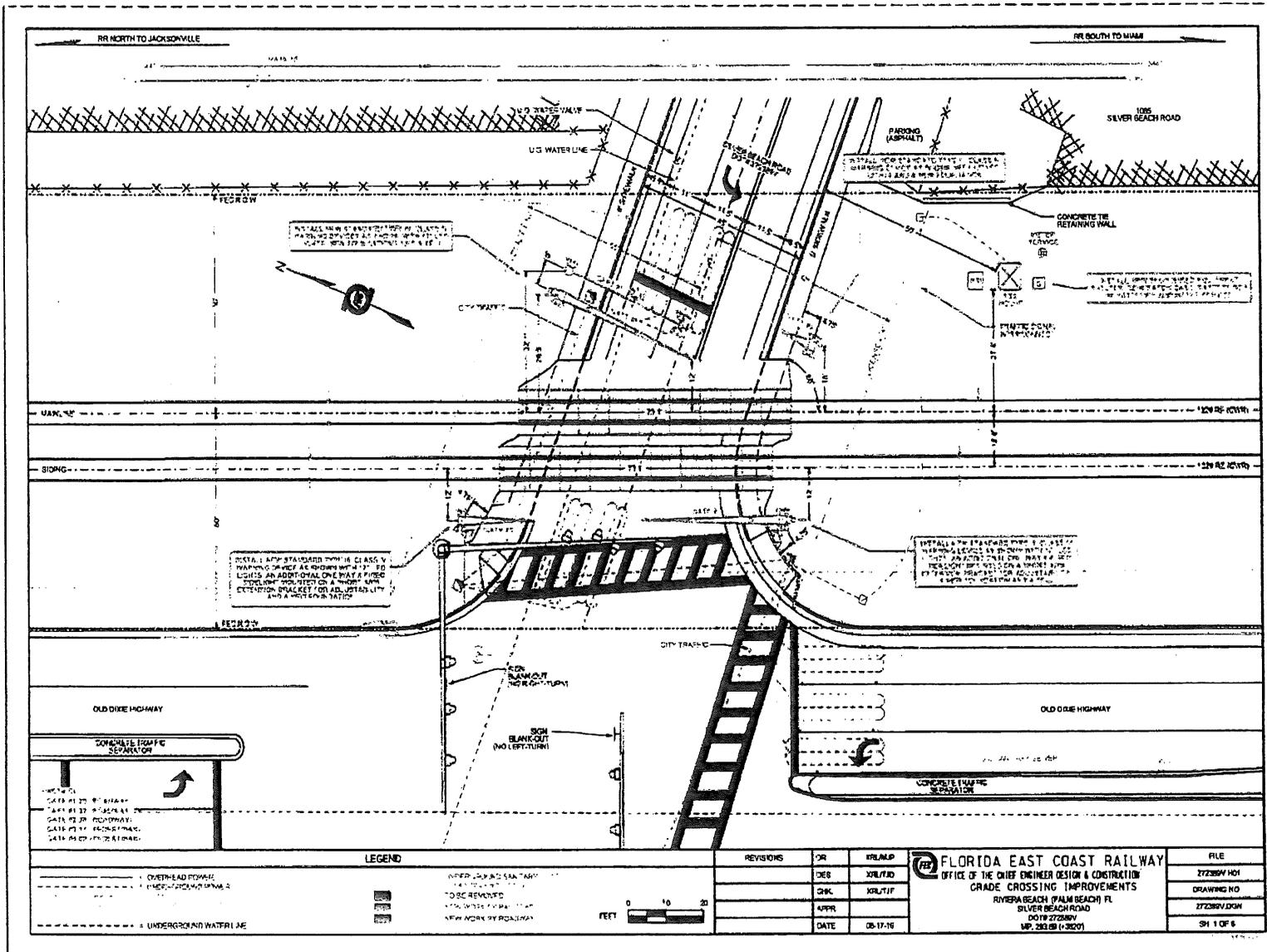
File: 293/39/3620

SILVER BEACH ROAD – MP 293+3620’ – FDOT # 272389V

A PARCEL OF LAND WITH UNIFORM WIDTH OF FIFTY (50) FEET NORTHERLY AND FIFTY (50) FEET SOUTHERLY AND EXTENDING EASTERLY AND WESTERLY ACROSS THE RIGHT-OF-WAY AND MAIN TRACK OF THE RAILWAY AT SILVER BEACH ROAD IN RIVIERA BEACH, FLORIDA, WITH LONGITUDINAL CENTER LINE OF SAID PARCEL LOCATED THREE THOUSAND SIX HUNDRED TWENTY FEET (3620) SOUTHERLY FROM THE RAILWAY'S MILE POST NO. 293 AS MEASURED FROM JACKSONVILLE, FLORIDA, SAID RIGHT-OF-WAY OF THE RAILWAY HAVING A TOTAL WIDTH OF ONE HUNDRED (100) FEET AT THIS LOCATION, ALL AS SHOWN ON THE ATTACHED DRAWING NO. 272389V.DGN, DATED JANUARY 8, 2010, OR AS LATER REVISED, ATTACHED HERETO AND MADE A PART HEREOF.

