

*Harrison***RESOLUTION NO R-94-32****APPROVAL OF GRADE CROSSING LICENSE AGREEMENT -
HARRISON STREET AND FLORIDA EAST COAST RAILWAY
AND APPROVAL OF MAINTENANCE EXPENDITURE
FROM GAS TAX FUNDS - \$9,480**

WHEREAS, In 1987 Hollywood Boulevard between U.S. 1 and 28th Avenue was transferred by the State of Florida to the City of Hollywood through Broward County, and

WHEREAS, this transfer included the City assuming the responsibility for the maintenance of Harrison Street throughout this section, and

WHEREAS, Harrison Street crosses the mainline of the Florida East Coast Railway's mainline within this section of the roadway, and

WHEREAS, there is no existing agreement between the City of Hollywood and the Florida East Coast Railway to cover the above crossing, and

WHEREAS, the Florida East Coast Railway Company has forward to the City a license agreement covering the Harrison Street crossing similar to existing agreements covering the other crossings within the City, and

WHEREAS, the crossing had deteriorated to the point that, in October 1993, it needed to be rebuilt, and

WHEREAS, the Florida East Coast Railway Company has sent an invoice to the City in the amount of \$9,480.00 to cover the expenses of the rebuilding, and

WHEREAS, crossing agreements covering other crossings within the city task the City with the costs of rebuilding of the crossings.

WHEREAS, funds are available in the Gas Tax Budget that could be allocated to the payment of the invoice from the Florida East Coast Railway Company.

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF HOLLYWOOD, FLORIDA:

That the License Agreement between the City of Hollywood and the Florida East Coast Railway Company covering the at grade crossing of the Florida East Coast Railway by Harrison Street be approved and its execution on behalf of the City of Hollywood be authorized, and

BE IT FURTHER RESOLVED:

That the invoice from the Florida East Coast Railway Company in the amount of \$9,480.00 for the rebuilding of the crossing at Harrison Street in October 1993 be approved for payment out of the Gas Tax Budget.

PASSED AND ADOPTED THIS 19th DAY OF January, 1994.

BY: Mara Giullanti
Mara Giullanti, Mayor

ATTEST:

Martha Lambos
Martha Lambos, City Clerk

Approved as to Form and Legality:

BY: Jeffrey Shoffel
Jeffrey Shoffel, Acting City Attorney

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, effective from the 19th day of January, 1993⁴ is between the FLORIDA EAST COAST RAILWAY COMPANY (Address: P.O. Box Drawer 1048, St. Augustine, Florida 32084), a Florida corporation, hereinafter called "RAILWAY" and CITY OF HOLLYWOOD, a municipal corporation of the State of Florida, hereinafter called "SECOND PARTY."

WITNESSETH:

That the RAILWAY, for valuable consideration and the covenants and agreements herein contained to be performed and kept by the SECOND PARTY, does hereby give and license unto said SECOND PARTY the right and privilege to use, for public at-grade road crossing purposes only, that part of the right-of-way and property of the RAILWAY at the RAILWAY'S Milepost 348 + 4451', more particularly described as follows, and hereinafter referred to as the "CROSSING SITE":

See Exhibit "A" Attached Hereto.

The words "CROSSING SITE" are defined to include any railroad crossing signs, crossing structures or automatic crossing devices which are, or might be, located within or adjacent to the above-described location. The status of the SECOND PARTY is that of a licensee and not lessee. It has the right to use the CROSSING SITE as specified herein, but legal possession of the CROSSING SITE shall remain with the RAILWAY.

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

1. That the CROSSING SITE shall be used for public at-grade road crossing purposes only across the RAILWAY'S right-of-way and tracks, and except as herein provided, no pipe, wire, rail, or other line or structure shall be placed in or on the CROSSING SITE without the previous consent in writing of the RAILWAY. SECOND PARTY further agrees that 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, will at all times be kept clear of any vegetation or other growth greater than two (2) feet in height on each side of the tracks at the expense of SECOND PARTY and without cost to RAILWAY or lien upon RAILWAY'S property.

