

Office of School Facilities
Rose Diamond, Chief Facilities Officer

SUBJECT: AUTHORIZATION FOR THE SUPERINTENDENT TO EXECUTE AN AGREEMENT WITH FLORIDA EAST COAST RAILWAY, LLC, TO ALLOW THE BOARD TO CONSTRUCT A NEW SEWER FORCE MAIN FOR THE SOUTH MIAMI ELEMENTARY SCHOOL K-8 CONVERSION, PROJECT NO. A01107

COMMITTEE: FACILITIES AND CONSTRUCTION REFORM

Introduction

In order to provide wastewater services for the proposed South Miami Elementary K-8 conversion project, and to comply with the May 13, 1998 Consent Agreement between the Department of Environmental Resources Management (DERM) and the Board, the Board must install a sewer connection as part of the proposed capital improvement project. The nearest point of connection to the Miami-Dade Water and Sewer Department (MDWASD) facilities, is located at SW 72 Avenue and SW 48 Street, approximately 1 mile from the school site. This will require the District to install a portion of the proposed sewer force main under the FEC railroad at SW 60 Street and SW 69 Court (see location map). In addition, an on-site private lift station will also be constructed. All existing on-site septic tanks and related appurtenances will subsequently be abandoned. It is estimated that the cost to complete the installation of a proposed 8-inch sewer force main and required connections to service the school site is approximately \$900,000.

Staff has spoken with the FEC and negotiated an agreement that will allow the District to traverse the FEC property, under substantially the following terms and conditions:

FEC License Agreement

- the District will be allowed to install a new sewer line under the FEC property in order to connect from the School site to MDWASD point of connection;
- in lieu of making ongoing monthly payments to the FEC for use of their property, which is standard FEC policy for such license agreements, the District shall pay a one-time, non-refundable, license fee in the amount of \$25,000, which fee shall cover the lifetime use of the FEC property;
- at such time as the District intends to construct its sewer force line, it shall provide plans and drawings of its proposed work to the FEC, and shall pay an additional non-refundable fee of \$500;
- all construction must conform to the FEC's specifications, in addition to those imposed by the local jurisdictional entities;

