

FIRST COAST RAILROAD INC. (FCRD)
CONSTRUCTION AND MAINTENANCE AGREEMENT

RR MILEPOST 39.06
CITY OF YULEE, COUNTY OF NASSAU, STATE OF FLORIDA

THIS CONSTRUCTION AND MAINTENANCE AGREEMENT (this “Agreement”) made this ____ day of _____, 2023 (“**Effective Date**”), by and between the **County of Nassau**, hereinafter called “**Agency**”, and **First Coast Railroad Inc. (FCRD)**, hereinafter called “**Railway**”:

WITNESSETH:

WHEREAS: in the interest of public safety and aiding motor vehicle traffic, Agency proposes to expand and redesign the current roadway, therefore; rebuilding the existing public crossing of Chester Road at Railway’s Milepost 39.06, DOT# 620804A and Railroad Project # 22FCRD01R, hereafter called “**Project**”; located in the City of Yulee, State of Florida by replacing the surface of such crossing with a precast concrete “tub” crossing; and the installation of automated warning devices at said at grade crossing

WHEREAS, Agency is willing to undertake the expense for the Project as detailed in **Exhibit B**, except as provided in Section I. (C) of the Agreement; and

WHEREAS, attached hereto and hereby made a part hereof as **Exhibit A** is a Project Print showing the type, size, and location of the Project; and

WHEREAS, Railway is willing to coordinate and cooperate with Agency to permit construction of the Project upon the terms and conditions herein stated and not otherwise; and

WHEREAS, said Project shall be constructed in accordance with full plans and full designs which shall be subject to the mutual approval of Railway and Agency.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is mutually agreed as follows:

I. Performance of Work

Agency and Railway will each perform various items of work as described below:

- A. WORK TO BE PERFORMED AND MATERIALS FURNISHED BY EITHER AGENCY OR ITS CONTRACTOR AT AGENCY EXPENSE.
 1. Project Plans & Specifications and Construction
Except as otherwise herein provided, furnish all plans, engineering, supervision, labor, material, supplies and equipment necessary for construction of the Project.
 2. Reconstruction of Roadway within RR right-of-way

Take all necessary, reasonable steps, including, without limitation, funding, for the reconstruction of the roadway in vicinity of track and crossing surface.

3. Maintenance of Roadway Traffic
Bear responsibility for all roadway traffic detours, maintenance of roadway traffic, and all other roadway modifications, permanent or temporary, necessary for the Project.
4. Schedule & Notification
Provide Project construction schedule and notify Railway (a) fifteen (15) days prior to the date Railway is to provide flagging services and (b) twenty (20) days prior to date construction is to begin. Thereafter, Agency will implement the entire Project in accordance with the mutually agreed upon schedule.

B. WORK TO BE PERFORMED AND MATERIALS FURNISHED BY RAILWAY AT AGENCY EXPENSE.

1. Engineering and Invoice Preparation
Perform special engineering services, including submittal, reviews, project coordination and inspection, including field and office work and preparation of invoices for the Project. Agency reserves the right to audit Railway invoices.
2. Crossing Surface Installation
The Railway, at Agency expense, will take all reasonable steps for the construction of the Project, including but not limited to the installation of full depth concrete tub style surface (including new ballast, ties, crossties, rail, OTM) to accommodate the Agency's rehabilitation of the vehicular crossing of Chester Road with the Railway for the Project, as shown in **Exhibit A**.
3. Roadway Warning Device Installation
The Railway, at Agency expense, will take all reasonable steps for the construction of the Project, including but not limited to the installation of new automatic warning devices (including new lights and gates, bells, control bungalow, and other necessary circuitry to provide advance train warning to the traveling public)
4. Flagging
Railway will schedule and perform flagging and furnish requested services and devices during construction operations of Agency or its contractor, as deemed necessary by Railway. Any flagging cost or protective services performed by Railway, or its contractor shall be at Agency's expense.

C. COSTS AND PAYMENTS.

The **Agency** hereby agrees to pay the **Railway** 100% of the cost of the work to be performed by Railway pursuant to Section I.B. The **Railway** will provide a Force Account Estimate (**Exhibit B**) prior to the beginning of the **Project** construction/installation, which the **Agency** will pay at the project completion the Railway will be reimbursed by the Agency for all actual cost incurred.