EXHIBIT "A"

EXHIBIT "A"





Estimate No : 272389V - 11/28/2016

**Florida East Coast Railway
(FEC)**

RIVIERA BEACH, (Palm Beach), FL
SILVER BEACH ROAD

DOT# : 272389V
RR MP.: 293+3620'

RAILROAD # : 2283728
XORAIL# : GEM16-24778

Summary

CROSSING WARNING SYSTEM (Includes all design, requisition, labor, materials, shop wiring, and installation)	\$423,320.00
CROSSING SURFACE/RESURFACE (Includes all design, requisition, labor, materials, and installation)	\$219,878.25
TRACK GRADE AND REHABILITATION (Includes all design, requisition, labor, materials, and installation)	\$0.00
RAILROAD ENGINEERING (Includes RAILROAD Labor for Reviewing Engineering Authorizations, Field Inspections and Administrative Labor)	\$2,500.00
PRELIMINARY ENGINEERING (Phase 1) (Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)	\$8,000.00
AGREEMENTS & APPROVALS (Phase 2) (Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)	\$5,000.00
CONSTRUCTION ENGINEERING (Phase 3) (Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)	\$8,000.00
CONSTRUCTION ENGINEERING INSPECTION (CEI) (Estimated Construction Engineering Inspection cost based on 5 days @ \$1500.00 per day)	\$7,600.00
AC POWER SERVICE (Includes all Power Service Charges not included in other costs)	\$6,000.00
OTHER (Description Required)	\$0.00
TOTAL ESTIMATE COST	\$680,898.25 (USD)

DATE: 11/28/2016

RESPONSIBLE PARTY:

Name: **PALM BEACH COUNTY**
Number: **2003514**
Contact: **Kristine Frazell-Smith**

NOTE: This Estimate has been prepared based on site conditions, anticipated work duration periods, material prices, labor rates, manpower, resource availability, and other factors known as of the date prepared. The actual cost for Railroad work may differ based upon the agency's requirements, their contractors work procedures, and/or other conditions that become apparent once construction commences or during the progress of the work. If any extended time elapses from the date of this Estimate, the Railroad will reserve the right to update the estimate to current price values, and require agency's approval before any work by Railroad will commence.

EXHIBIT "B"

**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 Signals – One Track	\$2,386.00
II	2-Quadrant Flashing Signals – Multiple Tracks	\$3,158.00
III	2-Quadrant Flashing Signals and Gates – One Track	\$3,600.00
IV	2-Quadrant Flashing Signals and Gates – Multiple Tracks	\$4,520.00
V	3 or 4-Quadrant Flashing Signals and Gates – One Track	\$7,116.00
VI	3 or 4-Quadrant Flashing Signals and Gates – Multiple Tracks	\$8,930.00

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

F. A. RULE EFFECTIVE DATE: July 22, 1982

GENERAL AUTHORITY: 334.044, F. S.

SPECIFIC LAW IMPLEMENTED: 335.141, F. S.

*This schedule was 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.

EXHIBIT "C"

FLORIDA EAST COAST RAILWAY, L.L.C. INSURANCE REQUIREMENTS

A. Liability Insurance. During the Term of this Contract, Contractor shall purchase and maintain: (i) Commercial General Liability Insurance ("CGL"), with contractual liability covering obligations assumed in this Contract (including any agreements entered into between the parties pursuant hereto) by Contractor, providing for available limits of not less than \$6,000,000 single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in each occurrence and for damage to or destruction of property, including the loss of use thereof, in each occurrence, including Federal Employers Liability Act claims ("FELA") against the FECR, or other liability arising out of or incidental to railroad operations; (ii) at FECR's option, Contractor will obtain a policy of Railroad Protective Liability with liability limits of \$2,000,000 per occurrence, \$6,000,000 aggregate with FECR as the only named insured.(iii) Statutory Workers' Compensation, Employer's Liability Insurance with available limits of not less than \$1,000,000 and Occupational Disease Insurance; (iv) if any motor vehicles are used in connection with the Services to be performed hereunder (or in connection with any agreements entered into between the parties pursuant hereto), Business Automobile Liability Insurance with limits of not less than \$1,000,000 single limit, bodily injury and/or property damage combined, for damages to or destruction of property including the loss of use thereof, in any one occurrence; and (v) if professional services are being rendered by Contractor, Professional Liability coverage in an amount not less than \$1,000,000. If, in FECR's opinion, a higher limit of liability is necessary for any insurance policy required hereunder, FECR shall so notify Contractor and Contractor shall, within thirty (30) days of receipt of such notice, provide a copy of the endorsement to the appropriate policy increasing the liability coverage to the required limit. Such insurance will include a minimum of two years' tail coverage necessary to cover claims occurring during the Term but which may not be brought until after termination of this Contract.

B. Policy Requirements. All insurance required hereunder shall be affected by valid and enforceable policies issued by insurer(s) of financial responsibility and authorized to do business in all necessary states, all subject to the reasonable prior approval of FECR. Contractor's liability insurance policies shall name FECR, its parent, affiliates and subsidiaries as additional insureds and will not have any exclusion for liability relating to railroad operations or contractual liability for construction or demolition within fifty (50) feet of FECR's tracks by endorsement. Contractor's Workers' Compensation and property insurance policies shall include waivers of subrogation rights endorsements in favor of FECR. All policies shall contain a provision for thirty (30) days' written notice to FECR prior to any expiration or termination of, or any change in, the coverage provided. Contractor shall provide FECR with at least thirty (30) days' written notice prior to such expiration, termination or change in any insurance coverage. Insurance Company must be issued by a casualty company/insurance company authorized to do business in the State of Florida that has a "Best's" rating of A or A+ and a financial category size of Class XII or higher. Prior to any entry upon FECR property pursuant to this Contract and upon FECR's request thereafter, Contractor shall provide or shall cause its insurer or insurance agent to provide FECR with a certificate of insurance certifying the liability insurance policies in effect for the Term of this Contract. The liability assumed by Contractor under this Contract, including, but not limited to, Contractor's indemnification obligations, shall not be limited to the insurance coverage stipulated herein.

EXHIBIT "D"