Memorandum

MIAMI-DADE COUNTY

Date: November 15, 2011

Agenda Item No. 8(M)(9)

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

From: Carlos A. Gimenez
Mayor

Subject: Resolution Authorizing the Approval of a Preemption Interconnection Agreement Between Miami-Dade County and CSX Transportation, Inc. for the Interconnection of Railroad Crossing Warning Devices and Roadway Traffic Signal at the Intersection of SW 72 Avenue and SW 39 Street

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Recommendation
It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing the execution of a Preemption Interconnection Agreement (Agreement) between Miami-Dade County (County) and CSX Transportation, Inc., (CSX) for the interconnection of railroad crossing warning devices and roadway traffic signal at the intersection of SW 72 Avenue and SW 39 Street.

Scope
The Agreement is specifically for one (1) railroad crossing and it is located within Commission District 6.

Fiscal Impact/Funding Source
The fiscal impact to the County is estimated in the amount of $15,731. The funding source to be used is Secondary Gas Tax with index code CPE06SEC.

Track Record/Monitor
Miami-Dade County, Public Works Department's Project Manager, Mr. Octavio Marin, P.E., will monitor this project.

Background
Miami-Dade County, Public Works Department completed the construction of a new traffic signal at SW 72 Avenue and SW 39 Street. This traffic signal requires the interconnection to the railroad warning devices.

Under this resolution, the County will be allowed by CSX to interconnect the railroad signals with the roadway signals through the Agreement.

The Agreement requires the County to pay CSX for all the costs incurred by CSX for work on the signal preemption. The estimated cost of this work is $15,731. The County will deposit with CSX $15,731 in advance of the work by CSX. CSX will provide the County with a final bill reflecting the final cost (based on actual cost, including normal surcharges) and supporting documentation.

County Manager / Deputy Mayor

MEMORANDUM

(Revised)

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

DATE: November 15, 2011

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

SUBJECT: Agenda Item No. 8(M)(9)

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. 8(M)(9)
11-15-11

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE APPROVAL OF A PREEMPTION INTERCONNECTION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND CSX TRANSPORTATION, INC. FOR THE INTERCONNECTION OF RAILROAD CROSSING WARNING DEVICES AND ROADWAY TRAFFIC SIGNAL AT THE INTERSECTION OF SW 72 AVENUE AND SW 39 STREET

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Preemption Agreement between Miami-Dade County and CSX Transportation, Inc. for the interconnection of railroad crossing warning devices and roadway traffic signal at the intersection of SW 72 Avenue and SW 39 Street. The Preemption Interconnection Agreement requires the County to pay CSX for all the costs incurred by the railroad for work on the signal preemption. The estimated cost of this work is $15,731.00 as stipulated in the Agreement. The County Mayor or the Mayor's designee is authorized to execute same for an on behalf of Miami-Dade County and to exercise all provisions contained therein.

The foregoing resolution 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 15th day of November, 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

Project: Preemption Interconnection with traffic signals located at intersection of SW 39th Street and SW 72nd Avenue at CSXT Milepost SXH-44.11, DOT No. 672901H, CSXT OP No. FL1533

PREEMPTION INTERCONNECTION AGREEMENT

This Preemption Interconnection Construction and Maintenance Agreement ("**Agreement**") is made as of _____, 2011, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida ("**CSXT**") and **MIAMI-DADE COUNTY THROUGH IT'S PUBLIC WORKS DEPARTMENT**, a body corporate and political subdivision of the **State of Florida** ("Agency").

EXPLANATORY STATEMENT

1. CSXT has or will construct and maintain highway rail grade crossing warning devices, consisting of automatic flashing lights and gates (the "Grade Crossing Warning Devices"), at the grade crossing of SW 39th Street of CSXT's mainline track at Railroad Milepost SXH-44.11, in Coral Gables, Miami-Dade County, FL; (DOT 627 901H).

2. Agency has or proposes to erect certain highway traffic signals at the intersection of SW 39th Street and SW 72nd Avenue ("Highway Traffic Signals") and to establish interconnection circuitry between such Highway Traffic Signals and the Grade Crossing Warning Devices.

3. CSXT is willing to permit such interconnection (the "Project"), subject to the terms and conditions of this Agreement.

