

RESOLUTION NO. 2005-378

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF A RAILROAD LICENSE AGREEMENT BETWEEN FLORIDA EAST COAST RAILWAY, L.L.C, AND ST. JOHNS COUNTY, FLORIDA, ASSOCIATED WITH A RAILROAD CROSSING LOCATED ON HOLMES BLVD, AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY

WHEREAS, Holmes Blvd., owned and/or maintained by Saint Johns County, Florida ("County") crosses the railroad tracks of the Florida East Coast Railway, L.L.C. ("FECR"); and

WHEREAS, the Railroad License Agreement ("Agreement") (attached and incorporated as Exhibit "A") between the Florida East Coast Railway, L.L.C, and St. Johns County, Florida, and that is associated with the railroad crossing located on Holmes Blvd., establishes the rights, duties and responsibilities of both the FECR and the County with respect to the railroad crossing located on Holmes Blvd.; and

WHEREAS, the County has reviewed the terms, provisions, conditions, and requirements of the Agreement; and

WHEREAS, the County has determined that accepting the terms of the Agreement, and entering into said Agreement will serve the interests of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

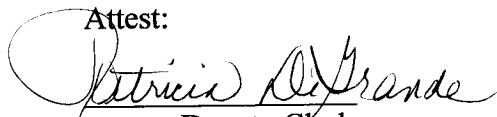
Section 1. The above Recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.

Section 2. The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of a Railroad License Agreement between Florida East Coast Railway, L.L.C., and St. Johns County, Florida, associated with a railroad crossing located on Holmes Blvd., and authorizing the County Administrator to execute the Agreement on behalf of the County.

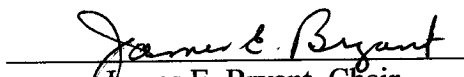
PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 13 day of Dec, 2005.

BOARD OF COUNTY COMMISSIONERS OF  
ST. JOHNS COUNTY, FLORIDA

Attest:

  
Deputy Clerk

By:

  
James E. Bryant, Chair



RENDITION DATE 12-15-05

**LICENSE AGREEMENT**

THIS LICENSE AGREEMENT, effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2005, is between the FLORIDA EAST COAST RAILWAY, L.L.C. (Address: P. O. Drawer 1048, St. Augustine, Florida 32085), a Limited Liability Company, hereinafter called "RAILWAY" and ST. JOHNS COUNTY, a political subdivision of the State of Florida, hereinafter called "COUNTY."

WITNESSETH:

That the RAILWAY, in consideration of the covenants and conditions hereinafter set forth to be performed and kept by the COUNTY, hereby permits the COUNTY to construct, use, maintain, repair, renew and ultimately remove an at-grade public road crossing across and over the tracks, right of way and property of RAILWAY, at the RAILWAY'S Milepost WW1+ 3,826', more particularly described in Exhibit A attached hereto and incorporated herein by reference, hereinafter referred to as the "CROSSING SITE":

The CROSSING SITE includes any railroad crossing warning signs, crossing surfaces and automatic crossing warning devices which are, or might be, located within or adjacent to the above-described location, provided that, the construction of the CROSSING SITE shall be done by RAILWAY as provided in this License Agreement ("Agreement") and further provided that, notwithstanding rights to the COUNTY granted herein, RAILWAY reserves the right to perform all work required on RAILWAY'S property including construction, drainage, lighting and vegetation management, in which event COUNTY shall pay the RAILWAY the entire cost and expense of labor, materials and equipment furnished by RAILWAY in performing such work.

The status of the COUNTY is that of a licensee and not lessee, granting the COUNTY the right to use the CROSSING SITE as specified herein.

In consideration of the granting of this Agreement by the RAILWAY, the COUNTY covenants and agrees with the RAILWAY as follows:

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

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

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

4. The COUNTY shall grant forthwith to the RAILWAY necessary permits for the installation, construction, erection, repair and maintenance of any of the RAILWAY-owned or maintained facilities described in this Agreement. If the COUNTY fails to promptly grant the

RAILWAY necessary permits, COUNTY shall bear all additional expense incurred by the RAILWAY attributable to such failure, including costs due to slow ordering of trains. COUNTY shall promptly pay such amounts upon billing by the RAILWAY.

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

6. The existing warning devices, including the fixed signs, flashing lights, bells and gates (collectively the "WARNING DEVICES"), at the CROSSING SITE are a Type I, Class I installation as defined in the Florida Department of Transportation Schedule of Signal Installations by Type and Class attached hereto as Exhibit C.

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

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

7. The existing 24' wide Type T-modified grade crossing surface (the "SURFACE") along with other improvements are in accordance with Florida Department of Transportation Standard Specifications for Road and Bridge Construction, Index No. 560, as may be revised or

amended in the future. When the RAILWAY determines that the replacement of the SURFACE is more economical than its continued maintenance, the RAILWAY shall have the exclusive option to replace the SURFACE with a comparable or improved structure. The replacement costs of the new SURFACE shall be the sole responsibility of the COUNTY. The COUNTY shall, at its sole expense, maintain and replace the remainder of the road inside the RAILWAY'S right-of-way, plus any paving which may be located between the ends of the ties. The RAILWAY shall provide a construction watchman at said CROSSING SITE while work is being performed by the COUNTY under the provisions of this Agreement, at the sole expense of the COUNTY.

