

Meeting Date
August 8, 2017



AGENDA	
Section	Unfinished Business
Item No.	V C

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval Re: Pineda Grade Separation Project – Florida East Coast Railway (FEC) agreement - Perpetual Aerial Easement, Grade Separation Agreement and Addendum modifying the License Agreement dated December 16, 2008 - District 4 (Fiscal Impact: \$715,623.67)
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DEPT/OFFICE:	Public Works Department / Land Acquisition Section
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Requested Action:
 It is requested that the Board of County Commissioners consider approval and authorization for the Chairman to sign:
 1) Grade Separation Agreement, 2) Addendum “A” to the existing License Agreement and 4) Perpetual Aerial Easement Agreement.

Summary Explanation & Background:

The subject property is located in Section 19, Township 26 South, Range 37 East.

The Board of County Commissioners, in regular session on May 23, 2017, executed Purchase Agreement for the acquisition of the Perpetual Aerial Easement from FEC for the Pineda Causeway Grade Separation Project in the amount of \$245,000.00 and approved the Draft Perpetual Aerial Easement Agreement.

Upon receipt of the final version of the Easement agreement there were additional documents that need additional action by the Board:

1. Grade Separation Agreement – establishes conditions whereby the County may construct the grade separation overpass. Estimated costs associated with FEC review - \$41,418.98.
2. Addendum “A” to the existing License Agreement – the addendum expands the existing License Agreement to provide for the construction of the Grade Separation overpass. In the addendum there is an estimate of costs FEC expects to incur as a result of their participation in the Project. - \$429,204.69
3. Perpetual Aerial Easement Agreement – Approved by Board Action on May 23, 2017 - \$245,000.00

The written agreements and aerial easements are standard FEC forms, however, the County Attorney’s Office, in concert with the County Manager’s Office, has negotiated a major change in the indemnity provision which, in FEC’s version of the contract documents, purports to shift all of FEC’s tort liability relating to the overpass and track at that location to the County. The new language—which has been accepted by FEC—reads as follows:

(Continued on page 2)

Clerk to the Board Instructions: Forward the following executed documents: Grade Separation Agreement, Addendum “A”, Perpetual Easement Agreement, and Board approval memo to Department

Exhibits Attached: Grade Separation Agreement, and Consent, Addendum “A”, Perpetual Easement Agreement., Location Map

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager	Assistant County Manager	Department Director / Extension Andrew Holmes / 57202
Frank Abbate	John Denninghoff	

(Continued from page 1)

“Nothing in this agreement shall be deemed a waiver of the COUNTY’S sovereign immunity beyond the limits set forth in section 768.28, Florida Statutes, nor shall this agreement be construed as an agreement by the COUNTY to indemnify the Railway for negligent acts or omissions of the Railway, its officers, agents, employees, or for the acts of third parties. Nothing herein shall be construed as consent of the COUNTY to be sued by third parties as a result of this agreement.”

The change would limit the County’s exposure to claims for which the County would be liable, but only in amounts that would not exceed the statutory limit of \$200,000 per person, and \$300,000 per occurrence.

This change, and other changes to the standard FEC documents that have been approved by FEC. The purchase agreement for the aerial easement will expire soon after the August 22, 2017 regular meeting and it was FEC’s desire to obtain Board approval of the documents referenced in this agenda item, as revised. Therefore, time is of the essence. If the purchase agreement expires, the County would not have the aerial easement required by the State of Florida Department of Transportation and would stand to lose \$26 million in FDOT funding which has been designated for the Pineda overpass. These agreements implement the overpass arrangement underlying the FDOT funding.

It is, therefore, recommended that the Board approve the agreements.

All costs are eligible for reimbursement. Costs are as expected and have been included in the cost estimates for the Project.

Fiscal Impact: FY 2016-2017: \$245,000.00 (To be reimbursed by State funds for this Project.)
FY 2017-2018-\$470,623.67 (To be reimbursed by State funds for this Project.)

**FLORIDA EAST COAST RAILWAY
GRADE SEPARATION AGREEMENT**

FEC MILEPOST	DOT#	ROAD NAME OR NUMBER	COUNTY NAME
184+2687'	272863R	SR 404 (Pineda Causeway)	Brevard

THIS AGREEMENT, effective as of the 8 day of August, 2017, is between FLORIDA EAST COAST RAILWAY, L.L.C. (Address: 7150 Phillips Highway, Jacksonville, Florida 32256), a Florida Limited Liability Company, hereinafter called "RAILWAY" and BREVARD COUNTY, a political subdivision of the State of Florida, hereinafter called "COUNTY".

WITNESSETH:

WHEREAS, the COUNTY proposes to construct a structure(s) and the necessary approaches thereto carry a public road, designated SR 404 (Pineda Causeway), which crosses the right of way and over the track(s) of the RAILWAY at RAILWAY'S Mile Post 184+2687', as shown on the COUNTY'S most current approved Plans, a represented portion of which are attached hereto as a part hereof; and

NOW, THEREFORE, in consideration of the mutual undertakings as herein set forth, the parties hereto agree as follows:

1. The RAILWAY hereby grants to the COUNTY the right to construct, install, inspect, and maintain the structure(s) and necessary approaches and drainage facilities, thereto across its right-of-way and over its tracks at the hereinabove referred to location, herein designated as the "Structure".

2. The COUNTY will provide, furnish or have furnished, all necessary materials required for, and will construct or have constructed said structure(s) and the necessary approaches thereto at its expense. Said work to be done in accordance with plans heretofore approved by the RAILWAY, with portion of plans attached hereto and made a part hereof as Exhibit A. Upon completion of the structure(s) the COUNTY will, at its expense, maintain the same in a good and safe condition.

3. All work contemplated hereunder shall at all times be subject to the approval of the RAILWAY'S Chief Engineer or his authorized representative. The COUNTY, or the

COUNTY'S Contractor, shall give the RAILWAY'S Engineer and/or designated Representative at least seventy-two (72) hours' notice prior to the performance of any work within the limits of the RAILWAY'S right-of-way.

4. (a) COUNTY, at its own cost and expense, when performing any work in connection with the Structure 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 Structure.

(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 of the Structure, 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 22 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 Structure 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.

5. The COUNTY will require its contractor to furnish Railroad Protective Public Liability and Railroad protective Property Damage Liability Insurance in the amounts shown on the document entitled "FLORIDA EAST COAST RAILWAY, LLC. INSURANCE REQUIREMENTS" attached hereto and made a part hereof as Exhibit D, and provide proof of such insurance prior to any work commencing upon or affecting the RAILWAY. Such insurance is to conform with the requirements of the RAILWAY and any supplements thereto or revisions thereof.

6. The COUNTY will bear the cost of all temporary and permanent changes made necessary in the RAILWAY'S signal wire line or other facilities and in the wire line facilities of any utility that has compensable interest on RAILWAY'S right-of-way occasioned by the construction of said crossing and the occupancy of the RAILWAY'S property, provided such costs are accrued as specified in Paragraph 7.

7. The RAILWAY hereby agrees to adjust the necessary parts of its facilities along said road in accordance with the attached detailed statement of the work, plans and specifications, and in accordance with the provisions set forth in the approved COUNTY design plans and any supplements thereto or revisions thereof, which, by reference hereto, are made a part hereof. The RAILWAY further agrees to do all of such work with its own forces or by a contractor paid under a contract let by the RAILWAY, at the sole cost of the COUNTY.

8. The COUNTY hereby agrees to reimburse the RAILWAY, as detailed in this agreement for all costs incurred by it in the adjustment of said facilities, in accordance with the terms and conditions stated herein, and any supplements thereto or revisions thereof.

9. Attached hereto, and by this reference made a part hereof, are plans and specifications of the work to be performed by the RAILWAY pursuant to the terms hereof, and an itemized estimate of the costs thereof in the amount of \$41,418.98. All work performed by the RAILWAY pursuant hereto, shall be performed according to these plans and specifications as approved by the COUNTY, RAILWAY, and the Federal Highway Administration if federal aid participating; and all subsequent plan changes shall likewise be approved by the COUNTY, RAILWAY, and the Federal Highway Administration, when applicable.

10. All labor, services, materials, and equipment furnished by the RAILWAY in carrying out the work to be performed hereunder shall be billed by the RAILWAY directly to the COUNTY. Separate records as to the costs of contract bid items and force account items performed for the RAILWAY shall also be furnished by the RAILWAY to the COUNTY.

11. The RAILWAY has determined that the method to be used in developing the relocation or installation cost shall be based on actual and related indirect costs accumulated in accordance with an established accounting procedure developed by the RAILWAY.