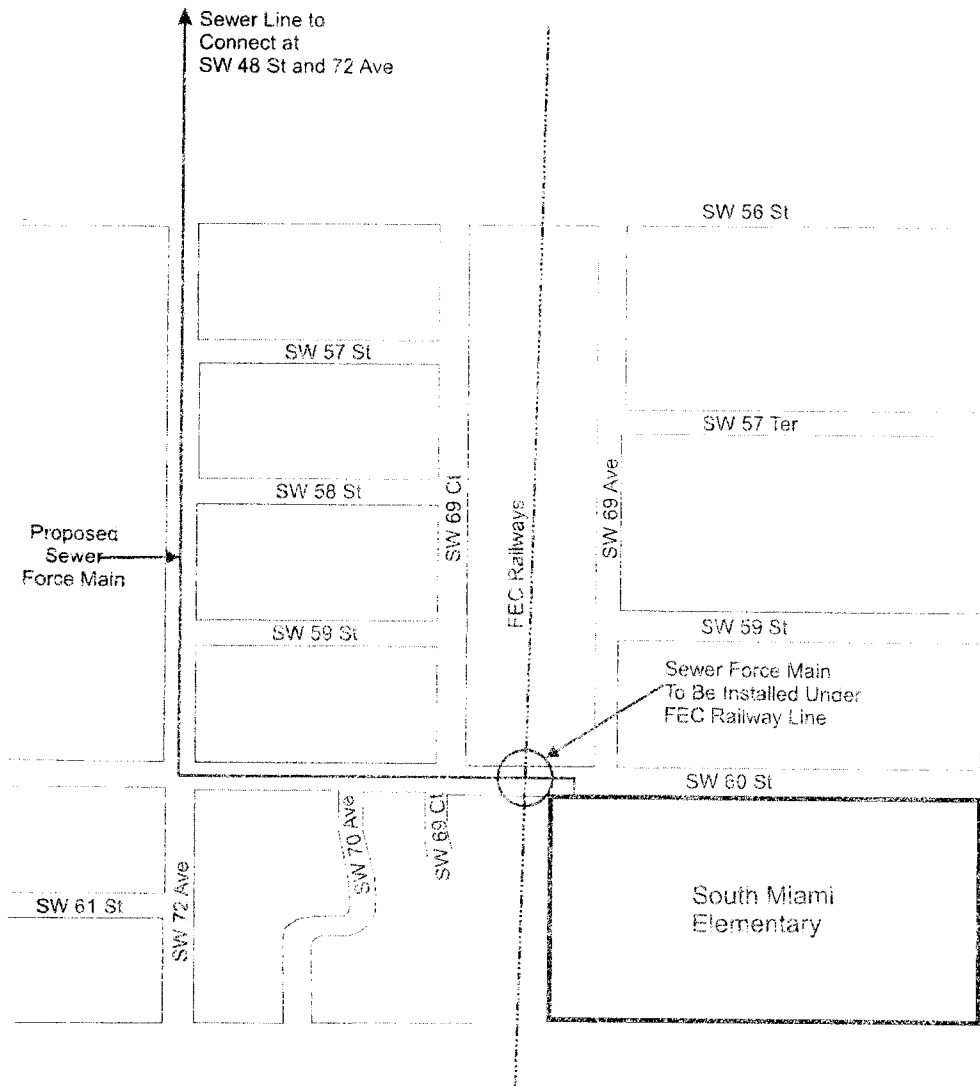
- either party may cancel this agreement with 30 days notice. In that event, the District must remove its improvements at its sole cost and expense. If the agreement is canceled by the FEC, it will attempt to provide the District with an alternate location, with such relocation costs to be borne by the District;
- upon termination of the agreement, or upon the accidental breakage of the sewer line causing damage or the danger of potential damage to the FEC property, the District must immediately repair its sewer pipe or remove the improvements and restore the site to its former good condition;
- subject to the provisions of Section 768.28, Florida Statutes, the Board agrees to and shall at all times indemnify, protect and save harmless the FEC, its parent, subsidiaries, and affiliates from and against all costs or expenses resulting from any and all losses, damages, suits or claims on account of the construction, placement, attachment, maintenance, repair or removal of the improvements, whether such loss is suffered by the FEC or by other persons or entities, including the Board, and whether attributable to the fault, failure or negligence of the FEC. However, no provision in the agreement shall be construed as a waiver of sovereign immunity beyond the provisions of Section 768.28, Florida Statutes;
- the District waives any legal right and monetary claims for damages of any sort resulting from its loss of occupancy of the FEC property. Furthermore, the Board covenants not to sue the FEC, waives all present and future claims against the FEC, and releases the FEC from any and all liability for damages to Board property situated within, or adjacent to, the FEC property, whether attributed to the fault, failure or negligence of the FEC;
- the District shall pay all costs of supervision, labor and material incurred by the FEC in supervising or protecting its property by reason of the Board operating the sewer line;
- in the event the District defaults under the terms of this agreement, and fails to cure same within 30 days, or fails to notify the FEC in writing of its proposed cure within said 30 days, which proposed cure is determined to be acceptable to the FEC in its sole discretion, then the FEC may, at its option, immediately cancel this agreement;
- in the event the District fails to pay an obligation within 30 days of presentation by the FEC, the amount of the obligation shall bear interest at 12% per year until paid;
- the parties waive the right to trial by jury with respect to any future litigation, and agree the venue for any such action shall be St. Johns County, Florida;
- unless terminated by either party, this agreement shall remain in full force and effect; and
- the Superintendent shall be the party designated by the Board to grant or deny all approvals required by this agreement, or to cancel this agreement.

The Construction Officer, Office of School Facilities; Maintenance Officer, Facilities Operations, Maintenance; Principal of South Miami Elementary School and Regional Center V Superintendent recommend entering into the proposed agreement with the Florida East Coast Railway. The agreement will be reviewed by the School Board Attorney's Office and the Office of Risk and Benefits Management prior to execution.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the Superintendent or his designee to execute an Agreement with the Florida East Coast Railway LLC, to allow the Board to construct a new sewer force main for the South Miami Elementary K-8 School Conversion, including a one-time license fee of \$25,000, and substantially in conformance with the other terms noted above.

AB:rr

LOCATION MAP



SOUTH MIAMI ELEM & MIDDLE
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