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

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

the location of such drainage facilities and type, size, depth and other specifications of the proposed facilities, as submitted to the RAILWAY.

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

11. The COUNTY further covenants to pay the RAILWAY, within sixty (60) days after presentation of the same, all bills submitted by Railway including maintenance bills as set forth in Paragraph 7 above and all bills for electricity for the lighting and illumination of the CROSSING SITE if same are provided by Railway.

12. At the termination of this Agreement for any cause, or upon termination of the COUNTY'S use of the CROSSING SITE as herein described, all rights of the COUNTY shall terminate and the COUNTY shall remove, under the RAILWAY'S supervision and direction, at COUNTY'S entire cost and expense, said road and all non-RAILWAY-owned improvements placed upon the RAILWAY'S right-of-way and restore the ground to its original condition.

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

14. 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.

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

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

16. (a) COUNTY, at its own cost and expense, when performing any work in connection with the CROSSING SITE shall request RAILWAY to furnish any necessary construction watchmen for the protection of RAILWAY'S employees, property and train operations. RAILWAY shall be notified at least one (1) week in advance of the performance of any work in connection with the CROSSING SITE.

(b) In addition to, but not in limitation of any of the foregoing provisions, if at any time RAILWAY should deem it necessary to place construction watchmen for the protection of any person or property, during the construction, maintenance, repair, alteration, renewal, or removal at the CROSSING SITE, RAILWAY shall have the right to place such construction watchmen, or other persons at the sole cost and expense of the COUNTY. Upon receipt of a bill from RAILWAY, COUNTY shall promptly pay RAILWAY the full cost and expense of such



construction watchmen. The furnishing or failure to furnish construction watchmen, or other persons by the RAILWAY under this paragraph, however, shall not release COUNTY from any and all other liabilities assumed by COUNTY under the terms of this Agreement, including its obligations under Paragraph 16 hereof. The COUNTY shall give the RAILWAY one (1) week's advance written notice when it or its contractor or anyone claiming under this Agreement proposes to enter upon the CROSSING SITE to perform work under this Agreement in order that proper warning may be provided for trains. In emergency situations COUNTY shall give the RAILWAY telephonic notice. The COUNTY further agrees that at all times its personnel or agents are on the property of the RAILWAY, they will be accompanied by a RAILWAY representative and any cost involved will be borne by the COUNTY.

17. After the SURFACE and WARNING DEVICES have been installed and all other work to be performed by the RAILWAY under this Agreement has been completed and found to be in satisfactory working order by the RAILWAY, the RAILWAY shall furnish to the COUNTY an invoice showing the final total cost of material, labor and equipment furnished by the RAILWAY, and COUNTY shall pay such invoice no later than sixty (60) days from the date thereof.

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

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

20. The COUNTY hereby acknowledges that it has been notified that its personnel will or may be working in an area containing active fiber-optic transmission cable as well as other cables and other facilities. Any damage to said cables caused by the COUNTY or its representatives shall be the responsibility of the COUNTY at its cost. Any damage to said cables caused by the COMPANY or its representatives shall be the responsibility of the COMPANY at its cost.

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

22. 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 and supersedes all proposals, oral or written, and all other prior agreements and 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.

23. It is understood by and between the respective parties hereto that this License Agreement cancels and supersedes any previous License Agreements for this location regarding matters contained herein between the RAILWAY and any other person or entity.

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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 officials thereunto lawfully authorized.

Signed, sealed and  
Delivered in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
Witnesses as to RAILWAY

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

By: \_\_\_\_\_ (Seal)

ATTEST: \_\_\_\_\_  
Assistant Secretary

DATE: \_\_\_\_\_

**ST. JOHNS COUNTY,** a political  
subdivision of the State of Florida

\_\_\_\_\_

\_\_\_\_\_  
Witnesses as to COUNTY

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

Title: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

## LICENSE AREA

November 3, 2005

File: WW1/39/3826

**HOLMES BOULEVARD – MP WW1+3,826' – FDOT # 271852A**

A PARCEL OF LAND WITH UNIFORM WIDTH OF SIXTY (60) FEET EASTERLY AND WESTERLY AND EXTENDING NORTHERLY AND SOUTHERLY ACROSS THE RIGHT-OF-WAY AND WILBUR WRIGHT LEAD TRACK OF THE RAILWAY AT HOLMES BOULEVARD IN ST. AUGUSTINE, FLORIDA, WITH LONGITUDINAL CENTER LINE OF SAID PARCEL LOCATED THREE THOUSAND EIGHT HUNDRED TWENTY-SIX (3,826') FEET SOUTHERLY FROM THE RAILWAY'S MILE POST NO. WW1 AS MEASURED FROM ST. AUGUSTINE, FLORIDA, SAID RIGHT-OF-WAY OF THE RAILWAY HAVING A TOTAL WIDTH OF ONE HUNDRED (100) FEET AT THIS LOCATION, BEING FIFTY (50) FEET IN WIDTH ON THE NORTH AND SOUTH SIDE AS MEASURED FROM THE CENTERLINE OF THE WILBUR WRIGHT LEAD TRACK.