II. Construction Plans and Specifications

Agency or its contractors shall perform its work in accordance with detailed plans and specifications which shall be prepared by Agency or its contractors and submitted to Railway for approval of those sections that are applicable to Railway's right-of-way, facility, or operations. No work pursuant to said plans and specifications shall be performed on the right-of-way of Railway prior to receipt of notices to proceed given by Railway to Agency or its authorized representatives. Nothing provided in this Agreement with respect to said plans and specifications shall be construed or deemed to be a ratification or adoption by Railway of either or both said plans as its own.

III. Traffic Protection, Safety and Flagging

All work herein provided for, to be done by Agency or its contractors on Railway's right-of-way, shall be performed at such time and in such manner as not to interfere unreasonably with the movement of trains or traffic upon the tracks of Railway. Agency or its contractors shall enter a "Right of Entry Agreement" with Railway prior to the first entry onto Railway's right-of-way, such Right of Entry Agreement to be provided by Railway upon request. Agency or Agency's contractor shall reimburse Railway for one hundred percent (100%) of the actual costs related to flagging per Section I. (B)(1) of this Agreement. Railway will submit bills for flagging and other protective services and devices during the progress of the work contemplated by this Agreement. Railway may bill the Agency monthly or periodically for its force account when costs exceed One Thousand dollars (\$1,000).

Wherever the safeguarding of trains or traffic of Railway is mentioned in this Agreement, it is intended to cover and include all users of Railway's tracks having permission for such use.

IV. Conditions, Restrictions, and Limitations

All the aforementioned rights are granted subject to the terms, provisions, conditions, restrictions, limitations, covenants, reservations and exceptions contained in this Agreement, including, without limitation, those set forth in the Right of Entry Agreement, Attachment 2 (Roadway Worker Protection Training Policy) and Attachment 3 (Contractor Safety Rules), each as attached hereto and by this reference incorporated herein; Agency and its contractors, in the exercise of the rights and in the conduct of the Project, shall and will do, keep, observe and perform each and all of the terms, provisions, conditions, restrictions, limitations, covenants, reservations and exceptions thereof.

Agency shall ensure that its contractor(s) obtain and provide to Railway evidence that such contractor(s) have procured the insurance coverage described in **Exhibit C**, hereto attached, covering their work on Railway's property in connection with the Project.

Agency agrees that at no time shall it file or permit the filing of a lien or liens upon the property of Railway related to the Project. If, at any time during the progress of the Project, at the time of acceptance of this Agreement or thereafter, any indebtedness due a subcontractor of Agency has become or may become a lien or liens upon said work, equipment or materials, Agency shall immediately, upon request from Railway pay such claim or indebtedness or cause such lien to be dissolved and discharged by giving a bond, or otherwise. In the case of its failure to do so, Railway may suspend the use of its property until such claim or indebtedness is paid or may apply such money toward the discharge thereof or assert and enforce a claim against Agency for such claim or indebtedness, or declare this Agreement to be cancelled, take possession and control of the Project and complete the same or cause the same to be completed in accordance with the terms and conditions hereof.

V. Intentionally Omitted

VI. Funding and Signatory Warranty

Agency acknowledges that it has available all funds necessary to complete the Project, including the reimbursement of Railway for the estimated costs, as set forth in the initial estimate (**Exhibit B**).

Each party to this Agreement certifies that its signatory has the authority to enter into this Agreement on its behalf.

Agency's performance and obligation under this Agreement is contingent upon an annual appropriation by the Nassau County Board of County Commissioners for subsequent fiscal years and is subject to termination based on lack of funding.

VII. Term, Ownership, and Maintenance Responsibilities

The term of this Agreement commences on the Effective Date and shall continue for a period not to exceed the earlier of the condition precedent in Section IX. (B), if it occurs, or twelve (12) months after either (i) the date construction commences within Railway's Right-of-Way or (ii) completion of the construction of the Project, as determined by Railway and subject to Section IX. (C). Agencies and Railway's obligations under Sections X. and XI. (B) shall survive the term of this Agreement.

Upon completion of the Project, Railway, at Agency's expense, will be responsible for the future maintenance of Railway's track infrastructure.

VIII. Assignment

Neither party has the right to assign this Agreement without the consent of the other. Notwithstanding the foregoing, this Agreement shall inure to the benefit of and be binding on the parties hereto, their successors and permitted assigns.

IX. Construction

- A. The parties acknowledge that time is of the essence in the completion of the Project.
- B. Agency shall complete all construction for the Project within ten (12) months of the Effective Date. If construction has not commenced within nine (9) months after the Effective Date, this Agreement becomes null and void.
- C. If construction has commenced and is not complete within ten (10) months of the Effective Date, Agency shall provide Railway a timeline for the completion of the construction. Railway will review and determine if amendments to the terms of this Agreement, including **Exhibit B**, or supplemental agreements are required prior to the completion of construction.

