

**CROSSING AGREEMENT BY AND AMONG
FLORIDA EAST COAST RAILWAY, LLC,
ALL ABOARD FLORIDA - OPERATIONS LLC AND
CITY OF RIVIERA BEACH
FOR IMPROVEMENTS TO RAILWAY CROSSINGS COVERED BY
EXISTING CROSSING LICENSE AGREEMENTS**

THIS AGREEMENT is made and entered into this _____ day of 2016, FLORIDA EAST COAST RAILWAY LLC, a Florida Limited Liability Company, with an address of 7411 Fullerton Street, Suite 300, Jacksonville, FL 32256 (hereinafter "FECR") an ALL ABOARD FLORIDA - OPERATIONS, LLC, a Delaware Limited Liability Company (authorized to do business in Florida), with an address of 2855 LeJeune Road, 4th Floor, Coral Gables, FL 33134 (hereinafter "AAF"), and CITY OF RIVIERA BEACH, a Political Subdivision of the State of Florida (hereinafter "CITY").

W I T N E S S E T H

WHEREAS, FECR owns and operates a rail corridor located within the boundaries of CITY; and

WHEREAS, CITY has various roadways that cross the FECR right-of-way as listed in **Exhibit A** (hereinafter individually and in the aggregate, as the case requires, referred to as "Crossings"), as such Crossings are more particularly defined in various license and/or crossing agreements; and

WHEREAS, FECR has entered into various license and/or crossing agreements with CITY that set forth the rights and obligations of the Parties with respect to each of the Crossings, as amended and assigned to date, as listed in Exhibit A (hereinafter "License Agreements"); and

WHEREAS, AAF is developing an intercity passenger rail service from Miami to Orlando, to be located within FECR's railway right-of-way (hereinafter "Project"); and

WHEREAS, FECR intends to allow AAF to utilize its rail corridor for the Project; and

WHEREAS, in order to accommodate the Project it is necessary for AAF to install a second track which requires improvement, construction and alterations to existing Crossings; and

WHEREAS, pursuant to the License Agreements, CITY is responsible for a portion of the costs related to improvements made to each Crossing; and

WHEREAS, AAF has agreed to incur all costs related to the Crossing improvements to the extent required for the Project to ensure safety at public crossings and to commence passenger rail service; and

WHEREAS, CITY finds that the terms of this Agreement will benefit the safety and welfare of the public;

NOW THEREFORE, for the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. PURPOSE

The purpose of this Agreement between FECR, AAF and CITY is to memorialize the agreement reached relating to the Project with respect to the Crossings and terms related to the construction, maintenance and safety of the Crossings.

Section 2. LICENSE AGREEMENTS

The Crossings, as improved for the Project, shall continue to be governed by the terms and provisions of the License Agreements, listed on Exhibit A.

Section 3. AAF REPRESENTATIONS

3.1 Initial Development Costs. AAF shall fund and be responsible for all necessary and reasonable capital investments to complete the initial installation of crossing improvements at the Crossings to the extent required for compliance with currently applicable laws and requirements for passenger rail service (hereinafter, the "Initial Development Costs"). The Initial Development Costs may include some or all of the following, based on the individual requirements for each Crossing, as more specifically described in the final plans and drawings for each Crossing prepared by AAF's consultant, and provided by AAF to CITY: the installation, relocation or alteration of new track and/or the existing track; cables; railroad devices; crossing structures; railroad signalization equipment; grade crossing surfaces; roadway, signage and pavement marking; co-habitation of roadway traffic signals impacted by the Project to railroad truss structures; relocation of any permitted CITY utilities and, any other element necessary to comply with all applicable laws and regulations. The Initial Development Costs do not include the costs of any other improvements to the Crossings related to the establishment of quiet zones or any other improvements required or desired by CITY. CITY shall have no responsibility for any Initial Development Costs, regardless of any provision to the contrary in any License Agreement.

3.2 Maintenance of Existing Crossing. If there is required regular maintenance to be performed in connection with the currently existing crossing surface that is outside of the scope of the Project, that maintenance is not included within the scope of AAF's work and expense, provided, however, that AAF and FECR will endeavor to coordinate their respective work so as to minimize any existing crossing surface maintenance costs that the CITY may bear in accordance with the existing License Agreements.

3.3 Standards. AAF shall construct all track and crossing Project improvements at each Crossing in compliance with the crossing construction plans submitted by AAF to the CITY..