2. This Agreement is for the term of one (1) year. If SECOND PARTY holds over and remains in possession after the expiration of such term or

any renewals thereof, this Agreement shall be considered as renewed, unless sixty (60) days' written notice of the termination of same has been or is given by the RAILWAY, and shall continue in effect from year to year, subject to the same terms and conditions as herein contained, unless amended by the RAILWAY, which it has the right to do upon sixty (60) days' 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 said SECOND PARTY 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 SECOND PARTY hereby grants unto 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 SECOND PARTY fails to promptly grant the RAILWAY necessary permits, SECOND PARTY shall bear all additional expense incurred by the RAILWAY attributable to such failure, including costs due to slow ordering of trains. SECOND PARTY shall promptly pay such amounts upon rendition of appropriate 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 SECOND PARTY or RAILWAY, shall be the sole responsibility of the SECOND PARTY.

6. The RAILWAY shall install, maintain and replace flashing lights, bells and gates, referred to jointly as "RAILROAD DEVICES," at the CROSSING SITE at the sole cost of SECOND PARTY.

In addition, SECOND PARTY shall pay unto RAILWAY one-half the annual cost of maintenance of said automatic crossing protection devices as provided in the Florida Department of Transportation's SCHEDULE OF ANNUAL COST OF AUTOMATIC HIGHWAY GRADE CROSSING TRAFFIC CONTROL DEVICES, as may be amended.

The aforementioned RAILROAD DEVICES are 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 the operations of the RAILROAD DEVICES.

7. The RAILWAY shall maintain the existing Type T-modified crossing structure (hereinafter referred to as "STRUCTURE") in accordance with Florida Department of Transportation Standard

Specifications for Road and Bridge Construction, Index No. 580, as may be amended, at the sole cost of SECOND PARTY.

When the RAILWAY determines that the replacement of the STRUCTURE is more economical than its continued maintenance, the RAILWAY shall have the exclusive option to replace the STRUCTURE with a comparable or improved facility. The replacement, repair and maintenance costs of the new structure shall be the sole responsibility of the SECOND PARTY. The SECOND PARTY 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 flagman at said CROSSING SITE while work is being performed by the SECOND PARTY under the provisions of this Agreement, at the sole expense of the SECOND PARTY.

8. The SECOND PARTY 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 SECOND PARTY agrees to bear the total expense of any changes or additions to the pavement, RAILROAD DEVICES or other railroad signalization equipment and 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 SECOND PARTY.

9. The SECOND PARTY 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 times to their approval. An additional license agreement may or may not be required by the RAILWAY, depending upon the 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 crossings shall be installed, maintained and replaced at or near this CROSSING SITE by and at the sole cost of SECOND PARTY.

11. The SECOND PARTY further covenants to pay, either directly or upon bills presented unto SECOND PARTY by the RAILWAY, within thirty (30) days after presentation of the same, all bills for electricity for the lighting and illumination of the CROSSING SITE.

12. At the termination of this Agreement for any cause, or upon termination of the SECOND PARTY'S use of the CROSSING SITE as herein

described, the SECOND PARTY shall remove, at its 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. SECOND PARTY shall indemnify 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 or arising out of the existence of the CROSSING SITE.

14. The SECOND PARTY shall not take any action that will prevent or tend to restrict the operations of trains over the CROSSING SITE.

15. The SECOND PARTY 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 SECOND PARTY, each and every one of the terms and conditions included on the two pages entitled "INDEMNITY TO THE FLORIDA EAST COAST RAILWAY COMPANY AND CONTRACTUAL LIABILITY ENDORSEMENTS TO CONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE LIABILITY INSURANCE POLICIES DURING SUCH INDEMNITIES" AND "INSURANCE FOR BENEFIT OF FLORIDA EAST COAST RAILWAY COMPANY TO BE OBTAINED, KEPT IN FULL FORCE AND EFFECT AT COST OF CONTRACTOR," both attached hereto and made a part hereof.