X. Indemnity

As a material inducement for entering into this Agreement, and without which Railway would not enter the same, Agency covenants and agrees that:

A. TO THE EXTENT NOT PROHIBITED BY SECTION 768.28, FLORIDA STATUTES, AGENCY SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS RAILWAY, ITS PARENTS, AFFILIATES, SUBSIDIARIES, AND THE OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS AND EMPLOYEES OF EACH ("RAILWAY INDEMNITEES") FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITIES OF EVERY KIND (INCLUDING REASONABLE ATTORNEYS' FEES, COURT COSTS, AND OTHER EXPENSES RELATED THERETO) FOR INJURY TO OR DEATH OF A PERSON OR FOR LOSS OF OR DAMAGE TO ANY PROPERTY WHATSOEVER (INCLUDING BUT NOT LIMITED TO PROPERTY OWNED BY OR IN THE CARE, CUSTODY, OR CONTROL OF RAILWAY INDEMNITEES, AGENCY OR ITS DESIGNEES), ARISING OUT OF OR IN CONNECTION WITH ANY AGENCY WORK DONE, ACTION TAKEN OR PERMITTED BY THE AGENCY, ITS CONTRACTORS, AGENTS OR EMPLOYEES UNDER THIS AGREEMENT AND/OR IN ANY WAY ARISING UNDER OR RELATED TO THE PROJECT OR THIS AGREEMENT.

B. IT IS THE EXPRESS INTENTION OF AGENCY AND RAILWAY THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, TO THE FULLEST EXTENT PERMITTED BY LAW, INDEMNIFIES RAILWAY INDEMNITEES FOR THEIR OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS ACTIVE OR PASSIVE, OR IS THE SOLE OR A CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE; PROVIDED THAT SAID INDEMNITY SHALL NOT PROTECT RAILWAY INDEMNITEES FROM LIABILITY FOR DEATH, INJURY OR DAMAGE ARISING SOLELY OUT OF THE CRIMINAL ACTIONS, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF RAILWAY INDEMNITEES. IT IS STIPULATED BY THE PARTIES THAT RAILWAY INDEMNITEES OWE NO DUTY TO AGENCY, ITS CLIENT, OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR INVITEES TO PROVIDE A REASONABLY SAFEWORK PLACE AND THAT ALL PARTIES ENTERING ONTO RAILWAY PROPERTY DO SO AT THEIR SOLE RISK.

C. IN NO EVENT SHALL RAILWAY INDEMNITEES OR AGENCY BE LIABLE TO THE OTHER FOR ANY PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

XI. Cancellation of Project; Termination of Agreement: Remedies

- A. If Agency determines it is necessary to cancel the Project for any reason, Agency may terminate this Agreement by delivery of written notice to Railway. Upon Railway's receipt of such notice, Railway shall proceed to stop work.
- B. Agency shall reimburse Railway for (i) all reasonable costs and expenses incurred in returning Railway's property to its original condition to Railway's reasonable satisfaction, and (ii) any of Railway's expenses incurred in connection with its provision of flagging and protective services up until the time of termination.

- C. Any delays in or failure of performance by either party under this Agreement will not constitute default or give rise to any claims for damages or penalties if the delay or failure is directly caused by a **Force Majeure Event**. A “**Force Majeure Event**” means any of the following and any other event, which are events, circumstances, or conditions beyond the reasonable control of the parties, including, without limitation, acts of God, riots, wars (whether declared or not), equipment malfunction, derailments, civil disturbances, civil disobedience, insurrections, acts of terrorism, sabotage, rockslides, landslides, snowslides, avalanches, earthquakes, explosions, floods, fire, underground damage, lightning, sustained abnormal weather conditions or other natural catastrophes and/or strikes, work slowdown, lockouts or other industrial disturbances, pandemics, epidemics, health emergencies, viruses (e.g. SARS Cov-2), disease (e.g. COVID-19), plague, changes in law or regulations, quarantine, travel restrictions, differing or unforeseeable site conditions, acts of governmental agencies or authorities (whether or not such acts are made in response to other **Force Majeure Events**), whether or not of a similar kind or nature to any of the foregoing. The parties agree that a **Force Majeure Event** does not include economic hardship, changes in market conditions, or insufficiency of funds. Under no circumstances shall an obligation to pay monies owed under this Agreement be delayed, deferred, postponed, or excused by a **Force Majeure Event**.

