



MEMORANDUM

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: September 14, 2011

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution waiving competitive bidding and authorizing the Mayor to execute an agreement with FEC to oversee certain repairs and improvements to rail facilities at the Port of Miami

The accompanying resolution was prepared by the Seaport Department and placed on the agenda at the request of Prime Commissioner Rebeca Sosa.

R. A. Cuevas, Jr.
County Attorney

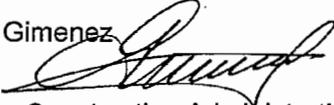
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Memorandum



Date: October 4, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Rail Bridge Construction Administration Agreement between Miami-Dade County
and the Florida East Coast Railway, LLC

RECOMMENDATION

It is recommended that the Board waive competitive bidding pursuant to Section 5.03(D) of the Charter and approve the attached Rail Bridge Construction Administration Agreement between Miami-Dade County and the Florida East Coast Railway, LLC (FEC). This contract will allow the FEC to oversee the restoration of the Port of Miami's rail bridge by a jointly selected third party design builder. The proposed resolution would also allow the Mayor to amend this Agreement, or enter into a new agreement, for the FEC to provide similar construction administration services for the development of the Port of Miami intermodal yard, all subject to ratification by the Board. Waiving competitive bidding to authorize this transaction is in the best interests of the County for the reasons set forth in this memorandum. This transaction is also authorized pursuant to Section 125.012 of the Florida Statutes which allows the County to enter into design and construction contracts with tenants, users and service providers of the Port.

SCOPE

The Port of Miami is located within District 5 – Commissioner Bruno A. Barreiro. The impact of this agenda item is countywide as the Port of Miami ("Port") is a regional asset and generates employment for residents throughout Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

The rail bridge restoration project is capped at \$6.6 million unless approval is granted by the Board for a higher authorization. It will be funded entirely from the \$22.767 million Department of Transportation (DOT) TIGER II Grant. The FEC will not charge for its construction administration services.

Should the Mayor amend this Agreement, or enter into a new agreement for the FEC to provide similar services for the development of a Port of Miami intermodal yard, such services will also be provided free of charge by the FEC. The total authorization for the entire On-Port rail project, which includes the bascule bridge restoration and intermodal rail yard development, will not exceed \$25.067 million. This figure equals the \$22.767 million DOT grant, plus \$2.3 million pledged by the Port to this project under the TIGER II Grant Agreement. Should the Administration seek to expend funds beyond this limit, it will have to request such authorization from the Board.

TRACK RECORD/MONITOR

The Port of Miami staff responsible for monitoring are Bill Johnson, Director, Dorian Valdes, Assistant Director, Capital Development, and Kevin Lynskey, Assistant Director for Business Initiatives.

BACKGROUND

The Port of Miami is undergoing its most significant cargo facility expansion in 30 years, putting in place three critical pieces of infrastructure that are timed with - and in anticipation of - the 2014 Panama Canal expansion. These assets all revolve around access: deeper waters to accommodate a new Post-Panamax class of mega-container vessel, twin tunnels to provide direct highway access, and an on-dock intermodal rail system to facilitate the movement of goods to distant markets and to better leverage the Hialeah Railyard as our 'inland port'.

The Port of Miami's intermodal and rail reconnection project was developed jointly with the FEC and resulted in a successful 2010 U.S Department of Transportation TIGER II grant. The project entails approximately \$49M in investment in on-Port (\$25M) and off-Port (\$24M million) improvements, and the Tiger II grant was made available to cover the costs of the on-Port Improvements.

The on-Port work entails three principal improvements. First, the existing single-leaf rail bascule bridge, which has been non-operational since Hurricane Wilma, will be rehabilitated and strengthened to accept higher loading consistent with current design standards and a double stacking operation. Second, a railroad intermodal yard consisting of new rail lines (3 or more parallel tracks of between 9,000 and 12,000 feet total in length) will be designed, constructed, and installed. Third, a gantry system (loading and related yard equipment) will be procured and installed, as well.

This proposed Agreement involves the first project element, the restoration and strengthening of the rail bascule bridge. It allows the FEC to serve as the Port's Representative in procuring on the County's behalf a design builder. The Port will retain substantial project control throughout the procurement, construction and acceptance phases. The Administration may enter into a subsequent agreement with the FEC for construction administration services for the second project element, the intermodal yard development. The remaining On-Port element, which entails the purchase of a gantry system and other supporting yard equipment, will be the subject of a future County procurement process. The Maritime Administration (MARAD), which is the agency of the U.S. Department of Transportation that supervises the Tiger II Grant, has approved of this collaborative arrangement and its continued approval will be sought throughout the course of this Agreement.

Justification for Procurement Approach

The on-Port rail improvements are the first element of what is to be a much larger strategic partnership between the Port and FEC where each recognizes that integrating operations will increase their respective long term asset values. The FEC is strategically important to the Port because New Panamax vessels derive their efficiency by stopping at fewer ports such that viable ports of call must provide access to hinterland markets and these markets are most effectively served by rail. Additionally, successful seaports are frequently linked to 'inland ports', which provide high-volume interchange capacity between truck and rail services. Inland ports like the Hialeah Railyard not only offer shippers transport efficiencies, but they act as reliever valves for land-constrained ports like the Port of Miami. While the

Port will (re)gain access to the national rail system and to a large inland facility, the FEC will be able to provide seamless service to distant markets and will be able to leverage their properties during the next phase of distribution facility development. It is likely that the Port and FEC will seek through future agreements to more fully integrate our South Florida assets.

In addition to these strategic considerations, the following additional practical considerations justify the Port's desire to have the FEC serve as its representative:

- **Time:** Though not a principal driver of our reasoning, we believe that three to six months is a reasonable estimate of potential time savings.
- **Cost:** The FEC will likely be able to leverage its volume rail purchasing to bring down certain acquisition costs.
- ~~**Expertise:** The FEC has offered to provide their construction management services without charge and they have significant expertise in the specialized field of bascule bridge rehabilitation. As Port rail assets will be operated by the FEC, they have significant incentive to see that they are constructed to in accordance with specifications and design criteria.~~
- **Operational Coordination:** The FEC and the Port have the intention of operating the usable portions of rail during the construction period. This will require coordination with the rail contractor. Having FEC involved with construction management should simplify this task. The 'operating' portion of the FEC Design, Procure, Construction Manage and Operate Agreement is envisioned as a simplified agreement set to expire upon final acceptance of the construction work. It is our intent to replace the operating agreement with a successor that is negotiated during the construction phase of the project.

Key provisions of the Proposed Agreement

The key provisions of the proposed "Rail Bridge Construction Administration Agreement" are as follows:

Scope of FEC's Services to the County: The FEC will serve as the County's representative to assist in the design, procurement, and construction management of the rehabilitation of the Port's existing single-leaf rail bascule bridge. FEC will not receive any compensation for these services, and will document for the County costs for direct payment from the selected third party contractors and material suppliers. The FEC shall supervise the Work in compliance with an attached construction schedule, the requirements of the Assumption and Grant Agreements, and all applicable laws.

Design standards for the Work: The Agreement contemplates a short term and long term design and construction standards for the Work with the objective of restoring railway service across the bridge for a minimum of twenty years following completion of the Work. The initial stage will restore the bridge to a Cooper E-60 live load standard (the "Restoration Repairs"). The second stage will improve the bridge to a Cooper E-80 live load standard (the "Overall Repairs").

Procurement of the Work: Based on the County's design criteria, FEC will procure on the County's behalf a design builder to provide these repairs. This procurement document will conform substantially with an attached draft and will contain the following key terms: (a) *Maximum Price* that includes separate pricing for the Restoration and the Overall Repairs; (b) *Best Value* whereby the Design Builder will be selected based a combination of quality and price criteria; (c) *The FEC and County approval rights* whereby they would jointly agree on certain aspects of the work; and (d) *Disadvantaged Business Enterprise Goal* whereby a minimum contract goal of 15% of the contract amount is established under 49 CFR Part 26.

Selection of design builder and Contract Execution: Responses to the procurement will be evaluated by a selection committee consisting of two representatives each from the County and FEC. The agreement for Design Build services shall be executed by the FEC and the design builder and is subject to the County's approval.

Compliance with all applicable procurement regulations: Any procurement under this Agreement will comply with those regulations applicable to the County's expenditure of federal funds as identified in the Grant Agreement, including but not limited to the following: (a) E-Verify system whereby the FEC and selected contractor will confirm any employee's immigration status; (b) Davis-Bacon Act whereby the FEC and selected contractor will comply with federal wage provisions under 40 U.S.C. 3141, *et seq.* (c) Payment and Performance Bond Requirements whereby the selected contractor shall post performance and payment bond satisfactory under Florida Statutes Section 255.05 and naming the FEC and the County. (d) Insurance Coverage whereby the selected contractor shall secure Comprehensive General Liability and Railroad General Liability Insurance not less than \$10,000,000 combined single limit per occurrence and naming the County as an additional insured; and (e) County Inspector General provisions whereby a specified amount is set aside in compliance of the County's oversight program.

Prosecution of the Work and Change Orders: The FEC shall be primarily responsible for oversight of the construction activities, and the County shall be entitled to inspect and approve the Work at specified intervals including (1) upon any payment requisition; (2) any change order or contract extra; (3) substantial completion, and (4) final completion. FEC shall not approve a payment requisition, change order request, or request for contract extra or approve substantial or final completion of the Work without the County's approval. The selected Design Builder will have primary responsibility for changes in the Work except that the County shall be responsible only for unforeseen site conditions. The FEC shall be responsible for changes which result from the FEC's failure to properly administer the Work.

County Payment of Costs: The County will reimburse FEC for the payment of the design builder. FEC's requisitions to the County are subject to inspection and audit, and no payment shall be made if there has been any material misrepresentations, pending litigation or default among other causes. This payment is subject to various reporting requirements, whereby the FEC and selected contractor shall abide by all applicable reporting requirements under the Grant Agreement, including maintaining accurate books and records for five years after completion of the Work. Also the County may audit all costs and expenses, and both the County & FEC may seek an reconciliation to the extent such audit reflects any under or over payments.

Acceptance of Work by the County, Interim Operation and Warranties: The County shall have the right to accept the Restoration Repairs and the Overall Repairs and receive all rights of against construction defects, including latent defects. Upon the County's acceptance of the Restoration Repairs, the parties anticipate that FEC shall be authorized to use the bascule bridge subject to a separate use agreement.

Termination: The County may terminate this Agreement for FEC's default if FEC has breached any term or obligation expressed herein and failed to cure such breach within thirty (30) calendar days.

Among the Agreement's miscellaneous provisions, the County has no liability for the exercise of its police power; the FEC will indemnify the County for its negligence including the discharge of hazardous materials; there are no claims for lost profits or consequential damages; the FEC may not assign the Agreement without County consent; the FEC is not the County's agent; and no property interests are conveyed.

Construction Challenges

As with all construction contracts, the Proposed Agreement presents several potential risks as follows:

Failure to timely coordinate: By having the FEC act as the Port's representative, there is a risk that they may fail to effectively coordinate their respective obligations such that the improvement of the bascule bridge may be delayed and impact the ability to timely develop the subsequent on-port facilities.

Cost Overruns and Change Orders: There is no guarantee that the responses received pursuant to the procurement documents will fall within the amounts allocated for this work. Also as noted above, any failure by the County and FEC to timely coordinate could also lead to claims of delay by the selected contractor.

Delays in Payment: Under this Agreement, FEC will first pay the contractor and then receive reimbursement from the County's Grant allocation. Given the required approval for these payments by the County and MARAD, there is a risk that payments may be delayed.



Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: October 4, 2011

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's , 3/5's , unanimous) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No.

RESOLUTION NO. _____

RESOLUTION WAIVING COMPETITIVE BIDDING AND AUTHORIZING THE MAYOR OR DESIGNEE TO EXECUTE AN AGREEMENT WITH FLORIDA EAST COAST RAILWAY, LLC ("FEC") TO ALLOW THE FEC TO OVERSEE ON THE COUNTY'S BEHALF CERTAIN REPAIRS AND IMPROVEMENTS TO RAIL FACILITIES AT THE PORT OF MIAMI

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy which is incorporated herein by reference, and

WHEREAS, Section 125.012 of the Florida Statutes authorizes the County to enter into contracts for design and construction of Port facilities with users and providers of the Port;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The foregoing recital is incorporated in this resolution and is approved.

Section 2. This Board hereby finds that it is in the best interest of the County to waive competitive bidding pursuant to Section 5.03(d) of the Charter to allow the County to contract with FEC, a user of the Port, to construct certain port improvements..

Section 3. The Board authorizes the County Mayor or County Mayor's designee to execute the Rail Bridge Construction Administration Agreement with the FEC (the "Rail Bridge Agreement") substantially in the terms of that attached to this resolution, and to exercise the provisions of the Rail Bridge Agreement, including but not limited to its termination provisions, except that any expenditure under the Rail Bridge Agreement for the current scope of the work which exceeds the amount of \$6.6 million dollars shall require the approval of this Board.

Section 4. The Board authorizes the County Mayor or County Mayor's designee to enter into such amendment of the Rail Bridge Agreement or such other contract or contracts with the FEC as may be necessary or appropriate to complete the bascule bridge restoration and intermodal rail yard developments at the Port which are the subject of the County's Tiger II Grant Application (the "Improvements"). No such agreement shall be in an amount which, taken together with other agreements entered into or necessary for completion of the Improvements, shall exceed the amounts budgeted for the Improvements. Any amendment or contract entered into pursuant to this authorization shall contain a termination for convenience clause and be subject to ratification by this Board.

The Prime Sponsor of the foregoing resolution is Commissioner Rebeca Sosa. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of October, 2011. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

HB

Hugo Benitez

RAIL BRIDGE CONSTRUCTION ADMINISTRATION AGREEMENT

between

FLORIDA EAST COAST RAILWAY, L.L.C. and MIAMI-DADE COUNTY

This Construction Administration Agreement ("Agreement") is entered into as of September __, 2011 by and between Miami-Dade County ("the County"), a political subdivision of the State of Florida, and the Florida East Coast Railway, L.L.C. ("the FEC").