3.4 Coordination. AAF and CITY agree to coordinate and cooperate with each other at all times with regard to notice, permitting, mobilization and construction timing of the Project improvements. Elements of the Project may extend beyond the FECR right-of-way at certain Crossing(s) in order to complete the Project within aforementioned standards and guidelines. Where elements of the crossing upgrades extend beyond the FECR right-of-way at any crossing, AAF shall coordinate any required crossing upgrade work which must be performed outside of the FECR right-of-way with the CITY and obtain all necessary permits. CITY acknowledges that it will grant to AAF the necessary permits for the installation and construction of any aspects of the crossing upgrades outside of the FECR right-of-way, provided that all permit requirements are met. AAF will repave or restore the CITY's right-of-way if impacted by the crossing upgrade construction at AAF's expense. If there is striping on CITY streets which extends beyond the FECR right-of-way for a reasonable short distance (not more than 40 feet), as part of the Project, AAF will re-stripe CITY's street along with the portions of the street within FECR's right-of-way at AAF's expense. In connection with future maintenance at these Crossings, if comparable restriping is necessary outside of the FECR right-of-way, FECR will perform that restriping, and the costs of such restriping in the CITY's right-of-way shall be apportioned to CITY.

3.5 Minimal Disruption. AAF shall perform and complete the Project in a manner that minimizes disruption and inconvenience to CITY and the public but CITY recognizes that, as with any construction project, there will be unavoidable disruptions and inconvenience to CITY and the public. AAF will make every effort to coordinate Crossing closures so as not to adversely impact CITY'S scheduled special events. AAF shall make reasonable efforts to only close individual crossings for a period of not more than three (3) consecutive days, provided that the CITY acknowledges that some crossings may take longer, ideally no more than five days. AAF will coordinate with the CITY so that the crossing improvement work minimizes disruption and inconvenience to the CITY and its residents.

3.6 Maintenance of Traffic. AAF shall be responsible for the costs of Maintenance of Traffic signage during the Project. AAF or its contractor shall submit a Maintenance of Traffic plan for each individual Crossing to the CITY a minimum of four (4) weeks prior to the commencement of Project work.

3.7 Quiet Zone. If CITY successfully obtains approval to classify the crossings within its boundaries as part of a Quiet Zone, prior to AAF's installation of the various crossing upgrades identified above, AAF agrees to install the quiet zone required improvements to the crossings, at the expense of CITY or such other governmental agency that agrees to pay the expenses associated therewith.

3.8 Budget Estimates. To accommodate CITY's statutory budget process and fiscal year (October 1st – September 30th, referred to as "Government Fiscal Year"), FECR agrees to utilize commercially reasonable efforts to provide to CITY, no later than April 1st each year, the list of Crossings scheduled for maintenance during the upcoming Government Fiscal Year, along with an estimate of any and all costs or expenses for which CITY will be responsible under the License Agreements during such Government Fiscal Year. CITY acknowledges that emergency and unanticipated repairs may be necessary at crossings periodically, and FECR may not be able to provide normal advance notice thereof. This provision shall survive any expiration or termination of this Agreement.

Section 4. FECR REPRESENTATIONS

4.1 Agreement with AAF. FECR hereby acknowledges that FECR and AAF have entered into an agreement under which AAF will utilize the FECR rail corridor for the Project.

4.2 Waiver. FECR hereby waives all rights to reimbursement from CITY of the Initial Development Costs under the License Agreements.

4.3 Maintenance of Existing Crossing during Project. If, during the course of the Project there is required regular maintenance to be performed in connection with the currently existing crossing surface that is outside of the scope of the Project, such maintenance is not included within the scope of AAF's work and expense; provided, however, that AAF and FECR will endeavor to coordinate their respective work so as to minimize any existing crossing surface maintenance costs that CITY may bear in accordance with the existing License Agreements. FECR agrees to provide the estimate for such costs at least ninety (90) days in advance of an invoice.

4.4 Ongoing Maintenance. For so long as FECR is the party responsible for maintaining the Crossings following the Project upgrades, CITY may continue to interface solely with FECR in connection with that maintenance and CITY required reimbursement in connection therewith. FECR and CITY agree to coordinate and cooperate with each other regarding Crossing(s) maintenance with regard to notice, permitting, mobilization and construction. This provision shall survive any expiration or termination of this Agreement.

4.5 Ongoing Maintenance Costs. For so long as FECR is the party responsible for maintaining the Crossings FECR shall apportion the costs for crossing surface maintenance and future crossing upgrade charges with CITY as provided for in the License Agreements. Charges for FECR's inspection of the crossing signals will continue to be assessed in accordance with FDOT's then-current standard chart for signal inspection costs; as such chart is updated and amended. This provision shall survive expiration or termination of this Agreement.