12. It is further agreed that the cost of all improvements made or performed by the RAILWAY during this adjustment work shall be the sole responsibility of the COUNTY.

13. Upon completion of the work, the RAILWAY shall furnish the COUNTY with two

(2) copies of its final and complete billing of all costs incurred in connection with the work performed hereunder, such statement to follow as closely as possible the order of the items contained in the estimate attached hereto as Exhibit B. The totals for labor, overhead, travel expense, transportation, equipment, materials and supplies, handling costs and other services shall be shown in such a manner as will permit ready comparison with the approved plans and estimates. Materials shall be itemized when they represent major components of cost in the relocation following the pattern set out in the approved estimate as closely as is possible. Salvage credits from recovered and replaced permanent and recovered temporary materials shall be reported in said bills in relative position with the charge for the replacement or the original charge for temporary use.

The final billing shall show the description and site of the Project. Adequate reference shall be made in the billing to the RAILWAY'S records, accounts and other relevant documents. All cost records and accounts shall be subject to audit by a representative of the COUNTY. The COUNTY agrees to reimburse the RAILWAY in the amount of such actual costs.

14. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the COUNTY.

15. The following provisions are included in this Agreement:

If this Contract involves units of deliverables, then such units must be received and accepted in writing by the RAILWAY prior to payments.

Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient to discern the charges incurred associated with the line item(s) related to the estimate prepared and included in this agreement as Exhibit B.

The COUNTY shall allow public access to all documents, papers, letters, or other material and made or received in conjunction with this Agreement as required by Florida Statutes, Chapter 119. The County shall not object to the release of such documents by the RAILWAY if requested.

16. The COUNTY further covenants to pay the RAILWAY, within sixty (60) days after presentation of the same, all bills submitted by Railway including watchman bills as set forth in this agreement and all bills related to the Structure if same are provided by RAILWAY.

17. Records of costs incurred under terms of this Agreement shall be maintained and

made available upon request to the COUNTY at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the COUNTY upon request. Records of costs incurred includes the Contractor's general accounting records and the project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the COUNTY for a proper audit of costs.

18. The RAILWAY shall require a statement from the COUNTY that such funds described in Exhibit B are available and provisioned for this project exclusively by issue of a Purchase Order or pre-paid funds in the amount equal to the entire estimated cost described and shown on Exhibit B attached hereto and made a part hereof.

19. Should the use of said structure(s) be abandoned due to removal of the roadway, then all rights hereby granted to the COUNTY shall thereupon cease and terminate and the COUNTY will, as its sole cost and in a manner satisfactory to the RAILWAY, remove said structure(s) and restore the RAILWAY'S property to the condition previously found, provided the RAILWAY may, at its option, remove the said Structure and restore its property, and the COUNTY will, in such event, upon bill rendered, pay to the RAILWAY the entire cost incurred by it in such removal and restoration.

20. The COUNTY shall not impose 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 Structure arising out of the existence of the Structure. The COUNTY will be liable for any imposed fees by any public agency that is directly related to this Agreement.

21. 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.

22. Except as limited by law, the COUNTY shall indemnify, defend and hold harmless RAILWAY, its affiliates, officers, directors and employees from any and all suits, claims, liability, losses, damages, expenses and costs (including reasonable attorney's fees) incurred by or asserted against RAILWAY whether for personal injury or death or damage to property of any person or persons whomsoever, relating to, resulting from or arising out of the construction, installation, maintenance or replacement of the Structure by RAILWAY, the performance of work by RAILWAY required to be performed by COUNTY hereunder, or the use of the Structure or COUNTY facilities, including but not limited to pedestrian walkways, at or near the Structure. Notwithstanding the foregoing, the COUNTY shall have no indemnification obligation for the intentional, wrongful acts of RAILWAY. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall same be construed to constitute an agreement by COUNTY to indemnify RAILWAY for negligent acts or omissions of RAILWAY, its officers, agents, or employees or for the acts of third parties. Nothing herein shall be construed as consent by COUNTY to be sued by third parties as a result of this agreement.

23. 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, LLC. INSURANCE REQUIREMENTS" attached hereto and made a part hereof as Exhibit D.

24. It is understood and agreed by the parties to this Agreement that if any part, term, or provision of this Agreement is held illegal by the courts or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

25. 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 Brevard County, Florida.

26. The parties agree to bear their own attorney's fees and costs with respect to this Agreement.

27. The parties agree that this Agreement is binding on the parties, their heirs-at-law, and their assigns and successors in interest as evidenced by their signatures and lawful executions below.

28. 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.

THE REMAINDER IF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the RAILWAY and the COUNTY have caused this instrument to be executed in their corporate names and respective seals to be hereunto affixed in duplicated the day first hereinafter written by their undersigned official's thereunto lawfully authorized.

Signed, sealed and delivered in the presence of:

Sandy Kelley
Sandy Kelley
Witnesses as to **RAILWAY**

FLORIDA EAST COAST RAILWAY L.L.C.
a Limited Liability Company

By: Robert Ledoux (Seal)

ATTEST: Robert Ledoux

DATE: 8-4-17

Christine Mulvey-Willey
Donna Scott
Witnesses as to **COUNTY**

COUNTY of BREVARD, a political
subdivision of the State of Florida

By: [Signature]

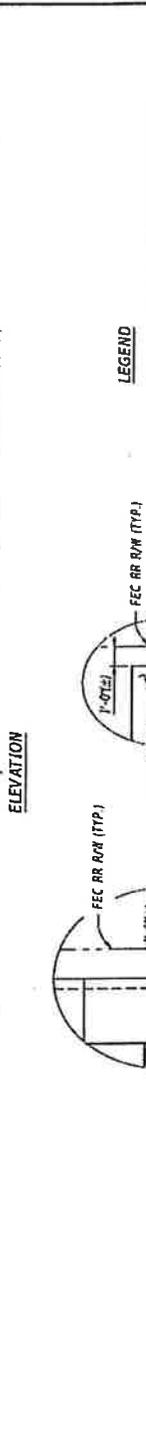
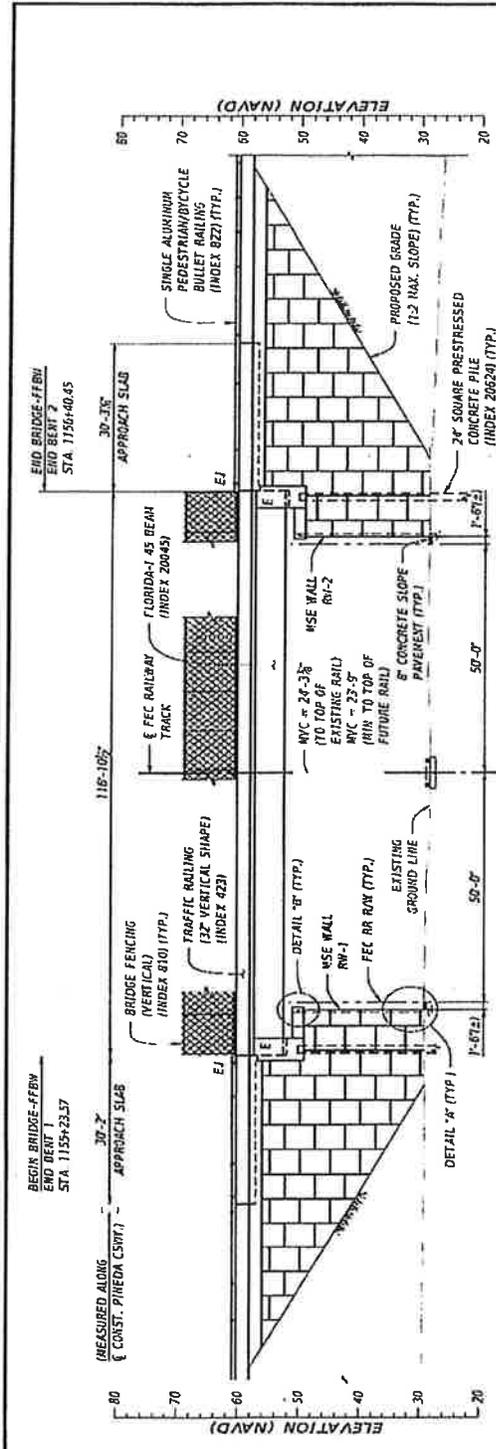
Title: CHAIRMAN

Attest: [Signature]

Title: CLERK

Date: AUGUST 8, 2017

As approved by Board 8/8/17

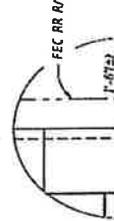
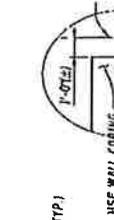


LEGEND
 EJ = POURED JOINT WITH BACKER AND EXPANSION JOINT SYSTEM (INDEX 21110)
 E = EXPANSION BEARING

NOTE
 GROUND LINE SHOWN IS AT THE RIGHT COPING LINE.