WITNESSETH:

WHEREAS, the FEC currently owns, operates, and maintains hundreds of miles of railway facilities and rights of way within the State of Florida and within Miami-Dade County, including, without limitation, tracks and facilities connecting the FEC Hialeah Yard to the Dante B. Fascell Port of Miami-Dade rail bridge and on-Port rail facilities; and

WHEREAS, the County owns the Dante B. Fascell Port of Miami-Dade, a/k/a the County Seaport Department or Port of Miami ("the Port"), which serves as a vital economic engine to all of Miami-Dade County by, among other things, providing land, facilities and infrastructure utilized by the cruise and cargo industries to serve their substantial respective markets and customers; and

WHEREAS, the Federal Government awarded the County a Tiger II Grant to fund improvements to its facilities so that it can enhance transportation options such as double stacked container service for the Port's various cargo users; and

WHEREAS, the FEC and the County entered into a "Rail Improvement Grant and Limited Assumption Agreement," dated May 17, 2011 that better defines their respective obligations under the Tiger II Grant; and

WHEREAS, the County wishes to proceed with such On-Port improvements in a phased manner and the FEC has significant experience with the work associated with restoring the existing bascule bridge such that the County desires that the FEC administer such work on its behalf; and

WHEREAS, the Maritime Administration, which is an agency of the U.S. Department of Transportation that supervises the Tiger II Grant, has indicated its approval of such collaboration between the FEC and County;

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

1. Definitions. In addition to terms defined in the balance of this Agreement, the following capitalized terms shall have the definitions set forth below:

a. "Applicable Laws" shall mean all applicable federal, state, county, and local laws, rules, regulations, ordinances, codes, administrative, executive, implementing and other orders, governmental decrees, and tariffs, including, without limitation, all applicable statutes, rules, orders, regulations and other legal requirements listed or referenced in the Grant Agreement or any attachments or exhibits thereto.

b. "Assumption Agreement" shall mean that "Rail Improvement Grant and Limited Assumption Agreement," between the County and the FEC dated May 17, 2011.

c. "County Reporting Requirements" shall mean the sum of all reporting requirements set forth in the Grant Agreement applicable to the On-Port Project Elements.

d. "Agreement" shall mean this written Rail Bridge Construction Administration Agreement between the County and the FEC, which may be referred to herein as the "Agreement", "herein," "hereunder," or "hereof."

e. "Grant Agreement" shall mean the written grant agreement between the County and MARAD dated March 17, 2011, including all exhibits and attachments thereto, a copy of which is attached hereto for identification purposes only as Exhibit A.

f. "FRA" shall mean the Federal Railroad Administration, which is an agency of the United States Department of Transportation.

g. "MARAD" shall mean the Maritime Administration, which is an agency of the U.S. Department of Transportation.

h. "Selected contractors" shall mean the Design-Builder and the contractors selected jointly by the FEC and the County pursuant to the terms of this Agreement to perform the Work and acquire the Long-Lead Items.

i. "Work" as further defined herein, shall mean that portion of the On-Port Project Elements work associated with the bascule bridge as more particularly described in Section 6 below.

2. Recitals and Exhibits. The foregoing Recitals and the attached Exhibits are incorporated herein and made a part of this Agreement. Attachments hereto (other than exhibits) are for identification purposes only and are not incorporated herein.

3. Effectiveness This Agreement shall not become effective until (i) it is properly executed by both parties hereto and, in the case of the County, after approval hereof by a duly adopted and effective resolution of the Board of County Commissioners of the County and (ii) receipt by the Port Director of written approval of this Agreement by MARAD, whichever is

later (the "Effective Date"). In the event that this Agreement has not become effective by November 15, 2011 this Agreement shall be null and void and be of no further force or effect, and each party shall bear its own costs.

4. Term. This Agreement shall commence on the Effective Date and end on December 31, 2013 or the County's Final Acceptance of the Bridge Repairs whichever is earlier, except that the following obligations shall extend beyond this Term:

4.1 The FEC's obligations in connection with any claims against the Design Builder for warranties and latent defects;

4.2 The FEC's obligations relating to the conduct of any audit as provided in this Agreement;

4.3 Any obligation of the FEC to cooperate with the County in the prosecution of any claim against the Design-Builder or any selected contractors in connection with the Work; and

4.4 Any obligation of indemnity of the FEC to the extent the claims arise in connection with the Work.

5. Scope of the FEC's Services to the County. As will be fully described below, the FEC shall contract for and administer the design, procurement, and construction management of the rehabilitation of the Port's bascule (the "Work"). The FEC will not receive any compensation for these services, and will document for the County the appropriate costs for payment to the selected contractors.

5.1 County Ownership of the Work. The parties agree that the County owns the Work and subject to the terms and conditions of this Agreement shall be responsible for the cost of their improvement, maintenance, and replacement after Final Acceptance.

5.2 FEC Obligations as Project Representative. The FEC shall supervise the design and construction of the Work using due diligence for completion of the work in compliance with the attached Construction Schedule, the requirements of the Assumption Agreement, all Applicable Laws (including, as applicable, those regulations promulgated by the FRA related to railroad construction), all other applicable requirements hereof and all requirements included or arising from the Grant Agreement that relate or apply to any or all of the Work. Likewise the FEC shall ensure that any its agents, employees, contractors, subcontractors, and material suppliers (of all tiers) perform all work and tasks relating to or in connection with the Work in compliance with all such requirements.

6. Scope of the Work. The Work consists of the rehabilitation of the County's existing single-leaf rail bascule bridge connecting the Port of Miami which has been non-

operational since Hurricane Wilma, described in the TIGER II application submitted to U.S. DOT on August 20, 2010, as described below. The Work includes the design and rehabilitation of the port lead rail bascule bridge across the Intracoastal Waterway for the entire bridge infrastructure (endbent to endbent of the elevated railroad retaining walls), including bridge approaches on east and west, approximately 2,250' (+/-) for which the scope includes the structural repairs/strengthening, mechanical systems rehabilitation, electrical and control systems retrofit/upgrade and the railroad track system restoration.

7. Design standards for the Work. The County and the FEC agree that the short term and long term design and construction standards for the Work shall meet the objective of restoring railway service across the bridge for a minimum of twenty years following completion of the Work. The initial stage will restore the bridge to a Cooper E-60 live load standard (the "Restoration Repairs"). The FEC agrees that the Restoration Repairs must be performed and completed in accordance with the Schedule attached hereto as Exhibit B and are intended to commence operations of the bridge during a period that shall not extend beyond the date set forth in the attached schedule. The second stage will improve the bridge to a Cooper E-80 live load standard (the "Overall Repairs"). The Overall Repairs must be performed and completed in accordance with the Schedule attached hereto as Exhibit B and are intended to allow the use of the bridge for double stack containers not later than the date set forth in the attached schedule.

8. Procurement of the Work. As described below, the FEC will procure on the County's behalf and in compliance with Applicable Law a design builder to provide all required design and construction services as may be required to complete the Work ("the Design Builder"). In accordance with the timetable set out below, the County will deliver to the FEC a design criteria packet for the design and construction of this work, which will include both the Restoration Repairs and the Overall Repairs. The FEC will then publish and administer a procurement request for design build services based on the County's design criteria ("the Design-Build Procurement") which will provide for the selection of a Design Builder to perform the Restoration Repairs and the Overall Repairs in accordance with the schedule attached hereto as Exhibit B. The County and the FEC shall agree on final form of the Design-Build Procurement and which will contain following key terms:

Maximum Price: Given the known funding amount for these improvements, the procurement documents will require a maximum price. The solicitation shall request separate pricing for the Restoration Repairs and the Overall Repairs. Overall Repairs shall be requested in a manner which would allow the County the right to exercise the option of purchasing the Overall Repairs, in its sole discretion depending upon the cost and availability of funds to complete the Overall Repairs. The documents shall contain a preference for selection of the Design Builder whose design concept and pricing allows for the completion of Overall Repairs within the available budget. The County does not anticipate purchasing the Restoration Repairs without the Overall Repairs, and no Work shall be contracted or performed without the express written agreement of the County.

Best Value: To avoid certain quality issues, the RFP will establish quality and price selection criteria.

Port Approval Rights: The County shall have approval rights of these documents in the County's discretion, including but not limited to proposed design criteria and subsequent acceptance of the proposed Repair designs, federal grant agreement compliance and County-stipulated procurement practices. The County shall provide approval within 20 working days of complete documents being submitted by the FEC.

Disadvantaged Business Enterprise Goal: The RFP will set a set a minimum contract goal of 15% of the contract amount for disadvantaged business enterprises as contemplated under 49 CFR Part 26.

Construction Payment Bond: The selected Design Builder will post a sufficient bond naming the FEC and the County as dual obligees, securing payment and performance in the manner required under Florida Statutes Section 255.05. The FEC shall not give notice to proceed to the selected Design Builder without the bond being posted in the amount of the Work and otherwise in full satisfaction of the requirements of Section 255.05 and Applicable Law.

Port Point of Contact: The County will assign its Chief Engineer as the point of contact/coordinator between the County and the FEC during the duration of the Work.

Retainage: Payments to the Design Builder shall be subject to retainage in amounts authorized by Applicable Law.

Other Rights: The County will maintain field inspection, and final acceptance rights, as well as approval of any rail operating plan on Port property during the construction period for both projects. The FEC will be provided access to Port property in order to the Work.

Reimbursement Protocol: The County and the FEC will establish reimbursement rules and guidelines to conform with Federal grant requirements and with the stipulations set forth in this Agreement.

FEC Approval Rights: The FEC will have approval rights of the procurement documents in its discretion, including but not limited to the stipulations for design, federal grant agreement compliance and rail requirements. In the event that the County and the FEC do not approve the documents for the Design Build Procurement by December 15, 2011 this Agreement shall be null and void and each party shall bear its own costs.

In addition to procuring the Design-Builder, the parties agree that upon the County's express written consent, the FEC may procure certain items which must be integrated into the Work separately (the "Long-Lead Items"). The parties agree that the Long-Lead items shall be purchased competitively, in a manner acceptable to the County, and reimbursable under the Grant Agreement. The parties further agree that certain of the Long-Lead items may be purchased by the County on a sales tax exempt basis pursuant to Applicable Law. The purchase by the County of such items shall be subject to the approval of such purchase through a Technical Advisement Letter of the Department of Revenue of the State of Florida, and to such conditions as may be set forth in such technical advisement letter or otherwise required by Applicable Law. The FEC shall at all times have full responsibility for scheduling purchases, determining quantities, providing specifications, coordinating delivery dates, acceptance testing, and addressing any and all vendor performance issues in connection with the Long Lead Items. The separate purchase of the Long Lead Items as set forth in this Section shall not impair or otherwise affect the obligations of the Design-Builder to perform in accordance with the terms of the Design-Build Contract including its schedule obligations.

The parties shall jointly establish a date for transfer of site control over to the FEC, and the FEC agrees to be fully responsible for safeguarding the security of the site, and all personnel, materials and supplies on the site, commencing on that date.

9. Compliance with all applicable procurement regulations. The County and the FEC agree that all purchases under this Agreement, including the agreement with the Design Builder and all procurements which may occur under the agreement with the Design Builder will comply with those procurement regulations applicable to the County's expenditure of federal funds as identified in the Grant Agreement. These include but are not limited to the following provisions:

9.1 E-Verify system ("E-Verify"). The FEC agree to utilize the U.S. Department of Homeland Security's E-Verify, in accordance with the terms governing use of the system, to confirm the employment eligibility of all persons assigned or authorized to perform work pursuant to or in connection with this Agreement. If at any time the County is no longer required by Applicable Laws, written agreement, contract or any certification made by the County to comply with the foregoing E-Verify requirement for purposes of compliance with the Grant Agreement or other contracts to which it is a party, then any failure of the FEC to comply with such foregoing E-Verify obligation after such time shall not be considered a breach of this Agreement. Additionally, any Design Build, or other contracts procured under this Agreement shall require such contractor, consultant or firm to confirm the employment eligibility of all of its U.S. employees that will perform

work on the Work utilizing E-Verify. A copy of the FEC's E-Verify certification to the Florida Department of Transportation is attached hereto as Exhibit C.

9.2 Davis-Bacon Act. The FEC and any selected contractor will comply with the provisions of the Davis Bacon Act, 40 U.S.C. 3141, *et seq.*

9.3 Payment and Performance Bond Requirements Per Florida Statutes Section 255.05. Prior to commencing any work, the contractors procured by the FEC will be required to post sufficient performance and payment bond (or two separate bonds) satisfactory under Florida Statutes Section 255.05 and naming the FEC and the County as dual obligees. These bonds must insure full payment of any sub contractors on the work. This bond(s) shall be in a form acceptable to the County.

9.4 Insurance Obligations. Prior to commencing any work, the contractors procured by the FEC shall secure the following insurance coverages in the following amounts, and shall retain such coverages from insurance companies rated at least A or better by the Best rating service, with such policies to remain in place until the expiration or proper termination of this Agreement plus sixty-six months:

- a. Railroad General Liability Insurance on a comprehensive basis in an amount not less than \$10,000,000 combined single limit per occurrence for bodily injury, employee injury (FELA) and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage, only for obligations arising under this Agreement.

9.5 Schedule. The design build agreement shall require the Design Builder to submit a schedule in form and substance reasonably satisfactory to the parties, which conforms to the dates set forth in this Agreement for the construction activities. The Design Builder shall update the schedule at a minimum with each payment application.

10. Prosecution of the Work. The FEC shall be primarily responsible for oversight and inspection of the construction activities. The County shall be entitled to inspect and approve the Work as follows:

1. in connection with any payment requisition,
2. in connection with any change order or contract extra;
3. at the time of substantial completion of the Restoration Repairs and the Overall Repairs, and
4. at the time of final completion of the Restoration Repairs and the Overall Repairs.

The FEC agrees that it shall not approve a payment requisition, change order request, or request for contract extra or approve substantial or final completion of the Work without the County's written approval. The FEC shall provide to the County notice of any of the above inspections at least five (5) business days prior to the conduct of the inspection. The County may waive appearance in writing of any of the inspections relating to the payment requisitions set forth in paragraph 1 above but shall attend substantial completion and final completion inspections. The County shall have the right to perform the inspections set forth above both with respect to Restoration Repairs and Overall Repairs.

11. Selection of Design Builder and other suppliers; Execution of Contracts. The Design Builder shall be selected jointly by the County and the FEC with each party to assign two representatives to the selection committee for the project. The selection committee shall select the Design Builder based on the application of the criteria set forth in the agreed upon competitive selection document, including the preference for selecting the design build team whose design concept, and price, allows for the performance of the Overall Repairs within the monies available for the project. The agreement for design-build services and all agreements for the purchase of Long Lead Items shall comply with Applicable Law and shall contain those provisions which are necessary and appropriate to implement the requirements of this Agreement and the Grant Agreement. The agreement for Design Build services to perform the Work shall be executed by the FEC and the Design Builder subject to the express written approval of the County. In the event that the agreement for design-build services to perform the Work is not executed by November 15, 2011 this Agreement shall be null and void, and of no further force or effect, each party to bear its own costs. In addition, the County shall approve the execution of any and all contracts for the procurement of Long-Lead Items.

12. Timeline. Attached hereto as an Exhibit D is a schedule of the transactions contemplated by the parties pursuant to this Agreement. The parties understand that the funding for the Work is provided by the Grant Agreement with strict deadlines, and that time is of the essence.

13. Change Orders. The contract documents shall provide that the primary responsibility for changes in the Work shall rest with the Design Builder. To the extent that the changes are not the responsibility of the Design Builder under the contract documents, the same shall be borne by the County only to the extent that they result from unforeseen site conditions that could not have been reasonably anticipated by the Design Builder upon review of site conditions and performance of all surveys, tests, borings, and site investigations which would reasonably have been performed by the Design Builder in the exercise of professional design and construction practices or which were otherwise identified or specifically required in the contract documents. The FEC shall bear responsibility for any changes in the Work which result from the FEC's failure to properly administer or oversee the Work.

