Memorandum

MIAMI-DADE COUNTY

Date: May 5, 2009

Agenda Item No. 8(P)(1)(J)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution Authorizing the Execution of Two Tri-Party Agreements Among Miami-Dade County, the State of Florida Department of Transportation and Florida East Coast Railway, LLC for the Installation of Crossing Protective Devices at NE 146 Street, and NW 44 Avenue (E 6 Avenue) and the yearly maintenance fee of $3,548.00

Recommendation

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing the execution of two (2) Tri-Party Agreements among Miami-Dade County (County), the State of Florida Department of Transportation (FDOT) and Florida East Coast Railway, LLC (FEC) for the installation and maintenance of railroad crossing protective devices at NE 146 Street, in the vicinity of US-1 and NW 44 Avenue (E 6 Avenue) in the vicinity of NW 74 Street (E 21 Street).

Scope

The Tri-Party Agreements are specifically for two (2) crossings and are within Commission Districts 2 and 6.

Fiscal Impact/Funding Source

The County fiscal impact is the yearly maintenance fee for the crossing protective devices in the amount of $1,573.00 for NE 146 Street and $1,975.00 for NW 44 Avenue (E 6 Avenue), totaling $3,548.00. The funding source to be used is Secondary Gas Tax. Miami-Dade County is not responsible for any of the installation costs.

Track Record/Monitor

FEC has performed at a satisfactory level and Miami-Dade County Public Works Department's Project Manager, Mr. Modesto Nuñez, is the responsible staff person to monitor this project.

Background

Resolution R-1090-76 adopted on October 5, 1976, the cost sharing policy was approved and has been implemented by the County as follows: "County may participate in the cost of maintaining grade crossing protection devices in the amount of fifty percent (50%) of the cost".

The yearly safety diagnostic review revealed the need for installation of crossing protective devices at the aforementioned railroad crossings. For the annual maintenance cost, the County is responsible for fifty percent (50%) $3,548.00 and FEC is responsible for the other fifty percent (50%) as stipulated in the aforementioned policy.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: May 5, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(P)(1)(J)

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Mayor's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(P)(1)(J)
5-5-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF TWO TRI-PARTY AGREEMENTS AMONG MIAMI-DADE COUNTY, THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND FLORIDA EAST COAST RAILWAY, LLC FOR THE INSTALLATION OF CROSSING PROTECTIVE DEVICES AT NE 146 STREET AND NW 44 AVENUE (E 6 AVENUE) AND THE YEARLY MAINTENANCE FEE OF $3,548.00

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves Two (2) Tri-Party Agreements among Miami-Dade County, the State of Florida Department of Transportation and Florida East Coast Railway, LLC for the installation of railroad crossing protective devices at NE 146 Street, in the vicinity of US-1 and at NW 44 Avenue (E 6 Avenue) in the vicinity of NW 74 Street (E 21 Street) in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or County Mayor's designee to execute same on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of May, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Thomas Goldstein

RAILROAD REIMBURSEMENT AGREEMENT
GRADE CROSSING TRAFFIC CONTROL DEVICES - COUNTY

FINANCIAL PROJECT NO.	ROAD NAME OR NUMBER	COUNTY NAME	PARCEL & R/W NUMBER	FAP NUMBER
42591415701	NE 146th St,	MIAMI-DADE	1(SIG-B)	00s6 046 J

THIS AGREEMENT, made and entered into this _____ day of _____, _____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the DEPARTMENT, and Florida East Coast Railway Company, a corporation organized and existing under the laws of Florida, with its principal place of business in the City of Jacksonville, County of Duval, State of Florida, hereinafter called the COMPANY; and MIAMI-DADE, County, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, hereinafter called the COUNTY.

WITNESSETH:

WHEREAS, the DEPARTMENT is constructing, reconstructing or otherwise changing a portion of the Public Road System, designated by the Financial Project ID 42591415701, on NE 146th St, which crosses at grade the right of way and tracks of the COMPANY'S Milepost 355.82, FDOT/AAR Crossing Number 272607A, at or near NE 146th Street, as shown on DEPARTMENT'S Plan Sheet No. N/A, 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 COMPANY shall furnish the necessary materials and install Automatic Grade Crossing Signals Type III Class III and/or other traffic control devices at said location on an actual cost basis and in accordance with (1) the attached detailed statement of the work, plans, and specifications; and (2) the DEPARTMENT'S Plans and Standard Index Number 17882 attached hereto and made a part hereof.

