ALCALDE & FAY

GOVERNMENT & PUBLIC AFFAIRS CONSULTANTS

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MEMORANDUM

TO: Chairman Joe A. Martinez
Board of County Commissioners

FROM: Hector Alcalde
Lois Moore
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SUBJECT: **July Monthly Report**

Congress began its five-week August recess after passage of the Budget Control Act of 2011. Congress will resume business after Labor Day and have a great deal of work to finish before the end of the year.

On August 2, 2011, after several weeks of bitter, partisan debate over the debt-ceiling and federal spending, the President approved the Budget Control Act of 2011 (S. 365) to raise the current $14.3 trillion debt-ceiling by at least $2.1 trillion. Below is a summary of the major components of S. 365:

Debt Ceiling Increase

- The current $14.3 trillion ceiling on federal borrowing would be increased by an amount between $2.1 trillion and $2.4 trillion, a sum presumed sufficient to allow the Treasury Department to operate beyond the 2012 election and into 2013.
- The increase would come in two steps:
    1. The debt limit would be increased by $900 billion immediately.
    2. A second increase of $1.2 trillion to $1.5 trillion would be available later, determined by actions Congress takes to curtail growth in the debt. If, by early next year, a joint congressional committee created by the legislation has recommended and Congress has enacted $1.5 trillion in in additional savings for fiscal 2012 - 2021, the second increase in the debt limit would be $1.5 trillion. Alternatively, the debt limit would be increased by $1.5 trillion if a constitutional amendment requiring a balanced budget is sent to the states for

ratification. If the joint committee recommends and Congress enacts savings of less than $1.5 trillion, or if no additional savings are enacted, the second debt limit increase would be $1.2 trillion.

Spending Cuts — First Round

- Statutory caps would be placed on discretionary appropriations for fiscal years 2012 through 2021. The savings would amount to $935 billion over 10 years.
- For fiscal years 2012 and 2013, a "firewall" would be erected between security (national defense, homeland security and related activities) and non-security accounts — meaning domestic programs could not be raided to provide more security spending.
- The caps for fiscal 2014 through fiscal 2021 would not segregate security and non-security spending.
- If lawmakers did not adhere to the discretionary caps, a process for imposing across-the-board, automatic spending cuts from discretionary accounts would take effect after Congress adjourns for the year.
- The automatic mechanism would be similar to the system of spending "sequesters" enacted as part of the 1985 Gramm-Rudman anti-deficit law (PL 99-177). Some spending, including military pay, would be exempt from the automatic cuts.

Spending Cuts — Second Round

- The new joint committee could recommend specific ways to reduce the deficit by an additional $1.5 trillion by 2021. The panel would be required to consider recommendations from regular legislative committees, and to report its recommendations to both chambers, subject to up-or-down votes without amendment.
- The committee would be required to report by November 23, 2011 and the House and Senate would be required to act by December 23, 2011.
- All of the federal budget would presumably be on the table, including entitlement cuts and revenue increases.
- Should the enacted recommendations from the joint committee not produce at least $1.2 trillion in savings, a process for automatic spending cuts would be triggered to achieve the desired savings and spread spending cuts equally across nine fiscal years.
- Programs targeting low-income individuals and families would largely be exempt from the sequester, as they were under Gramm-Rudman. Medicare cuts

would be restricted to no more than 2 percent of the program's outlays, and would only affect payments to providers, not beneficiaries.

Entitlement Cuts

- The special joint committee would be likely to look closely at entitlement spending to achieve its deficit reduction goals. The spending cuts would be subject to tough negotiations over the next four or five months.
- If a sequester was triggered, some restricted automatic cuts in Medicare spending might occur. It is unclear what other entitlement spending might be subject to a sequester.

Taxes

- The proposal does not include immediate increases in revenue, although the joint deficit-reduction committee might consider revenue increases.
- Earlier in the negotiations, House Speaker John Boehner (R-OH) proposed an increase of $800 billion in revenue. Such an increase might come either from elimination of tax breaks for individuals or corporations, or a comprehensive overhaul of the tax code might be structured to yield a net revenue increase.

Below is a summary of our work and an update on legislative issues of interest to the County.