16. SECOND PARTY shall give the RAILWAY one (1) week's advance

notice when the SECOND PARTY 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; except that in emergency situations SECOND PARTY shall only be required to give the RAILWAY such advance notice as is practicable under the circumstances. The SECOND PARTY 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 SECOND PARTY.

17. 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 of the SECOND PARTY, and at its sole expense.

18. The SECOND PARTY shall promptly pay RAILWAY all charges for maintenance, replacement, repair or otherwise of the facilities at this crossing as provided for in this Agreement, upon being billed for the same by the RAILWAY. Failure to promptly pay to RAILWAY amounts billed as due under this Agreement shall constitute default by the SECOND PARTY and shall enable RAILWAY to terminate this Agreement as provided for below.

19. The SECOND PARTY is specifically notified that its personnel

will be working in an area containing active fiber-optic transmission cable as well as other cables and other facilities. If a cable or other facility is cut or damaged, the SECOND PARTY agrees to indemnify RAILWAY for any damages which may result. The SECOND PARTY will secure insurance to cover this obligation as provided for below.

20. 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.

21. 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 which supersedes all proposals, oral or written, and all other 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.

22. It is understood by and between the respective parties hereto that this License Agreement cancels and supersedes that certain License Agreement between the RAILWAY and the CITY OF HOLLOYYWOOD, dated August 11, 1952 and that certain Agreement between the RAILWAY, Broward County and FDOT, dated December 30, 1977.

IN WITNESS WHEREOF, the RAILWAY and the SECOND PARTY have caused this instrument to be executed in their corporate names and respective seals to be hereunto affixed in duplicate the day first hereinafter written by their undersigned officials thereunto lawfully authorized.

Signed, sealed and delivered in the presence of:

L. W. Hume
Patricia J. J. J.
Witnesses as to Railway

FLORIDA EAST COAST RAILWAY
COMPANY, a Florida corporation

By: *E. L. J. J.* (Seal)

ATTEST: *M. C. J. J.*
Assistant Secretary

DATE: 10-11-93

CITY OF HOLLYWOOD, a
municipal corporation of the
State of Florida

By: *Mara Giuliani*
Mara Giuliani

Title: Mayor

Attest: *Martha S. Lambos*
Martha S. Lambos

Title: City Clerk

Date: 1/19/94

Kenneth V. J. J.
Terry D. J. J.
Witnesses as to SECOND PARTY

APPROVED AS TO FORM & LEGALITY

Jeffrey B. Sheffer
JEFFREY B. SHEFFER
ACTING CITY ATTORNEY

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

Annual Maintenance Cost Exclusive of Installation

<u>CLASS</u>	<u>DESCRIPTION</u>	<u>COST</u>
I	Flashing Signals - One Track	\$1,404.00
II	Flashing Signals - Multiple Tracks	\$1,838.00
III	Flashing Signals and Gates - One Track	\$2,117.00
IV	Flashing Signals and Gates - Multiple Tracks	\$2,637.00

AUTHORITY: FLORIDA ADMINISTRATIVE RULE 014-46.02
Responsibility for the Cost of Automatic
Highway Grade Crossing Traffic Control
Devices

EFFECTIVE DATE: July 1, 1991

GENERAL AUTHORITY: 20.05, F.S.