XII. General Provisions

SOLE BENEFIT. This Agreement is intended for the sole benefit of the parties hereto. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation, or other entity, other than Railway Indemnitees, the parties’ successors and permitted assigns, any right or benefit pursuant to any provision or term of this Agreement, and all provisions and terms of this Agreement are and will be for the sole and exclusive benefit of the parties to this Agreement.

WAIVER. Any waiver at any time by one party of a breach hereof by the other party will extend only to the particular breach so waived and will not impair or affect the existence of any provision, condition, obligation, or requirement of this Agreement or the right of either party hereto thereafter to avail itself of any rights under this Agreement with respect to a subsequent breach. No provision of this Agreement shall be waived by any act or knowledge of the parties hereto, but only by a written instrument signed by the party waiving a right hereunder.

SEVERABILITY. If any part of this Agreement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

MERGER. This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements, and understandings with respect thereto, written or oral.

AMENDMENT. No provision of this Agreement shall be modified without the written concurrence of the parties hereto.

HEADINGS. The headings of the Sections of this Agreement are inserted for convenience only and are not intended to govern, limit or aid in the construction of any term or provision of this Agreement.

CONSTRUCTION OF TERMS. The terms of this Agreement have been arrived at after mutual negotiation and, therefore, it is the intention of the parties that its terms be not construed against any of the parties by reason of the fact that it was prepared by one of the parties.

GOVERNING LAW. This Agreement will be construed in accordance with the laws of the state where the work is performed.

COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which may be deemed an original for any purpose.

SURVIVAL. Agencies and Railway's indemnity obligations shall survive the expiration or termination of this Agreement along with any other right or obligation that is, by its express terms or nature and context, intended to survive.

The following is a list of the attachments:

Exhibit A – Project Plan Set
Exhibit B – Rail Services Cost Estimate
Exhibit C – Insurance Requirements
Attachment 1 – G&W Code of Ethics and Conduct
Attachment 2 – Roadway Worker Protection Training Policy
Attachment 3 – Contractor Safety Rules

PUBLIC RECORDS

As used in this Section, "County" shall mean "Agency".

The County is a public agency subject to Chapter 119, Florida Statutes. **IF THE RAILWAY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RAILWAY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (904) 530-6090, RECORDS@NASSAUCOUNTYFL.COM, 96135 NASSAU PLACE, SUITE 6, YULEE, FLORIDA 32097.** Under this Agreement, to the extent that the Railway is providing services to the County, and pursuant to Section 119.0701, Florida Statutes, the Railway shall:

- a. Keep and maintain public records required by the County to perform the service.

Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Railway does not transfer the records to the County.

- d. Upon completion of the Agreement, transfer, at no cost, to the County all public records in possession of the Railway or keep and maintain public records required by the County to perform the service. If the Railway transfers all public records to the County upon completion of

the Agreement, the Railway shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Railway keeps and maintains public records upon completion of the Agreement, the Railway shall meet all applicable requirements for retaining public records. All records stored electronically shall be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

A request to inspect or copy public records relating to the County's Agreement for materials shall be made directly to the County. If the County does not possess the requested records, the County shall immediately notify the Railway of the request, and the Railway shall provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

If the Railway does not comply with the County's request for records, the County shall enforce the Agreement provisions in accordance with the Agreement.

If the Railway fails to provide the public records to the within a reasonable time, the Railway may be subject to penalties under Section 119.10, Florida Statutes.

If a civil action is filed against the Railway to compel production of public records relating to the Agreement, the Court shall assess and award against the Railway the reasonable costs of enforcement, including reasonable attorney fees if:

- (a) The Court determines that the Railway unlawfully refused to comply with the public records request within a reasonable time; and
- (b) At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Railway has not complied with the request, to the County and to the Railway.

A notice complies with their requirements of this section hereinabove, if it is sent to the County's custodian of public records and to the Railway at the Railway's address listed on its Agreement with the County or to the Railway's registered agent. Such notices shall be sent each party at their business address.

If the Railway complies with a public records request within eight (8) business days after the notice is sent, the Railway is not liable for the reasonable costs of enforcement.

E-VERIFY

The Railway shall comply with Section 448.095, Florida Statutes, and use the United States Department of Homeland Security's E-Verify system ("E-Verify") to verify the employment eligibility of all persons hired by the Railway during the term of this Agreement to work in Florida. Additionally, if the Railway uses subcontractors to perform any portion of the work (under this Agreement), the Railway shall include a requirement in the subcontractor's Agreement that the subcontractor use E-Verify to verify the employment eligibility of all persons hired by subcontractor to perform any such portion of the work. Answers to questions regarding E-Verify as well as instructions on enrollment may be found at the E-Verify website: www.uscis.gov/e-verify.