TRAFFIC DATA PINEDA CSWY
 CURRENT YEAR (2015) ADOT = 43,000
 K = 9.0%
 D = 53.9%
 T = 6.1% (24 HOUR)
 DESIGN SPEED = 45 MPH
 POSTED SPEED = 40 MPH

STATION	OFFSET	ELEVATIONS:
1155+74.39	43.03 LT.	28.17
1155+78.39	9.30 LT.	28.21
1155+79.19	43.67 LT.	28.17
1155+87.20	13.17 RL	28.23
1155+83.33	9.66 LT.	28.21
1155+85.18	45.57 RL	28.26
1155+86.08	12.28 RL	28.22
1155+90.15	44.95 RL	28.25



ELEVATIONS ALONG TOP OF FEC RAILWAY TRACK

100% SUBMITTAL NOT FOR CONSTRUCTION

BREVARD COUNTY

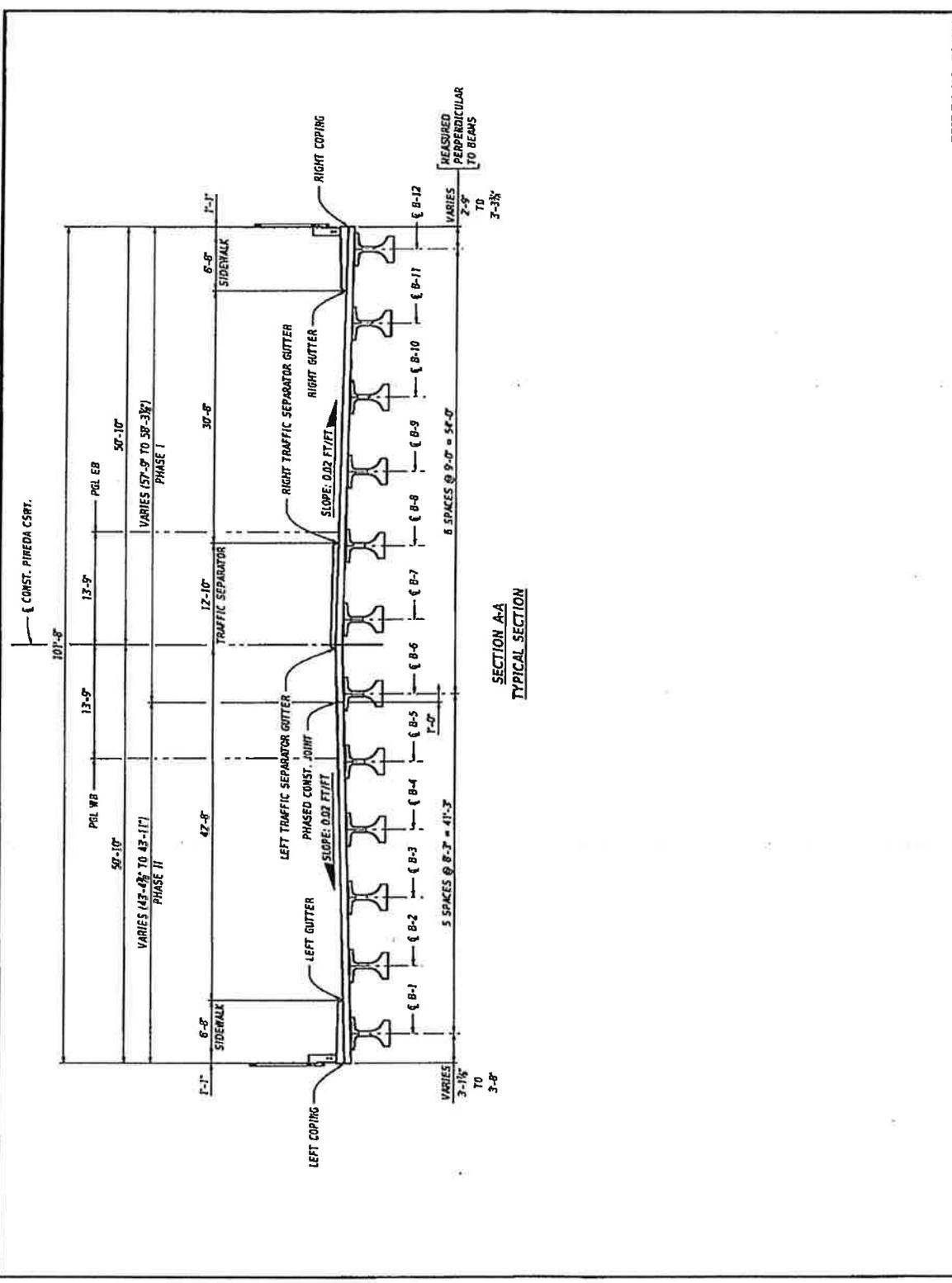
DRADD, INC. DRAWN BY: J.A. DUNN
 501 Lake James Lane, Cassel, FL 32909
 Project 1155+23.57 - 1156+40.45
 Contract for Improvement No. 15-17
 MICHAEL JOSEPH LEO, P.E.
 LICENSE NO. 58818
 DATE: 04-20-2017

DATE: 04-20-2017
 PROJECT NUMBER: 12230-1-04-01
 SHEET NO.: 81-02

BRIDGE NO. 704196

ELEVATION

PINEDA CAUSEWAY OVER FEC RAILWAY



SECTION A-A
TYPICAL SECTION

DATE		REVISED		REVISIONS		BRIDGE NO. 704195	
100% SUBMITTAL NOT FOR CONSTRUCTION				FINISH GRADE ELEVATIONS (2 OF 3)			
100% SUBMITTAL NOT FOR CONSTRUCTION				PINEDA CAUSEWAY OVER FEC RAILWAY			
100% SUBMITTAL NOT FOR CONSTRUCTION				BREVARD COUNTY			
100% SUBMITTAL NOT FOR CONSTRUCTION				PROJECT NO. 81-16			
100% SUBMITTAL NOT FOR CONSTRUCTION				PROJECT NO. 81-16			



Estimate No.: 272863R - 06/16/2017

**Florida East Coast Railway
(FEC)**

**MELBOURNE, (Brevard), FL
Pineda Causeway
Install Grade Separation Structures
(Grade Separation Agreement)**

DOT# : 272863R
RR MP.: 184+2687'

RAILROAD # : 2279717
XORAIL# : GEM12-31833

Summary

CROSSING WARNING SYSTEM (Includes all design, requisition, labor, materials, shop wiring, and installation) Warning Device work required during Phase 1, 2, & 3	\$0.00
CROSSING SURFACE/RESURFACE (Includes all design, requisition, labor, materials, and installation) NEW Temp Bypass Road Installed During TCP Phase 1	\$0.00
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)	\$5,918.98
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)	\$6,000.00
CONSTRUCTION ENGINEERING (Phase 3) (Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)	\$7,500.00
CONSTRUCTION ENGINEERING INSPECTION (CEI) (Estimated Construction Engineering Inspection cost based on 10 days @ \$1500 per day)	\$16,000.00
AC POWER SERVICE (Includes all Power Service Charges not included in other costs) Transfer of Power for relocated Case	\$0.00
OTHER (Description Required)	\$0.00
TOTAL ESTIMATE COST	\$41,418.98 (USD)

DATE: 06/16/2017

RESPONSIBLE PARTY:

Name: Brevard County
Number: 422830-1-94-01
Contact: Michael Albano

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.

This Estimate does NOT include Railroad Watchman/Flagging cost. Due to the undetermined actual days that a Railroad Watchman/Flagger will be required, all cost for Railroad Watchman/Flagger are independently billed and invoiced to the Roadway Agency responsible directly. the Roadway Agency must estimate appropriately and account for this cost within the project budget.

EXHIBIT B

EXHIBIT C

There is no Exhibit C applicable to this Agreement

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

ADDENDUM "A"

This Addendum "A" is made a part of the License Agreement (hereinafter referred to as LICENSE) granted by Florida East Coast Railway LLC (hereinafter referred to as RAILWAY) to Brevard County (hereinafter referred to as COUNTY) dated December 16, 2008 related to that portion of Roadway Section 740 of Pineda Causeway (SR 404), lying in the Railway Property as identified and granted in the December 16, 2008 License Agreement.