2. After installation of said signals is completed, fifty (50%) percent of the expense thereof in maintaining the same shall be borne by the COUNTY and fifty (50%) percent shall be borne by the COMPANY, as enumerated by the Schedule of Annual Cost of Automatic Highway Grade Crossing Devices attached hereto and by this reference made a part hereof and subject to future revision.

3. After said signals have been installed and found to be in satisfactory working order by the parties hereto, the same shall be immediately put into service, operated and maintained by the COMPANY so long as said COMPANY or its successors or assigns shall operate the said signals at said grade crossing; or until it is agreed between the parties hereto that the signals are no longer necessary or until the said crossing is abandoned; or legal requirements occur which shall cease operation of signals thereat.

The COMPANY agrees that any future relocation or adjustment of said signals shall be performed by the COMPANY, but at the expense of the party initiating such relocation. Upon relocation the maintenance responsibilities shall be in accordance with the provisions of this agreement. It is further agreed that the cost of maintaining any additional or replacement signal equipment at the same location will be shared as provided under Paragraph 2. above.

4. Unless otherwise agreed upon herein, the COUNTY agrees to insure that at the crossing the advance warning signs and railroad crossing pavement markings will conform to the U.S. Department of Transportation Manual on Uniform Traffic Control Devices within 30 days of notification that the railroad signal improvements have been completed and that such signs and pavement markings will be continually maintained at an acceptable level.

5. The COMPANY hereby agrees to install and/or adjust the necessary parts of its facilities along said road in accordance with the provisions set forth in the:

☐ (a) DEPARTMENT Procedure No. 725-080-002 Appendix D.4, and Rule 14.57.011 "Public Railroad-Highway Grade Crossing Costs", Florida Administrative Code.

☒ (b) Federal Highway Administration Federal-Aid Policy Guide, 23 C.F.R. Subchapter G, Part 646, Subpart B, and 23 C.F.R., Subchapter B, Part 140, Subpart I,

and any supplements thereto or revisions thereof, which, by reference hereto, are made a part hereof. The COMPANY further agrees to do all of such work, with its own forces or by a contractor paid under a contract let by the COMPANY, all under the supervision and approval of the DEPARTMENT and the Federal Highway Administration, when applicable.

6. The DEPARTMENT hereby agrees to reimburse the COMPANY for all costs incurred by it in the installation and/or adjustment of said facilities, in accordance with the provisions of Procedure No. 725-080-002 Appendix D-4 "Billing Requirements," and any supplements thereto or revisions thereof. It is understood and agreed by and between the parties hereto that preliminary engineering costs not incorporated within this agreement shall not be subject to payment by the DEPARTMENT.

7. Attached hereto, and by this reference made a part hereof, are plans and specifications of the work to be performed by the COMPANY pursuant to the terms hereof, and an itemized estimate of the cost thereof in the amount of $ 65,820.00 . All work performed by the COMPANY pursuant hereto, shall be performed according to these plans and specifications as approved by the DEPARTMENT and the Federal Highway Administration if federal aid participating; and all subsequent plan changes shall likewise be approved by the DEPARTMENT and the Federal Highway Administration, when applicable.

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

9. The COMPANY has determined that the method to be used in developing the relocation or installation cost shall be as specified for the method checked and described hereafter:

☒ (a) Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

☐ (b) Actual and related indirect costs accumulated in accordance with an established accounting procedure developed by the COMPANY and approved by the DEPARTMENT.

☐ (c) An agreed lump sum $ 0.00 , as supported by a detail analysis of estimated cost attached hereto. (NOTE: This method is not applicable where the estimated cost of the proposed adjustment exceeds $100,000.)

10. The installation and/or adjustment of the COMPANY'S facility as planned ○ will ◉ will not involve additional work over and above the minimum reimbursable requirements of the DEPARTMENT. (If upgrading and/or nonreimbursable work is involved at the option of the COMPANY, then credit against the cost of the project is required and will be governed by the method checked and described hereafter):

☐ (a) _____ % will be applied to the final billing of work actually accomplished to determine required credit for (betterment) and/or (expired service life) and/or (nonreimbursable segments).

☐ (b) All work involving nonreimbursable segments will be performed by special COMPANY work or job order number apart and separate from the reimbursable portion of the work; such work or job order number to be _____ . The COMPANY further agrees to clearly identify such additional work areas in the COMPANY'S plans and estimates for the total work covered by this Agreement.

☐ (c) $ 0.00 credited for ○ betterment ○ expired service life ○ nonreimbursable segments in accord with Article 9.(c) hereinabove.