**EXHIBIT "A"**

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

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## Annual Maintenance Cost Exclusive of Installation

| <u>CLASS</u> | <u>DESCRIPTION</u>                           | <u>COST*</u> |
|--------------|--|--------------|
| I            | Flashing Signals – One Track                 | \$1,870.00   |
| II           | Flashing Signals – Multiple Tracks           | \$2,474.00   |
| III          | Flashing Signals and Gates – One Track       | \$2,820.00   |
| IV           | Flashing Signals and Gates – Multiple Tracks | \$3,540.00   |

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AUTHORITY: FLORIDA ADMINISTRATIVE RULE: 14-46.002  
Responsibility for the Cost of Automatic Highway  
Grade Traffic Control Devices

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

GENERAL AUTHORITY: 334.044. F. S.

SPECIFIC LAW IMPLEMENTED: 335.144.F. S.

\*This schedule was effective July 1, 2001, and will be reviewed every 5 years and revised as appropriate based on the Consumer Price Index for all Urban Consumers published by the U.S. Department of Labor.

**EXHIBIT "C"**

## FLORIDA DEPARTMENT OF TRANSPORTATION

Listed Below are signal installations by type and class:

FLASHING SIGNALS - ONE TRACK

Type = 1, Class = 1

FLASHING SIGNALS - MULTIPLE TRACKS

Type = 1, Class = 2

FLASHING SIGNALS AND CANTILEVER - ONE TRACK

Type = 2, Class = 1

FLASHING SIGNALS AND CANTILEVERS - MULTIPLE TRACKS

Type = 2, Class = 2

FLASHING SIGNALS AND GATE - ONE TRACK

Type = 3, Class = 3

FLASHING SIGNALS AND GATE - MULTIPLE TRACKS

Type = 3, Class = 4

FLASHING SIGNALS AND GATE WITH CANTILEVER - ONE TRACK

Type = 4, Class = 3

FLASHING SIGNALS AND GATE WITH CANTILEVER - MULTIPLE TRACKS

Type = 4, Class = 4

### TYPE OF TRAFFIC CONTROL DEVICES

- I Flashing signals
- II Flashing signals with cantilevers
- III Flashing signals with gate
- IV Flashing signals with cantilevers & gate

### CLASS OF TRAFFIC CONTROL DEVICES

- I Flashing signals - one track
- II Flashing signals - multiple track
- III Flashing signals & gates - one track
- IV Flashing signals & gates - multiple track

## EXHIBIT "C"

INDEMNITY OF FLORIDA EAST COAST RAILWAY, L.L.C.  
AND INSURANCE REQUIREMENTS

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The Contractor by execution and delivery hereof, agrees that it shall and will at all times hereafter indemnify, defend and save harmless the Florida East Coast Railway, L.L.C from and against all judgments, and all loss, claims, damages, costs, charges, and expenses ("Costs") which it may suffer, sustain, or in anywise be subjected to on account of or occasioned by the operations of the Contractor, or any of the subcontractors, or both, whether directly or indirectly under, or pursuant to, this construction contract, including any such Costs arising from the death, bodily injury or personal injury of, as follows:

Of any person, including without limitation upon the generality of the foregoing description, employees and officers of Florida East Coast Railway, L.L.C., employees and officers of materialmen, employees and officers of the Contractor, employees and officers of all subcontractors, and from loss damage, injury and loss of use of any real or personal property (a) in which Florida East Coast Railway Company has any ownership interest, and (b) personal property in the custody of Florida East Coast Railway Company under any transportation contracts; including without limitation upon the generality of the two foregoing enumerations, all railroad equipment commonly described as rolling stock and the contents of the same.

In furtherance of its obligation to indemnify, defend and save harmless, Contractor shall procure and keep in effect comprehensive general liability insurance in the limits of \$5,000,000.00 each occurrence for bodily injury or death and \$3,000,000.00 property damage each occurrence with a \$5,000,000 aggregate covering all obligations of Contractor to indemnify the Railway by Contractual Assumed Liability Endorsement, with all railroad exclusives removed. Alternatively, Contractor may procure and keep in effect during the life of this construction contract, as aforesaid, Railroad Protective Liability Policies insuring the Railway directly as insured against losses and damages with the limits specified in this paragraph.

In addition to the above, Contractor shall, at its cost and expenses, maintain a Workman's Compensation Insurance Policy as required in the State of Florida.

All such insurance, directly or indirectly for the benefit of the Railway, shall be in a form satisfactory to Railway's Manager of Insurance and 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.

EXHIBIT "D"