4. Agency proposes to use the interconnection circuitry to change the Highway Traffic Signals sequence of operation when a signal is received from the Grade Crossing Warning Devices. The interconnection will provide Simultaneous Preemption or Advanced Preemption of the Highway Traffic Signals as specified in the project plans and specification.

5. Agency has obtained, or will obtain all authorizations, permits and approvals from all local, state and federal agencies, and their respective governing bodies and regulatory agencies, necessary to proceed with the Project and will implement the Project at its sole cost and expense.

6. Agency and CSXT acknowledge that: (i) by entering into this Agreement, CSXT will provide services and accommodations to promote public interest in this Project, without profit or other economic inducement typical of other Agency contractors; (ii) neither CSXT nor its affiliates (including their respective directors, officers, employees or agents) will incur any costs, expenses, losses or liabilities in excess of payments made to CSXT, by or on behalf of Agency or Agency contractors, pursuant to this Agreement; and (iii) CSXT retains the paramount right to regulate all activities affecting its property and operations.

7. It is the purpose of this Agreement to provide for the terms and conditions upon which construction of the Project shall proceed and the parties' obligations with respect to the future maintenance and operation of the permanent aspects of the Project.

NOW, THEREFORE, in consideration of the foregoing Explanatory Statement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. Project Plans and Specifications.

1.1. Preparation and Approval. Agency shall prepare, or cause to be prepared, all plans, specifications, drawings and other documents necessary or appropriate to the design and construction of the Project (including, but not limited to, a written or graphic description of the operation of the interconnection system both in the operational mode and failed mode), at Agency sole cost and expense, by Agency or its contractors. Project plans, specifications and drawings prepared by or on behalf of Agency shall be subject, at CSXT's election, to the review and approval of CSXT. Such plans, specifications and drawings, as approved by CSXT, are referred to as the "**Plans**", and shall be incorporated and deemed a part of this Agreement.

1.2. Effect of CSXT Approval or Review of Plans. By its review, approval or preparation of Plans pursuant to this Agreement, CSXT signifies only that such Plans and improvements constructed in accordance therewith satisfy CSXT's requirements for the interconnection of the Highway Traffic Signals and the Grade Crossing Warning Devices. CSXT expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of Agency or any other persons of the Plans or improvements constructed in accordance with the Plans, and the suitability or fitness of the Grade Crossing Warning Devices for purposes of the Project. Accordingly, Agency acknowledges and agrees that CSXT assumes no responsibility for, and releases CSXT from all liability or losses arising from or related to, the timing or sequencing of the Highway Traffic Signals and the Grade Crossing Warning Devices, and the maintenance, operation, use, fitness or suitability of the Highway Traffic Signals and related cables connecting the Highway Traffic Signals to the Grade Crossing Warning Devices.

1.3. Other Approval or Review of Plans. The agency shall schedule and conduct a Diagnostic Review of the existing and proposed Highway-Rail Grade Crossing Devices, the proposed Highway Traffic Signals and the interconnection circuitry. The Plans and Specifications shall be approved in writing by the appropriate highway and/or regulatory authority. Project plan specifications and drawings prepared by or on behalf of Agency shall comply with current MUTCD requirements, use appropriate current AREMA recommended practices. The Plans must specify Simultaneous Preemption or Advance Preemption and the preemption timing in seconds.

1.4. Compliance with Plans. The Project shall be constructed in accordance with the Plans.

2. Allocation and Conduct of Work.

Work in connection with the Project shall be allocated and conducted as follows:

2.1. CSXT Work. Subject to timely payment of Reimbursable Expenses as provided by Section 3.1, CSXT shall furnish the following services, at Agency's sole cost and expense:

2.1.1. CSXT shall furnish one or more preemption interconnection circuits of a normally closed contact that is designed to open upon the approach or presence of a train and shall terminate the closed preemption interconnection circuit in the

common cable junction box to be used for the interconnection of the Highway Traffic Signals and the Grade Crossing Warning Devices.

2.1.2. CSXT shall furnish additional preemption interconnection circuits of a normally closed contact designed to open to provide additional information for the Highway Traffic Signals as specified in the Plans for gate down, occupancy of the crossing island circuit or other purposes.

2.1.3. CSXT shall furnish flagging and other protective services, as CSXT deems necessary or appropriate during the construction of the Project;

2.1.4. CSXT shall furnish all other services that CSXT deems necessary or appropriate to preserve and maintain its property and operations, without impairment or exposure to liability of any kind and in compliance with all applicable federal, state and local regulations and CSXT's contractual obligations, including, but not limited to, CSXT's existing or proposed third party agreements and collective bargaining agreements.