11. It is specifically agreed by and between the DEPARTMENT and the COMPANY that the DEPARTMENT shall receive fair and adequate credit for any salvage which shall accrue to the COMPANY as a result of the above installation and/or adjustment work.

12. It is further agreed that the cost of all improvements made during this adjustment work shall be borne by the COMPANY, subject only to the DEPARTMENT bearing such portion of this cost as represents the cost of adjustment of previously existing facility, less salvage credit as set forth in the immediately preceding paragraph.

13. Upon completion of the work the COMPANY shall, within one hundred eighty (180) days, furnish the DEPARTMENT 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. The totals for labor, overhead, travel expense, transportation, equipment, material 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 where 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; the date on which the first work was performed, or, if preliminary engineering or right-of-way items are involved, the date on which the earliest item of billed expense was incurred; the date on which the last work was performed or the last item of billed expense was incurred; and the location where the records and accounts billed can be audited. Adequate reference shall be made in the billing to the COMPANY'S records, accounts and other relevant documents. All cost records and accounts shall be subject to audit by a representative of the DEPARTMENT. Upon receipt of invoices, prepared in accordance with the provisions of the above indicated Reimbursement Policy, the DEPARTMENT agrees to reimburse the COMPANY in the amount of such actual costs as approved by the DEPARTMENT'S auditor.

14. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the DEPARTMENT's Comptroller under Section 334.044(29), F.S., or by the Department of Financial Services under Section 215.422(14), Florida Statutes (F.S.).

15. In accordance with Section 287.058, Florida Statutes, the following provisions are in this Agreement: If this Contract involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

16. Bills for travel expenses specifically authorized in this agreement shall be submitted and paid in accordance with DEPARTMENT Rule 14-57.011 "Public Railroad-Highway Grade Crossing Costs" and the Federal Administration Federal-Aid Policy Guide, Subchapter B, Part 140, Subpart I "Reimbursement for Railroad Work."

17. In accordance with Section 215.422, Florida Statutes, the following provisions are in this Agreement: Contractors providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services, unless the Agreement specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 215.422(3)(b), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Contractor. Interest penalties of less than one (1) dollar will not be enforced unless the Contractor requests payment. Invoices which have to be returned to a Contractor because of Contractor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the Department of Financial Services Hotline, 1-800-848-3792.

18. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department 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 Department 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 Department for a proper audit of costs.

19. In the event this contract is for services in excess of TWENTY FIVE THOUSAND DOLLARS ($25,000.00) and a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

> The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered

or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of TWENTY FIVE THOUSAND DOLLARS ($25,000.00) and which have a term for a period of more than one year.

20. In accordance with Section 287.133 (2)(a), Florida Statutes, the following provisions are included in this Agreement:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s.287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

21. In accordance with Section 287.0582, Florida Statutes, the following provisions is included in this Agreement:

The Department's obligation to pay under this contract is contingent upon an annual appropriation by the Florida Legislature.

~~22. The COMPANY covenants and agrees that it will indemnify and hold harmless the DEPARTMENT and all of the DEPARTMENT'S officers, agents, and employees from any claim, loss, damage, cost change, or expense arising out of any act, action, neglect, omission or delay by the COMPANY during the performance of the contract, whether direct or indirect, and whether to any person or property to which the DEPARTMENT or said parties may be subject, except that neither the COMPANY nor any of its sub-contractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of the DEPARTMENT or any of its officers, agents, or employees.~~

23. Paragraph 22 was stricken prior to execution by all parties at the request of Florida East Coast Railway, L.L.C.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers, the day and year first above written.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: _____
(TITLE: Director of Transportation Development)

COMPANY: FLORIDA EAST COAST RAILWAY

BY: A. G. FOWLER JR General Manager Signals & Communications

MIAMI DADE COUNTY , FLORIDA

BY: _____
(TITLE: _____)

Legal Review	Approved as to Funds Available	Approved as to FAPG Requirements
BY: _____	BY: Attached	BY: N/A
Attorney - DOT Date	Comptroller - DOT Date	FHWA Date

2008/2009 DIAGNOSTICS

DATE:	09/02/08
FILE:	10.2
TYPE:	III
CLASS:	III
NO. OF DAYS:	5
AAR / DOT #:	272607A
MILE POST:	355+4331'
Project Type:	FDOT

FLORIDA EAST COAST RAILWAY
OFFICE OF THE GENERAL MANAGER
OF SIGNALS AND COMMUNICATIONS

ESTIMATED COST FOR HIGHWAY CROSSING WARNING DEVICES AT N.E. 146th STREET.
This estimate should be considered void after one (1) year.