14. County Payment of Costs. To obtain payment from the County to the selected contractors, the FEC shall file its requisition on a form or forms prescribed by the County. The County shall pay the FEC on a reimbursement basis, upon proof reasonably satisfactory to the

County that the FEC has paid the Design Builder and its contractors and suppliers involved in the Work and that the same have released any and all claims that they may have against the FEC and/ or the County in connection with the Work. The FEC shall also provide the County, upon request, with any and all supporting documentation which the federal government may request as a condition of funding under the Grant Agreement. In the event that the work for which the FEC seeks reimbursement is the subject of claims, such amounts shall be reimbursable to the FEC only to the extent that the County in its discretion determines that adequate bonding is in place to secure the claim. Any and all reimbursements by the County to the FEC under this Agreement shall be contingent upon reimbursement by the federal government to the County under the Grant Agreement. To facilitate the County's review, the FEC agrees, upon request of the County, to promptly provide the County with access to any requested cost records, contracts, subcontracts, invoices, plans, specifications, audits, or other records that the County may request and, if requested, to provide the County with copies of same, and to otherwise cooperate with County to facilitate its efficient and thorough review of all Work improvements. However, notwithstanding any other provision of this Agreement, the County may elect by notice in writing not to make a payment on the Work if:

14.1 The FEC or the contractor shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

14.2 There is then pending litigation with respect to the performance by the FEC or the contractor of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement, or payments to or potentially due the County in connection with any portion of the Project;

14.3 The FEC or the contractor shall have taken any action pertaining to the Project which, under this Agreement, requires the approval of the County or has made related expenditures or incurred related obligations without having been advised by the County that same are approved;

14.4 There has been any violation of the conflict of interest provisions contained herein; or

14.5 The FEC or contractor has been determined by the County to be in default under any of the provisions of the Agreement.

14.6 If, after completion of the Project, any claim is made by the County resulting from an audit for work performed pursuant to this Agreement, the County may offset such amount from payments due the FEC under any other funding agreements if, upon demand, payment of the amount is not made within sixty (60) days to the County. Offsetting amounts by the County shall not be considered a breach of this Agreement. In the event such claims or potential offsets are not identified by County until after payment(s) have been made to the FEC pursuant to this Section, the FEC agrees to refund

to the County, upon its request, the full amount of any such post-payment County claims or offsets.

15. Reporting Requirements; County Audit Rights.

15.1 Reporting Requirements. The FEC and the selected contractors shall at all times comply with all applicable Reporting Requirements relating to the Work, including, without limitation, all reporting requirements set forth herein, in the Grant Agreement or any exhibits or attachments thereto, including any reporting requirements referenced therein. In addition, as to any information, documents, or reports required to be reported, compiled, tracked, prepared, or monitored by any of the above-referenced requirements, upon request by the County, the FEC and the selected contractors shall provide copies of same to the County (without cost or charge). This section shall survive the expiration or early termination of this Agreement until the expiration of a six month period after all Tiger grant funds are received by the County under the Grant Agreement and all closeout requirements and procedures under the Grant Agreement have been completed.

15.2 Books and Records. For a period of five (5) years after the completion of the last of the Work, or such longer period as may be required by applicable law (the "Books and Records Retention Period"), the FEC and the selected contractor shall maintain complete and accurate Work related records for inspection and copying by County, upon request, within the State of Florida. The FEC and the selected contractors shall keep and maintain their respective books and records for this Project separate and identifiable from its books and records for their other projects. This section shall survive the expiration or early termination of this Agreement until the expiration of a six month period commencing upon expiration of the Books and Records Retention Period.

15.3 County Audit Rights. The County, at its election and expense, including a County designee and/or inspector general, may audit Project costs and expenses, including the books and records of the FEC (and those of the FEC's consultants, contractors, and subcontractors) and the selected contractors relating to the Work, and, in the event the County elects to do so, the FEC and selected contractors shall provide their full cooperation in connection therewith, including making available all Project books and records for inspection and copying by Miami-Dade County and/or its designee(s) promptly upon request. The audit rights conferred herein shall expire one year from the expiration of the Books and Records Retention Period (the "Audit Period"). This section shall survive the expiration or early termination of this Agreement until the expiration of a six month period commencing upon expiration of the Books and Records Retention Period.

15.4 County & FEC Right to Reconciliation. Upon completion of a Project audit by the FEC or the County, any Party hereto may seek an reconciliation of payments to the extent such audit reflects any under or over payments, provided, however, such reconciliation can never result in the County paying any amounts in excess of any caps or limits otherwise contained in this Agreement. Such reconciliation must be sought

prior to the expiration of the Audit Period (defined in Section 6.3 above). This section shall survive the expiration or early termination of this Agreement until the expiration of a nine month period commencing upon expiration of the Books and Records Retention Period.

16. Acceptance of Work by the County. The FEC shall be primarily responsible for accepting the Restoration Repairs and the Overall Repairs. Notwithstanding, the County shall have the right to accept the Restoration Repairs and the Overall Repairs. Upon the County's acceptance of the Restoration Repairs, the FEC shall be authorized to use the bascule bridge for its intended purpose, subject to the terms of any applicable use agreement between the County and the FEC. Notwithstanding the County's acceptance of the Restoration Repairs, the FEC shall bear all risk of use and operation of the bascule bridge, all risk of loss, and all obligations to maintain and repair the bascule bridge through [date certain] (the "FEC Maintenance Period"), including but not limited to the obligation to assert any and all warranty claim against the Design Builder. The FEC agrees to use and operate the facilities through the FEC Maintenance Period, and at all times, in a manner that does not impede, interfere with, or otherwise affect the construction of the Overall Repairs, if the Overall Repairs are the subject of a contract approved pursuant to this Agreement. Following completion of the FEC Maintenance Period, or the County's acceptance of the Overall Repairs, whichever is later (the "Final Acceptance Date"), the obligation to maintain and repair the bascule bridge shall be with the County, subject to the terms and conditions of any applicable use agreement between the FEC and the County.

17. Warranties; obligations of the parties in the event of latent claims relation to the work. The FEC agrees to assign to the County, on the Final Acceptance Date, any and all warranties in connection with the Work, and any and all rights that the FEC may have against the Design Builder under the design build documents, including any and all rights that the FEC may have against the Design Builder for construction defects, including latent defects. The FEC agrees to fully cooperate with the County in the prosecution of any claims which the County may have against the Design Builder, or any manufacturer, subcontractor or supplier, for any construction defect, including any latent defect, at any time that such defect may be discovered/ This obligation shall extend beyond any stated term of this agreement.

18. No Operating Agreement. The parties agree that the use of the Port Railway facilities, including the use of the bascule bridge that is the subject of the Work, shall be the subject of a separate agreement of the parties, and the operation of the improved railway shall be fully subject to the terms and conditions of that separate contract.

19. Inspector General and Independent Private Sector Inspector General.

19.1 Office of Inspector General. The attention of the Parties is hereby directed to Section 2-1076 of the County Code establishing the Miami-Dade County Office of the Inspector General, which has the authority and power to investigate County affairs and review past, present and proposed County programs, accounts, projects, contracts and transactions.

19.2 Independent Private Sector Inspector General. Pursuant to Board Resolution No. R-516-96 and Administrative Order 3-20, the County may authorize, retain and coordinate the services of an independent private sector inspector general (“IPSIG”) for construction, capital development, procurement, retail, concession, lease and management agreements and/or contracts and other agreements exceeding \$1 million. The County has, at its expense, appointed the Inspector General as its IPSIG for the Work. The IPSIG may audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the FEC and the County in connection with project design and construction matters under this Agreement. The scope of services performed by the IPSIG may include, but are not limited to, monitoring and investigating compliance with contract specifications; project costs; and investigating and preventing corruption and fraud.

The IPSIG may perform its services at all levels of the construction contracting and procurement process under this Agreement, including but not limited to, project design, establishment of bid specifications, bid submittals, activities of the FEC and its officers, agents and employees. Upon fifteen (15) days’ written notice to the FEC from the IPSIG, the FEC shall make all requested non-proprietary project-related records and documents available to the IPSIG for inspection and copying.

The IPSIG shall have the right to examine all documents and records in the FEC’s possession, custody or control which, in the IPSIG’s reasonable judgment, pertain to the project design and performance of construction matters under this Agreement, including but not limited to, original estimate files; Change Order estimate files; worksheets; proposals and agreements from and with subcontractors and suppliers; all project- related correspondence, memoranda, instructions, financial documents, construction documents, bid and contract documents; back-charge documents; documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received; payroll and personnel records; and supporting documentation for the aforesaid documents and records.

The provisions in this Section shall apply to the FEC and its officers, agents and employees. The FEC shall incorporate the provisions in this Section in all subcontracts executed by the FEC in connection with the performance of this Agreement.

Nothing in this Section shall impair any independent right the FEC may grant to the County to conduct audit or investigative activities. The provisions in this Section are neither intended nor shall they be construed to impose any liability on the County by the FEC or third parties.

20. Coordination. The Parties have endeavored to exchange information and reach agreement on aspects of the Project that will require continued cooperation and coordination. The County and the FEC each agrees that it will provide reasonable and appropriate cooperation to assist in the performance of their respective obligations hereunder provided, however, such general duty to cooperate shall not be construed as requiring the County or the FEC to undertake

any actions or to assume any payment obligations in excess of those respective and limited payment and performance obligations set forth herein, and further, with respect to the County, this Section shall not limit or affect the inherent discretion of the County or Port in the exercise of either police power or other governmental authority, and FEC agrees to hold the County harmless from any exercise of the County's discretion in exercising such powers.

21. Termination. The County may terminate this Agreement for the FEC's default if the FEC has breached any term or obligation expressed herein and failed to cure such breach within thirty (30) calendar days after receipt of written notice thereof by the County. Such County termination rights shall supplement and be in addition to any other breach of contract remedies the County may have herein or at common law. The County may also terminate this agreement without cause at any time after first giving the FEC not less than thirty (30) days' written notice; however, in the event the County exercises such right to terminate this Agreement without cause then the FEC's then-future obligations under Sections 4.2, 4.6, and 4.12 hereof shall thereafter not apply. If the County terminates this Agreement without cause, then the County shall pay the FEC the verifiable direct construction costs incurred, after the commencement of this Agreement and up to the date of such termination notice in performing the Work, but shall in no event pay any lost profits of the FEC or the Design Builder or any of the selected contractors.

22. Miscellaneous.

- a. **No Liability for Exercise of Police Power.** Notwithstanding and prevailing over any contrary term or implication contained in this Agreement, nothing contained in this Agreement, including, without limitation, any County covenant or obligation that may be contained or implied herein to cooperate with, or provide good faith, diligent, reasonable, or other similar efforts to assist the FEC in fulfilling any of its obligations herein or otherwise, shall bind the County Commission, the Zoning Appeals Board, the Planning, Regulation and Department of Miami-Dade County, DERM, the Biscayne Bay Shoreline review Committee, the Building and Zoning Departments of Miami-Dade County or the City, the Seaport Department or any other County, City, federal, or state department, authority, committee or agency to grant, deny, or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld **or revoked** in the discretion of the County or other applicable governmental entities in the exercise of its police power; and the County shall be released by the FEC from any liability, responsibility, claims, consequential or other damages, or losses to the FEC, or to any third party(ies) resulting from denial, withholding, or revocation (in whole or in part) of any sought zoning or other changes, variances, permits, licenses, waivers, amendments, or approvals of any kind or nature whatsoever, or in connection with any existing ordinance or Port Tariff or the future enactment of any lawful County ordinance, or rule, order or tariff. This section shall survive the expiration or early termination of this Agreement until the expiration of a six

month period after all Tiger grant funds are received by the County under the Grant Agreement and all closeout requirements and procedures referenced in the Grant Agreement have been completed.

- b. **Notices.** All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing and shall be delivered or sent, with copies indicated, by personal delivery, certified mail, fax or overnight delivery service to all Parties as follows (or at such other address as a party shall specify by notice given pursuant to this Section):

To the FEC: Florida East Coast Railway, L.L.C.
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256
Attention: Law Department

To the County: County Mayor
Stephen P. Clark Center
111 N.W. 1st Street, Suite 2900
Miami, Florida 33128

and

Port Director
Port of Miami
1015 North America
Way, 2d Floor
Miami, Florida 33132

With a copy to: Office of the County Attorney
Stephen P. Clark Center
111 N.W. First Street,
Suite 2810
Miami, Florida 33128

Each notice shall be deemed given and received on the day of personal delivery or one business day after its delivery other than by personal delivery to the address for the respective party with the copies indicated, as provided in this Section.

- c. **Entire Agreement.** This Agreement and the documents that are exhibits to this Agreement contain the entire agreement between the Parties with respect to the subject matter herein, and, upon becoming effective in accordance with the terms of Section 3 hereof, supersede any and all other prior written or oral agreements between them with respect to such subject matter including that certain Assumption Agreement.

- d. **Amendment.** No amendment or modification of this Agreement shall be valid unless in writing and duly executed by all parties hereto and, as to the County, that same is first approved by a duly adopted and effective resolution of the Board of County Commissioners of Miami-Dade County.
- e. **Binding Effect.** This Agreement shall be binding upon the Parties and their respective representatives, successors and permitted assigns (if any).
- f. **Waiver.** Waiver by either Party of any breach of any provisions of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement. Further, in no event shall the making by the County of any payment to the FEC constitute or be construed as a waiver by the County of any breach of covenant, breach of contract or other default on the part of the FEC that may then exist, and the making of such payment by the County while any such default or breach may exist shall in no way impair or prejudice any right or remedy available to the County with respect to such breach or default, regardless of whether such County remedy arises from this Agreement or otherwise.
- g. **Captions.** The captions contained in this Agreement are inserted only as a matter of convenience or reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.
- h. **Construction.** In the construction of this Agreement, whether or not so expressed, words used in the singular or in the plural, respectively, include both the plural and the singular and the masculine, feminine and neuter genders include all other genders.
- i. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under Applicable Laws, but if any provision of this Agreement is held to be prohibited by or invalid under Applicable Laws, the Parties shall, to the extent possible, negotiate a revised provision which (a) complies with applicable law, (b) does not alter any of the substantive rights, obligations or liabilities of any party under this Agreement, (c) confers upon the Parties the benefits intended to be conferred by the invalid provision, and (d) is mutually acceptable to the Parties; and the remaining provisions of this Agreement, if capable of substantial performance, shall be enforced as if this Agreement was entered into without the invalid provision.
- j. **Absence of Third Party Beneficiaries.** Except as otherwise expressly provided below, nothing in this Agreement, express or implied, is intended to (a) confer upon any entity or person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement. The

FEC further acknowledges and agrees that it is not a third party beneficiary of or to the Grant Agreement.

- k. **Other Documents.** The Parties shall take all such actions and execute all such documents which may be reasonably necessary to carry out the purposes of this Agreement, whether or not specifically provided for in this Agreement; provided, however, that the Parties acknowledge that certain additional actions by MDC may require approval by the Board of County Commissioners and, to the extent such approval is required by law or ordinance, obtaining such approval shall be a condition to MDC's obligations under this Section, and provided further that no such action shall be required if it would require the County's payment or performance obligations hereunder to be increased.
- l. **Governing Law; Exclusive Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without application of conflicts of law principles. Venue for any judicial, administrative or other action to enforce or construe any term of this Agreement or arising from or relating to this Agreement shall lie exclusively in Miami-Dade County, Florida.
- m. **Counterparts.** This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be an original and which, taken together, shall be deemed to be one agreement.
- n. **Absence of County Warranties and Representations.** Neither the County nor any of its officers, employees, contractors, consultants or agents make, or have made, any express, implied, or other representations, promises, statements, opinions, or warranties, written or oral, with respect to the Off-Port Project Elements; their viability or constructability; their proposed designs; the qualifications of the FEC-selected designer or contractor; the suitability or adequacy of either's qualifications, experience, financial condition, design, intended construction schedule, equipment, materials, intended means and methods of construction; any as-built conditions at, under, or near the Port of Miami, or otherwise; and, to the extent any representations, warranties, opinions or other statements or communications are or were made, or are or were purported to have been made, they shall be deemed unauthorized, not sanctioned by the County, void *ab initio*, and may not be relied upon by the FEC, its employees, agents, consultants, or contractors, or any third parties for any purpose whatsoever. In entering into this Agreement the County makes no express or implied warranties or representations regarding the constructability of the Off-Port Project Elements, the qualifications or abilities of the FEC's selected designer(s) or contractor(s), the propriety, suitability or viability of such designer's proposed or actual designs, or the FEC's or its contractor's intended construction means and methods, or the suitability of its equipment.