The purpose of this Addendum "A" is to TEMPORARILY expand the current License Area granted and specified in the current December 16, 2008 License Agreement, in order to perform Roadway at-grade and grade-separation improvement activities.

Notwithstanding any language in the December 16, 2008 License Agreement, and until such time the at-grade roadway is removed from service, and the grade separation crossing has been placed in-service, the parties hereto agree that the License Area description will be amended as follows:

WITNESSETH:

That said RAILWAY, for and in consideration of the covenants and agreements herein contained to be performed and kept by the COUNTY, does hereby modify the existing LICENSE to give and grant unto the COUNTY the right, privilege and license to construct, use and maintain a crossing for public road crossing purposes, the right of way and property of said RAILWAY in Brevard County, Florida, at the location described as follows:

A PARCEL OF LAND WITH UNIFORM WIDTH MEASURING ONE HUNDRED SEVENTY (170') FEET IN WIDTH NORTHERLY AND SOUTHERLY. EXTENDING EASTERLY AND WESTERLY ACROSS THE RIGHT OF WAY AND TRACKS OF THE RAILWAY AT PINEDA CAUSEWAY (SR 404), MELBOURNE, FLORIDA. WITH LONGITUDINAL CENTERLINE OF SAID CROSSING INTERSECTING THE CENTERLINE OF THE RAILWAY'S NORTHBOUND MAIN TRACK AT A POINT LOCATED TWO THOUSAND SIX HUNDRED AND EIGHTY-SEVEN (2687') FEET SOUTHERLY FROM RAILWAY'S MILE POST NO. 184, AS MEASURED FROM JACKSONVILLE, FLORIDA, SAID RIGHT OF WAY HAVING A TOTAL WIDTH OF ONE HUNDRED (100') FEET AT THIS LOCATION. AS SHOWN ON ATTACHED DRAWING EXHIBIT "A", ATTACHED HERETO AND MADE A PART HEREOF.

SAID LICENSE AREA WILL BE FOR THE USE AND IMPROVEMENTS FOR MAINTAINING THE PUBLIC ROADWAY TRAFFIC USE, AND THE CONSTRUCTION OF A ROADWAY GRADE SEPARATION STRUCTURE, WHICH WILL CROSS THE RIGHT OF WAY AND TRACKS OF THE RAILWAY.

In Addition, the Railway and County agree, that to facilitate the project work and construction, at the COUNTY's sole expense, the following will also be performed and completed, subject to the same terms and conditions as the December 16, 2008 License Agreement.

1. That said RAILWAY, at the sole cost of the COUNTY will install a new realigned eastbound grade crossing roadway and warning device system to a southerly location, and maintain both eastbound and westbound at grade roadway crossing and warning device systems in this temporary location to allow the construction of the new roadway overpass structure. The temporary at grade crossing and warning system configurations will remain in operation until such time the roadway overpass structure has been completed, and upon County's acceptable completion of the grade separation structure at the COUNTY'S expense, the at grade crossings and warning systems will be removed from service, at which time this Addendum "A", and said December 16, 2008 License Agreement will be terminated between named parties, with the grade separation structure and roadway being covered under separate agreement(s).

2. The COUNTY will bear the cost of all temporary and permanent changes made necessary in the RAILWAY'S facilities and any RAILWAY or third party utility that has compensable interest on RAILWAY'S right-of-way occasioned by the construction of said grade separation crossing and the occupancy of the RAILWAY'S property.

3. The RAILWAY hereby agrees to adjust the necessary parts of its facilities along said road in accordance with the attached detailed statement of the work, plans and specifications, and in accordance with the provisions set forth in the approved COUNTY design plans and any supplements thereto or revisions thereof, which, by reference hereto, are made a part hereof. The RAILWAY further agrees to do all of such work with its own forces or by a contractor paid under a contract let by the RAILWAY, at the sole cost of the COUNTY.

4. The COUNTY hereby agrees to reimburse the RAILWAY, as detailed in this agreement for all costs incurred by it in the adjustment of said facilities, in accordance with the terms and conditions stated herein, and any supplements thereto or revisions thereof.

5. Attached hereto, and by this reference made a part hereof, are plans of the work to be performed by the RAILWAY as Exhibit "C", pursuant to the terms hereof, and an itemized estimate of the costs thereof in the amount of \$429,204.69 attached hereto as Exhibit "B". All work performed by the RAILWAY pursuant hereto, shall be performed according to these plans and specifications as approved by the COUNTY, RAILWAY, and the Federal Highway Administration if federal aid participating; and all subsequent plan changes shall likewise be approved by the COUNTY, RAILWAY, and the Federal Highway Administration, when applicable.

6. All labor, services, materials, and equipment furnished by the RAILWAY in carrying out the work to be performed hereunder shall be billed by the RAILWAY directly to the COUNTY. Separate records as to the costs of contract bid items and force account items performed for the RAILWAY shall also be furnished by the RAILWAY to the COUNTY.

7. Nothing in this License shall be deemed a waiver of sovereign immunity beyond the limits set forth in Section 768.38, Florida Statutes, nor shall this License be construed as an Agreement by COUNTY to indemnify RAILWAY for negligent acts or omissions of RAILWAY, its officers, agents, employees or for the acts of third parties. Nothing herein shall be construed as consent of COUNTY to be sued by third parties as a result of this License.

This Addendum "A" shall become a part of, and except as modified herein, shall be subject to the same terms and conditions as the December 16, 2008 License Agreement.

Accepted Date:

**FLORIDA EAST COAST RAILWAY. L.L.C., a
Florida Limited Liability Company**

**BREVARD COUNTY, a Political subdivision of
the State of Florida**

By: _____

By: _____

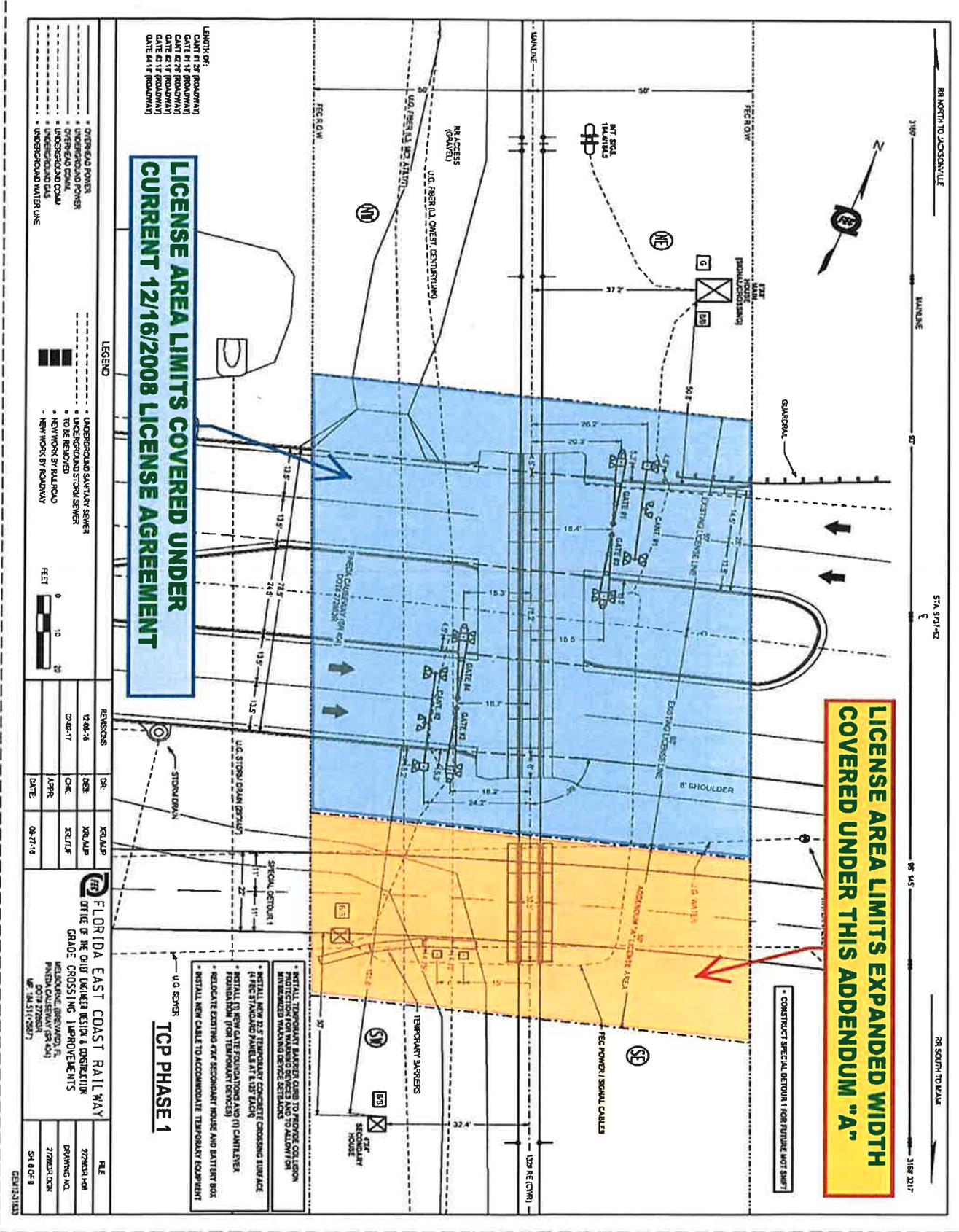
Print/Type Name: Joseph L. Schonder

Print/Type Name: _____

Title: Public Projects Engineer

Title: _____

ADDENDUM "A" - EXHIBIT "A"