MATERIAL	UNIT COST	UNITS	TOTAL COST
12" LED RETROFIT LIGHTS	$140.00	8 EA.	$1,120.00
26' CANTILEVER WITH B/B LED	$13,369.00	1 EA.	$13,369.00
CANTILEVER FOUNDATIONS	$3,200.00	1 EA.	$3,200.00
MISC. GROUND MATERIAL	$1,427.35	1 PKG.	$1,427.35
CONDUIT & DIRECTIONAL BORE	$45.00	100 FT.	$4,500.00
CABLE	$5,530.60	1 PKG.	$5,530.60
MISCELLANEOUS RELAY EQUIPMENT	$1,120.00	1 PKG.	$1,120.00
POWER SERVICE	$1,800.00	1 EA.	$1,800.00
SANITATION & DISPOSAL	$1,500.00	1 PKG.	$1,500.00
FREIGHT & HANDLING			$6,413.00
TAX @ 6.5%			$2,084.00
TOTAL MATERIALS			**$42,063.95**
EXCAVATING EQUIPMENT PER DAY	$181.00	5 DAYS	$905.00
EQUIPMENT RENTAL PER DAY	$125.00	5 DAYS	$625.00
FOREMAN'S TRUCK PER DAY	$35.00	5 DAYS	$175.00
GANG TRUCK PER DAY	$63.00	5 DAYS	$315.00
SUPERVISORS TRUCK PER DAY	$35.00	5 DAYS	$175.00
EQUIPMENT TOTAL			**$2,195.00**
ENGINEERING	$2,500.00	1	$2,500.00
ENGINEERING TOTAL			**$2,500.00**
CONSTRUCTION SUPERVISION	$377.00	5 DAYS	$1,885.00
LABOR ADDITIVE			$1,050.00
SUPERVISION TOTAL			**$2,935.00**
LABOR PER DAY	$1,261.24		$6,306.00
NUMBER OF DAYS	5		
LABOR ADDITIVE			$3,680.00
TOTAL LABOR			**$9,986.00**
GANG EXPENSES PER DAY	$602.00		
NUMBER OF DAYS	5		
TOTAL GANG EXPENSES			**$3,010.00**
SUB-TOTAL			**$62,689.95**
CONTINGENCIES 5%			$3,134.00
TOTAL			**$65,820.00**

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

725-090-27
RAIL
OGC - 10/08

RAILROAD REIMBURSEMENT AGREEMENT
GRADE CROSSING TRAFFIC CONTROL DEVICES - COUNTY

FINANCIAL PROJECT NO.	ROAD NAME OR NUMBER	COUNTY NAME	PARCEL & R/W NUMBER	FAP NUMBER
42389715701	East 6th Avenue	MIAMI-DADE	1(SIG-B)	00s6 046 J

THIS AGREEMENT, made and entered into this _____ day of _____, _____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the DEPARTMENT, and Florida East Coast Railway Company, a corporation organized and existing under the laws of Florida, with its principal place of business in the City of Jacksonville, County of Duval, State of Florida, hereinafter called the COMPANY; and MIAMI-DADE, County, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, hereinafter called the COUNTY.

WITNESSETH:

WHEREAS, the DEPARTMENT is constructing, reconstructing or otherwise changing a portion of the Public Road System, designated by the Financial Project ID 42389715701, on East 6th Avenue, which crosses at grade the right of way and tracks of the COMPANY'S Milepost 366+1426', FDOT/AAR Crossing Number 272737W, at or near East 6th Avenue, as shown on DEPARTMENT'S Plan Sheet No. N/A, 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 COMPANY shall furnish the necessary materials and install Automatic Grade Crossing Signals Type III Class IV and/or other traffic control devices at said location on an actual cost basis and in accordance with (1) the attached detailed statement of the work, plans, and specifications; and (2) the DEPARTMENT'S Plans and Standard Index Number 17882 attached hereto and made a part hereof.

2. After installation of said signals is completed, fifty (50%) percent of the expense thereof in maintaining the same shall be borne by the COUNTY and fifty (50%) percent shall be borne by the COMPANY, as enumerated by the Schedule of Annual Cost of Automatic Highway Grade Crossing Devices attached hereto and by this reference made a part hereof and subject to future revision.

3. After said signals have been installed and found to be in satisfactory working order by the parties hereto, the same shall be immediately put into service, operated and maintained by the COMPANY so long as said COMPANY or its successors or assigns shall operate the said signals at said grade crossing; or until it is agreed between the parties hereto that the signals are no longer necessary or until the said crossing is abandoned; or legal requirements occur which shall cease operation of signals thereat.