- o. **Compliance with Applicable Laws.** At all times each of the Parties hereto shall perform all of their respective obligations hereunder in compliance with all Applicable Laws, building codes, ordinances, rules and regulations, administrative and other orders and tariffs.
- p. **FEC Obligations re Indemnity, Hold Harmless, and Duty to Defend.** The FEC shall indemnify, hold the County harmless from, and defend the County and all of its officers, agents, and employees from, for, and against any claims, demands, causes of action, damages, cost, charge, expense, or loss asserted against or incurred by the County that arise from or relate to, in whole or in part, any act, error, omission, negligent act or breach of this Agreement by the FEC, its employees, officers, agents, contractors, subcontractors (of any tier) or consultants (in aggregate, "Indemnitors") during the performance of this Agreement or arising from or relating to any work, act or duty undertaken in connection with the Work except to the limited extent such actions, demands, damages, or loss are caused by a County default hereunder, (each a "**Claim**" and collectively, "**Claims**") and excluding any Claim brought by any third party for death, bodily injury or property damage arising during the performance of this Agreement and arising from a collision between a train and vehicle, person or object ("Collision"). When the County receives a claim for damages that may have been caused by the FEC in the performance of services required under this Agreement, the County will forward a copy of such claim to the FEC within 30 days of Port's receipt thereof. Thereafter, the FEC and the County will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the County will determine whether to require the participation of the FEC in the defense of the claim or to require that the FEC defend the County in such claim (at the FEC's cost) as described in this section. The County's failure to promptly notify the FEC of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by the FEC. This section shall survive the expiration or early termination of this Agreement until the expiration or proper termination of this Agreement plus sixty-six months.
- q. **FEC Environmental Indemnity Obligations.** The FEC shall indemnify, hold the County harmless from, and defend the County, from, for, and against any claims, demands, causes of action, damages, penalties, fines, remediation costs, and other loss asserted against or incurred by the County that arise from or relate to, in whole or in part, any actions or omissions of the FEC or any of the respective Indemnitors on or in the vicinity of any County property that result in the violation of any Applicable Laws or otherwise result in the improper or unauthorized release of any hazardous or other regulated material or substance in, onto, beneath, or above any property, submerged lands, or waterways owned or within Miami-Dade County, Florida. This section shall survive the expiration or

early termination of this Agreement until the expiration or proper termination of this Agreement plus sixty-six months.

- r. **No Lost Profit or Consequential Damages.** The FEC and the County agree that claims for lost profits and other consequential damages for breach of this Agreement are hereby waived and that lost profit and other consequential damages are not available to any party hereto as an element of damages for breach of any duty or provision contained herein by the other party. This section shall survive the expiration or early termination of this Agreement until the expiration or proper termination of this Agreement plus sixty-six months.
- s. **No Assignment Permitted Without County Consent.** The FEC may not assign or otherwise transfer any rights conferred herein to any third part without the County's prior written consent.
- t. **Restrictions on Lobbying.** No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the County Commission, the judicial branch or any state agency.
- u. **Autonomy.** Both parties agree that this Agreement recognizes the autonomy of the contracting parties and implies no affiliation between the contracting parties. It is expressly understood and intended that the FEC is only a recipient of funding support and is not an agent or instrumentality of the County. Furthermore, the FEC's agents and employees are not agents or employees of the County.
- v. **No Property Interest Conveyed.** Notwithstanding and prevailing over any contrary term or potential implication contained herein, the parties hereto acknowledge and agree that nothing contained in this Agreement conveys, nor is intended to convey, any property interest to either party or any of their respective agents, employees, or contractors.
- w. **Designation of Contact Persons.** For purposes of this Agreement, each party shall designate a contact person to act as the official representative of such party until such party designates another in writing. Initially, the FEC designates its VP, Chief Engineer as its representative and the County designates as its representative (or principal point of contact) the Director of the Port of Miami.

[SIGNATURE PAGE TO FOLLOW]

Dated and executed by the Parties as of _____, 2011.

Attest:

MIAMI-DADE COUNTY, a political subdivision
of the State of Florida

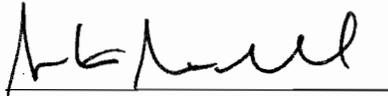
Name:

By: _____

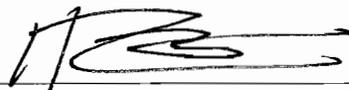
Carlos Gimenez
County Mayor

Attest:

FLORIDA EAST COAST RAILWAY, L.L.C.



Name:

By:  _____

Name: Husein Cumber

Title: Executive Vice President

9/8/11

Seal:

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION
WASHINGTON, DC 20590

GRANT AGREEMENT UNDER THE
TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND
RELATED AGENCIES APPROPRIATIONS ACT, 2010 (DIVISION A OF
THE CONSOLIDATED APPROPRIATIONS ACT, 2010 (PUB. L. 111- 117,
DEC. 16, 2009)), FOR THE NATIONAL INFRASTRUCTURE
INVESTMENTS DISCRETIONARY GRANT PROGRAM (TIGER II
DISCRETIONARY GRANTS)

MIAMI-DADE COUNTY

PORT OF MIAMI: INTERMODAL & RAIL RECONNECTION PROJECT

Grant Number: DTMA1G11006

Appropriation Data:

7069M01430 2011 1PMRAG-0006 0000150002 41010 61006600 - \$22,767,000

This Agreement (the "Agreement" or "Grant Agreement") reflects the selection of Miami-Dade County ("Grantee" or "Recipient") as a Recipient of a grant awarded under the provisions of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010 (Division A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117, Dec. 16, 2009)), regarding National Infrastructure Investments (the "Act"). The grant program under the Act is referred to as "TIGER II Discretionary Grants."

SECTION 1. TERMS AND CONDITIONS OF THE GRANT

- 1.1 This Agreement is entered into between United States Department of Transportation ("DOT" or the "Government") and the Grantee. This Agreement will be administered by The Maritime Administration (also referred to herein as "MARAD").
- 1.2 This Grant is made to the Grantee for the project as described in the Grantee's Technical Application (the "Project") and the negotiated provisions on the Project's material terms

and conditions, including the Project's scope, assurance/confirmation that all required funding has been obtained and committed, and the timeline for completion of the Project.

- 1.3 The Government, having reviewed and considered the Grantee's Technical Application and finding it acceptable, pursuant to the Act awards a TIGER II Discretionary Grant in the amount of Twenty-Two Million Seven Hundred Sixty-Seven Thousand Dollars (\$22,767,000.00), for the entire period of performance (referred to as the "Grant"). This Grant is the total not-to-exceed amount of funding that is being provided under this Agreement. Grantee certifies that not less than Nine Million Eight Hundred Sixty-One Thousand Four-Hundred Dollars (\$9,861,400.00) in non-Federal funds are committed to fund the Project in order to satisfy the Act's requirement that at least twenty percent (20%) of the Project's costs are funded by non-Federal sources. The Government's liability to make payments to the Grantee under this Grant Agreement is limited to those funds obligated by the Government under this Agreement as indicated herein and by any subsequent amendments agreed to in writing by all parties.
- 1.4 The Grantee agrees to abide and comply with all terms and conditions of this Agreement and to abide by, and comply with, all requirements as specified in the Exhibits and Attachments, identified in paragraphs 1.5 and 1.6, which are considered as integral parts of this Agreement. Each Exhibit and Attachment identified below is deemed to be incorporated by reference into this Agreement as is fully set out herein.
- 1.5 This Agreement shall also include the following Exhibits as integral parts hereof:

Exhibit A	Legislative Authority
Exhibit B	General Terms and Conditions
Exhibit C	Applicable Federal Laws and Regulations
Exhibit D	Grant Assurances
Exhibit E	Responsibility and Authority of the Grantee
Exhibit F	Reimbursement of Project Costs
Exhibit G	Grant Requirements and Contract Clauses
Exhibit H	Quarterly Progress Reports: Format and Content
- 1.6 This Grant Agreement shall also include the following Attachments as integral parts hereof:

Attachment A	Statement of Work
Attachment B	Project Schedule
Attachment C	Project Budget
Attachment D	Performance Measurement Table
- 1.7 In the case of any inconsistency or conflict between the specific provisions of this Grant Agreement, the Exhibits, and the Attachments, such inconsistency or conflict shall be resolved as follows: First, by giving preference to the specific provisions and terms of this Grant Agreement; second, by giving preference to the provisions and terms of the

Exhibits; and, finally by giving preference to the provisions and terms in the Attachments.

SECTION 2. GRANTEE AND PROJECT INFORMATION

Grantee, in accordance with the requirements of the TIGER II Discretionary Grant Program, provides the following information:

2.1 Project's Statement of Work Summary (for further information see Attachment A):

This Project is for the construction of the Port of Miami Intermodal & Rail Reconnection project. The portion of the overall Intermodal & Rail Reconstruction project being funded by the TIGER II Grant entails three principal improvements: (1) Bascule Bridge: the rehabilitation of the non-operational bascule bridge connecting the Port of Miami to the mainland, (2) Rail Lines and Gantry System: Construction of the on-port rail lines and gantry system. The improvements between 9,000 and 12,000 feet of rail will include an on-port lead track and at least three parallel tracks of approximately 3,000 feet each. This portion of the project will include a by-pass rail siding and required equipment for the on-port intermodal rail facility; and (3) Intermodal Apron: Construction of an intermodal apron running parallel to the full length of the tracks. The apron will include security fencing, a radiation portal and inspection infrastructure, and crossing improvements.

2.2 Project's Schedule Summary (for further information see Attachment B):

Planned Contract Award Date: July 6, 2011

Planned Construction Start Date: July 7, 2011

Planned Project Completion Date: December 31, 2013

2.3 Project's Budget Summary (for further information see Attachment C):

TIGER II Grant Funds and Additional Sources of Project Funds:

1) Grant Funds and Sources of Project Funds:

TIGER Discretionary Grant Amount:	\$22,767,000.00
Federal Other Share (if any):	\$0.00
State Share (if any):	\$6,558,472.00
Local Share (if any):	\$0.00
Other Share (if any):	\$19,982,328.00
Total Project Cost:	\$49,307,800.00

2.4 Project's State and Local Planning Requirements: The proposed Port Lead, including the necessary improvements, are to be included in the PORT OF MIAMI's 2035 Master Plan that is

being prepared and that will be a sub-element to the Miami-Dade County Comprehensive Development Master Plan (CDMP).

The PORT OF MIAMI Intermodal and Rail Reconnection Project is consistent with the Adopted Miami Dade County CDMP's PORT OF MIAMI Master Plan Sub-Element, Objective PM-2 stating that the Port shall expand its cargo-handling and related intermodal facilities to the optimum extent possible by the year 2015 to accommodate the projected cargo tonnages.

It is in particular agreement with Policy PM-2C that states: "The port shall construct additional railroad tracks, marshaling yards, intermodal logistic transfer facilities and other access improvements necessary for the efficient, competitive and rapid movement of cargo."

In addition, the CDMP identifies the existing rail corridors including the Port Lead and the PORT OF MIAMI Tracks, in the Freight Lines 2025.

In August of 2010 the City of Miami City Commission passed a Legislation Resolution supporting the National Infrastructure Investment Grant Application to bring freight rail service to the Port. Additionally the project has the support of the Florida Department of Transportation. The Miami Downtown Development Authority (DDA) also passed a resolution in support of the project. A public involvement program was also undertaken before submission of the TIGER II grant application and all relevant documents from the public involvement program were attached to the application.

Metropolitan Planning Organization (MPO)

The Metropolitan Planning Organization (MPO) for the Miami Urbanized Area Transportation Improvement Program (TIP) includes in the 5-Year Project Listing for 2008-2013, Approved May 22, 2008, under the Multimodal Port Development (Seaport) the following funded projects:

MPO Project No. 648880 Repair the Rail Bascule Bridge, repair railroad bridge to allow movement of containers by rail during off-peak hours, for the year 2008-2009 and a total amount of \$1,500,000 from FSJLD funds. The MPO's TIP also identifies under Part Three: Unfunded Priority Needs, Unfunded Summary Table, project SP 6433320 for the Intermodal Container Facility to provide off port storage for empty containers for a funding amount of \$42,93M; and project SP645680 in the amount of \$12M to expand railroad track in container yard. Additionally SP 644650 identified the unfunded need for a Rail Cargo Shuttle Service.

Miami-Dade County's MPO supports the Port of Miami Intermodal and Rail Reconnection Project. The MPO's Freight Transportation Advisory Committee (FTAC) passed Resolution #02-10 supporting the National Infrastructure Investment Act Application to bring Near-Dock Rail to the Port of Miami. The full MPO Board also passed a resolution in support of the project.

2.5 Project's Environmental Approvals and Processes:

National Environmental Policy Act (NEPA) Requirement Notwithstanding the Federal Railroad Administration NEPA approval described in this paragraph, the Grantee may not draw down funds or incur expenses under this Agreement unless and until the NEPA process has been completed, and approved by MARAD, with a determination of whether further review, documentation, and/or mitigation measures are required, and the Grantee has satisfied any requirements contained in MARAD's determination. Once these conditions have been successfully completed, the Agency will then notify the Grantee that the review is complete. At that time, the distribution and expenditure of TIGER II Discretionary Grant funds may be authorized.

Environmental Documentation Type, Titles and Date: Federal Railroad Administration Category Exclusion Worksheet dated August 23, 2010.

Environmental Decision Type and Date: The Federal Railroad Administration Category Exclusion Worksheet was submitted to MARAD for consideration in MARAD's NEPA review on November 24, 2010.

Name of Agency and Office Approving each Environmental Decision Document: Federal Railroad Administration Environmental Office

2.6 Grantee's and any Sub-Grantee's Dun and Bradstreet Information:

Dun and Bradstreet Data Universal Numbering System (DUNS) No. of the Grantee: 004148292

Name of any First-Tier Sub-Grantees or Sub-Recipients (if applicable – to be reported if/when identified. If not applicable please note is N/A): N/A

DUNS No. of First-Tier Sub-Grantee or Sub-Recipient (if applicable – to be reported if/when identified): N/A

2.7 Grantee's Designation of Official Contact (to whom all communications from Government will be addressed):

Mr. Kevin Lynskey
Assistant Director, Business Initiatives
Port of Miami
1015 North America Way
Miami, Florida 33132
Tel. 305 347 5503
Cel. 305 790 8566
KTL@Miamiidade.gov

SECTION 3. REPORTING REQUIREMENTS

Subject to the Paperwork Reduction Act, and consistent with the purposes of the TIGER II Discretionary Grant Program, Grantee agrees to collect data necessary to measure performance of the Project and to ensure accountability and transparency in Government spending. Grantee further agrees to submit periodic reports to the Government that contain data necessary to measure performance of the Project and to ensure accountability and transparency in Government spending.