LICENSE AREA LIMITS COVERED UNDER CURRENT 12/16/2008 LICENSE AGREEMENT

LICENSE AREA LIMITS EXPANDED WIDTH COVERED UNDER THIS ADDENDUM "A"

LENGTH OF:
 DATE 01 IF ROADWAY
 DATE 02 IF ROADWAY
 DATE 03 IF ROADWAY
 DATE 04 IF ROADWAY
 DATE 05 IF ROADWAY
 DATE 06 IF ROADWAY

LEGEND

- EXISTING POWER
- UNDERGROUND POWER
- OVERHEAD CABLE
- UNDERGROUND CABLE
- UNDERGROUND GAS
- UNDERGROUND WATER LINE
- UNDERGROUND SANITARY SEWER
- UNDERGROUND STORM SEWER
- TO BE REMOVED
- NEW WORK BY ROADWAY
- NEW WORK BY RAILROAD

REVISIONS

NO.	DATE	BY	APP.	DESCRIPTION
1	08-27-16	ASR	XSL/JF	...
2	08-27-16	ASR	XSL/JF	...

FLORIDA EAST COAST RAILWAY
 OFFICE OF THE CHIEF ENGINEER DESIGN & CONSTRUCTION
 GRADE CROSSING IMPROVEMENTS
 WILSONVILLE, GEORGIA
 PROJECT NO. 77000000
 SHEET NO. SH 6 OF 8

CONSTRUCTION NOTES

- INSTALL TEMPORARY BARRIERS (S1) TO PROVIDE COLLISION PROTECTION FOR WALKING DEVICES AND TO ALLOW FOR REMOVED WALKING DEVICES RETRAKES
- INSTALL NEW 12" TEMPORARY CONCRETE CROSSING SURFACE IF THE STANDING PANELS AT LOST PLAIN FOUNDATION (FOR TEMPORARY DEVICES)
- RELOCATE EXISTING 400' SECONDARY HOUSE AND BATTERY BOX
- INSTALL NEW CABLE TO ACCOMMODATE TEMPORARY EQUIPMENT

CONTRACT SPECIAL DETOUR 1 FOR FUTURE WEST SHIRT

TCP PHASE 1

DATE 01 IF ROADWAY
 DATE 02 IF ROADWAY
 DATE 03 IF ROADWAY
 DATE 04 IF ROADWAY
 DATE 05 IF ROADWAY
 DATE 06 IF ROADWAY

ADDENDUM "A" - EXHIBIT "B"



Estimate No.: 272863R - 07/05/2017

Florida East Coast Railway

(FEC)

MELBOURNE, (Brevard), FL

Pineda Causeway

Temp. Relocate At-Grade Crossing / Remove At Grade Crossing
(Grade Crossing License Amendment)

DOT# : 272863R
RR MP.: 184+2687'

RAILROAD # : 2279717
XORAIL# : GEM12-31833

Summary

CROSSING WARNING SYSTEM (Includes all design, requisition, labor, materials, shop wiring, and installation) Warning Device work required during Phase 1, 2, & 3	\$155,438.11
CROSSING SURFACE/RESURFACE (Includes all design, requisition, labor, materials, and installation) NEW Temp Bypass Road Installed During TCP Phase 1	\$113,466.58
TRACK GRADE AND REHABILITATION (Includes all design, requisition, labor, materials, and installation) Estimate of cost to remove the at-grade crossings, install track panel, line and surface track, and restore right-of-way once the overhead highway bridge is completed	\$141,300.00
RAILROAD ENGINEERING (Includes RAILROAD Labor for Reviewing Engineering Authorizations, Field Inspections and Administrative Labor)	\$1,600.00
PRELIMINARY ENGINEERING (Phase 1) (Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)	\$2,000.00
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)	\$2,500.00
CONSTRUCTION ENGINEERING INSPECTION (CEI) (Estimated Construction Engineering Inspection cost based on 2 days @ \$1500 per day)	\$3,000.00
AC POWER SERVICE (Includes all Power Service Charges not included in other costs) Transfer of Power for relocated Case	\$5,000.00
OTHER (Description Required)	\$0.00
TOTAL ESTIMATE COST	\$429,204.69 (USD)

DATE: 07/05/2017

RESPONSIBLE PARTY:

Name: Brevard County
Number: 422830-1-94-01
Contact: Michael Albano

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.

This Estimate does NOT include Railroad Watchman/Flagging cost. Due to the undetermined actual days that a Railroad Watchman/Flagger will be required, all cost for Railroad Watchman/Flagger are independently billed and invoiced to the Roadway Agency responsible directly. the Roadway Agency must estimate appropriately and account for this cost within the project budget.

ADDENDUM "A" - EXHIBIT "C"

ADDENDUM "A" - EXHIBIT "C"

ADDENDUM "A" - EXHIBIT "C"

ADDENDUM "A" - EXHIBIT "C"

ADDENDUM "A" - EXHIBIT "C"

ADDENDUM "A" - EXHIBIT "C"

Prepared by:
Robert Ledoux, Esq
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256

Upon recording return to:
Florida East Coast Railway, L.L.C.
7411 Fullerton Street, Suite 300
Jacksonville, Florida 32256
Attn: Legal Department

Road Name: SR 404 (Pineda Causeway)
County: Brevard
Parcel No.: 801

PERPETUAL AERIAL EASEMENT AGREEMENT

This Perpetual Aerial Easement Agreement ("Aerial Easement") effective this 8 day of August, 2017, between **Florida East Coast Railway, L.L.C.**, a Florida limited liability company ("Grantor"), whose address is 7411 Fullerton Street, Suite 300, Jacksonville, Florida 32256, and the **Board of County Commissioners, Brevard County, Florida**, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 ("Grantee").

RECITALS:

A. Grantee desires to construct, install, inspect and maintain an elevated highway bridge for SR 404- Pineda Causeway (the "Bridge"), above a portion of the existing railway corridor owned by the Grantor, located in Brevard County, Florida, and more particularly described in **Exhibit "A"** attached hereto and made a part hereof (the "Property").

B. Grantee has requested that it be granted an aerial easement over the Property to allow for the construction, installation, inspection, maintenance and use of the Bridge by the general public as a public roadway, and Grantor has agreed to grant such aerial easement under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of TEN (\$10.00) Dollars and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Grant of Easement. Grantor does hereby grant, bargain, sell and convey a nonexclusive, perpetual aerial easement over the Property as set forth on **Exhibit "B"** attached hereto (the "Aerial Easement") to Grantee, its successors and assigns, for the sole purpose of constructing, installing and maintaining the portion of the Bridge elevated over the Property, including replacement of the Bridge, and for use of the Bridge by the general public as a public roadway.

2. Nonexclusive Easements. The Aerial Easement granted to Grantee hereunder is nonexclusive and nothing set forth herein shall be interpreted in any way to permit the use of the

Aerial Easement for any purpose other than the purposes set forth in paragraph 1 above. Nothing herein shall be interpreted in any way to restrict Grantor's and any easement holders' right to access, license, sell, transfer or otherwise use or allow the use in any way to the area of the Aerial Easements, except in a manner which would materially interfere with use of the Aerial Easement for the purposes set forth herein. The Aerial Easement acquired does not entitle Grantee the right to obstruct, prevent, prohibit or restrict any activities or facilities that are located underground, below the surface of the Property or Grantor's adjacent property by Grantor or its easement holders (whether existing as of the date of the this Aerial Easement or in the future), it being acknowledged and agreed by Grantee that any such subgrade and subterranean facilities and activities are permitted and retained, notwithstanding the interests acquired herein. Furthermore, the interest acquired does not entitle Grantee to obstruct, prevent, prohibit or restrict any activities or facilities on or within the above-ground portion of the Property up to the bottom plane of the vertical space of the Aerial Easement, as described in Exhibit "B", or Grantor's adjacent property by Grantor or its easement holders, including, without limitation, for the safe and efficient operation of railroad operations and facilities, it being acknowledged and agreed by Grantee that such matters are permitted and retained, notwithstanding the interests acquired herein.