The COMPANY agrees that any future relocation or adjustment of said signals shall be performed by the COMPANY, but at the expense of the party initiating such relocation. Upon relocation the maintenance responsibilities shall be in accordance with the provisions of this agreement. It is further agreed that the cost of maintaining any additional or replacement signal equipment at the same location will be shared as provided under Paragraph 2. above.

4. Unless otherwise agreed upon herein, the COUNTY agrees to insure that at the crossing the advance warning signs and railroad crossing pavement markings will conform to the U.S. Department of Transportation Manual on Uniform Traffic Control Devices within 30 days of notification that the railroad signal improvements have been completed and that such signs and pavement markings will be continually maintained at an acceptable level.

5. The COMPANY hereby agrees to install and/or adjust the necessary parts of its facilities along said road in accordance with the provisions set forth in the:

☐ (a) DEPARTMENT Procedure No. 725-080-002 Appendix D.4, and Rule 14.57.011 "Public Railroad-Highway Grade Crossing Costs", Florida Administrative Code.

☒ (b) Federal Highway Administration Federal-Aid Policy Guide, 23 C.F.R. Subchapter G, Part 646, Subpart B, and 23 C.F.R., Subchapter B, Part 140, Subpart I,

and any supplements thereto or revisions thereof, which, by reference hereto, are made a part hereof. The COMPANY further agrees to do all of such work, with its own forces or by a contractor paid under a contract let by the COMPANY, all under the supervision and approval of the DEPARTMENT and the Federal Highway Administration, when applicable.

6. The DEPARTMENT hereby agrees to reimburse the COMPANY for all costs incurred by it in the installation and/or adjustment of said facilities, in accordance with the provisions of Procedure No. 725-080-002 Appendix D-4 "Billing Requirements," and any supplements thereto or revisions thereof. It is understood and agreed by and between the parties hereto that preliminary engineering costs not incorporated within this agreement shall not be subject to payment by the DEPARTMENT.

7. Attached hereto, and by this reference made a part hereof, are plans and specifications of the work to be performed by the COMPANY pursuant to the terms hereof, and an itemized estimate of the cost thereof in the amount of $ 232,520.00 . All work performed by the COMPANY pursuant hereto, shall be performed according to these plans and specifications as approved by the DEPARTMENT and the Federal Highway Administration if federal aid participating; and all subsequent plan changes shall likewise be approved by the DEPARTMENT and the Federal Highway Administration, when applicable.

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

9. The COMPANY has determined that the method to be used in developing the relocation or installation cost shall be as specified for the method checked and described hereafter:

☒ (a) Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

☐ (b) Actual and related indirect costs accumulated in accordance with an established accounting procedure developed by the COMPANY and approved by the DEPARTMENT.

☐ (c) An agreed lump sum $ 0.00 , as supported by a detail analysis of estimated cost attached hereto. (NOTE: This method is not applicable where the estimated cost of the proposed adjustment exceeds $100,000.)

10. The installation and/or adjustment of the COMPANY'S facility as planned ○ will ◉ will not involve additional work over and above the minimum reimbursable requirements of the DEPARTMENT. (If upgrading and/or nonreimbursable work is involved at the option of the COMPANY, then credit against the cost of the project is required and will be governed by the method checked and described hereafter):

☐ (a) _____ % will be applied to the final billing of work actually accomplished to determine required credit for (betterment) and/or (expired service life) and/or (nonreimbursable segments).

☐ (b) All work involving nonreimbursable segments will be performed by special COMPANY work or job order number apart and separate from the reimbursable portion of the work; such work or job order number to be _____ . The COMPANY further agrees to clearly identify such additional work areas in the COMPANY'S plans and estimates for the total work covered by this Agreement.

☐ (c) $ 0.00 credited for ○ betterment ○ expired service life ○ nonreimbursable segments in accord with Article 9.(c) hereinabove.

11. It is specifically agreed by and between the DEPARTMENT and the COMPANY that the DEPARTMENT shall receive fair and adequate credit for any salvage which shall accrue to the COMPANY as a result of the above installation and/or adjustment work.

12. It is further agreed that the cost of all improvements made during this adjustment work shall be borne by the COMPANY, subject only to the DEPARTMENT bearing such portion of this cost as represents the cost of adjustment of previously existing facility, less salvage credit as set forth in the immediately preceding paragraph.