- 3.1 **Project Outcomes and Performance Measurement Reports:** Grantee shall collect the data necessary to track and report on each of the performance measures identified in the Performance Measurement Table in Attachment D and report results of the data for each measure to the Government periodically, according to the reporting schedule identified in Attachment D. Furthermore, Grantee agrees to provide an initial Pre-project Report and a final Project Outcomes Report to the Government.
 - 3.1.1 The Pre-project Report shall consist of current baseline data for each of the performance measures specified in the Performance Measurement Table in Attachment D. The Pre-project Report shall include a detailed description of data sources, assumptions, variability, and the estimated level of precision for each measure. Grantee shall submit the report to the Government by **April 30, 2011**. Grantee shall represent that the data in the Pre-project Report is current as of **December 31, 2010**.
 - 3.1.2 Grantee shall submit interim Project Performance Measurement Reports to the Government for each of the performance measures specified in the Performance Measurement Table in Attachment D following Project completion. Grantee shall submit reports at each of the intervals identified for the duration of the time period specified in the Performance Measurement Table in Attachment D. Grantee shall represent that the data in each of the interim Project Performance Reports is current as of the final date of the reporting interval.
 - 3.1.3 The Project Outcomes Report shall consist of a narrative discussion detailing Project successes and/or the influence of external factors on Project expectations. Grantee shall submit the Project Outcomes Report to the Government by **April 30, 2017**, which includes an *ex post* examination of project effectiveness in relation to the Pre-project Report baselines. Grantee shall represent that the data in the Project Outcomes Report is current as of **December 31, 2016**.
 - 3.1.4 Grantee shall submit each report via email to each of the Government contacts identified in paragraph 3.5 of this Agreement and, additionally, to outcomes@dot.gov. The email shall reference and identify in the email subject line the TIGER Grant Number and provide the number of the Performance Measures report submitted, e.g., Re: [Modal] Tiger Grant No. 52 - Performance Measure Report No. 1 or 2 or 3, etc.

3.2 **Project Progress and Monitoring Reports:** Consistent with the purposes of the TIGER II Discretionary Grant Program, to ensure accountability and transparency in Government spending, the Grantee shall submit quarterly progress reports and the Federal Financial Report (SF-425) to the Government contacts listed in paragraph 3.2.1, or other system as designated by the Government, as set forth in Exhibit H, Quarterly Progress Reports: Format and Content, to the Government on a quarterly basis, beginning on the 20th of the first month of the calendar year quarter following the execution of the Agreement, and on the 20th of the first month of each calendar year quarter thereafter until completion of the Project. The initial report shall include a detailed description, and, where appropriate, drawings, of the items funded.

3.2.1 The Grantee shall submit all required reports and documents to the Government electronically, referencing the Grant number, at the following addresses:

Mr. Robert Bouchard
Grants Officer Technical Representative
MARAD
1200 New Jersey Ave, SE
MAR-510
Washington, DC 20590
202-366-5076
Robert.Bouchard@dot.gov

and

Ms. Judy Bowers
Grants Officer
1200 New Jersey Ave, SE
MAR-380, W28-201
Washington, DC 20590
202-366-1913
Judy.Bowers@dot.gov

and

Mr. Robert Mariner
Office of the Secretary of Transportation
1200 New Jersey Ave, SE
W84-224
Washington, DC 20590
202-366-8914
Robert.Mariner@dot.gov

3.3 **Annual Budget Review and Program Plan:** The Grantee shall submit an Annual Budget Review and Program Plan to the Government via e-mail 60 days prior to the end

of each Agreement year. The Annual Budget Review and Program Plan shall provide a detailed schedule of activities, estimate of specific performance objectives, include forecasted expenditures, and schedule of milestones for the upcoming Agreement year. If there are no proposed deviations from the Approved Detailed Project Budget, attached hereto as Attachment C, the Annual Budget Review shall contain a statement stating such. The Grantee will meet with the Government to discuss the Annual Budget Review and Program Plan. If there is an actual or projected project cost increase, the annual submittal should include a written plan for providing additional sources of funding to cover the project budget shortfall or supporting documentation of committed funds to cover the cost increase. To the extent the annual budget update deviates from the approved project budget by more than 10 percent, then work proposed under the Annual Budget Review and Program Plan shall not commence until written approval from the Government is received.

- 3.4 **Closeout Process:** Closeout occurs when all required project work and all administrative procedures described in Title 23 (or 49 C.F.R. part 18 or part 19, as applicable) are completed, and the Government notifies the Grantee and forwards the final Federal assistance payment, or when the Government acknowledges Grantee's remittance of the proper refund. Within 90 days of the Project completion date or termination by the Government, the Grantee agrees to submit a final Federal Financial Report (SF-425), a certification or summary of project expenses, and third-party audit reports.
- 3.5 All notices or information required by this Agreement should be addressed and sent to all the Government contacts as follows:

Mr. Robert Bouchard
Grants Officer Technical Representative
MARAD
1200 New Jersey Ave, SE
MAR-510
Washington, DC 20590
202-366-5076
Robert.Bouchard@dot.gov

Miss. Judy Bowers
Grants Officer
1200 New Jersey Ave, SE
MAR-380, W28-201
Washington, DC 20590
202-366-1913
Judy.Bowers@dot.gov

Mr. Robert Mariner
Office of the Secretary of Transportation
1200 New Jersey Ave, SE (W84-224)
Washington, DC 20590

202-366-8914
Robert.Mariner@dot.gov

SECTION 4. SPECIAL GRANT REQUIREMENTS

- 4.1 The Grantee may not draw down funds or incur expenses under this Agreement unless and until Grantee provides, and MARAD approves in writing, a fully-executed Assumption Agreement between the Grantee and Florida East Coast Railway, L.L.C.
- 4.2 The Grantee must obtain written approval from MARAD prior to any modification of the Assumption Agreement between the Grantee and Florida East Coast Railway, L.L.C. Failure to obtain MARAD's prior approval will result in a suspension of the Grantee's right to draw down funds under this Agreement from the effective date of such modification until receipt by the Grantee of MARAD's written approval of such modification.

SECTION 5. TERMINATION, EXPIRATION, AND MODIFICATION

- 5.1 Subject to terms set forth in this Agreement, the Government reserves, in its sole discretion, the right to terminate this Agreement and all of its obligations associated with this Agreement, unless otherwise agreed to in a signed writing between the Grantee and the Government, if any of the following occurs:
 - 5.1.1 The Grantee fails to obtain or provide any non-TIGER II Discretionary Grant contribution or alternatives approved by the Government as provided in this Agreement and in accordance with the Project Schedule (Attachment B);
 - 5.1.2 The Grantee fails to begin construction within 150 days of the execution of this Agreement.
 - 5.1.3 The Grantee fails to begin expenditure of Grant funds within 120 days of the execution of this Agreement.
 - 5.1.4 The Grantee fails to meet the conditions and obligations specified under this Agreement including, but not limited to, a material failure to comply with the Project Schedule (Attachment B) even if it is beyond the reasonable control of the Grantee; or
 - 5.1.5 The Government, in its sole discretion, determines that termination of the Agreement is in the public interest
- 5.2 Funds made available under this Agreement shall be obligated by Grantee on or before September 30, 2012. Funds made available under this Agreement, once obligated, are available for liquidation and adjustment through September 30, 2017, the "Grant

Termination Date." Unless otherwise agreed to by the parties, this Agreement shall terminate on the Grant Termination Date.

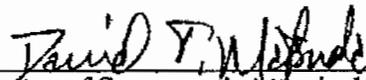
- 5.3 Either party (the Government or the Grantee) may seek to amend or modify this Agreement prior to the Grant Termination Date by written notice (formal letter) to the other party and in accordance with 49 C.F.R. parts 18.43 and 18.44. The Grant Agreement may be amended or modified only on the mutual written agreement by both parties.

SECTION 6. AWARD AND EXECUTION OF GRANT AGREEMENT

There are three (3) identical counterparts of this Agreement in hard copy; each counterpart is to be fully signed in writing by the parties and each counterpart is deemed to be an original writing having identical legal effect. Upon final execution of this Agreement by the Grantee, the effective date shall be the date the Government awarded funding under this Agreement as set forth below. When signed and dated by the authorized official of the Government, this instrument will constitute an Award under the Act.

EXECUTION BY THE GOVERNMENT

Executed this 17th day of March, 2011.



Signature of Government's Authorized Representative
Maritime Administration

David T. Matsuda

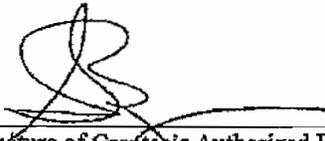
Name of Government's Authorized Representative
Maritime Administrator

Title

EXECUTION BY THE GRANTEE/RECIPIENT

By signature below, the Grantee/Recipient acknowledges that it accepts and agrees to be bound by this Agreement.

Executed this 15th day of March, 2011.



Signature of Grantee's Authorized Representative

George Burgess

Name of Grantee's Authorized Representative

County Manager, Miami-Dade

Title

**ATTACHMENT A
STATEMENT OF WORK**

The portion of the overall Intermodal & Rail Reconnection project being funded by the TIGER II Grant entails three principal on-Port improvements:

- Bascule Bridge: The rehabilitation of the non-operational bascule bridge connecting the Port of Miami to the mainland;
- Rail Lines and Gantry System: Construction of the on-port rail lines and gantry system. The improvements of between 9,000 and 12,000 feet of rail will include an on-port lead track and three or more parallel tracks of approximately 3,000 feet each. This portion of the project will include a by-pass rail siding and required equipment for the on-port intermodal rail facility;
- Intermodal Apron: Construction of an intermodal apron running parallel to the full length of the tracks. The apron will include security fencing, a radiation portal and inspection infrastructure, and crossing improvements.

In addition to the on-Port Project improvement elements listed above, which on-Port elements will be funded by the TIGER II Grant, the Florida East Coast Railway, LLC ("FEC"), with financial assistance from the State of Florida Department of Transportation (FDOT), will be making major off-Port improvements to the FEC's 4.4 mile port rail lead line. This 4.4 mile Port Lead is an existing off-port rail line that runs directly to the Port on the FEC owned right-of-way. The off-Port elements are an integral part of the Project in order to meet the matching requirements of Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010 (Division A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117, Dec. 16, 2009)), and are subject to the terms and conditions of the TIGER II Grant Agreement executed between the Port of Miami and the United States Department of Transportation.

The improvements to the (off-Port) Port Lead, to be undertaken by the FEC with the assistance of FDOT, include the reconstruction of all the tracks. The existing track is 90-115 lb rail (the number represents the weight of the rail as measured by a yard in length). New 136 lb rail and ties will be used and the existing rail lines will be removed and recycled. The detailed scope of services includes: existing track removal; site preparation (clearing and grading); track construction; and construction of Quiet Zones at roadway intersections. The contemplated scope of work will also include reconstruction of the southwest quadrant connection at Little River which will allow trains to move from the Port to the FEC Hialeah Yard without stopping and making reverse moves as presently required.

Reconstruction of the tracks will provide the capability for trains to operate at speeds of up to 30 miles-per-hour over the corridor. The relocation of tracks associated with this project will allow for the potential introduction of passenger rail within the same rail corridor. The project will upgrade existing active grade-crossing equipment (gates and flashers) to the extent that a

municipality could successfully petition the FRA for a waiver to establish a "Quiet Zone" in the corridor. The City of Miami has already contacted the FRA to begin the application process. The introduction of quiet zones will enhance the livability and sustainability of nearby neighborhoods and businesses.

The rail and bridge improvements will restore the freight rail connection between the Port and the Florida East Coast Railway rail yard located in Hialeah, Florida. This will allow Port of Miami freight to access the national railway system via FEC's rail connections in Jacksonville, Florida.

TIGER II Grant Award Components

The detailed scope of work to be carried out on-Port with the TIGER II Discretionary Grant Award is as follows:

Rehabilitation of Existing Rail Bascule Bridge and Approaches

An existing rail bascule bridge allows rail access to Dodge Island, site of the Port of Miami. The rail bascule bridge can only be operated manually because of electrical control system and mechanical deficiencies. There are substantial repairs needed to the electrical systems, mechanical system, the switching system, repainting and minor structural repairs. The detailed scope of services includes:

- **Electrical Repairs:** Operations Control Console separation from vehicular bridge; Electrical equipment cabinet replacement; wayside signal light; Lift Rail Detector Switch, Lock Bar Detector Switches; Wireless Transceiver System; Motors and Wiring.
- **Mechanical Repairs:** Clean and repaint all exposed equipment such as the Hopkins frame, input and output shafts, gearbox, linkage arms, end lock bars and brackets and other essential components; replacement of both 30 hp span motors; replace both service and emergency drum brakes with new drum brakes and covers; realign and lubricate the open gears; flush and refill the gear boxes with new oil and send the old oil to be tested; replace the oil level sight glass; purge all bearings and bushings of old grease and lubricate with new grease; adjust, tighten, align and lubricate all chain drives and refurbish the 3 hp motor and brake for the end lock.
- **Structural Repairs:** Repaint bridge to address active surface corrosion (bridge has been tested for lead paint); blast and paint steel structures; contain lead abatement as required; repair concrete spalls and cracks on bridge abutment; and repair concrete spalls on beams and columns as required.

Construction of Rail Lines and Gantry System

Existing rail lines will be removed and a new Intermodal Yard System will be constructed. The Intermodal Yard will be served by the single track that comes across the bridge and

three (3) or more tracks parallel to each other will be constructed within the Port Intermodal Yard.

Three or more tracks of approximately 3,000 feet will be constructed. Apron areas will be designed to allow simultaneous loading of multiple trains. An additional by-pass siding will provide for the efficient movement of locomotives.

- Access Rail Track will include the installation of a railroad switch to the three tracks within the Yard;
- Loading system comprised of equipment to transfers containers to and from trains.

Construction of an Intermodal Apron and Crossing Improvements

The total space to be occupied by the Intermodal Yard will be approximately 600,000 square feet (13.77 acres). The detailed scope of services includes:

- Removal and replacement of existing pavement; removal of existing rail line; proposed tracks R.O.W. bed preparation; demolition or removal (as needed) of certain existing structures;
- Construction of Apron Area - filling and grading to create a stable base for the train tracks and the apron area. The apron area will parallel the tracks;
- Construction of drainage structures and placement of asphalt paving in the apron area. Installation of lights, fencing and gates. For security purposes, the facility will include radiation portal(s) and Customs and Border Patrol secondary inspection infrastructure, as required.

**ATTACHMENT C
PROJECT BUDGET**

Below are the summary revised construction costs for the On-Port Project Elements:

Summary of TIGER II Discretionary Grant Project Construction Costs (for On-Port Elements)

Item

Bridge Reconstruction	\$ 3,500,000
Port Intermodal Rail Line Tracks and Gantry System	\$ 9,567,000
Port Rail Intermodal Apron	<u>\$12,000,000</u>
Total (On-Port Improvement Costs)	\$25,067,000

Summary of Funding Sources for On-Port Elements:

TIGER II Discretionary Grant	\$22,767,000
Port of Miami Funding =	<u>\$ 2,300,000</u>
Total (On-Port Improvement Funds)	\$25,067,000

Below are the summary revised construction costs for the Off-Port Project Elements to be designed, constructed, and maintained by the FEC:

Reconstruction and Relocation of FEC Port Lead & Construction of Southwest Connection at Little River	\$21,840,800
FEC Hialeah Rail Yard Track Reconfiguration and Improvements	<u>\$ 2,400,000</u>
Total (Off-Port Improvement Costs)	\$24,240,800
Total (Off-Port Improvement Funds – from FEC)	\$24,240,800

TOTAL ON-PORT AND OFF-PORT **\$49,307,800**

**ATTACHMENT D
PERFORMANCE MEASUREMENT TABLE**

Performance measures include the number of truck trips removed from Miami Interstate Highway system as containers are moved from the Port of Miami to Florida East Coast (FEC) Intermodal Yard in Hialeah, Florida. This is a 17 mile trip. The performance measures will be carried out in both rail cars entering and leaving the Port of Miami as well as the number of Twenty Foot Equivalent Units (TEU's) that are transferred via rail.