3. Grantees' Responsibilities. All construction, installation, inspection and maintenance of the Bridge (i) shall be subject to the terms and conditions of the Grantor's grade separation agreement which shall be executed by the parties hereto prior to Grantee, its agents, contractors, licensees, employees, successors and assigns accessing the Aerial Easement, the Property or any adjoining property of Grantor; and (ii) shall be performed in such a manner and at such times as to cause no disruption to the operation of any business of the Grantor, or any easement holders. The Grantee agrees that the Bridge, when completed, and Grantee's use of the Aerial Easement shall not interfere with the use and operation of the Aerial Easement, the Property, or Grantor's adjacent property by Grantor or any easement holders, including, without limitation, any facilities or structures installed or operating therein from time to time. In constructing, installing, inspecting and maintaining the Bridge, Grantee shall comply with all applicable laws, regulations and ordinances, including but not limited to all applicable regulatory, environmental and safety requirements, at Grantee's sole cost and expense. Grantee will not use or allow the use on the Aerial Easement or the Property of any material or substance that is defined as a hazardous waste, material or substance under any law or regulation in violation of any such laws. Grantee shall be responsible for any damage to the property of Grantor, or property of any easement holders, and their respective employees, agents and contractors, including but not limited to the Property, resulting from any exercise of their rights herein granted. Grantee shall promptly repair and restore to its original or better condition any of the property of Grantor, and property of any easement holders, and their respective employees, agents and contractors that may be altered, damaged or destroyed in connection with the exercise by Grantee, its employees, agents or contractors of the rights herein granted, or in connection with the use of the Bridge by any person whomsoever. At all times during the construction, installation, inspection and maintenance of the Bridge, Grantee shall maintain all necessary drainage facilities to prevent the accumulation of surface water on the Grantor's, or its easement holder's property due to the performance of the activities of the Grantee pursuant to this Aerial Easement.

4. Indemnification. Except as limited by law, Grantee shall indemnify, defend and hold harmless Grantor against any actions, claims, or damages in tort arising out of, relating to, or resulting from negligent or wrongful act(s) or omission(s) of Grantee, or any of its officers, agents, contractors, licensees or employees, while acting within the scope of their office or employment, in connection with this Aerial Easement. Nothing herein shall be construed as consent by Grantee to be sued by third parties in any manner arising out of this Aerial Easement. The foregoing indemnification and Paragraph 3 shall not constitute a waiver of sovereign immunity beyond the limit set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute an agreement by Grantee to indemnify Grantor for negligent acts or omissions of Grantor, its officers, agents or employees, or for the acts of third parties.

5. Liens. Grantee shall not cause liens of any kind to be placed against the Property.

6. Notices. All notices, requests, demands, consents, approvals and other communications which are given hereunder, shall be in writing and shall be deemed to have been duly given if mailed, postage prepaid by registered mail or certified first class mail, return receipt requested, postage prepaid, addressed to the party to receive such notices as set forth below, which address may be changed by notice to the other parties:

As to Grantor:

Florida East Coast Railway, L.L.C.
7411 Fullerton Street
Suite 300
Jacksonville, Florida 32256
Attn: Legal Department

With a copy to:

Florida East Coast Railway, L.L.C.
7411 Fullerton Street
Suite 300
Jacksonville, Florida 32256
Attn: Secretary

As to Grantee:

Board of County Commissioners,
Brevard County, Florida
2725 Judge Fran Jamieson Way
Viera, Florida 32940
Attn: Public Works

Or to such addresses which may be designated in lieu of the above addresses by providing written notice as provided above to the other parties.

7. Covenants Running with the Land. All terms, conditions, provisions, and obligations of this Aerial Easement shall be covenants running with the land and shall inure to the benefit of and be binding upon the parties and their respective successors and assigns until the termination of this Aerial Easement. Notwithstanding the foregoing, this Aerial Easement shall automatically terminate if at any time the Bridge ceases on a permanent basis to be used for

public purposes. In such instance, if a termination occurs and Grantor so requests, Grantee shall promptly remove the Bridge. Removal shall be done in compliance with all applicable laws and regulations and in a manner that causes no damage or loss to the Property or Grantor's, or any easement holders' property and that of their respective employees, agents and contractors.

8. In Lieu of Condemnation. The Aerial Easement granted hereunder is being given under the threat of condemnation but in lieu of condemnation.

9. Miscellaneous.

(a) No Waiver. No delay or omission in the exercise of any right accruing to any party under this Aerial Easement shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time. A waiver by any party of a nonconforming condition or noncompliance with the terms and conditions set forth in this Aerial Easement shall not be construed to be a waiver of any subsequent nonconforming condition or noncompliance.

(b) Effect of Invalidation. If any particular provision of this Aerial Easement is held to be invalid by any court, the validity of such provision shall not affect the validity of the remaining provisions hereof.

(c) Counterparts. This Aerial Easement may be executed in multiple counterparts, each of which shall be deemed to be an original agreement, and all of which shall constitute one agreement.

(d) Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Aerial Easement.

(e) Controlling Law. This Aerial Easement shall be construed in accordance with the laws of the State of Florida.

(f) Third Party Beneficiary. The terms and provisions of this Aerial Easement are for the benefit of the parties hereto and, except as herein specifically provided herein, no other person shall have any right or cause of action on account thereof. Notwithstanding anything to the contrary in this Aerial Easement, Grantee acknowledges and agrees that All Aboard Florida-Operations LLC, a Delaware limited liability company, and FDG Flagler Station II LLC, a Delaware limited liability company, and their respective successors and assigns, as easement holders in the Property are third party beneficiaries to this Aerial Easement and have executed the Joinder and Consent Agreement attached hereto as Exhibit "C".

(g) Entire Agreement. This document constitutes the entire agreement between the parties relating to the subject matter hereof. This Aerial Easement may not be changed or amended except by a writing executed by all parties hereto.

(h) Recording. This document shall be recorded in the public records of Brevard County, Florida.

IN WITNESS WHEREOF, the parties have executed this Aerial Easement the day and year first above written.

(SIGNATURES ON NEXT PAGE)

Signed, sealed and delivered
in the presence of:

Florida East Coast Railway, L.L.C.,
a Florida limited liability company

Print Name: _____

By: _____

Name: _____

Title: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this ____ day of _____,
2017, by _____, as _____ of Florida East Coast Railway,
L.L.C., who is personally known to me and who did not take an oath.

Notary Public

My Commission Expires: _____

(SIGNATURES CONTINUE ON NEXT PAGE)

Signed, sealed and delivered
In the presence of:

Board of County Commissioners
Brevard County, Florida

Tommy Rowe

By: [Signature]

Print Name: Tommy Rowe

CURT SMITH, CHAIRMAN

Name: Christine Mulligan-Willey
Christine Mulligan-Willey

Title: _____

Print Name: _____

2017

As Approved by the Board 8/8/17,

Agenda Item # VC
Form reviewed by the County Attorney's Office

Attest:

[Signature]
SCOTT ELLIS, Clerk

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 8 day of August, 2017, by CURT SMITH, as CHAIRMAN of the Board of County Commissioners, Brevard County, Florida, who is personally known to me and who did not take an oath.

Deborah W. Thomas
Notary Public
My Commission Expires: 6/10/20

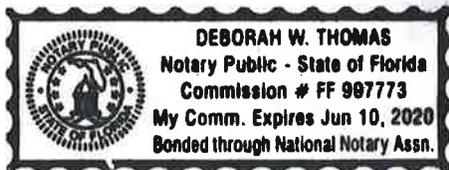


Exhibit "A"
Property

LEGAL DESCRIPTION

SECTION 19, TOWNSHIP 26 SOUTH, RANGE 37 EAST
BREVARD COUNTY TAX ID NUMBER: 2623566
OWNER NAME: FLORIDA EAST COAST RAILWAY, LLC

Parcel 801 (Perpetual Aerial Easement)
Prepared by DRMP, Inc.