13. Upon completion of the work the COMPANY shall, within one hundred eighty (180) days, furnish the DEPARTMENT 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. The totals for labor, overhead, travel expense, transportation, equipment, material 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 where 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; the date on which the first work was performed, or, if preliminary engineering or right-of-way items are involved, the date on which the earliest item of billed expense was incurred; the date on which the last work was performed or the last item of billed expense was incurred; and the location where the records and accounts billed can be audited. Adequate reference shall be made in the billing to the COMPANY'S records, accounts and other relevant documents. All cost records and accounts shall be subject to audit by a representative of the DEPARTMENT. Upon receipt of invoices, prepared in accordance with the provisions of the above indicated Reimbursement Policy, the DEPARTMENT agrees to reimburse the COMPANY in the amount of such actual costs as approved by the DEPARTMENT'S auditor.

14. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the DEPARTMENT's Comptroller under Section 334.044(29), F.S., or by the Department of Financial Services under Section 215.422(14), Florida Statutes (F.S.).

15. In accordance with Section 287.058, Florida Statutes, the following provisions are in this Agreement: If this Contract involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

16. Bills for travel expenses specifically authorized in this agreement shall be submitted and paid in accordance with DEPARTMENT Rule 14-57.011 "Public Railroad-Highway Grade Crossing Costs" and the Federal Administration Federal-Aid Policy Guide, Subchapter B, Part 140, Subpart I "Reimbursement for Railroad Work."

17. In accordance with Section 215.422, Florida Statutes, the following provisions are in this Agreement: Contractors providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services, unless the Agreement specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 215.422(3)(b), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Contractor. Interest penalties of less than one (1) dollar will not be enforced unless the Contractor requests payment. Invoices which have to be returned to a Contractor because of Contractor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the Department of Financial Services Hotline, 1-800-848-3792.

18. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department 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 Department 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 Department for a proper audit of costs.

19. In the event this contract is for services in excess of TWENTY FIVE THOUSAND DOLLARS ($25,000.00) and a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

> The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered

or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of TWENTY FIVE THOUSAND DOLLARS ($25,000.00) and which have a term for a period of more than one year.

20. In accordance with Section 287.133 (2)(a), Florida Statutes, the following provisions are included in this Agreement:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s.287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

21. In accordance with Section 287.0582, Florida Statutes, the following provisions is included in this Agreement:

The Department's obligation to pay under this contract is contingent upon an annual appropriation by the Florida Legislature.

~~22. The COMPANY covenants and agrees that it will indemnify and hold harmless the DEPARTMENT and all of the DEPARTMENT'S officers, agents, and employees from any claim, loss, damage, cost change, or expense arising out of any act, action, neglect, omission or delay by the COMPANY during the performance of the contract, whether direct or indirect, and whether to any person or property to which the DEPARTMENT or said parties may be subject, except that neither the COMPANY nor any of its sub-contractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of the DEPARTMENT or any of its officers, agents, or employees.~~

23. Paragraph 22 was stricken prior to execution by all parties at the request of Florida East Coast Railway, L.L.C.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers, the day and year first above written.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: _____
(TITLE: Director of Transportation Development)

COMPANY: FLORIDA EAST COAST RAILWAY

BY: A.G. FOWLER JR General Manager Signals & Communications

MIAMI DADE COUNTY , FLORIDA

BY: _____
(TITLE: _____)

Legal Review	Approved as to Funds Available	Approved as to FAPG Requirements
BY: _____	BY: Attached	BY: N/A
Attorney - DOT Date	Comptroller - DOT Date	FHWA Date

Baez, Paola

From: The job FI989HLR
Sent: Monday, December 08, 2008 2:38 PM
To: Baez, Paola
Subject: FUNDS APPROVAL/REVIEWED FOR CONTRACT APD82

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
FUNDS APPROVAL

```
Contract #APD82   Contract Type: AA          Method of Procurement: R
Vendor Name: FL E CST RAILWAY
Vendor ID:   VF596001115001
Beginning date of this Agmt: 12/08/08
Ending date of this Agmt:    12/31/10
Contract Total/Budgetary Ceiling: ct = $232,520.00

**********************************************************************
Description:
EAST 6TH AVENUE, XING NO. 272737W, RR MP LR5+27, FL&G, CWT,  RECORDER W/ CASE
**********************************************************************
ORG-CODE     *EO  *OBJECT *AMOUNT           *FIN PROJECT  *FCT  *CFDA
(FISCAL YEAR)     *BUDGET ENTITY            *CATEGORY/CAT YEAR
AMENDMENT ID      *SEQ.   *USER ASSIGNED ID *ENC LINE(6S)/STATUS
**********************************************************************

Action: ORIGINAL       Funds have been: APPROVED

55 062020629 *PT  *134004  *      232520.00 *42389715701  *127  *
2009              *55100100                 *088808/09
0001              *00      *                *0001/04
----------------------------------------------------------------------
         TOTAL AMOUNT:   *$      232,520.00 *
----------------------------------------------------------------------
FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER
DATE: 12/08/2008
```