2.1.5. Initial testing and placing in service.

2.1.6. Periodic testing initiated by the agency and periodic testing by CSXT in conformance with Federal Railroad Administration regulations in 49 CFR Part 234.

2.2. Agency Work. Agency shall perform, or cause to be performed, all other work in connection with the Project, at Agency's sole cost and expense, including:

2.2.1. Preparation of all Plans

2.2.2. Installation of all cables from the Highway Traffic Signals up to the preemption interconnection circuit at the common cable junction box;

2.2.3. Provide standby electric power for operation of the Highway Traffic Signals.

2.2.4. Configuration of the circuitry connection of the Highway Traffic Signals whereby a failure will not cause any unsafe condition

2.2.5. Initial testing and placing in service

2.2.6. Periodic testing

2.3. Conduct of Work. The parties shall not commence work under this Agreement unless and until: (i) delivery to CSXT of a notice to proceed from Agency; (ii) payment of Reimbursable Expenses (as provided by Section 3.1) as required by CSXT prior to the commencement of work by CSXT; (iii) issuance of all permits, approvals and authorizations necessary or appropriate for such work; and (iv) delivery of proof of insurance acceptable to CSXT, as required by Section 7. The initiation of any services by CSXT pursuant to this Agreement, including, but not limited to, the issuance of purchase orders or bids for materials or services, shall constitute commencement of work for the purposes of this Section.

3. CSXT Rules and Procedures. Agency shall observe and abide by, and shall require its contractors ("**Contractors**") to observe and abide by the rules, procedures, directions and instructions of CSXT. To the extent that Agency performs Project work itself; Agency shall be deemed a Contractor for purposes of this Agreement. Agency further agrees that, prior to the commencement of Project work by any third party Contractor, such Contractor shall execute and deliver to CSXT Schedule I to this Agreement to acknowledge Contractor's agreement to observe and abide by the terms and conditions of this Agreement.

Reimbursement of CSXT Expenses:

3.1. Reimbursable Expenses. Agency shall reimburse CSXT for all costs and expenses incurred by CSXT in connection with construction and maintenance of the Project including, without limitation: (i) all out of pocket expenses, (ii) travel and lodging expenses, (iii) telephone, facsimile, and mailing expenses, (iv) costs for equipment, tools, materials and supplies, (v) sums paid to consultants and subcontractors, and (vi) labor, together with labor overhead percentages established by CSXT pursuant to applicable law (collectively, the "**Reimbursable Expenses**"). Reimbursable Expense shall also include expenses incurred by CSXT prior to the date of this agreement included in the estimate.

3.2. Estimate. CSXT has estimated the total Reimbursable Expenses for the construction of the Project as shown on Exhibit A (the "**Estimate**", as amended or revised). In the event CSXT anticipates that actual Reimbursable Expenses may exceed such Estimate, it shall provide Agency with the revised Estimate of the total Reimbursable Expenses for Agency's approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses as reflected in the revised Estimate. CSXT may elect, by delivery of notice to Agency, to immediately cease all further work on the Project, unless and until Agency provides such approval and confirmation.

3.3. Payment Terms.

3.3.1. Advance Payment in Full. Upon execution and delivery of this Agreement by Agency, Agency will deposit with CSXT a sum equal to the Reimbursable Expenses, as shown by the Estimate. Agency shall pay CSXT for Reimbursable Expenses in the amount set forth in **CSXT Schedule PA** attached hereto, a copy of which shall accompany the advance payment. If CSXT anticipates that it may incur Reimbursable Expenses in excess of the deposited amount, CSXT will request an additional deposit equal to the then remaining Reimbursable Expenses which CSXT estimates that it will incur. CSXT shall request such additional deposit by delivery of invoices to Agency. Agency shall make such additional deposit within thirty (30) days following delivery of such invoice to Agency.

3.3.2. Following completion of all Engineering Work, CSXT shall reconcile the total Reimbursable Expenses incurred by CSXT against the total payments received from Agency and shall submit to Agency a final invoice if required. Agency shall pay to CSXT the amount by which actual Reimbursable Expenses exceed total payments, as shown by the final invoice, within thirty (30) days following delivery to Agency of the final invoice. CSXT will provide a refund of any unused deposits if the deposit exceeds the incurred Reimbursable Expenses for the Project.