The Railway shall maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make

RE Contract: _____

RR Project# 22FCRD01R

DOT PID#: [N/A]

such records available to the County or other authorized entity consistent with the terms of the Railway's enrollment in the program. This includes maintaining a copy of proof of the Railway's and subcontractors' enrollment in the E-Verify program. If the Railway enters into a contract with a subcontractor, the subcontractor shall provide the Railway with an affidavit stating that the subcontractor does not employ, Agreement with, or subcontract with an unauthorized alien. The Railway shall maintain a copy of such affidavit for the duration of the Agreement.

Compliance with the terms of the E-Verify program provision is made an express condition of this Agreement and the County may treat a failure to comply as a material breach of the Agreement. If the County terminates the Agreement pursuant to Section 448.095(2)(c), Florida Statutes, the Railway may not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated and the Railway is liable for any additional costs incurred by the County as a result of the termination of this Agreement.

RE Contract: _____

RR Project# 22FCRD01R

DOT PID#: [N/A]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year hereinafter written.

WITNESS:

County of Nassau

Authorized Representative Signature

Authorized Representative (print) / Title

WITNESS:

First Coast Railroad Inc. (FCRD)

Greg Breaston 12/14/2023

James Irvin 12/13/2023
Authorized Representative Signature

Greg Breaston, Manager, Public Projects

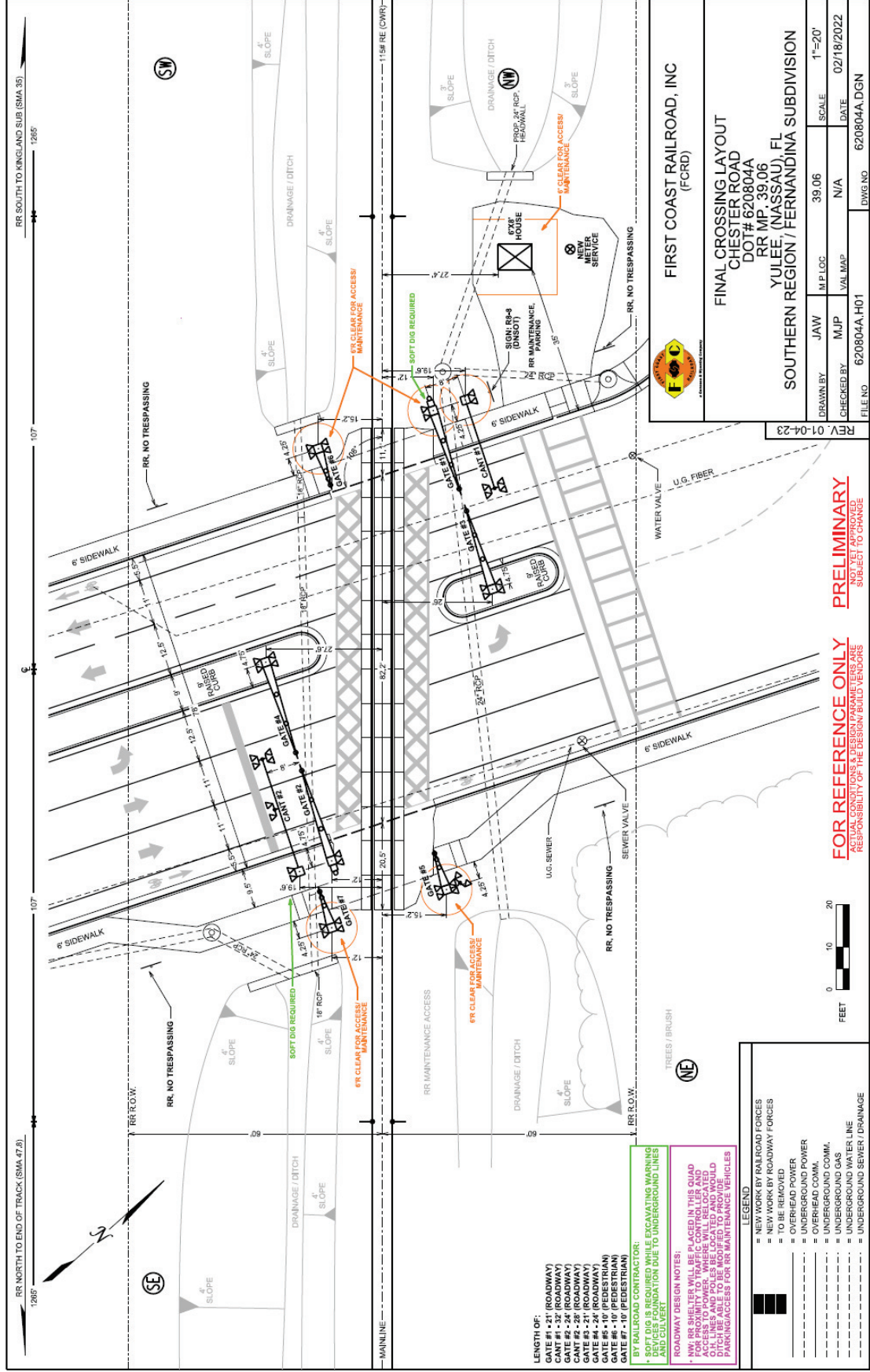
James E. Irvin President
Authorized Representative (print) / Title

