

Meeting Date
07/25/2017



ADD-ON	
AGENDA	
Section	Unfinished Business
Item No.	V B

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval Re: Pineda Grade Separation Project – Florida East Coast Railway (FEC) Amendment to Purchase Agreement – Extension – District 4 (Fiscal Impact: None)
DEPT/OFFICE:	Public Works Department / Land Acquisition Section

Requested Action:

It is requested that the Board of County Commissioners consider approval and authorization for the Chairman to sign the Amendment to Purchase Agreement between Brevard County (Buyer) and Florida East Coast Railway, LLC for the acquisition of the Perpetual Aerial Easement Agreement related to the Pineda Causeway Grade Separation Project. The amendment extends the closing date to August 23, 2017.

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 23rd, 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.

Various easement language concerns have become apparent resulting in multiple revision cycles between FEC and County staff. However, the final language has not been resolved to the satisfaction of staff and the County Attorney's Office. Some of the FEC proposed language would waive the County's Sovereign Immunity. The Contract closing date is August 6th, 2017. In order to provide more time to resolve these concerns we have attached a Contract "Amendment to Purchase Agreement" which extends the closing date until August 23rd, 2017. This amendment has already been executed by FEC. In the event the language can't be resolved staff will prepare another agenda report providing the Board all available options to consider.

Fiscal Impact: FY 2016 – 2017 \$0.00 related to the extension
FY 2017 – 2018 \$0.00 related to the extension

Clerk to the Board Instructions: Forward the executed Amendment to Purchase Agreement and Board approval memo to Department

Exhibits Attached: Amendment to Purchase Agreement

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

Interim County Manager	Interim Assistant County Manager	Interim Department Director / Extension
Frank Abbate 	John P. Denninghoff 	Andrew J. Holmes, P.E. / 57202



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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Tammy.Rowe@brevardclerk.us

July 26, 2017

MEMORANDUM

TO: Andrew Holmes, Interim Public Works Director

RE: Item V.B., Amendment to Purchase Agreement for Brevard County and Florida East Coast Railway, LLC (FEC) to Extend Closing Date

The Board of County Commissioners, in regular session on July 25, 2017, authorized the Chairman to sign the Amendment to Purchase Agreement between Brevard County (buyer) and Florida East Coast Railway, LLC for the acquisition of the Perpetual Aerial Easement Agreement related to Pineda Causeway Grade Separation Project to extend the closing date to August 23, 2017. Enclosed is a fully-executed copy of the Amendment.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/cmw

Encl. (1)

cc: Contracts Administration
Budget
Finance

AMENDMENT TO PURCHASE AGREEMENT

THE PURCHASE AGREEMENT ("Agreement"), dated June 6, 2017, by and between THE BOARD OF COUNTY COMMISSIONERS, BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "BUYER", and FLORIDA EAST COAST RAILWAY, L.L.C., a Florida limited liability company, hereinafter referred to as "SELLER" whose address is: 7411 Fullerton Street, Suite 300, Jacksonville, FL, 32256, is amended by this document as follows:

WHEREAS, the parties agreed to transfer permanent aerial easement of real property and,

WHEREAS, the parties wish to extend the period of time in Paragraph IV to August 23, 2017, for the closing.

NOW, THEREFORE, it is mutually agreed as follows:

1. The period of time in Paragraph IV of the Agreement is amended to read as follows: This closing shall occur on or prior to August 23, 2017.
2. All other terms of the Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this day and year first above written.

SELLER

FLORIDA EAST COAST RAILWAY, LLC

BY: Robert Ledoux

Name: Robert Ledoux

Title: SVP & General Counsel

Dated: 7/19/17

Reviewed for legal form and content:

Eden Bentley, Deputy County Attorney

BUYER

**BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA**

BY: Curt Smith

Name: Curt Smith

Title: Chairman, Brevard County
Commission

Dated: July 25, 2017

As Approved by the Board on:

7/25/17

ATTEST:

Scott Ellis
Scott Ellis, Clerk



Sandy Kelley
Legal Department

July 20, 2017

VIA OVERNIGHT MAIL

RE: Amendment to Purchase Agreement

Eden Bentley
Deputy County Attorney
2725 Judge Fran Jamieson Way
Suite 308
Viera, FL 32940

Dear Ms. Bentley:

Enclosed please find the original signed Amendment to Purchase Agreement. Thank you.

Sincerely,


Sandy L. Kelley