SEAPORT DEPARTMENT

Miami Harbor Deep Dredge

On July 15, we were pleased to report that the Office of Management and Budget (OMB) officially endorsed the Army Corps' proposed plan to accept and use non federal funds for the construction work on the deep dredge (50 foot) project, Miami Harbor.

This followed several meetings over the past months with OMB officials, including the most recent July 16 meeting for Port Director Johnson with OMB Associate Director Sally Ericsson. Senator Nelson participated in the meeting at which time the Senator voiced his strong support for the project. Director Bill Johnson was able to communicate to Director Ericsson that this was not a "new start," as federal funds are not a requirement for moving forward with the project.

Shortly after the official endorsement by OMB, Assistant Secretary Darcy (Army Corps) forwarded a letter to the Chairs of the House and Senate Energy and Water Development Appropriations Subcommittees, Congressman Rodney Frelinghuysen (R-NJ) and Senator Diane Feinstein (D-CA), which advised of the Army Corps' intent to move forward with the Project Partnership Agreement (PPA) and to accept non federal funds for the construction work.

Both House and Senate Appropriations Committees need to approve the Corps' plan to use non federal funds for the construction. While the Senate Appropriations Committee immediately endorsed the Secretary's plan on receipt of Secretary Darcy's letter, the House Appropriations Committee is continuing to review. We are following up with both majority and minority appropriations staff members. Congressman Mario Diaz-Balart (R-FL) personally spoke with Subcommittee Chairman Frelinghuysen on Friday, July 30 about the significance of the project to job creation and the overall economic impact to South Florida and the nation. We prepared talking points for Congressman Diaz-Balart. Miguel Menoza, Legislative Assistant to Congressman Diaz-Balart, immediately followed up and contacted appropriations committee staff.

We scheduled meetings for Port Director Bill Johnson on July 27 and 28 with the following members and staff. We coordinated these meetings with the Miami Dade County Washington office and accompanied Director Johnson to each of the meetings, along with Mr. Philip Drujak, Miami Dade Washington office.

- Congresswoman Frederica Wilson (D-FL)
- Congresswoman Ileana Ros-Lehtinen (R-FL)
- Congressman Ed Pastor (D-AZ), ranking Democrat, Energy and Water Development appropriations subcommittee
- Congressman David Rivera (R-FL)
- Congressman Mario Diaz-Balart (R-FL)

Also on July 27 and 28, we accompanied Director Johnson to drop off copies of Secretary Darcy's letter to key staff as a follow up to previous meetings with Angie Giancarlo (Majority Clerk, Energy and Water Development Subcommittee); Taunja Berquam (Minority Clerk, Energy and Water Development subcommittee); Michael Higdon, Chief of Staff to Congressman Hal Rogers (R-KY), chair of the House Appropriations Committee; and Harry Glenn, Chief of staff to Congressman Bill Young (R-FL), senior member of the House Appropriations Committee. As previously reported other recent meetings (in June) included:

- Stacey Brown, Chief, Integrations Division, South Atlantic Division
- Susan Nee, Legal Department, Army Corps Headquarters
- Richard Patrick, Legislative Director to Congressman Ed Pastor (D-AZ), Ranking Democrat, Energy and Water Development Appropriations Subcommittee
- John Anderson, Staff Director, Water Resources Subcommittee, Transportation and Infrastructure Committee
- Roger Cockrell, Professional Staff, Energy and Water Subcommittee, Senate Appropriations Committee
- Senator Bill Nelson (D-FL)

As soon as the House Appropriations Committee approves Secretary Darcy's plan, the Army Corps Headquarters can begin to prepare the Project Partnership Agreement (PPA) which will include a provision to utilize the authority of the 1925 Act for acceptance of non federal funds. The PPA will be prepared at Headquarters, rather than the District, in order to expedite the process.

As previously reported, in May, the House and Senate Appropriations Committees approved the Army Corps' Accelerated Funds Agreement for the Preconstruction, Engineering and Design (PED) stage of the project. Also during the month of May, the Army Corps' FY 2011 work plan was released. For the Port of Miami, the Corps included $1 million for completion of the PED and $200,000 for regular Operation and Maintenance needs in the Miami federal channel. These allocations by the Army Corps were significant, as neither had been included within the original FY 2011 Corps budget introduced in February of 2010. These initiatives on the part of the Corps are indicative of the agency's growing support for the deep dredge project. The $1 million allocation for the PED also precluded the need for the Seaport Department to advance non federal funds for the PED, as originally planned.