RE Contract: _____

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DOT PID#: [N/A]

Exhibit A Project Print



RE Contract: _____

RR Project# 22FCRD01R

DOT PID#: [N/A]

Exhibit B
Rail Services Cost Estimate

Force Account Estimate		Estimate to Complete
Railroad:	First Coast Railroad Inc. (FCRD)	Region: Southern
Agency:	County of Nassau	State: Florida
DOT #:	620804A	COUNTY: Nassau
ROADWAY:	Chester Road	CITY: Yulee
DESCRIPTION:	Oversight and engineering of the proposed widening of the subject roadway, The installation of new warning devices, Ped gates and an at grade surface, 113.75' crossing surface	
AGENCY PROJECT NUMBER:	tbd	ESTIMATE SUBJECT TO REVISION AFTER: 07/11/23
PRELIMINARY ENGINEERING:		
Contracted & Administrative Engineering Services		\$ 17,565
Subtotal		\$ 17,565
CONSTRUCTION & CLOSEOUT:		
Contracted & Administrative Engineering Services		\$ 19,360
Subtotal		\$ 19,360
FLAGGING SERVICE:		
Contracted or Railroad Flagmen Services	8 Days	\$ 9,600
Subtotal		\$ 9,600
UTILITY WORK:		
Power Service		\$ -
Other		\$ -
Subtotal		\$ -
CONTRACT WORK:		
Crossing Warning System		\$ 574,525
Crossing Surfacing		\$ 437,350
Subtotal		\$ 1,011,875
RAILROAD TRACK:		
Labor & Material		\$ -
Subtotal		\$ -
RAILROAD SIGNAL & COMMUNICATION:		
Labor & Material		\$ -
Subtotal		\$ -
PROJECT SUBTOTAL:		
Public Project Admin:	4.00%	\$ 1,058,400
Contingencies:	10.00%	\$ 105,840
PROJECT TOTAL:	*****	\$ 1,164,240
CURRENT AUTHORIZED BUDGET:	*****	\$ -
TOTAL SUPPLEMENT REQUESTED:	*****	\$ 1,164,240
DIVISION OF COST:		
Agency	100.00%	\$ 1,164,240
Railroad	0.00%	\$ -
<p>NOTE: Estimate is based on FULL CROSSING CLOSURE during work by Railroad Forces & Contractors. This estimate has been prepared based on site conditions, anticipated work duration periods, material prices, labor rates, manpower and resource availability, and other factors known as of the date prepared. The actual cost for the railroad work may differ based upon the agency's requirements, their contractor's work procedures, and/or other conditions that become apparent once construction commences or during the progress of the work.</p>		
Estimated prepared by:	TJD	Approved by: mjp
DATE:	09/01/21	DATE: 01/31/23
REVISED:	01/12/23	

Exhibit C
Insurance Requirements

The coverages and limits required hereunder shall include the liability assumed by the named insured under the indemnification provisions contained in the Agreement between the Agency and Railway covering work to be performed upon or adjacent to Railway's property **Mile Post 39.06**: summarized herein below for convenience:

TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS RAILWAY, ITS PARENTS, AFFILIATES, SUBSIDIARIES, AND THE OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS AND EMPLOYEES OF EACH ("RAILWAY INDEMNITEES") FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITIES OF EVERY KIND (INCLUDING REASONABLE ATTORNEYS' FEES, COURT COSTS, AND OTHER EXPENSES RELATED THERETO) FOR INJURY TO OR DEATH OF A PERSON OR FOR LOSS OF OR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH ANY WORK DONE, ACTION TAKEN OR PERMITTED BY AGENCY, ITS SUBCONTRACTORS, AGENTS OR EMPLOYEES UNDER THIS AGREEMENT.