A parcel of land located within the existing right-of-way of the Florida East Coast Railroad and being in the Southwest 1/4 (One-Quarter) of Section 19, Township 26 South, Range 37 East, being more particularly described as follows:

BEGIN at the intersection of the Westerly existing right-of-way line of Florida East Coast Railroad (100 foot right-of-way) and the Southerly existing right-of-way line of Pineda Causeway (200 foot right-of-way); thence North $18^{\circ}50'33''$ West, along said Westerly existing right-of-way line of Florida East Coast Railroad, a distance of 200.01 feet to the intersection of said Westerly right of way line with the Northerly existing right-of-way line of Pineda Causeway; thence departing said Westerly existing right-of-way, run thence North $70^{\circ}33'25''$ East along the Easterly projection of said Northerly existing right-of-way line of Pineda Causeway, a distance of 100.01 feet to a point on the Easterly existing right-of-way line of Florida East Coast Railroad; thence run South $18^{\circ}50'33''$ East along said Easterly existing right-of-way line, a distance of 200.01 feet to a point on the Easterly projection of the aforesaid Southerly existing right-of-way line of Pineda Causeway; thence departing said Easterly existing right-of-way line, run South $70^{\circ}33'25''$ West along said Easterly projection, a distance of 100.01 feet to the POINT OF BEGINNING.

Containing 20,001 square feet (0.459 acres), more or less.

Exhibit "B"
Aerial Easement
(See attached)

LEGAL DESCRIPTION

SECTION 19, TOWNSHIP 26 SOUTH, RANGE 37 EAST
 BREVARD COUNTY TAX ID NUMBER: 2623566
 OWNER NAME: FLORIDA EAST COAST RAILWAY, LLC

Parcel 801 (Perpetual Aerial Easement)
 Prepared by DRMP, Inc.

A parcel of land located within the existing right-of-way of the Florida East Coast Railroad and being in the Southwest 1/4 (One-Quarter) of Section 19, Township 26 South, Range 37 East, being more particularly described as follows:

BEGIN at the intersection of the Westerly existing right-of-way line of Florida East Coast Railroad (100 foot right-of-way) and the Southerly existing right-of-way line of Pineda Causeway (200 foot right-of-way); thence North 18°50'33" West, along said Westerly existing right-of-way line of Florida East Coast Railroad, a distance of 200.01 feet to the intersection of said Westerly right of way line with the Northerly existing right-of-way line of Pineda Causeway; thence departing said Westerly existing right-of-way, run thence North 70°33'25" East along the Easterly projection of said Northerly existing right-of-way line of Pineda Causeway, a distance of 100.01 feet to a point on the Easterly existing right-of-way line of Florida East Coast Railroad; thence run South 18°50'33" East along said Easterly existing right-of-way line, a distance of 200.01 feet to a point on the Easterly projection of the aforesaid Southerly existing right-of-way line of Pineda Causeway; thence departing said Easterly existing right-of-way line, run South 70°33'25" West along said Easterly projection, a distance of 100.01 feet to the POINT OF BEGINNING.

Containing 20,001 square feet (0.459 acres), more or less.

Said easement shall have a bottom plane elevation not less than 52.00 feet and a top plane elevation not exceeding 86.00 feet, North American Vertical Datum of 1988, as shown on construction plans for SR 404 (Pineda Causeway) Project Number 422830-1-94-01.

SURVEYOR'S NOTES

1. THE BEARINGS SHOWN HEREIN ARE BASED ON THE SOUTHERLY RIGHT-OF-WAY LINE OF PINEDA CAUSEWAY AS BEING 570°33'25"W, AN ASSUMED BEARING.
2. NO UNDERGROUND INSTALLATIONS OR IMPROVEMENTS, INCLUDING, BUT NOT LIMITED TO, BURIED CABLES, SUB-SURFACE UTILITIES, FOUNDATIONS/FOOTERS OR BURIAL SITES WERE LOCATED, EXCEPT AS SHOWN.
3. THIS PROPERTY IS SUBJECT TO THE RECORDED AND UNRECORDED AGREEMENTS, ASSESSMENTS, EXCEPTIONS, COVENANTS, EASEMENTS, RESERVATIONS, RESTRICTIONS, AND OTHER ENCUMBRANCES, IF ANY, WHICH MAY OR MAY NOT APPEAR IN THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.
4. THIS SKETCH OF DESCRIPTION DOES NOT CONSTITUTE A BOUNDARY SURVEY.
5. PARCEL TAX ID. No.: 2623566
6. SHEET 3 OF 3 WAS PROVIDED BY THE ENGINEER OF RECORD FOR BRIDGE NO. 704196 AND WAS NOT PREPARED BY A SURVEYOR. SHEET 3 IS PROVIDED FOR GRAPHICAL PURPOSES ONLY TO ILLUSTRATE THE VERTICAL COMPONENT OF THE ABOVE LEGAL DESCRIPTION.

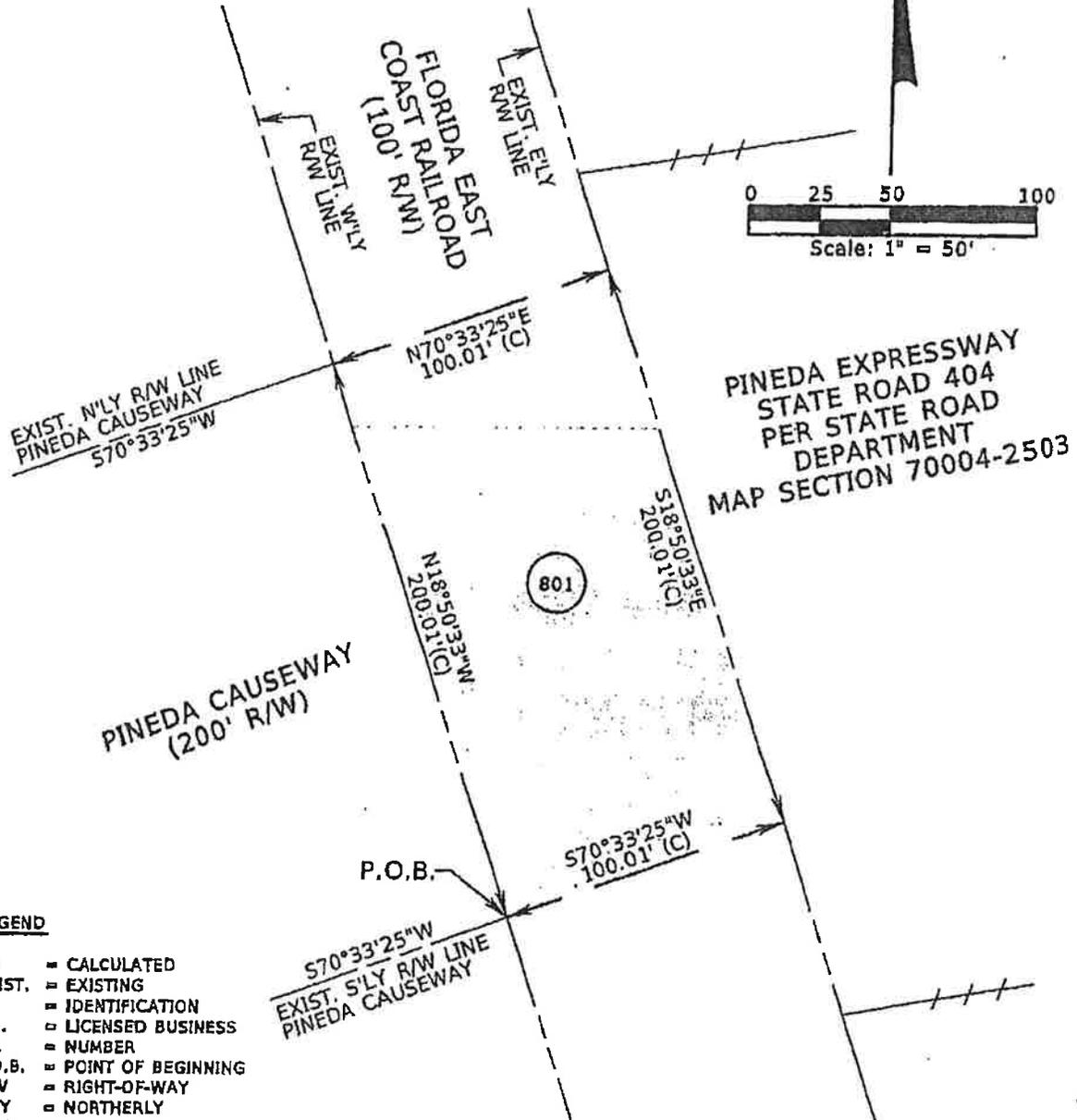
THIS SKETCH IS NOT A SURVEY
 SEE SHEETS 2 AND 3 OF 3 FOR SKETCH OF DESCRIPTION

		PINEDA CAUSEWAY BREVARD COUNTY, FLORIDA		RIGHT OF WAY PARCEL SKETCH	
		PARCEL 801			
		BY	DATE	DRMP PROJECT NUMBER:	
		DRAWN	B. PAULK	2/20/2017	12-0042.002
		CHECKED	A. QUICKEL	2/20/2017	SCALE: N/A
BOBBY PAULK, PSM FLORIDA REGISTRATION No: LS 6691 (NOT VALID UNLESS SIGNED AND SEALED)		DATE		 SKETCH PREPARED BY: DRMP 841 LAKE BALDWIN LANE ORLANDO, FLORIDA 32834 (407) 896-0593 - www.drmp.com L.S. No. 2648	