Performance Measures will be executed for a period of three (3) years beginning after project completion and submitted to USDOT on a quarterly basis. The Performance Measures are outlined in Table 1: Performance Measurement Table.

Table 1: Performance Measurement Table

Number of rail cars per month	The monthly number of rail cars using the Port of Miami Intermodal Yard System on a monthly basis.	Quarterly	Pre-Project (Baseline) Measurement: Before project construction. Performance Measurement: Quarterly reports for a period of 3 years, beginning after project completion.
Monthly number of Twenty Foot Equivalent Units (TEU's) moved using the Port Intermodal Yard System	The monthly number of Twenty Foot Equivalent Units (TEU's) moved by rail at the Port of Miami Intermodal Yard.	Quarterly	Pre-Project (Baseline) Measurement: Before project construction. (Performance Measurement): Quarterly reports for a period of 3 years, beginning after project completion.
Number of truck trips at FEC's Rail Yard in Hialeah, Florida	The monthly number of truck trips to FEC's Rail Yard in Hialeah, Florida	Quarterly	Pre-Project (Baseline) Measurement: Before project construction. (Performance Measurement):

			Quarterly reports for a period of 3 years, beginning after project completion.
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EXHIBIT A LEGISLATIVE AUTHORITY

1. The U.S. Department of Transportation (DOT or Government) is authorized to award \$600 million in TIGER II Discretionary Grants pursuant to Title I (Department of Transportation) of Division A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117, Dec. 16, 2009) (the "Act"). This appropriation is similar, but not identical to the appropriation for the Transportation Investment Generating Economic Recovery, or "TIGER Discretionary Grant", program authorized and implemented pursuant to the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"). Because of the similarity in program structure and objectives, DOT is referring to the grants for National Infrastructure Investments under the Act as "TIGER II Discretionary Grants".
2. The grant awards made under Tiger II Discretionary Grant program are in full compliance with the Act, the Interim Notice of Funding Availability (75 FR 21695, 26 April 2010) and the Final Notice of Funding Availability (75 FR 30460, 1 June 2010).
3. As with the TIGER program, funds for the TIGER II program are being awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area or a region. Additionally, the awards ensure an equitable geographic distribution of funds, an appropriate balance in addressing the needs of urban and rural areas, and the investment in a variety of transportation modes.
4. The Act specifies that not less than \$140 million of the funds provided for TIGER II Discretionary Grants be used for projects located in rural areas.

EXHIBIT B
GENERAL TERMS AND CONDITIONS

1. The Grantee shall be responsible for ensuring that the Project is financed, constructed, operated and maintained in accordance with this Agreement and in compliance with all applicable Federal laws, regulations and policies.
2. The maximum obligation of the Government payable under this award, hereinafter referred to as the "Grant," shall be the award as specified in section 1.3 of the Agreement, subject to all the terms and conditions in this Agreement and of all other Federal grant awards funding the Project. Once the Government issues its approval of the expenditure of TIGER II Discretionary Grant funds for a particular Project or segment of the Project, funding will then be authorized.
3. Payment of the Grant will be made pursuant to and in accordance with 49 C.F.R. Parts 18 and 19 (to the extent that a non-governmental grantee receives grant funding), and the provisions of such regulations and procedures as the Government may prescribe. Final determination of the Grant's expenditures may be based upon a final review of the total amount of agreed project costs and settlement will be made for adjustments to the Grant amount in accordance with applicable government-wide cost principles under 2 C.F.R. 225 (State and Local Governments); 2 C.F.R. 215 (Higher Education Institutions); and 2 C.F.R. 230 (Non-Profit Organizations). If there are any differences between the requirements of 49 C.F.R. Parts 18 and 19.
4. The Grantee agrees to notify the Government within 14 calendar days of any change in circumstances or commitments that adversely affect the Grantee's plan to complete the Project as is described in Attachments A-C to this Agreement. In its notification, the Grantee shall advise the Government of what actions it has taken or plans to take to ensure completion of the Project and shall reaffirm its commitment to the Government as set forth in this Agreement. The Government is not responsible for any funding shortfalls regarding the non-TIGER II Discretionary Grant amount share. The TIGER II Discretionary Grant Amount will remain unchanged. (See Section 5 of the Agreement regarding termination).
5. The Grantee agrees to carry out and complete the Project without undue delays and in accordance with the terms hereof, including the Project Schedule set out in Attachment B, and such regulations and procedures as the Government may prescribe.
6. The Grantee has submitted a request for Federal assistance, hereinafter referred to as the "Technical Application," hereby incorporated by reference into this Agreement and the Government is relying upon the Grantee's assurances, certifications, and other representations made in the Technical Application, or any other related documents submitted to the Government; and, in its submissions, the Grantee has demonstrated justification for the Project, and has demonstrated the financial and technical feasibility of the Project, including the ability to start construction quickly upon receipt of the Grant; to expend Grant funds once construction starts; and to receive all necessary environmental, state and local planning, and legislative approvals necessary for the Project to proceed in accordance with the Project Schedule.

7. The Government has determined that the Project is an Eligible Project as it provides a highway or bridge project, public transportation project, passenger or freight rail transportation project, or a port infrastructure project, or other such eligible project as authorized, and that the Project will have a significant impact on the Nation, a metropolitan area, or a region. The Government has determined that Grantee should receive the award of a Grant based on a review of the Project's Technical Application, as it meets the requirements specified in the Act and the June 1, 2010, *Federal Register* Notice, "Notice of Funding Availability for the Department of Transportation's National Infrastructure Investments Under the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for 2010" (Available at http://www.dot.gov/docs/TIGER_II_Discretionary_Grant_Program_Final_Notice_1_June_2010.pdf)

8. The Grantee will be monitored periodically by the Government, both programmatically and financially, to ensure that the Project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring will involve the review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. The Grantee is responsible for monitoring award activities, to include sub-awards, to provide reasonable assurance that the Federal award is administered in compliance with applicable requirements. Responsibilities include the accounting of receipts and expenditures, cash management, maintaining adequate financial records, and refunding disallowed expenditures.

9. The Grantee agrees to take all steps, including initiating litigation, if necessary, to recover Federal funds if the Government determines, after consultation with the Grantee, that such funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner in undertaking the Project. For the purposes of this Agreement, the term "Federal funds" means funds however used or disbursed by the Grantee that were originally paid pursuant to the Agreement.

10. The Grantee agrees to retain all documents relevant to the Grant award for a period of three years from completion of the Project and receipt of final reimbursement from the Government. The Grantee agrees to furnish the Government, upon request, all documents and records pertaining to the determination of the Grant amount or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Grantee, in court or otherwise, involving the recovery of such Grant amount shall be approved in advance by the Government.

11. The Government is subject to the Freedom of Information Act (FOIA). The Grantee should therefore be aware that all applications and related materials submitted by the Grantee related to this Agreement will become agency records and thus are subject to FOIA and to public release through individual FOIA requests.

12. The Government shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this Agreement.

13. The Grantee agrees to: 1) promote the creation of job opportunities for low-income workers through the use of best practice hiring programs and utilization of apprenticeship (including pre-apprenticeship) programs; (2) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses; (3) make effective use of community-based organizations in connecting low income or unemployed workers with economic opportunities; (4) give priority consideration to doing business under the grant with firms that have a sound track record on labor practices and compliance with Federal laws ensuring that American workers are safe and treated fairly; and (5) implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race gender, age, disability, and national origin – benefit from the Recovery Act.

An example of a best practice under (5) would be to incorporate key elements of the Department's disadvantaged business enterprise (DBE) program (see 49 CFR Part 26) in contracts under this grant. This practice would involve setting a DBE contract goal on contracts under this grant that have subcontracting possibilities. The goal would be to reflect the amount of DBE participation on the contract that the recipient would expect to obtain absent the effects of discrimination and consistent with the availability of certified DBE firms to perform work under the contract. When a DBE contract goal has been established by a recipient, the contract would be awarded only to a bidder/offeror who has met or made documented, good faith efforts to reach the goal. Good faith efforts are defined as "efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement." Recipients must provide the Department a plan for incorporating the above best practice into its implementation of the grant within 30 days following execution of this grant agreement. If the recipient is not able to substantially incorporate Part 26 elements in accordance with the above-described best practice, the recipient agrees to provide the Department with a written explanation and an alternative program for ensuring the nondiscriminatory use of contractors owned and controlled by socially and economically disadvantaged individuals.

14. The Government encourages the Grantee and the State Department of Transportation acting as the limited agent on behalf of the Grantee (if applicable), to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies that bar text messaging while driving company-owned or –rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official government business or when performing any work for or on behalf of the Government. See Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 "Text Messaging While Driving", Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP-2010-01, Feb. 2, 2010, available at http://www.dot.gov/ost/m60/Financial_Assistance_Management_Home/FAPL_2010-01.pdf).

This includes, but is not limited to, the Grantee and the State Department of Transportation acting as the limited agent on behalf of the Grantee:

- a) considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;
 - b) conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and
 - c) encouraging voluntary compliance with the agency's text messaging policy while off duty.
- The Grantee is encouraged to insert the substance of this clause in all assistance awards.

15. The Grantee agrees that it will comply with the provisions of the Davis-Bacon Act, 40 U.S.C. 3141, et seq., as is specified in the Act.

EXHIBIT C

APPLICABLE FEDERAL LAWS AND REGULATIONS

By entering into the Agreement the Grantee assures and certifies, with respect to this grant, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this project. Performance under this Agreement shall be governed by and in compliance with the following requirements as applicable to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to the Agreement include but are not limited to the following:

General Federal Legislation

- a. Davis-Bacon Act - 40 U.S.C. 3141, et seq.
- b. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- c. Hatch Act - 5 U.S.C. 1501, et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title - 42 U.S.C. 4601, et seq.
- e. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470f
- f. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469a through 469c.
- g. Native American Graves Protection and Repatriation Act - 25 U.S.C. 3001, et seq.
- h. Clean Air Act, P.L. 90-148, as amended
- i. Section 404 of the Clean Water Act, as amended 33 U.S.C. 1251, et seq.
- j. Section 7 of the Endangered Species Act, P.L. 93-205, as amended.
- k. Coastal Zone Management Act, P.L. 92-583, as amended.
- l. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a
- m. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- n. American Indian Religious Freedom Act, P.L. 95-341, as amended
- o. Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101, et seq.
- p. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended - 42 U.S.C. 4541, et seq.
- q. Sections 523 and 527 of the Public Health Service Act of 1912, as amended, 42U.S.C. 290dd through 290dd-2
- r. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.
- s. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C. 8373
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 3701, et seq.
- u. Copeland Anti-kickback Act, as amended - 18 U.S.C. 874 and 40 U.S.C. 3145
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended - 16 U.S.C. 1271, et seq.
- x. Federal Water Pollution Control Act, as amended - 33 U.S.C. 1251-1376
- y. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.
- z. Americans with Disabilities Act of 1990 - 42 U.S.C. 12101, et seq.
- aa. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. 1681 through 1683, and 1685 through 1687

- bb. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. 794
- cc. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. 2000d *et seq.*
- dd. Title IX of the Federal Property and Administrative Services Act of 1949 - 40 U.S.C. 541, *et seq.*
- ee. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. 1352
- ff. Freedom of Information Act - 5 U.S.C. 552, as amended
- gg. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. 1855
- hh. Farmlands Protection Policy Act of 1981 – 7 U.S.C. 4201
- ii. Noise Control Act of 1972 – 42 U.S.C. 4901, *et seq.*
- jj. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. 661
- kk. Section 9 of the Rivers and Harbors Act and General Bridge Act of 1946 - 33 U.S.C. 401
- ll. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and 23 U.S.C. 138
- mm. Resource Conservation and Recovery Act of 1976 (RCRA), as amended -- 42 U.S.C. 6901, *et seq.*
- nn. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended –42 U.S.C. 9601-9657
- oo. Safe Drinking Water Act – 42 U.S.C. 300F-300J-6
- pp. Wilderness Act -- 16 U.S.C. 1131-1136
- qq. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 - 42 U.S.C. 6901, *et seq.*
- rr. Migratory Bird Treaty Act 16 U.S.C. 760c-760g
- ss. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Public Law 110-252)
- tt. Cargo Preference Act of 1954 – 46 U.S.C. 55305
- uu. Buy American Act – 41 U.S.C. 10a-10c

Executive Orders

- a. Executive Order 11246 - Equal Employment Opportunity
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11988 – Floodplain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12549 – Debarment and Suspension
- f. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- g. Executive Order 13166 – Improving Access to Services for Persons With Limited English Proficiency

General Federal Regulations

- a. Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations – 2 C.F.R. Part 215
- b. Cost Principles for State and Local Governments – 2 C.F.R. Part 225
- c. Non-procurement Suspension and Debarment – 2 C.F.R. Part 1200
- d. Investigative and Enforcement Procedures - 14 C.F.R. Part 13
- e. Procedures for predetermination of wage rates - 29 C.F.R. Part 1

- f. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States - 29 C.F.R. Part 3
- g. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) - 29 C.F.R. Part 5
- h. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) - 41 C.F.R. Parts 60, et seq.
- i. Contractor Qualifications - 48 C.F.R. Part 9
- j. Uniform administrative requirements for grants and cooperative agreements to state and local governments - 49 C.F.R. Part 18
- k. New Restrictions on Lobbying - 49 C.F.R. Part 20
- l. Nondiscrimination in Federally Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 - 49 C.F.R. Part 21
- m. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs - 49 C.F.R. Part 24
- n. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance - 49 C.F.R. Part 25
- o. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance - 49 C.F.R. Part 27
- p. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation - 49 C.F.R. Part 28
- q. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors - 49 C.F.R. Part 30
- r. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) - 49 C.F.R. Part 32
- s. DOT's implementing ADA regulations, including the ADA Accessibility Guidelines in Part 37, Appendix A - 49 C.F.R. Parts 37 and 38
- t. Procedures for Transportation Workplace Drug and Alcohol Testing Programs - 49 C.F.R. Part 40
- u. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs - 49 C.F.R. Part 26
- v. Preference for Privately Owned Commercial U.S. Flag Vessels - 46 C.F.R. Part 381.

Office of Management and Budget Circulars

- a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments
- b. A-102 - Grants and Agreements with State and Local Governments
- c. A-133 - Audits of States, Local Governments, and Non-Profit Organizations

EXHIBIT D
GRANT ASSURANCES

EXHIBIT D 1

**TITLE VI ASSURANCE
(Implementing Title VI of the Civil Rights Act of 1964, as amended)**

**ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY-
ASSISTED PROGRAMS AND ACTIVITIES RECEIVING OR
BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE**

(Implementing the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act, as amended)

49 C.F.R. Parts 21, 25, 27, 37 and 38

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER II Discretionary Grant program, the Grantee hereby agrees that:

1. As a condition to receiving any Federal financial assistance from the U.S. Department of Transportation, Grantee will comply with: Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d-42 U.S.C. 2000d-4; all requirements imposed by or pursuant to: Title 49, Code of Federal Regulations, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964; and other pertinent directives so that no person in the United States shall, on the grounds of race, color, national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Grantee receives Federal financial assistance from the Department of Transportation. This assurance is required by Title 49, Code of Federal Regulations, Section 21.7(a).