IT IS THE EXPRESS INTENTION OF AGENCY AND RAILWAY THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, TO THE FULLEST EXTENT PERMITTED BY LAW, INDEMNIFIES RAILWAY INDEMNITEES FOR THEIR OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS ACTIVE OR PASSIVE, OR IS THE SOLE OR A CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE; PROVIDED THAT SAID INDEMNITY SHALL NOT PROTECT RAILWAY INDEMNITEES FROM LIABILITY FOR DEATH, INJURY OR DAMAGE ARISING SOLELY OUT OF THE CRIMINAL ACTIONS OF RAILWAY INDEMNITEES. IT IS STIPULATED BY THE PARTIES THAT RAILWAY INDEMNITEES OWE NO DUTY TO AGENCY, ITS CLIENT, OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR INVITEES TO PROVIDE A REASONABLY SAFE WORKPLACE AND THAT ALL PARTIES ENTERING ONTO RAILWAY PROPERTY DO SO AT THEIR SOLE RISK.

Without limiting the obligations of Agency in the foregoing paragraphs of this Exhibit C, the parties agree that the following coverages are material requirements of this Agreement, and such coverages shall not be limited by Agency inability to indemnify and hold harmless Railroad Indemnitees under applicable laws and regulations:

- (a) Agency or Agency's Contractor shall, at its own cost and expense, prior to entry onto the property of Railway (the "Property") or the commencement of any work pursuant to this Agreement, procure and thereafter maintain throughout the term of this Agreement the following types and minimum amounts of insurance:
- (i) Agency or Agency's Contractor shall maintain Public Liability or Commercial General Liability Insurance ("CGL") including Contractual Liability Coverage and CG 24 17 "Contractual Liability-Railroads" endorsement, covering all liabilities assumed by Agency or Agency's Contractor under this Agreement, without exception or restriction of any kind, with a combined single limit of no less than two million dollars (\$2,000,000) for bodily injury and/or property damage liability per occurrence, and an aggregate limit of no less than six million dollars (\$6,000,000) per annual policy period. Such insurance policy shall be

endorsed to provide a Waiver of Subrogation in favor of Railway Indemnitees and shall name Railway Indemnitees as Additional Insureds. An Umbrella or Excess policy may be utilized to satisfy the required limits of liability under this section but must "follow form" and afford no less coverage than the primary policy.

- (ii) Agency or Agency's Contractor shall maintain Commercial Automobile Insurance for all owned, non-owned and hired vehicles with a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and/or property damage liability per occurrence. Such insurance policy shall be endorsed to provide a waiver of subrogation in favor of Railway Indemnitees and shall name Railway Indemnitees as Additional Insureds.
- (iii) Agency or Agency's Contractor shall maintain Statutory Workers' Compensation and Employers' Liability Insurance for its employees (if any) with minimum limits of no less than one million dollars (\$1,000,000) for bodily injury by accident, each accident; one million dollars (\$1,000,000) for bodily injury by disease, policy limit; one million dollars (\$1,000,000) for bodily injury by disease, each employee. Such insurance policy shall be endorsed to provide a waiver of subrogation in favor of Railway Indemnitees.
- (iv) Prior to construction within fifty (50) feet of the Railway's tracks, Agency shall purchase Railroad Protective Liability Insurance Naming Railway Indemnitees as the named insureds with limits of two million dollars (\$2,000,000) each occurrence and six million dollars (\$6,000,000) aggregate limit. The policy shall be issued on a standard ISO form CG 00 35 12 03 or, if available, obtain such coverage from Railway.

(b) The following general insurance requirements shall apply:

- (i) The specified insurance policies must be affected under standard form policies underwritten by insurers licensed in the state where work is to be performed and carry a minimum Best's rating of "A-" and size "Class VII" or better. Railway reserves the right to reject as inadequate any insurance coverage provided by an insurer that is rated less than the ratings specified in this section.
- (ii) All coverages shall be primary and non-contributory to any insurance coverages maintained by Railway Indemnitees.
- (iii) All insurance policies shall be endorsed to provide Railway with thirty (30) days prior written notice of cancellation, non-renewal, or material changes.
- (iv) Agency or Agency's Contractor shall provide Railway with certificates of insurance evidencing the insurance coverages, terms and conditions required prior to commencement of any activities on or about the Property. Said certificates should reference this Agreement by date and description and shall be furnished to Railway at the following address, or to such other address as Railway may hereafter specify:

Genesee & Wyoming Railroad Services, Inc.
Attn: Kristine Storm
13901 Sutton Park Drive South, Suite 270
Jacksonville, Florida 32224

- (v) If any policies providing the required coverages are written on a Claims-Made basis, the following shall apply:

- a. The retroactive date shall be prior to the commencement of work.
- b. Agency or Agency's Contractor shall maintain such policies on a continuous basis.
- c. If there is a change in insurer or policies are cancelled or not renewed, Agency or Agency's Contractor shall purchase an extended reporting period of not less than three (3) years after the Agreement expiration or termination date.
- d. Agency or Agency's Contractor shall arrange for adequate time for reporting of any loss under this Agreement.

c. Railway may require Agency or Agency's Contractor to purchase additional insurance if Railway reasonably determines that the amount of insurance then being maintained by Agency's Contractor is insufficient in light of all relevant factors. If Agency or Agency's Contractor is required to purchase additional insurance, Railway will notify Agency or Agency's Contractor. Failure of Agency or Agency's Contractor to comply within thirty (30) days shall be considered a default subject to termination of the Agreement.

- e. Furnishing of insurance by Agency or Agency's Contractor shall not limit Agency's liability under this Agreement but shall be additional security therefor.
- f. The above indicated insurance coverages shall be enforceable by any legitimate claimant after the termination or cancellation of this Agreement, or any amendment hereto, whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the period of time when the Agreement was in effect and the insurance was in force.

f. Failure to provide the required insurance coverages or endorsements (including contractual liability endorsement) or adequate reporting time shall be at Agency or Agency's Contractor sole risk

g. If contractors are utilized by Agency or Agency's Constructor, Agency or Agency's Contractor agrees to require all such contractors to comply with the insurance requirements of this Exhibit C.

Agency or Agency's Contractor shall keep said insurance in full force and effect until all work to be performed upon or adjacent to the Property under this Agreement is completed to the satisfaction of and accepted by Railroad and thereafter until Agency has fulfilled the provisions of this Agreement with respect to the removal of tools, equipment, and materials from the Property.

Attachment 1

GWI CODE OF ETHICS AND CONDUCT

GWI Code of Ethics and Conduct: This document is located online at

[https:// gwrr.com/about us/code-of-ethics](https://gwrr.com/about-us/code-of-ethics)

I certify that I have reviewed and understand the GWI Code of Ethics and Conduct and agree to abide by this Code for the duration of this Agreement while performing services for Indiana & Ohio Railway Company.

City of Yulee

Printed Name, Title

Signature

Date

Attachment 2

ROADWAY WORKER PROTECTION TRAINING POLICY

Railroad and Contractor have a mutual interest in providing a safe workplace for the employees of both parties and in maintaining the integrity and security of Railroad's facilities and property (the "Property"). To help ensure this goal, Railroad has instituted a training program for all employees of Contractor or its subcontractor(s) seeking admission to the Property (the "Program"). These employees must successfully complete the Program. Contractor shall cause its employees, and shall cause its subcontractor to require its employees, to successfully complete the Program on an annual basis, at their sole cost and expense, prior to their admission onto the Property. The Program will be available on-line and administered by a third party on behalf of GWI. The cost per employee certification attempt is \$75.00 USD, payable via credit or purchasing card.

To access the G&W Roadway Worker Protection Training for Railroad Contractors Course on the RWT On-Line Portal please follow these instructions:

- Start at website <https://railpros.com/training/>
- Click on the "Online Training" button
- Select the G&W course by clicking on the course name or simply add to cart
- If creating an account for multiple people, adjust the quantity purchased to match the tests needed
- Create an account as a new user or use previous login information
- A username will be assigned after an account is created
- Fill out all of the fields on the payment page and submit
- You will be asked if this is for you or someone else, if it is for your use select you. If it is for members of your team, enter the name and contact information of those that will be taking the test
- After receiving the username and password go back to the On-Line University page and select the G&W course again
- Complete the registration process and training

All employees of the Contractor or its subcontractor(s) will be required to submit a copy of their training certification to the railroad personnel managing the applicable project.

RE Contract: _____

RR Project# 22FCRD01R

DOT PID#: [N/A]

Attachment 3
Contractor Safety Rules

Contractor Safety Rules can be found at: <https://www.gwrr.com/wp-content/uploads/2021/05/GWI-Contractor-Safety-Rules.pdf>

The undersigned has read and understands these Genesee & Wyoming "Safety Guidelines for Contractors and Non-GWRR Personnel":

Printed Name, Title

Signature

Date