21

ROJECT NO. _____ F.M. NO. _____

FLORIDA DEPARTMENT OF TRANSPORTATION
DIAGNOSTIC FIELD REVIEW SHEET
RAIL-HIGHWAY GRADE CROSSING
DATA SHEET

ROSSING NO.: 272737W PRIORITY NO.: 619 COUNTY: MIAMI-DADE CITY: HIALEAH RDWY: E 6th AVE

LASSIFICATION/LOCATION: DATE LAST UPDATED: 03/30/2007

R. R. CO.: FEC R. R. BRANCH: Main STATION: MIAMI R. R. MILEPOST: 366.27

R. R. CROSSING STATUS: OPEN–TRACK ACT AS OF 07/23/2003 LATITUDE: 25.84 LONGITUDE: 80.27

AIL OPERATIONS: DATE LAST UPDATED: 08/15/1991

TRAIN MOVEMENTS: ~~26~~ 30 MAXIMUM TRAIN SPEED: 40 EFFECTIVE: 03/05/2001 NO. OF MAIN TRACKS: 2 OTHER TRACKS: 0

ARNING DEVICES: DATE LAST UPDATED:

EXISTING WARNING: FL&G TYPE OF TRAIN DETECTION: OTHER PREEMPTION: ~~NOT~~ INTERCONNEC ADVANCE WARNING: Y

HYSICAL DATA: DATE LAST UPDATED: 10/23/2002

R. R. CROSSING ANGLE: 60-90 DEG NO. OF THRU LANES: 2 OTHER LANES: 0 HIGHWAY SPEED: 30

CROSSING CONDITION: EXCELLENT APPROACH CONDITION: NONE MAINTAINING AGENCY: CITY

EPARTMENT DATA: DATE LAST UPDATED: 07/23/2003

TRAFFIC VOL. (ADT): 5,827 AS OF 2003 SCHOOL BUS COUNT: 52 AS OF 2000 PERCENT TRUCKS: 4.00

AFETY DATA: DATE LAST UPDATED: 05/02/2007

PRED. ACCID./YEAR: 0.01 SAFETY INDEX: 63.24 SAFETY INDEX UPDATE: 05/02/2007 RECOMMENDED WARNING DEVICE: FL & G

DESCRIPTION OF SITE / INSTALLATION CONFLICTS: Low ped. count. Antiquated signal equipment. E. 22nd St. is 70' from xing rail.

REVIEW TEAM RECOMMENDATION: FL&G's, w/ New case & CWT/Recorder. Do Not Stop on Trk sign for South approach. W10-2 signs for E. 22nd St.

DATE REVIEWED 6-13-07 BY _____

REVIEW TEAM PERSONNEL: _____

Exhibit 10. Estimated costs of improvements for Crossing 272737W

FEC

2007/2008 DIAGNOSTICS

FLORIDA EAST COAST RAILWAY
OFFICE OF THE GENERAL MANAGER
OF SIGNALS AND COMMUNICATIONS

DATE: 06/21/07
FILE: 10.2
TYPE: III
CLASS: IV
NO. OF DAYS: 12
AAR / DOT #: 272737W
MILE POST: 366+1436'
Project Type: FDOT

ESTIMATED COST FOR HIGHWAY CROSSING WARNING DEVICES AT EAST 6th AVENUE.
This estimate should be considered void after one (1) year.