3.3.3. In the event that Agency fails to pay CSXT any sums due CSXT under this Agreement: (i) Agency shall pay CSXT interest at the lesser of 1.0% per month or the maximum rate of interest permitted by applicable law on the delinquent amount until paid in full; and (ii) CSXT may elect, by delivery of notice to Agency: (A) to immediately cease all further work on the Project, unless and until Agency pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.

4. Termination.

4.1. By Agency. Agency may terminate this Agreement, for any reason, by delivery of notice to CSXT. Such termination shall become effective upon the expiration of fifteen (15) calendar days following delivery of notice to CSXT or such later date designated by the notice.

4.2. By CSXT. CSXT may terminate this Agreement (i) as provided pursuant to Section 3.3.3(ii)(B), or (ii) upon Agency's breach of any of the terms of, or its obligations under, this Agreement and such breach continues without cure for a period of ten (10) days after written notification from CSXT to Agency of such breach.

4.3. If this agreement is terminated the Agency shall close and barricade the highway-rail grade crossing and prevent all vehicle traffic from entering the highway-rail grade crossing unless Highway and/or Regulatory Authority determines the preemption is no longer required and notifies CSXT in writing of this determination.

4.4. The Agency shall close and barricade crossing if Agency does not maintain and test the traffic signal and preemption operation to assure the Highway Traffic Signals and traffic signal preemption sequence operate in compliance with the design, or as may be modified from time to time by agreement between CSXT and Agency and provided Agency secures all appropriate approvals including from any regulatory entity having jurisdiction.

4.5. If Agency does not close and barricade the highway-rail grade crossing and prevent traffic from utilizing said crossing to the satisfaction of CSXT when required by this Agreement, the FRA or other Regulatory or Highway Agency, CSXT may close and barricade the crossing at the expense of the Agency. CSXT will not be required to reduce train speed, stop and flag the crossing or make other change in train operation to accommodate the operation of the traffic signal, preemption circuitry or failure of Agency to comply with any terms of this Agreement.

4.6. The Agency shall not reopen the highway-rail grade crossing or attempt to reopen or remove any barricades until the Highway Traffic Signal and preemption circuitry have been inspected, tested and operating according to the plans and specification or as may otherwise be determined between the parties hereto. In case of dispute over the status of the operating condition and compliance with the plans and specification the FRA, and appropriate highway or regulatory authority will be requested to inspect and observe appropriate testing to confirm proper operation.

4.7. Consequences of Termination. If the Agreement is terminated by either party pursuant to this Section or any other provision of this Agreement, the parties understand that it may be impractical for them to immediately stop the work. Accordingly, they agree that, in such instance a party may continue to perform work until it has reached a point where it may reasonably and/or safely suspend the work. Agency shall reimburse CSXT pursuant to this Agreement for the work performed, plus all costs reasonably incurred by CSXT to discontinue the work and protect the work upon full suspension of the same, and all other costs of CSXT incurred as a result of the

Project up to the time of full suspension of the work. In addition, Agency shall return CSXT's property to its former condition to the extent altered by Agency or its Contractors, and shall reimburse CSXT for all costs incurred by CSXT to return its property to its former condition to the extent altered by CSXT or its contractors. Termination of this Agreement or work on the Project, for any reason, shall not diminish or reduce Agency's obligation to pay CSXT for CSXT Costs incurred in accordance with this Agreement. In the event of the termination of this Agreement or the work for any reason, CSXT's only remaining obligation to Agency shall be to refund to Agency payments made to CSXT in excess of CSXT Costs in accordance with Section 3.3.2. Agency shall not be entitled to otherwise pursue claims for consequential, direct, indirect or incidental damages or lost profits as a consequence of CSXT's default or termination of this Agreement or work on the Project by either party.

5. Construction Easements and Licenses.

   5.1. Agency Obligation. Agency shall acquire all necessary licenses, permits and easements required for the Project.

   5.2. Temporary Construction Licenses. Insofar as it has the right to do so, CSXT hereby grants Agency, and upon execution and delivery to CSXT of Contractor's Acceptance (Schedule I), its Contractors, a nonexclusive license to access and cross CSXT's property, to the extent necessary for the construction of the Project (excluding ingress or egress over public grade crossings), along such routes and upon such terms as may be defined and imposed by CSXT and such temporary construction easements as may be designated on the Plans approved by CSXT. No work shall be performed on CSXT property by Agency or its Contractors, without the prior approval of CSXT.