2. As a condition to receiving any Federal financial assistance from the U.S. Department of Transportation, Grantee will comply with: Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, which prohibit discrimination on the basis of sex. As a condition to receiving any Federal financial assistance from the U.S. Department of Transportation, it will comply with: the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.), the Drug Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1101 et seq.), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended (42 U.S.C. 4541 et seq.); and any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and the requirements of any other nondiscrimination statute(s) which may apply to the Grantee.

3. As a condition to receiving any Federal financial assistance from the Department of Transportation, it will comply with: section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794); and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Part 27, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance; and Part 37, Transportation Services for Individuals With Disabilities; and Part 38, Americans With Disabilities Act – Accessibility Specifications for Transportation Vehicles; and other pertinent directives so that no otherwise qualified person with a disability, be excluded from participation in, be denied the benefits of, be discriminated against by reason of such handicap, or otherwise be subjected to discrimination under any program for which the Grantee receives Federal financial assistance from the Department of Transportation. This assurance is required by Title 49, Code of Federal Regulations, Section 27.9.

4. The Grantee will promptly take any measures necessary to effectuate this Agreement. The Grantee further agrees that it shall take reasonable actions to guarantee that it, its contractors and subcontractors subject to the Department of Transportation regulations cited above, transferees, and successors in interest will comply with all requirements imposed or pursuant to the statutes and Department of Transportation regulations cited above, other pertinent directives, and the above assurances.

5. These assurances obligate the Grantee for the period during which Federal financial assistance is extended. The Grantee agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the statutes and Department of Transportation regulations cited above, other pertinent directives, and the above assurances.

6. These assurances are given for the purpose of obtaining Federal grant assistance under the TIGER II Discretionary Grant Program and are binding on the Grantee, contractors, subcontractors, transferees, successors in interest, and all other participants receiving Federal grant assistance in the TIGER II Discretionary Grant Program. The person or persons whose signatures appear below are authorized to sign this Agreement on behalf of the Grantee.

7. In addition to these assurances, the Grantee agrees to file: a summary of all complaints filed against it within the past year that allege violation(s) by the Recipient of Title VI of the Civil Rights Act of 1964, as amended, section 504 of the Rehabilitation Act of 1973, as amended; or a statement that there have been no complaints filed against it. The summary should include the date the complaint was filed, the nature of the complaint, the status or outcome of the complaint (*i.e.*, whether it is still pending or how it was resolved).

EXHIBIT D 2

DISCLOSURE OF LOBBYING ACTIVITIES

Certification for Contracts, Grants, Loans, and Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and grant agreements) and that all subgrantees shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

EXHIBIT D 3

**CERTIFICATION REGARDING DRUG-FREE WORKPLACE
REQUIREMENTS IN THE PERFORMANCE OF THE TIGER II
DISCRETIONARY GRANT PROGRAM**

The Grantee certifies that it will, or will continue, to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace, and specifying the actions that will be taken against employees for violation of such prohibition.
2. Establishing an ongoing drug-free awareness program to inform employees about:
 - (a) The dangers of drug abuse in the workplace;
 - (b) The Grantee's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and,
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of work supported by the grant award be given a copy of the statement required by paragraph 1.
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment supported by the grant award, the employee will:
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
5. Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of conviction. Employers of convicted employees must provide notice, including position title, to the Department. Notice shall include the order number of the grant award.
6. Taking one of the following actions, within 30 days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:
 - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended,
or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

8. The Grantee *may*, but is not required to, provide the site for the performance of work done in connection with the specific grant. For the provision of services pursuant to the Agreement, workplaces include outstations, maintenance sites, headquarters office locations, training sites and any other worksites where work is performed that is supported by the grant award. If the Grantee does so, please insert in Section 4 of the Agreement the following information from subsection (a) below:

(a) Identify the Places of Performance by listing the street address, city, county, state, zip code. Also identify if there are workplaces on file that are not identified in this section of the Agreement.

EXHIBIT D 4

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

2 C.F.R. Part 1200, 49 C.F.R. Part 32

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER II Discretionary Grant program, the Grantee is providing the assurance and certification set out below.

1. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
2. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
3. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. See Nonprocurement Suspension and Debarment (2 C.F.R. Part 1200) and Government wide Requirements for Drug-Free Workplace Grants (49 C.F.R. Part 32). The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
5. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions

The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER II Discretionary Grant program, the Grantee is providing the assurance and certification set out below.

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
5. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available

to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion -- Lower Tier Covered Transactions

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER II Discretionary Grant program, the Grantee is providing the assurance and certification set out below.

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

EXHIBIT E

RESPONSIBILITY AND AUTHORITY OF THE GRANTEE

1. Legal Authority. The Grantee affirms that it has the legal authority to apply for the grant, and to finance and carry out the proposed project identified in its Technical Application; that a resolution, motion or similar action has been duly adopted or passed as an official act of the Grantee's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Grantee to act in connection with the application and to provide such additional information as may be required.

2. Funds Availability. Grantee affirms that it has sufficient funds available for that portion of the project costs that are not to be paid by the Government. Grantee also affirms that it has sufficient funds available to assure operation and maintenance of items funded under the Agreement that it will own or control.

3. Preserving Rights and Powers. Grantee will not take or permit any action that would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the Agreement without the written approval of the Government, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with such performance by the Grantee. The Grantee agrees that this will be done in a manner acceptable to the Government.

4. Accounting System, Audit, and Record Keeping Requirements.

(a) The Grantee agrees to keep all project accounts and records that fully disclose the amount and disposition by the Grantee of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984, as amended (31 U.S.C. 7501-7507).

(b) The Grantee agrees to make available to the DOT and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the Grantee that are pertinent to the grant. The Government may require that a Grantee conduct an appropriate audit. In any case in which an independent audit is made of the accounts of a Grantee relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

5. Minimum Wage Rates. It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this Agreement that involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 3141, et seq.), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

6. Engineering and Design Services. It will award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under the Brooks Act (40 U.S.C. 1101-1104) or an equivalent qualifications-based requirement prescribed for or by the Grantee as approved by the Secretary.

7. Foreign Market Restrictions. It will not allow funds provided under this grant to be used to fund any project that uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

8. Relocation and Real Property Acquisition. (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 C.F.R. Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 C.F.R. Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 C.F.R. Part 24.

EXHIBIT F

REIMBURSEMENT OF PROJECT COSTS

1. The Grantee will be reimbursed in accordance with the terms of a Project Agreement between the Government (Modal Administration) or other specified form or agreement as determined by the Government that incorporates this Agreement by reference.

a) Requests for Reimbursement: When requesting reimbursement of costs incurred, the Recipient shall submit supporting cost detail with the SF-270 (available at www.whitehouse.gov/sites/default/files/omb/grants/sf270.pdf) to clearly document costs incurred. Cost detail includes a detailed breakout of all costs incurred including direct labor, indirect costs, other direct costs, travel, etc. The DOT/Enterprise Service Center (ESC) OFO/FAA, Oklahoma City, OK (Attn: Tammy Curnett) and Mr. Robert Bouchard, Program Office, DOT/MAR 510 reserve the right to withhold processing requests for reimbursement until sufficient detail is received. In addition, reimbursement will not be made without DOT/ESC OFO/FAA and program official review and approval to ensure that progress on the Agreement is sufficient to substantiate payment. After approval, Ms. Tammy Curnett, ESC will certify and forward the request for reimbursement to the payment office.

b) Requests for reimbursement and required supporting documents should be sent via e-mail to the following e-mail address: maradinvoices@faa.gov (repository subject to change, upon notice to Grantee). Include the request for reimbursement and supporting documents as an attached PDF document. Include in the e-mail subject line the following:

Requests for Reimbursement #
Grant Award Number
Name of your Company/Organization
Attention: (Agreement Specialist's name)

Example: Invoice No. 1 of Grant No. DTFH61-08-H-00001 ABC Corporation,
Attention: John Doe

Note: If the request for reimbursement and supporting documents exceed 8 MB, as an e-mail attachment, the recipient must select one of two non-electronic submission options presented below:

- Requests for reimbursement may be submitted via regular U.S. Postal Service to the following P.O. Box address; A/P Branch, AMZ-150 PO Box 25710, Oklahoma City, OK 73125
- Requests for reimbursement submitted via an overnight service must use the following physical address because delivery services other than the U.S. Postal Service will not deliver to the P.O. Box address noted above:

Attn: Tammy Curnett,
AMZ-160, HQ Bldg., Room 272F
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169

2. The Grantee shall have entered into obligations for services and goods associated with the Project prior to seeking reimbursement from the Government. Reimbursement will only be made for expenses incurred after execution of a project agreement.
3. The Grantee shall ensure that the funds provided by the Government are not misappropriated or misdirected to any other account, need, project, line-item, or the like.
4. Any Federal funds not expended in conjunction with the Project will remain the property of the Government.
5. Financial Management System: By signing this Agreement, the Grantee verifies that it has, or will implement, a financial management system adequate for monitoring the accumulation of costs and that it complies with the financial management system requirements of 49 C.F.R. Part 18 and Title 23. The Grantee's failure to comply with these requirements may result in Agreement termination.
6. Allowable Costs: Determination of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., OMB Circular A-87 (2 C.F.R. Part 225). Disallowed costs are those charges determined to not be allowed in accordance with the applicable Federal cost principles or other conditions contained in this Agreement.

EXHIBIT G

GRANT REQUIREMENTS AND CONTRACT CLAUSES

1. The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for 2010 (Div. A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-- 117, Dec. 16, 2009)), regarding National Infrastructure Investments (the "Act") (referred to as "TIGER II Discretionary Grants") requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

2. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 C.F.R. parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 C.F.R. 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Act shall ensure that the standard Davis-Bacon contract clauses found in 29 C.F.R. 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

3. Federal agencies providing grants, grant agreements, and loans under the Act shall ensure that the standard Davis-Bacon contract clauses found in 29 C.F.R. 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

4. For additional guidance on the wage rate requirements of the Act, contact your awarding agency. Recipients of grants, grant agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

TRANSPARENCY ACT REQUIREMENTS

Pursuant to the Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Public Law 110-252, hereafter referred to as "the Transparency Act" or "the Act") and the OMB Interim Final Rule (75 FR 55663 (September 14, 2010) (available at <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf>) (codified at 2 CFR Part 170), the Grantee is required to report as required under the Act, in addition to including the following clause in all first-tier Subawards:

- I. Reporting Subawards and Executive Compensation.
 - a. Reporting of First-Tier Subawards.

1) Applicability. Unless the Grantee (hereinafter in this section referred to as "you") are exempt as provided in paragraph d. of this section, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in subsection e. of this section).

2) Where and when to report.

a. You must report each obligating action described in subsection a.1. of this section to <http://www.fsrs.gov>.

b. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3) What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1) Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

a. the total Federal funding authorized to date under this award is \$25,000 or more;

b. in the preceding fiscal year, you received—

(1) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(2) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

c. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2) Where and when to report. You must report executive total compensation described in subsection b.1. of this section:

a. As part of your registration profile at <http://www.ccr.gov>.

b. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1) Applicability and what to report. Unless you are exempt as provided in subsection d. of this section, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

a. in the subrecipient's preceding fiscal year, the subrecipient received—

(1) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(2) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

b. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2) Where and when to report. You must report subrecipient executive total compensation described in subsection c.1. of this section:

a. To the recipient.

b. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

a. Subawards,
and

b. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this section:

- 1) Entity means all of the following, as defined in 2 CFR part 25:
 - a. A Governmental organization, which is a State, local government, or Indian tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization;
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- 2) Executive means officers, managing partners, or any other employees in management positions.
- 3) Subaward:
 - a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. — .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - c. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
- 4) Subrecipient means an entity that:
 - a. Receives a subaward from you (the recipient) under this award; and
 - b. Is accountable to you for the use of the Federal funds provided by the subaward.
- 5) Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - a. Salary and bonus.
 - b. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

- c. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- d. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- e. Above-market earnings on deferred compensation which is not tax-qualified.
- f. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

SINGLE AUDIT INFORMATION FOR RECIPIENTS OF TIGER II GRANT FUNDS

1. To maximize the transparency and accountability of funds authorized under the Act as required by Congress and in accordance with 2 C.F.R. 215.21 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations" and OMB Circular A-102 "Grants and Cooperative Agreements with State and Local Governments." Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of TIGER II Discretionary Grant funds. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.
2. For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "TIGER II -" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

EXHIBIT H

QUARTERLY PROGRESS REPORTS: FORMAT AND CONTENT

The Paperwork Reduction Act approval is still pending. At this time, this Exhibit is included for informational purposes. Grantees are requested to retain data for potential future reporting, to ensure that DOT (Government) records are complete (assuming clearance is granted).

1. The purpose of the calendar quarterly progress reports under the Agreement for the TIGER II Discretionary Grants program is to ensure that the project budget and schedule will be maintained to the maximum extent possible, that the project will be completed with the highest degree of quality, and that compliance with Federal regulations will be met. To that end, along with the quarterly progress, as outlined below, the Grantee should also submit a Federal Financial Report (SF-425) with each quarterly progress report.
2. The Grantee should develop a project reporting and tracking system to collect, assess and maintain project status information and data that is timely, independent, and accurate. This system should provide current information on project prosecution, progress, changes, and issues. This information should be used to identify trends and forecast project performance and to identify and proactively address challenges to eliminate major project surprises.
3. The need to continuously and accurately report cost increases; schedule changes; deficient quality items; and the causes, impacts, and proposed measures to mitigate these issues is paramount to effectively managing, administering, and protecting the public investment in the project. Any apparent reporting deficiencies or questionable data should be completely resolved. Ultimately, the Grantee and the Government must be fully aware of the complete status of the project, and therefore be in a position to take appropriate action if necessary.
4. A quarterly cost, schedule, and status report will be produced by the Grantee, and a quarterly status meeting will be held with the Grantee, the Government and other applicable agencies in attendance. The quarterly status meetings should discuss the project costs, schedules, quality issues, compliance with Federal requirements, and other status items in sufficient enough detail to allow all involved parties to be fully aware of the significant status issues and actions planned to mitigate any adverse impacts. In addition, significant issues occurring between status meetings must be communicated immediately without waiting for the next regularly scheduled meeting, with any highly significant or sensitive issues elevated immediately to the executive leadership.
5. The following is the required format for the quarterly progress reports. At the discretion of the Government, modifications or additions can be made in order to produce a quarterly reporting format that will most effectively serve both the Grantee and the Government. It is recognized that some projects will have a more extensive quarterly status than others. In the case of smaller projects, the content of the quarterly reports will be streamlined and project status meetings will be held on a less-frequent basis. Please note that the initial quarterly progress report should include a detailed description, and where appropriate, drawings, of the items funded.

(a) **Executive Summary.** The executive summary should be a clear and concise summary of the current status of the project, including any major issues that have an impact on the project's scope, budget, schedule, quality, or safety. It may be done in a bulleted format. The following summary information is an example of items that should be covered in the executive summary section:

- Current total project cost (forecast) vs. latest budget vs. baseline budget. Include an explanation of the reasons for any deviations from the approved budget.
- Current overall project completion percentage vs. latest plan percentage.
- Any delays or exposures to milestones and final completion dates. Include an explanation of the reasons for the delays and exposures.
- A summary of the projected and actual dates for notices to proceed for significant contracts, start of construction, start of expenditure of TIGER II Discretionary Grant funds, and project completion date. Include an explanation of the reasons for any discrepancies from the corresponding project milestone dates included in the Agreement.
- Any Federal obligations and/or TIFIA disbursements occurring during the month versus planned obligations or disbursements.
- Any significant contracts advertised, awarded, or completed.
- Any significant scope of work changes.
- Any significant items identified as having deficient quality.
- Any significant safety issues.
- Any significant Federal issues such as environmental compliance, Buy American, Davis-Bacon Act Prevailing Wage requirements, etc.