Section 5. CITY REPRESENTATIONS

5.1 Permits; Maintenance of Traffic. CITY will grant to AAF the necessary permits for the installation and construction of any Project elements that may be required beyond the FECR right-of-way, provided all permit requirements are met.

5.2 Maintenance of Existing Crossing during Project. If, during the course of the Project there is required regular maintenance to be performed in connection with the currently existing crossing surface that is outside of the scope of the Project, such maintenance is not included within the scope of AAF's work and expense; and CITY acknowledges that FECR may apportion the appropriate share of such costs to CITY in accordance with the existing License Agreements.

5.3 Ongoing Maintenance Costs. CITY acknowledges that the costs for crossing sur-

face maintenance and future crossing surface and signal upgrade charges shall be reimbursed by CITY as provided for in the License Agreements. Charges for FECR's inspection of the crossing signals will continue to be assessed in accordance with FDOT's then-current standard chart for signal inspection costs; as such chart is updated and amended. This provision shall survive expiration or termination of this Agreement.

Section 6. THIRD PARTY BENEFICIARY

The Parties agree that AAF shall be a third party beneficiary with respect to the License Agreements identified in Exhibit A attached hereto with the right to enforce the terms and conditions thereof. Notwithstanding, for so long as FECR is the party responsible for maintaining the Crossings, FECR shall be solely responsible for exercising any rights AAF may have against CITY under this Agreement. AAF shall have no greater rights with respect to CITY than FECR has under the License Agreements. Each of the aforesaid License Agreements is hereby deemed amended to reflect the provisions of this Section 6. This provision shall survive any expiration or termination of this Agreement.

No provision of this Agreement is intended to, or shall be construed to, create any additional third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the CITY and/or AAF.

Section 7. EFFECTIVE DATE AND TERM

7.1 Effective Date. This Agreement will become effective upon approval by the governing body of the CITY and execution by all parties.

7.2 Term. The term of this Agreement will be concurrent with the term of each License Agreement to which it is applicable.

Section 8. VENUE AND CHOICE OF LAW

This Agreement will be governed by the laws of the State of Florida. 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 Palm Beach County, Florida.

Section 9. NOTICE

All notices required in this Agreement shall be sent by, hand delivery or overnight commercial courier. Notices shall be addressed as follows:

<u>To FECR:</u>	Attention:	Robert Ledoux, VP and General Counsel Florida East Coast Railway L.L.C. 7411 Fullerton Street, Suite 300 Jacksonville, FL 32256
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To AAF: Attention: P. Michael Reininger, President
All Aboard Florida – Operations, LLC
2855 S. Le Jeune Rd., 4th Floor
Coral Gables, FL 33134

To CITY: Attention: Mr. Danny Jones, Assistant City Manager
City of Riviera Beach
600 W. Blue Heron Blvd.
Riviera Beach, FL 33404

Section 10. SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

Section 11. EXHIBIT(S)

The Exhibit(s) attached to this Agreement are incorporated fully into this Agreement by this reference.

Section 12. CAPTIONS

The captions and section designations contained in this Agreement are for convenience only and shall have no substantive meaning.

Section 13. MODIFICATIONS TO AGREEMENT

None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument duly executed by the parties to this Agreement.

Section 14. PUBLIC RECORDS

The parties to this Agreement shall have access to public records pursuant to Chapter 119, Florida Statutes.

Section 15. ENTIRETY OF AGREEMENT

It is agreed, except as provided in the License Agreements, that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understand-

ings other than those stated in this document.

Section 16. ACCESS AND AUDITS

AAF shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of the work associated with such charges, expenses and costs. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at AAF's place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed CITY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of FECR and AAF, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor. IN WITNESS WHEREOF, this Agreement has been fully executed on behalf of the parties hereto by its duly authorized representatives.

FECR:

Florida East Coast Railway, L.L.C.

By: _____
Robert Ledoux, VP and General Counsel

Date: _____

AAF:

All Aboard Florida – Operations LLC

By: _____
P. Michael Reininger, President

Date: _____

Attest:

NAME:
CITY CLERK

CITY OF RIVIERA BEACH
CITY COMMISSION:

By: _____
Claudene L. Anthony, CMC, City Clerk

By: _____
Thomas A. Masters, Mayor

Date: _____

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Andrew DeGraffenreidt, City Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Ruth C. Jones, City Manager

Exhibit A

Crossing/License Agreements Listing

Location	Mile Post	Street Name	AAR/DOT#	Agreement Holder	Date
Riviera Beach	295+532	W. 13 th St. (Flagler St.)	272399B	City of Riviera Beach	11/5/03*

*See City Resolution No. 244-03