   5.3. Interconnection Cable License. CSXT hereby grants to Agency, insofar as CSXT has the right to do so, permission to place conduit and wire or cable on CSXT property, in accordance with the Plans, but has not permitted the placement of traffic signals or traffic light cabinets on CSXT property even where road across track is there by prior license or easement. The installation shall be in compliance with the term and conditions of Attachment B; Wire Line Requirements and Conditions.

6. Permits. At its sole cost and expense, Agency shall procure all permits and approvals required by any federal, state, or local governments or governmental agencies for the construction, maintenance and use of the Project, copies of which shall be provided to CSXT.

7. Insurance. In addition to the insurance that Agency requires of its Contractor, Agency shall acquire or require its Contractor to purchase and maintain insurance in compliance with CSXT's insurance requirements attached to this Agreement as Attachment C, unless a formal letter of self-insurance is submitted to CSX Insurance Manager and approved by same. Exhibit D shows the approved letter. Neither Agency nor Contractor shall commence work on the Project until such policy or policies have been submitted to and approved by CSXT's Risk Management Department.

8. Ownership and Maintenance.

   8.1. By Agency. Agency shall own, maintain, inspect and repair, at its sole cost and expense, the Highway Traffic Signals and the interconnecting cable terminating at the common cable junction box. Agency shall be solely responsible for the provision of electricity and all other utilities necessary to the operation of such facilities. Upon the cessation of use of the Highway Traffic Signals and the interconnecting cable terminating at the common cable junction box, Agency

shall remove the interconnecting cable and restore CSXT's property to its original condition, at Agency's sole cost and expense, to CSXT's satisfaction. CSXT hereby grants to Agency, insofar as CSXT has the right to do so, permission to access CSXT's property for the purposes maintaining, inspecting and repairing the Agency's interconnection cable, upon reasonable advance notice to CSXT and CSXT's prior approval. Agency agrees to reimburse CSXT for all costs and expenses incurred by CSXT for flagging, testing and protective services provided by CSXT in connection with such activities, within thirty (30) days of delivery of an invoice for such costs and expenses to Agency.

8.2. By CSXT. CSXT shall posess, and shall inspect, test and maintain, at Agency's sole cost and expense, the preemption interconnection circuit only from the common cable junction box to the railroad cabinet. Agency agrees to reimburse CSXT for all such costs and expenses, within thirty (30) days following delivery of an invoice for such costs and expenses to Agency.

8.3. By Agency. Upon completion of the Project, Agency shall deliver notice of completion to CSXT and Agency. Agency and CSXT shall promptly inspect the Project. If either Agency or CSXT notify Agency of its determination that the Project requires further work to comply with the Plans, Agency shall promptly perform such work and notify CSXT and Agency upon completion of such work. Upon completion of the Project in accordance with the Plans and to the satisfaction of CSXT and Agency, Agency shall accept Agency's obligations under Section 1.2, Section 8.1, Section 8.1 and Section 8.2 of this Agreement.

8.4. Alterations. Neither Agency nor CSXT shall change the effective circuits or equipment without the prior written concurrence of the other.

9. Indemnification.

9.1. Generally. To the maximum extent permitted by Section 768.28 of the Florida Statutes and subject to the monetary limitations set forth therein, Agency and its Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of CSXT, its affiliates, Agency and its Contractors), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of CSXT, its affiliates, Agency and its Contractors, and environmental damages and any related remediation brought or recovered against CSXT and its affiliates), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Agency, and its Contractors, and their respective agents, employees, invitees, or its contractors' agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto, or from their presence on or about CSXT's property.

9.2. Compliance with Laws. Agency and its Contractors shall comply, and shall require its Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the Project. Agency's Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.