MATERIAL	UNIT COST	UNITS	TOTAL COST
GATE ASSEMBLIES	$7,479.00	2 EA.	$14,958.00
GATES	$500.00	2 EA.	$1,000.00
GATE FOUNDATIONS	$575.00	2 EA.	$1,150.00
6' X 6' WIRED CASE, WITH HXP-3R2	$75,860.00	1 EA.	$75,860.00
GENERATOR CASE W/ TRANSFER SWITCH	$2,870.00	1 EA.	$2,870.00
BATTERY BOX	$675.00	1 EA.	$675.00
BATTERIES, SAFT SPL250	$215.00	30 EA.	$6,450.00
MISC. GROUND MATERIAL	$1,882.84	1 PKG.	$1,882.84
CONDUIT & DIRECTIONAL BORE	$45.00	150 FT.	$6,750.00
CABLE	$5,000.00	1 PKG.	$5,000.00
MISCELLANEOUS RELAY EQUIPMENT	$1,120.00	1 PKG.	$1,120.00
POWER SERVICE	$2,000.00	1 EA.	$2,000.00
MONITORING EQUIPMENT	$10,725.00	1 PKG.	$10,725.00
SANITATION & DISPOSAL	$1,500.00	1 PKG.	$1,500.00
FREIGHT & HANDLING			$32,610.00
TAX @ 6.5%			$8,479.00
TOTAL MATERIALS			$173,029.84
EXCAVATING EQUIEMENT PER DAY	$181.00	12 DAYS	$2,172.00
EQUIPMENT RENTAL PER DAY	$125.00	12 DAYS	$1,500.00
FOREMAN'S TRUCK PER DAY	$35.00	12 DAYS	$420.00
GANG TRUCK PER DAY	$63.00	12 DAYS	$756.00
SUPERVISORS TRUCK PER DAY	$35.00	12 DAYS	$420.00
EQUIPMENT TOTAL			$5,268.00
ENGINEERING	$7,500.00	1	$7,500.00
ENGINEERING TOTAL			$7,500.00
CONSTRUCTION SUPERVISION	$312.00	12 DAYS	$3,744.00
LABOR ADDITIVE			$2,085.00
SUPERVISION TOTAL			$5,829.00
LABOR PER DAY	$1,188.90		$14,267.00
NUMBER OF DAYS	12		
LABOR ADDITIVE			$8,326.00
TOTAL LABOR			$22,593.00
GANG EXPENSES PER DAY	$602.00		
NUMBER OF DAYS	12		
TOTAL GANG EXPENSES			$7,224.00
SUB-TOTAL			$221,443.84
CONTINGENCIES 5%			$11,072.00
TOTAL			$232,520.00

MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

Legislative Notes

Agenda No: **8(P)1(J)**

File Number: **090881**

Committee(s) of Reference: **Board of County Commissioners**

Date of Analysis: **April 23, 2009**

Commission District: **2 & 6**

Type of Item: Execution of a Two Tri-Party Agreement

Summary

This resolution approves a Two Tri-Party Agreement between Miami-Dade County, the State of Florida Department of Transportation and the Florida East Coast Railway, LLC for the installation of railroad crossing protective devices at N.E. 146 Street, in the vicinity of US-1 and at N.W. 44 Avenue. The Agreements are for two crossings within Commission Districts 2 and 6. The County will be responsible for the yearly maintenance fee totaling $3,548. The Secondary Gas Tax will be used as the funding source.

Budgetary Impact

The SGT is a tax levy of $.02 on most motor fuel sold in the state which is returned to the counties pursuant to a formula for the construction, reconstruction, and maintenance of roadways. The 2-cent per gallon SGT is levied on motor fuel pursuant to Sections 206.41 and 206.47 of the Florida Statute. All surplus tax is restricted for use on road construction, acquisition, and maintenance. The SGT is collected from all counties by the State of Florida Department of Revenue.

Miami-Dade State Gas Tax Revenue Projections

Historical Data ($ in 000s)							**Projections**	
Actuals FY 01-02	Actuals FY 02-03	Actuals FY 03-04	Actuals FY 04-05	Actuals FY 05-06	Actuals FY 06-07	Actuals FY 07-08	Projected FY 08-09	Projected FY 09-10
$12,212	$12,707	$13,403	$14,007	$13,719	$13,820	$14,849	**$12,732**	**$12,230**

Source: Office of Strategic Business Management (OSBM) Revenue Estimating Worksheet

Comments

The hotel tourist tax revenue collection for the month of January showed a decrease of 14% for Convention Development Tax (CDT) and a 22% decrease for Tourist Development Tax (TDT) and

Professional Sports Franchise Facilities Tax (PST). The February tourist tax collections for CDT showed a decrease of 21%, TDT decreased 28%, and PST decreased 28% over the same period in 2008. The CDT, TDT, and PST are used to make debt service payments, payments to other obligations and accumulate necessary reserves.

Similarly, the County depends on the SGT for the funding of construction, reconstruction, and maintenance of our roadways. As shown in the Revenue Estimating Chart above, the SGT collection is not anticipated to grow at levels experienced in recent years. For example, the preliminary SGT collection figures for FY 2008-09 show a decrease of 14% and a 18% decrease for FY 2009-10 from FY 2007-08. Should this trend continue, adjustments may have to be made to future SGT obligations. Furthermore, trends in purchasing of hybrid cars may impact future state gas tax revenue streams.

Prepared by: Michael Amador-Gil