The Miami-Dade delegation members and Senator Nelson continue to be thoroughly supportive and intent to keep the deep dredge project on schedule for completion by 2014. We continue to work with delegation members and staff. Congresswoman Ileana Ros-Lehtinen (R-FL) held a delegation meeting in her office with the Assistant Secretary of the Army (for Civil Works), JoEllen Darcy. At that time, Secretary Darcy indicated that the deep dredge was a priority of the department.

Port of Miami Landside Infrastructure Improvements

On October 19, 2010, the Department of Transportation announced a $22.7 million grant to the Port of Miami for the proposed Intermodal and Rail Interconnection project at the

Port of Miami. As indicated above, this was one of the largest grant awards under the TIGER II program and only one of seven port grants nationwide.

The Department of Transportation released the TIGER III solicitation notice on June 30, 2011. Approximately $500 million is available for federal grant awards under the TIGER III program. During a webinar discussion, Deputy Assistant Secretary Szabat indicated that, as in previous TIGER solicitions, priority will be given to projects for which traditional sources of federal assistance are not available and that private/public partnerships will be encouraged.

WRDA 2011/Maritime Section of Transportation Bill

On July 7, 2011, Congressman John Mica (R-FL), Chairman of the House Transportation and Infrastructure Committee (T&I), introduced a summary of his Transportation Reauthorization bill.

As anticipated, the legislation includes a maritime title. One of the title's key provisions ensures that funds collected for the Harbor Maintenance Trust Fund (HMTF) are used as intended, which is accomplished by tying HMTF expenditures to revenues.

Staff is continuing to draft the maritime provisions at this time and introduction is expected by September. We anticipate that the introduced bill will include language which amends the cost share formula for construction channel depths greater than 45 feet. While current law provides for a local cost share of 60 percent (50 percent plus 10 percent over three years) for depths greater than 45 feet, the proposed amendment will change the depth threshold from 45 to 53 feet. This is one of the WRDA requests which have been submitted to the committee by the Miami Dade delegation on behalf of the Seaport Department.

<u>Water Resources Development Legislation (WRDA 2011)</u>
While T&I Committee Chairman Mica has indicated an interest in moving WRDA legislation later this year, a House WRDA bill would need to be restricted to policy provisions only, due to the moratorium on earmarks. While the Chair and Ranking members of the Senate Environment and Public Works (EPW) Committee, Barbara Boxer (D-CA) and James Inhofe (R-OK), have issued a request for Member projects for WRDA consideration, the deadline for submission continues to be extended. The most recent submission deadline is September 18th. While we prepared the submissions for the Port of Miami and submitted them to Senator Bill Nelson's (D-FL) office by his deadline of April 25, it is highly unlikely that the Senate EPW committee will move on

legislation this year (Senator Marco Rubio (R-FL) will not make WRDA requests). The Port of Miami WRDA requests are:

- Language which amends the cost sharing formula for construction of channel depths greater than 45 feet.

  In previous WRDA conferences, the Senate committee has opposed any change in the cost share. Therefore, we will work with the American Association of Port Authorities to generate support for the issue in the Senate. Assuming a minimum of two years of PED work, a cost share change in WRDA 2011 would be timely to impact the cost sharing on the Phase III construction project.

  As reported above, it is expected that the proposed amendment will be included within the Maritime title of the transportation reauthorization legislation, which is expected to be introduced by Chairman John Mica (R-FL) during the month of September.

- Language (report) which clarifies that Sec. 221(4) - Credit for In-Kind Contributions of the 2007 Water Resources Development Act is applicable for "in-kind" work accomplished by the Port during the preparation of the General Reevaluation Report (GRR).