9.3. Operation of Preemption Interconnection. To the maximum extent permitted by Section 768.28 of the Florida Statutes and subject to the monetary limitations set forth therein, Agency and their Contractors shall indemnify, defend and hold harmless CSXT and its affiliates from and against,

and releases CSXT and its affiliates from all liability for, all claims, demands, payments, suits, actions, judgments, settlements and damages of every nature, degree and kind (including direct, indirect, consequential, incidental and punitive damages), for the loss or damage to any property whatsoever (including, but not limited to, property owned by or in the care, custody or control of CSXT or its affiliates or Agency and/or their Contractors) and for any injury to or death of any person(s) (including, but not limited to, the employees of CSXT, its affiliates or Agency and/or their Contractors), arising directly or indirectly from: (1) the negligence, recklessness, or willful misconduct of Agency, their employees, agents or contractors in connection with the operation, inspection, testing and maintenance of the Highway Traffic Signals and the interconnecting cable pursuant to this Agreement; or (2) defects, faults or inaccuracies in the timing intervals, sequence chart or preemption aspects of the interconnection with the Grade Crossing Warning Devices.

9.4. "CSXT Affiliates". For the purpose of this Section 9, CSXT's affiliates include CSX Corporation and all entities, directly or indirectly, owned or controlled by or under common control of CSXT or CSX Corporation and their respective officers, directors, employees and agents.

9.5. Notice of Incidents. Agency and their Contractors shall notify CSXT promptly of any loss, damage, injury or death arising out of or in connection with the Project work.

9.6. No Insurance Limitations. The foregoing indemnification obligations of this Section 9 shall not be limited to the insurance coverage required by this Agreement, except to the extent required by law.

9.7. Survival. The provisions of this Section 9 shall survive the termination or expiration of this Agreement.

10. Independent Contractor. The parties agree that neither Agency nor its Contractors shall be deemed either agents or independent contractors of CSXT. Except as otherwise provided by this Agreement, CSXT shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by Agency or their Contractors, or the construction practices, procedures, and professional judgment employed by Agency or its Contractors to complete the Project. Notwithstanding the foregoing, this Section 10 shall in no way affect the absolute authority of CSXT to prohibit Agency or their Contractors or anyone from entering CSXT's property, or to require the removal of any person from its property, if it determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the Project exist.

11. Subcontracts. CSXT shall be permitted to engage outside consultants, counsel and subcontractors to perform all or any portion of the Engineering Work.

12. Notices. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the parties at the addresses set forth below, or such other addresses as either party may designate by delivery of prior notice to the other party:

If to CSXT: CSX Transportation, Inc.
500 Water Street, J301
Jacksonville, Florida 32202
Attention: Hal Gibson, Project Manager Public Projects

If to Agency: Miami Dade County
Public Works Department
Highway Division
Stephen P. Clark Center
111 NW 1st Street, 14th Floor
Miami, FL 33128
Attention: Octavio Marin, M.S., P.E

13. Severability. The parties agree that if any part, term or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable.

14. Entire Agreement. This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.

15. Waiver. If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.

16. Assignment. CSXT may assign this Agreement and all rights and obligations herein to a successor in interest, parent company, affiliate, or future affiliate. Upon assignment of this Agreement by CSXT and the assumption by CSXT's assignee of CSXT's obligations under this Agreement, CSXT shall have no further obligations under this Agreement. Agency shall not assign its rights or obligations under this Agreement without CSXT's prior written consent, which consent may be withheld for any reason.

17. Applicable Law. This Agreement shall be governed by the laws of the **State** of **Florida**, exclusive of its choice of law rules. The parties further agree that the venue of all legal and equitable proceedings related to disputes under this Agreement shall be situated in Duval County, Florida, and the parties agree to submit to the personal jurisdiction of any State or Federal court situated in Duval County, Florida.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, each by its duly authorized officers, as of the date of this Agreement.

MIAMI-DADE COUNTY

By:_____
Name:_____
Title:_____

CSX TRANSPORTATION, INC.

By:_____
Dale W. Ophardt
Assistant Vice President - Engineering

Exhibit A

CSX TRANSPORTATION, INC.
FORCE ACCOUNT ESTIMATE

ACCT. CODE : 709 - FL1533

ESTIMATE SUBJECT TO REVISION AFTER: 8/21/2011 **DOT NO.:** 627 901H
CITY: Coral Gables **COUNTY:** Miami-Dade **STATE:** FL
DESCRIPTION: Preemption at SW 39th Street and SW 72nd Avenue

DIVISION: Jacksonville **SUB-DIV:** Homestead **MILE POST:** SXH-44.11
AGENCY PROJECT NUMBER: Miami-Dade Public Works