SKETCH OF DESCRIPTION

SHEET 2 OF 3

SECTION 19, TOWNSHIP 26 SOUTH, RANGE 37 EAST
 BREVARD COUNTY TAX ID NUMBER: 2623566
 OWNER NAME: FLORIDA EAST COAST RAILWAY, LLC

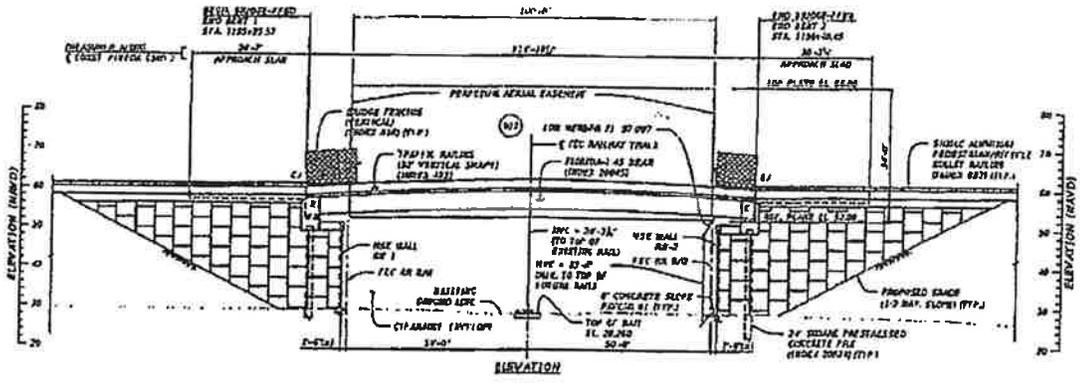


LEGEND

- (C) = CALCULATED
- EXIST. = EXISTING
- ID = IDENTIFICATION
- L.B. = LICENSED BUSINESS
- No. = NUMBER
- P.O.B. = POINT OF BEGINNING
- R/W = RIGHT-OF-WAY
- N'LY = NORTHERLY
- S'LY = SOUTHERLY
- E'LY = EASTERLY
- W'LY = WESTERLY

THIS SKETCH IS NOT A SURVEY
 SEE SHEET 1 OF 3 FOR DESCRIPTION

			PINEDA CAUSEWAY BREVARD COUNTY, FLORIDA		RIGHT OF WAY PARCEL SKETCH	
			PARCEL 801			
			BY	DATE	DRMP PROJECT NUMBER: 12-0042.002	
			DRAWN	B. PAULK	2/20/2017	SCALE: 1" = 50'
REVISION			CHECKED	A. QUICKEL	2/20/2017	SKETCH PREPARED BY:  941 LAKE BALDWIN LANE ORLANDO, FLORIDA 32814 (407) 896-0593 • www.drmp.com L.B. No. 2648



THIS SHEET PROVIDED FOR GRAPHICAL PURPOSES ONLY TO ILLUSTRATE THE VERTICAL COMPONENT OF THE LEGAL DESCRIPTION

REVISIONS				DATE	BY	DESCRIPTION
PROJECT: BREVARD COUNTY LOCATION: ... DRAWING NO. ...				COUNTY: BREVARD COUNTY		BRIDGE NO. 704196
TITLE: ... SCALE: ...				COUNTY: BREVARD COUNTY		ELEVATION
PROJECT: ... LOCATION: ...				COUNTY: BREVARD COUNTY		BRIDGE NO. 704196
TITLE: ... SCALE: ...				COUNTY: BREVARD COUNTY		ELEVATION

EXHIBIT "C"

JOINDER AND CONSENT AGREEMENT

TO: The Board of County Commissioners, Brevard County, Florida, with its mailing address at 2725 Judge Fran Jamieson Way, Viera, Florida 32940.

WITNESSETH;

WHEREAS, FLORIDA EAST COAST RAILWAY, L.L.C., a Florida limited liability company (hereinafter referred to as "FECR") has agreed to convey and grant the foregoing aerial easement to construct, install, inspect and maintain an elevated highway bridge for Pineda Causeway, to the Grantees over the real property located in Brevard County, Florida, which has been designated as Parcel 801 (the "Aerial Easement");

WHEREAS, FECR granted to FDG FLAGLER STATION II LLC, a Delaware limited liability company ("FDG FS II"), successor-in-interest by assignment from FDG Row Holdings LLC, certain rights to use and possess the property, including Parcel 801, pursuant to (i) a First Amended and Restated Grant of Easements dated June 13, 2014 ("Non-Rail Easement Agreement") and recorded in Official Records Book 7149, Page 1269, (ii) a Bill of Sale and Non-Exclusive Use Agreement dated December 20, 2007 and recorded in Official Records Book 5834, Page 7970 ("Bill of Sale"), (iii) a First Amendment to Bill of Sale and Non-Exclusive Use Agreement dated as of December 9, 2009 and effective as of December 20, 2007 ("First Amendment") recorded in Official Records Book 6082, Page 2430, all recorded in the Public Records of Brevard County, Florida (the First Amendment, together with the Non-Rail Easement Agreement and Bill of Sale, hereinafter, collectively, referred to as the "Non-Rail Agreements"); and

WHEREAS, FECR granted to All Aboard Florida - Operations LLC, a Delaware limited liability company (f/k/a FDG Passenger Row Holdings LLC) ("AAF") certain rights to use and possess the property, including Parcel 801, pursuant to that certain Second Amended and Restated Grant of Passenger Service Easement (West Palm Beach to Cocoa) dated June 13, 2014 and recorded in Official Records Book 7149, Page 1350, of the Public Records of Brevard County, Florida ("Passenger Easement Agreement").

NOW THEREFORE, for and in consideration of the premises and the terms and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

1. The foregoing recitals are true and correct and are expressly incorporated into and made part of this Agreement as if fully rewritten herein.
2. Subject to the terms of this Agreement, FDG FS II and AAF do hereby and herewith consent to and join with FEC in the Aerial Easement.
3. It is expressly understood and agreed that this Agreement shall not be construed as a limitation on the rights of the FEC and FDG FS II and or AAF to amend, modify or otherwise supplement, from time to time, the Non-Rail Agreements, the Passenger Easement Agreement and/or rights thereunder. Further, this Agreement and the terms and provisions of the Aerial Easement that affect the Non-Rail Agreements and/or the Passenger Easement Agreement may not be amended or modified except by a written instrument executed by FDG FS II and AAF that is

recorded in the Public Records of Brevard County, Florida.

4. This Agreement shall inure to the benefit of, and is binding upon, all the parties hereto and their respective successors and/or assigns.

5. This Agreement shall be construed according to the laws of the State of Florida. Any action arising under or relating to this Agreement shall be venued in Brevard County, Florida, and all parties acknowledge and consent to the jurisdiction of the courts located in such county. To encourage prompt and equitable resolution of any litigation that may arise with respect to this Agreement, the parties hereby waive any rights any of them may have to a trial by jury of any such litigation.

Signed, sealed and delivered in the presence:

FDG FLAGLER STATION II LLC, a Delaware limited liability company

Print Name: _____

By: _____
Name: _____
Its: _____

Print Name: _____

ALL ABOARD FLORIDA - OPERATIONS LLC,
a Delaware limited liability company

Print Name: _____

By: _____
Name: _____
Its: _____

Print Name: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as _____ of FDG Flagler Station II LLC, a Delaware limited liability company, on behalf thereof, who is personally known to me or who produced _____ as identification.

Notary Public in and for the County and State last aforesaid.

My Commission Expires: _____

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Kolleen O.P. Cobb, as Vice President of All Aboard Florida-Operations LLC, a Delaware limited liability company, on behalf thereof, who is personally known to me or who produced _____ as identification.

Notary Public in and for the County and State last aforesaid.

My Commission Expires: _____