  This integral in-kind contribution included research assistance and other planning efforts in consultation with the Army Corps. The amount of the credit is estimated at $400,000. The requested language reads:

  > ***Miami – Harbor, Miami-Dade County Florida: Credit for In- Kind Contributions***
  >
  > *Section 221(4) – Credit for In-kind Contributions of the Water Resources Development Act of 2007 shall be applicable for work undertaken by the Port of Miami during the preparation of the General Reevaluation Report (GRR) which resulted in the Report of the Chief of Engineers dated April 25, 2005.*

- Language which federalizes the Dodge Island Cut extension for maintenance dredging. This is important, should operation and maintenance (O&M) be needed in the future in this area of the Miami Harbor.

  On the above request, since "earmarks" are not allowed in House legislation this year, we submitted suggested language for consideration by staff of the House and Transportation Committee which establishes a process whereby non federal entities could apply to the Secretary of the Army Corps of Engineers to request consideration for federal assumption of maintenance. Staff are considering at this time.

WATER AND SEWER DEPARTMENT

The upcoming Senate WRDA bill will present an opportunity to secure authorizations for Water and Sewer Department priorities, and, along with the Seaport Department's WRDA requests, we prepared submissions to Senator Nelson's office for the following projects. As reported above, it is highly unlikely that the Senate EPW committee will move forward with WRDA legislation this year. We will certainly monitor for any activities for the second session of the 112th Congress.

$6.25 million for the Water Transmission Pipeline authorized in the Water Resources Development Act of 2007. Congress authorized this reclaimed water pipeline to receive up to $6.25 million in grant assistance from the Army Corps, pending an appropriation.

Authorization of $30 million for a pipeline to convey reclaimed water to the Florida Power and Light (FPL) complex at Turkey Point. The $120 million project would require a nine-mile pipeline from the South District Water Treatment Plant to the FPL complex. The reclaimed water would be used to cool a proposed power plant addition, and to replace cooling water for existing units.

Authorization of $1.5 million for a Water Main to convey reclaimed water to Fisher Island and Miami Beach. The $3 million project includes the construction of a 20-inch reclaimed water main from the Central District Wastewater Treatment Plant on Virginia Key to Fisher Island and Miami Beach. The reclaimed water, delivered through the 8,300 foot pipeline, would be used for irrigation replacing potable water from the Biscayne Aquifer.

Increase to $20 million the authorization for the South Miami-Dade Reuse Pipeline. Section 5158 (128) of the Water Resources Development Act of 2007 included the authorization of $6.25 million for the $357 million project to construct new water reuse treatment facilities and pipelines. This request will increase the federal participation level, in this important environmental project, to six percent.

We will continue to seek federal grant funding for the following project:

$5 million for the Pump Station Optimization Program (PSOP). The PSOP consists of the installation of a program addition to pump station Supervisory Control and Data Acquisition (SCADA) controls for each station. Five million is needed for program upgrades and monitoring well installations, upgrades to pump station control panels and level sensing equipment to allow for increased pressures, which result from increased wastewater elevations during the PSOP operations.

Chemical Facilities Security Bill
On June 29, 2011 the Senate Homeland Security and Governmental Affairs Committee reported out legislation which extends the Department of Homeland Security's program requiring high-risk chemical facilities to comply with federal security standards. The Chemical Facility Anti-Terrorism Standards program, or CFATS, sets 18 risk-based performance standards that high-risk chemical facilities must meet. The security standards cover a range of vulnerabilities, such as perimeter security, access control, theft, internal sabotage and cyber security.

Water Quality Standards/ Clean Water Cooperative Federalism Act
On July 13th, the full House passed H.R. 2018, sponsored by Congressman John Mica (R-FL) and Congressman Nick Rahall (D-WV). The bill gives the states the final say in decisions concerning water pollution regulation, wetlands protection and mountaintop-removal mining.

The bill is not likely to see final enactment, as it faces strong opposition in the Senate and faces a possible veto threat by the President.

TRANSPORTATION

FY 2012 Transportation Appropriations

Only a handful of appropriations bills have passed the House of Representatives, while none have passed the Senate. Since there will be limited time on the legislative calendar when congress returns from recess, FY 2012 appropriations legislation seems destined to end with an omnibus spending package.

The Budget Control Act of 2011, a summary of which we forwarded on August 1, 2011 and further detailed above, established a cap of $1.043 for FY 2012 discretionary spending, which is approximately $24 billion greater than the House-passed budget resolution known as "The Path to Prosperity."