PRELIMINARY ENGINEERING:					
200 Labor (Non Contract)				$	-
200 Additive	31.34%			$	-
230 Expenses				$	-
212 Contracted & Administrative Engineering Services				$	750
Subtotal				$	750
CONSTRUCTION ENGINEERING/INSPECTION:					
200 Labor (Non Contract)				$	-
200 Additive	31.34%			$	-
230 Expenses				$	-
212 Contracted & Administrative Engineering Services				$	750
Subtotal				$	750
FLAGGING SERVICE: (Contract Labor)					
070 Labor (Conductor-Flagman)		Days @	$ 350.00	$	-
050 Labor (Foreman/Inspector)		Days @	$ 336.00	$	-
070 Additive	71.09% (Transportation Department)			$	-
050 Additive	100.72% (Engineering Department)			$	-
230 Per Diem	(Engineering Department)	Days @	$ 75.00	$	-
230 Expenses		Days @	$ 45.00	$	-
Subtotal				$	-
SIGNAL & COMMUNICATIONS WORK: (Details Attached)				$	12,474
TRACK WORK: (Details Attached)				$	-
ACCOUNTING & BILLING:					
040 Labor				$	200
040 Additive	63.03%			$	126
Subtotal				$	326
PROJECT SUBTOTAL				$	14,300
900 **CONTINGENCIES:**	10.00%			$	1,430
GRAND TOTAL **********				$	15,731

DIVISION OF COST:

Agency	100.00%	$	15,731
Railroad		$	-
TOTAL **********		$	15,731

NOTE: Estimate is based on FULL CROSSING CLOSURE during work by Railroad Forces.
This estimate has been prepared based on site conditions, anticipated work duration periods, material prices, labor rates, manpower and resource availability, and other factors known as of the date prepared. The actual cost for CSXT work may differ based upon the agency's requirements, their contractor's work procedures, and/or other conditions that become apparent once construction commences or during the progress of the work

Office of Assistant Chief Engineer Public Projects–Jacksonville, Florida
Estimated prepared by: Hal Gibson **Approved by:** **CSXT Public Project Group**
DATE: 2/22/2011 **REVISED:** **DATE:**

Form Revised 03-02-2010-LLS

Exhibit A-1

Estimate No. 118115

CSX Transportation

SW 72nd Avenue @ SW 39th St Preemption
Coral Gables, FL

DOT: 627901H OP: FL1533 CSX Project: FL2011011

Summary

Material	$ 1,523
Sales Tax	$ 0
Labor:	
Construction Labor (3 man-days)	$ 884
Shop Labor (0 man-days)	$ 0
Subsistence (3 man-days)	$ 390
Railroad Engineering, Preliminary	$ 2,792
Railroad Engineering, Construction	$ 133
Additives to Construction Labor	$ 804
Additives to Shop Labor	$ 0
Additives to Track Labor	$ 0
Additives to Engineering	$ 917
Equipment Expenses (1 work days)	$ 650
Waste Management (1 work days)	$ 24
Contract Engineering	$ 3,159
Freight	$ 1,200
Poleline Removal	$ 0
AC Power Service	$ 0
Salvage	$ 0
TOTAL ESTIMATE COST	$ 12,474

Date: 02/08/2011
Estimated By: Ernesto Prospero

NOTE: This estimate should be considered void one year from date of estimate.

Exhibit A-2

Field Material List for CSX Project: FL2011011 (Effective: 02/08/2011)
SW 72nd Avenue @ SW 39th St. Preemption
Coral Gables, FL - SXH 44.11