**SPECIFIC LAW
IMPLEMENTED:** 338.21, F.S.

**INSURANCE FOR BENEFIT OF FLORIDA EAST COAST RAILWAY COMPANY TO
BE OBTAINED AND KEPT IN FULL FORCE AND EFFECT AT COST OF CONTRACTOR**

In further consideration of the sums of money herein specified to be paid to Contractor, Contractor, at its cost and expense, shall obtain and keep in effect, insurance policy or policies in the limits of \$1,000,000 each person injured or killed and \$2,000,000 each occurrence and \$1,000,000 property damage per person and \$2,000,000 property damage each occurrence directly by Contractual Liability Endorsement to Contractor's General Public Liability and Property Damage Insurance Policies insuring Contractor against loss or damage to Contractor upon the indemnities concurrently extended to the Florida East Coast Railway Company and within the limits specified in this paragraph. Alternatively, Contractor may procure and keep in effect during the life of this construction contract, as aforesaid, Railroad Protective Liability Policies insuring Florida East Coast Railway Company directly as insured against losses and damages but within the limits specified in this paragraph.

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

All such insurance, directly or indirectly for the benefit of the Florida East Coast Railway Company, shall be in a form satisfactory to its 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.

**INDEMNITY TO FLORIDA EAST COAST RAILWAY COMPANY AND CONTRACTUAL
LIABILITY ENDORSEMENTS TO CONTRACTOR'S PUBLIC LIABILITY AND
PROPERTY DAMAGE LIABILITY INSURANCE POLICIES DURING SUCH INDEMNITIES**

In further consideration of the sums of money herein agreed to be paid to the Contractor, the Contractor by execution and delivery hereof, agrees that it shall and will at all times hereafter indemnify and save harmless the Florida East Coast Railway Company from and against all judgments, and all loss, damages, costs, charges, and expenses which it may suffer, sustain, or in anywise be subjected to on account of or occasioned by the operations, whether or not negligent, of the Contractor, or any of the subcontractors, or both, whether directly or indirectly under, or pursuant to, this construction contract, up to the total sums of money, as follows:

A. On account of death, personal injuries, loss of income or earning ability of any person, including without limitation upon the generality of the foregoing description, employees and officers of Florida East Coast Railway Company, employees and officers of materialmen, employees and officers of the Contractor, employees and officers of all subcontractors, in the limits of \$1,000,000.00 each person injured or killed, and \$2,000,000.00 each occurrence.

B. 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, all in the aggregate limit of \$2,000,000.00.

C. Loss, injury, decline in market value or deterioration in quality of any perishable merchandise in the custody of Florida East Coast Railway Company occurring or originating during the first forty-eight (48) hours from, but excluding, the first five (5) minutes any break in the continuity or other obstruction or passage of trains, directly or indirectly arising from the Contractor's operations, upon said track or tracks, as the case may be, of Florida East Coast Railway Company at or within one hundred (100) feet of said location upon which the work is to be performed hereunder, the improvement, renovation, or repair of which is the subject matter of this construction contract, and also all expenses reasonably incurred by Florida East Coast Railway Company in and about the rerouting of its trains and cars to, via, and from the lines of railroad of other railroad common carriers during the first forty-eight (48) hours following any such break in the continuity of said track or tracks as the case may be, of the Florida East Coast Railway Company at or within one hundred (100) feet of said areas.

LICENSED AREA

A PARCEL OF LAND WITH UNIFORM WIDTH OF 160.0 FEET NORTHERLY AND SOUTHERLY, EXTENDING EASTERLY AND WESTERLY ACROSS THE RIGHT-OF-WAY AND TRACKS OF THE RAILWAY AT HOLLYWOOD, FLORIDA, WITH LONGITUDAL CENTERLINE LOCATED 4451 FEET, MORE OR LESS SOUTHERLY FROM RAILWAYS MILEPOST NO. 348 FROM JACKSONVILLE, FLORIDA, SAID RIGHT-OF-WAY OF THE RAILWAY HAVING A TOTAL WIDTH OF 100.0 FEET AT THIS LOCATION, BEING 50 FEET IN WIDTH ON EACH SIDE OF THE CENTERLINE OF THE RAILWAYS NORTHBOUND MAIN.

ALL AS SHOWN COLORED IN ORANGE ON THE ATTACHED PLAN 550 (MP 348+4451) DATED APRIL 24, 1987, ATTACHED HERETO AND MADE A PART HEREOF.