Although it is unclear whether the additional funding provided by the debt limit package will be used to increase funding for transportation programs, it will likely ease the negotiations when the House and Senate begin the process of conferencing their respective appropriations bills in the coming months.

Now that the Senate Appropriations Committee has an established level of discretionary spending for FY 2012, they are likely to begin work on their bills upon returning from the August recess. The Senate had postponed any action on their appropriations bills until after the debt limit debate had concluded and have yet to announce the details of the Transportation, Housing and Urban Development (T-HUD) spending package. Similarly, the House Appropriations Committee announced on July 11, 2011, that the T-HUD Subcommittee's markup of the bill, previously scheduled for July 14, 2011, was indefinitely postponed.

Surface Transportation Reauthorization Bill

We recently responded to the County's concerns about the elimination of bicycling and walking programs (Safe Routes to Schools, Transportation Enhancements and Recreational Trails programs) from the House and Senate transportation authorization proposals. With regards to the overview summary of Chairman John Mica's (R-FL) proposal (unveiled on July 7, 2011), at this time it does appear that the bill will eliminate the "mandated set-aside" of funding for bicycling and walking programs, as the Chairman described it during the rollout press conference. He noted, however, that this would not affect a project's eligibility for funding, just that there would not be a federal guarantee for funds under these types of programs. According to the Chairman, this would provide states with greater flexibility to allocate funds to the most deserving projects. Senators Barbara Boxer (D-CA) and James Inhofe (R-OK), Chair and Ranking Republican of the Senate Environment and Public Works (EPW) Committee respectively, released an outline of their bill to extend the nation's highway programs, which does not appear to preserve dedicated funding for these programs. However, during an EPW hearing on July 21, 2011, Chairwoman Boxer confirmed that this dedicated funding remains in the draft bill, but she did not provide any additional details. Chairwoman Boxer had previously indicated that dedicated funding for these programs would be included, but it remains unclear whether these guarantees would be a casualty of compromises in the bipartisan Senate bill.

Despite his hope of moving forward with Committee action on his proposal prior to the August recess, Chairman Mica's plan will not be addressed until at least September when Congress returns to Washington. The Chairman's proposal would authorize $230 billion over six years from the Highway Trust Fund, providing $35 billion for surface transportation in FY 2012 and rising to $42 billion in 2017. This level of funding represents a nearly 33 percent cut below the current level of $51 billion and limits funding levels to the amount of revenue provided by the Fund. While the specific breakdown of funding to highway and transit programs has yet to be formally announced, the current share of 80/20 will be continued. Using this formula, the proposal would result in a cut from the FY 2011 enacted level of $10 billion to less than $7 billion.

In the Senate, Environment and Public Works (EPW) Committee Chairwoman Barbara Boxer (D-CA) announced on July 6, 2011that her Committee would be moving forward with a two-year $109 billion bill, which would reflect current funding levels plus inflation, and that she would be working with the Finance Committee to find funding to cover the bill's $12 billion shortfall. However, debate over the debt limit delayed action on the Committee's markup of the bill, which has yet to be introduced. The EPW Committee is likely to begin work on marking-up their reauthorization bill when they return from the August recess; however, the timing of this may be affected by the Senate Finance Committee's efforts to close the bill's funding shortfall.

The seventh short-term extension of SAFETEA-LU (H.R. 662, enacted in March, 2011) freezes funding at FY 2010 levels for highway, transit and highways safety programs through September 30, 2011, and Congress will need to agree on a long-term measure or pass another extension prior to the current extension's expiration.

National Infrastructure Investments (TIGER III)

On June 30, 2011, U.S. Department of Transportation Secretary Ray LaHood announced that approximately $527 million would be available for a third round of the Transportation Investment Generating Economic Recovery (TIGER) grant program, and we provided the County with the **Interim Notice of Funding Availability**. **We provided the County with a "blueprint" of the grant to assist with drafting an application if one will be submitted.**

TIGER III grants can be used for capital investments in surface transportation infrastructure and are to be awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region. Eligible projects include, but are not limited to: (1) highway or bridge projects eligible under title 23, United States Code; (2) public transportation projects eligible under chapter 53 of title 49, United States Code; (3) passenger and freight rail transportation projects; and (4) port infrastructure investments. Grants may not be less than $10 million and may not be greater than $200 million. TIGER III grants will require a 20 percent local cost share, although this requirement can be waived for "rural" entities.