(b) **Project Activities and Deliverables.** The purpose of this section is to: (1) highlight the project activities and deliverables occurring during the previous quarter (reporting period), and (2) define the activities and deliverables planned for the next two reporting periods. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to Recovery Act requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance. The two reporting period "look ahead schedule" will enable the Government to accommodate any activities requiring input or assistance.

(c) **Action Items/Outstanding Issues.** This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction in order to resolve. In general, issues and administrative requirements that could have a significant or adverse impact to the project's scope, budget, schedule, quality, safety, and/or compliance with Federal requirements should be included. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly

status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.

(d) Project Schedule. An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is probably the most appropriate for quarterly reporting purposes, with the ultimate format to be agreed upon between the Grantee and the Government. It is imperative that the master program schedule be integrated, i.e., the individual contract milestones tied to each other, such that any delays occurring in one activity will be reflected throughout the entire program schedule, with a realistic completion date being reported. Narratives, tables, and/or graphs should accompany the updated master program schedule, basically detailing the current schedule status, delays and potential exposures, and recovery efforts. The following information should also be included:

- Current overall project completion percentage vs. latest plan percentage.
- Completion percentages vs. latest plan percentages for major activities such as right-of-way, major or critical design contracts, major or critical construction contracts, and significant force accounts or task orders. A schedule status description should also be included for each of these major or critical elements.
- Any delays or potential exposures to milestone and final completion dates. The delays and exposures should be quantified, and overall schedule impacts assessed. The reasons for the delays and exposures should be explained, and initiatives being analyzed or implemented in order to recover the schedule should be detailed.

(e) Project Cost. An updated cost spreadsheet reflecting the current forecasted cost vs. the latest approved budget vs. the baseline budget should be included in this section. One way to track project cost is to show: (1) Baseline Budget, (2) Latest Approved Budget, (3) Current Forecasted Cost Estimate, (4) Expenditures or Commitments To Date, and (5) Variance between Current Forecasted Cost and Latest Approved Budget. Line items should include all significant cost centers, such as prior costs, right-of-way, preliminary engineering, environmental mitigation, general engineering consultant, section design contracts, construction administration, utilities, construction packages, force accounts/task orders, wrap-up insurance, construction contingencies, management contingencies, and other contingencies. The line items can be broken-up in enough detail such that specific areas of cost change can be sufficiently tracked and future improvements made to the overall cost estimating methodology. A Program Total line should be included at the bottom of the spreadsheet. Narratives, tables, and/or graphs should accompany the updated cost spreadsheet, basically detailing the current cost status, reasons for cost deviations, impacts of cost overruns, and efforts to mitigate cost overruns. The following information should be provided:

- Reasons for each line item deviation from the approved budget, impacts resulting from the deviations, and initiatives being analyzed or implemented in order to recover any cost overruns.
- Transfer of costs to and from contingency line items, and reasons supporting the transfers.
- Speculative cost changes that potentially may develop in the future, a quantified dollar range for each potential cost change, and the current status of the speculative change. Also, a comparison analysis to the available contingency amounts should be included, showing that

reasonable and sufficient amounts of contingency remain to keep the project within the latest approved budget.

- Detailed cost breakdown of the general engineering consultant (GEC) services (if applicable), including such line items as contract amounts, task orders issued (amounts), balance remaining for tasks, and accrued (billable) costs.
- Federal obligations and/or TIFIA disbursements for the project, compared to planned obligations and disbursements.

(f) Project Funding Status. The purpose of this section is to provide a status report on the non-TIGER II Discretionary Grant funds necessary to complete the project. This report section should include a status update of any legislative approvals or other actions necessary to provide the non-TIGER II Discretionary Grant funds to the project. Such approvals might include legislative authority to charge user fees or set toll rates, or the commitment of local funding revenues to the project. In the event that there is an anticipated or actual project cost increase, the project funding status section should include a report on the anticipated or actual source of funds to cover the cost increase and any significant issues identified with obtaining additional funding.

(g) Project Quality. The purpose of this section is to: (1) summarize the Quality Assurance/Quality Control activities during the previous month (reporting period), and (2) highlight any significant items identified as being deficient in quality. Deficient items noted should be accompanied by reasons and specifics concerning the deficiencies, and corrective actions taken or planned. In addition, the agency or firm responsible for the corrective action should be documented. Planned corrective actions should then be included as Action Items/Outstanding Issues.

(h) Federal Financial Report (SF-425). The Federal Financial Report (SF-425) (available at http://www.whitehouse.gov/omb/grants_forms/) is a financial reporting form used throughout the Federal Government Grant system. Grantees should complete this form and attach it to each quarterly Project Progress and Monitoring Report.

(i) Other Status Reports. The Grantee and the Government may agree that other reports may be beneficial in ensuring that project status issues are fully and openly communicated. Such reports may include the public relations plan, value engineering and constructability review plan, environmental compliance report, and/or compliance with the Buy American requirements.

FINAL

Port of Miami: Rail Bascule Bridge Rehabilitation

ID	Task Name	Duration	Start	Finish	2Q11 Apr	3Q11 Jul	4Q11 Oct	1Q12 Jan	2Q12 Apr	3Q12 Jul	4Q12 Oct	1Q13 Jan	2Q13 Apr	Jun
1	RAIL BASCULE BRIDGE REHABILITATION	595 days	Sat 10/22/11	Fri 6/7/13										
2	Design-Build Procurement	90 days	Sat 10/22/11	Thu 1/19/12										
3	Procurement Process	90 days	Sat 10/22/11	Thu 1/19/12										
4	Rehab and Ancillary Work	505 days	Fri 1/20/12	Fri 6/7/13										
5	NTP for Bridge Rehabilitation	30 days	Fri 1/20/12	Sat 2/18/12										
6	Restoration Design & Construction Activities	270 days	Sun 2/19/12	Wed 11/14/12										
7	Overall Design & Construction Activities	475 days	Sun 2/19/12	Fri 6/7/13										

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Project: Port of Miami TIGER II Grant
Date: Thu 9/17/11

Task Split

Progress Public Meeting/Hearing

Summary Milestone

Exhibit C

~~Exhibit 5~~

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

375-040-68
PROCUREMENT

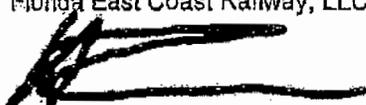
E-VERIFY

01/11

Contract No: ANO51
Financial Project No(s): 42012415701
Project Description: Joint Participation Agreement to
Rehabilitate FEC Railway's Downtown
Lead (Port Lead) and Double Track the
Medley Lead

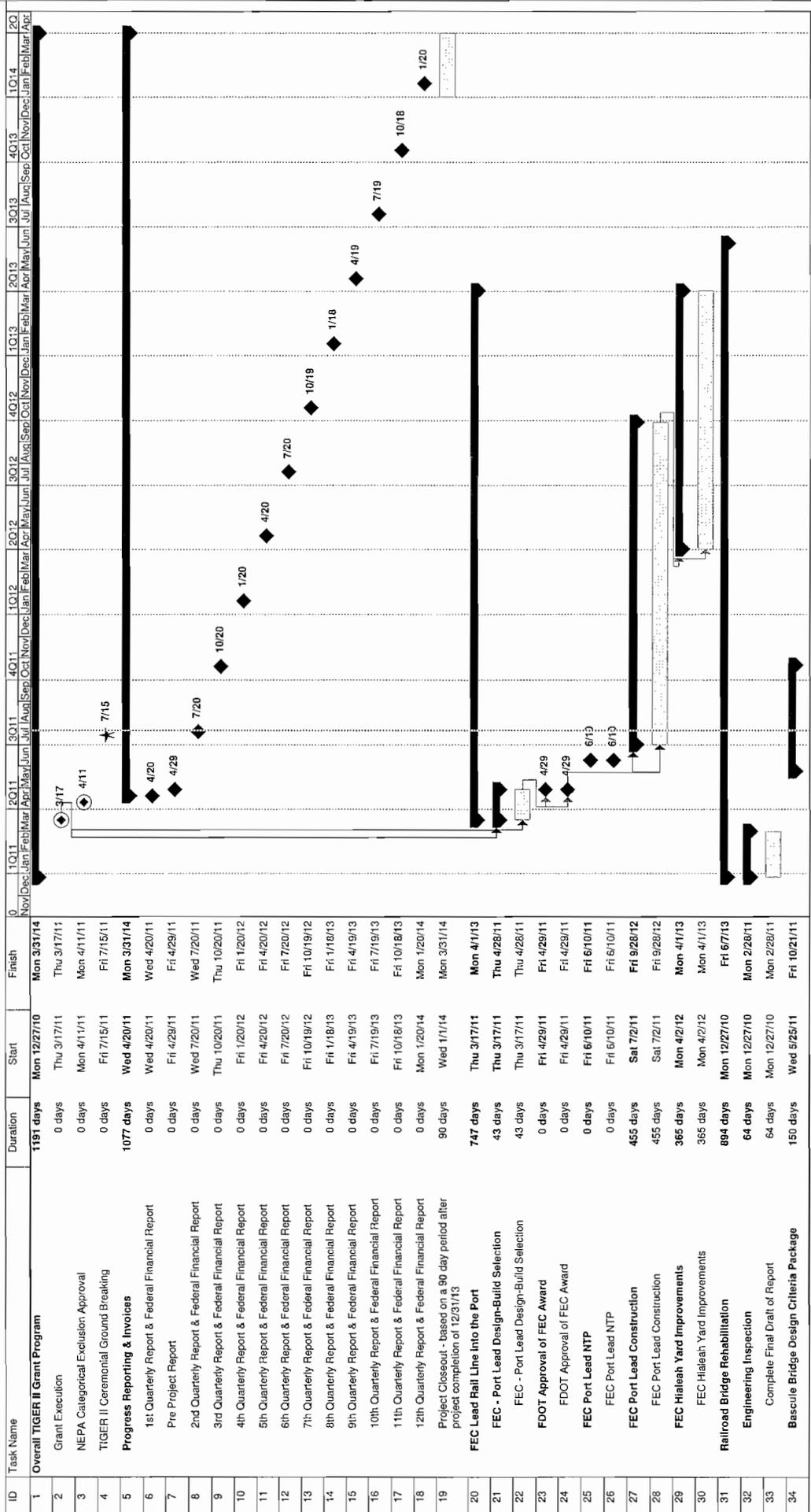
Vendor/Consultant acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:
(a) all persons employed by Vendor/Consultant to perform employment duties within Florida during the term of the contract; and
(b) all persons (including subcontractors/subvendors) assigned by Vendor/Consultant to perform work pursuant to the contract with the Department.
The Vendor/Consultant acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the Department.

Company/Firm: Florida East Coast Railway, LLC

Authorized Signature: 
Title: Executive Vice President, Corporate Development
Date: January 17, 2011

FINAL Working Schedule

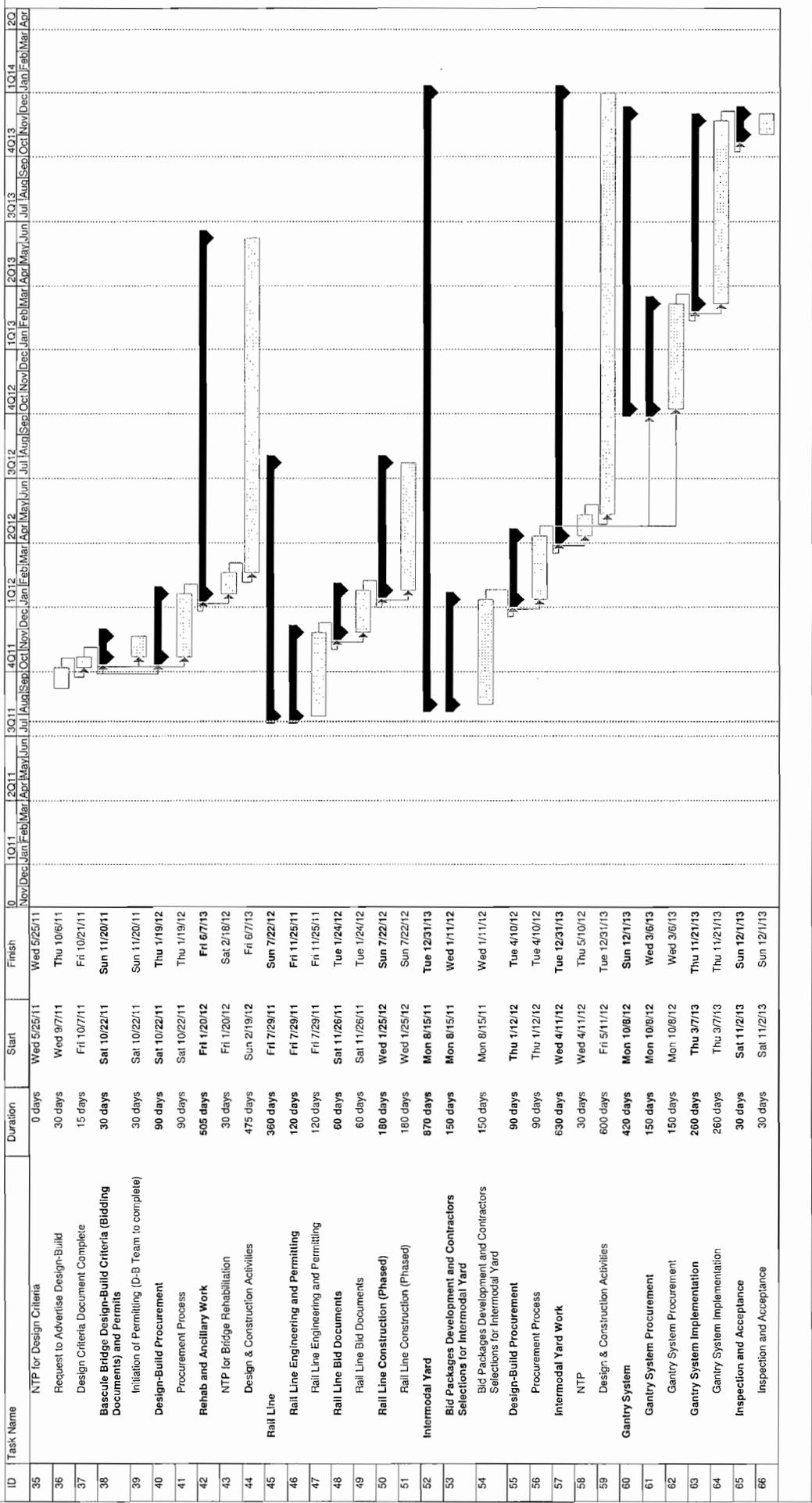
Port of Miami: Intermodal & Rail Reconnection Project (Including FEC's Port Lead)



█ Task
█ Progress
◆ Public Meeting/Hearing
◆ Summary
◆ Milestone

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Port of Miami: Intermodal & Rail Reconnection Project (Including FEC's Port Lead)



Project: Port of Miami TIGER II Grant
 Revised Date: Fri 7/15/11

Legend:
 Progress: [Solid Bar]
 Public Meeting/Hearing: [Diamond]
 Summary: [Thick Arrow]
 Milestone: [Circle]

Page 2

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