The Department will begin accepting pre-applications on August 22, 2011 and they must be submitted by October 3, 2011 at 5:00 p.m. EST. Final applications must be submitted through grants.gov by October 31, 2011 at 5:00 p.m. EST.

ECONOMIC DEVELOPMENT

CDBG Grants

The House Appropriations Committee recently approved FY 2012 spending limits, known as 302(b)s, for each of the 12 Appropriations Subcommittees that amount to nearly $47 billion less in available funding for federal programs important to cities and towns. The Committee and each of the Subcommittees began considering legislation with these spending limits in a process Chairman Hal Rogers (R-KY) plans to complete by September 30, 2011. The spending limit released for the Transportation, Housing and Urban Development (THUD) Subcommittee is $7.7 billion less than the FY 2011 approved level. This subcommittee has CDBG grants within its jurisdiction. In light of the recent debt ceiling negotiations and correlated spending cuts, the Subcommittee postponed its scheduled July 12, 2011 markup of the THUD appropriations bill and a date has not yet been rescheduled. The US Conference of Mayors organized and developed a letter to be signed by Mayors urging for the full appropriation of funds to the CDBG/Home programs. Sending out of the letter has been delayed due to the postponement of the Subcommittee markup.

On the Senate side, Senators Patrick Leahy (D-VT) and Olympia Snowe (R-ME) coauthored a bipartisan *Dear Colleague Letter* urging the Senate THUD Subcommittee to fund CDBG at the highest level. This *Dear Colleague Letter* had the support of 28 Senators.

Build America Bonds

Building America Bonds, which were enacted as part of the American Recovery and Reinvestment Act of 2009, expired this past December and the president has reauthorized BABs in his FY 2012 budget. Three proposals to revive BABs with varying rebate levels have been introduced in the House of Representatives, H.R. 736, H.R. 747 and H.R. 11, but they all face opposition from the Republican majority, which says BABs rebates reward wasteful spending states. In the Senate, Senator Ron Wyden (D-OR) has introduced a bill, S. 722 Bipartisan Tax Fairness and Simplification Act, to make municipal bonds a "tax-credit." Instead of paying interest to investors that is exempt from taxation, the bonds would give buyers credits against their taxes. All of these measures have been read and referred to the House Ways & Means Committee or the Senate Finance Committee. As of the end of July all measures are still in their respective Committees.

ELECTIONS

There has been no further action on H.R.672 which would transfer most of the Election Assistance Commission's responsibilities to the Federal Election Commission. As you may remember the bill was defeated in June; however, the bill's sponsor, Rep. Gregg Harper (R-MS), has indicated that he hopes to bring the bill up again under a rule rather than suspension.

FY 2012 Budget Information

As reported previously, for FY2012 the Administration did not request funding for the Help America Vote Act grants to the states. The House Appropriations Committee reported out H.R. 2434, the FY2012 Financial Services and General Government Act on July 7, 2011.

Election Assistance Commission

FY2010 Actual	*FY2011 Actual*	*FY2012 Administration Request*	*H.R. 2434 House Mark*
$14,000,000	$16,300,000	$11,000,000	$6,858,000

OTHER LEGISLATION AND ISSUES OF INTEREST

Draft Internet Travel Tax Fairness Act

We continue to monitor the internet hotel tax issue. Of recent interest is the July 1 ruling by Federal Judge Orlando Garcia, of the U.S. District Court for the Western District of Texas in San Antonio, that the defendant companies are obligated under the cities' hotel tax ordinances to collect and pay hotel occupancy taxes on the total amount that hotel guests pay for rooms. Contrary to this requirement, the online travel companies had remitted taxes on the lower "wholesale" rate that they pay hotels for the right to sell rooms rather than the higher "retail" rate that online travel companies charge hotel guests. As a result of this practice, the court found that "virtually every transaction resulted in underpayment of the hotel occupancy tax." The Judge affirmed that the 173 Texas cities were due the original judgment of $20 million for damages as well as penalties and interest. This ruling received considerable coverage in the media including its possible impact on pending and future cases.