Catalog Num	Cond	Unit Price	Qty	Cost	Description
020-0013555	1	291.50	1	291.50	BOX JUNCTION 8 WAY ALUMINUM INCLUDES 2 EACH 4 POST
020-0015287	1	29.16	1	29.16	LOCK SAFETRAN 030399-16X HEXAGON/SPANNER SCREW HEAD
020-0015558	1	1.46	1	1.46	COMPOUND DUCT SEAL 5 LB PKG NEER NO 578.2
020-0017076	1	0.16	25	4.00	TIE CABLE AMP 15-1/2" LENGTH UP TO 4" WIRE BUNDLE RANGE
020-0017120	1	11.52	1	11.52	BLOCK TERMINAL 12 POST SINGLE STRIP AAR 14.1.6 WITH 1 AAR
020-0017625	1	0.42	100	42.00	WIRE CASE TWISTED PAIR AWG #14 FLEX TWIST 2 TURNS PER FT
020-0017630	1	0.13	100	13.00	WIRE CASE NO 16 AWG FLEX CSX SPEC SS796 FURN 1000 FT SPOOL
020-0022651	1	55.89	2	111.78	PLUGBOARD KIT TYPE B1 OR ST1 RELAY ASSEMBLY WITH 12 EACH
020-0028610	1	0.22	20	4.40	TERMINAL RING PANDUIT PN12-14HDR-D YELLOW NYLON HVY
020-0053245	1	1.66	150	249.00	CABLE UG 3 COND NO 9 AWG SOLID C CSX SPEC SS796 SHOW
020-0054275	1	1.62	1	1.62	MARKER WIRE CARD BRADY OLWM-1-12 36 MARKERS PER CARD
020-0056822	1	9.41	1	9.41	TAPE UG RED CABLE MARKER IMPRINT TO READ-"CAUTION
020-0057111	1	0.21	25	5.25	TAG TEXIT HEATEX WIRE MARK 2:1 WHITE 3/8" X 1" (9.5MM X
020-0064053	1	22.12	2	44.24	MOUNTING ASSY 58570-13 GR2 SHELF GRS A62-501 FOR SHELF
020-0770060	1	13.44	2	26.88	ARRESTER US&S N451552-0201 TRACK SERIES RED LABEL USGA
020-3430110	1	321.84	2	643.68	RELAY SAFETRAN 400004 500 OHMS CONTACTS 4FB-2F-1B CSX
020-4151750	1	0.34	10	3.40	TAG PLASTIC 1-1/2 X 7/8" WIDE ONE HOLE WHITE MATT FINISH
020-4200340	1	1.65	2	3.30	LINK TEST ASSEMBLY 1" CENTERS COMPLETE WITH INSULATED
020-4200892	1	0.44	4	1.76	CONNECTOR TERMINAL 1" CENTERS AAR 14.1.15-3 NICKEL PLATED
020-4200900	1	0.27	2	0.54	CONNECTOR SHEATHING AMP 329860 FOR NO. 14 WIRE
020-4201042	1	0.12	20	2.40	NUT HEX BINDING (RSA NUT) AAR 14.1.11-6 14-24 NS-2 THD CONE
020-4201043	1	0.11	20	2.20	NUT HEX CLAMP (FLAT NUT) AAR 14.1.11-7 14-24 NS-2 THD FLAT
020-4201044	1	0.11	50	5.50	WASHER AAR 14.1.11 ROUND COPPER NICKEL PLATED FOR AAR
250-0012228	1	2.98	1	2.98	TAPE BLACK ELECTRIC 3/4" X 66' 3M "SUPER 33 PLUS"
360-0020350	1	2.93	4	11.72	WATER DRINKING PURIFIED 10OZ PLASTIC BOTTLES 24 PER CASE

Total Cost: $ 1,522.7

Estimate ID: 118115

Exhibit A-3

EXHIBIT B

Wire Line Requirements and Conditions

EXHIBIT C
INSURANCE REQUIREMENTS

I. Insurance Policies:

Agency and Contractor, if and to the extent that either is performing work on or about CSXT's property, shall procure and maintain the following insurance policies:

1. Commercial General Liability coverage at their sole cost and expense with limits of not less than $5,000,000 in combined single limits for bodily injury and/or property damage per occurrence, and such policies shall name CSXT as an additional named insured.

2. Statutory Worker's Compensation and Employers Liability Insurance with limits of not less than $1,000,000, which insurance must contain a waiver of subrogation against CSXT and its affiliates.

3. Commercial automobile liability insurance with limits of not less than $500,000 combined single limit for bodily injury and/or property damage per occurrence, and such policies shall name CSXT as an additional named insured.

4. Railroad protective liability insurance with limits of not less than $5,000,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate annual limit of $10,000,000, which insurance shall satisfy the following additional requirements:

   a. The insurer must be financially stable and rated B+ or better in Best's Insurance Reports.

   b. The Railroad Protective Insurance Policy must be on the ISO/RIMA Form of Railroad Protective Insurance - Insurance Services Office (ISO) Form CG 00 35.

   c. CSX Transportation must be named as the named insured on the Railroad Protective Insurance Policy.

   d. Name and Address of Contractor and Agency must be shown on the Declarations page.

   e. Description of operations must appear on the Declarations page and must match the Project description, including project or contract identification numbers.

   f. Authorized endorsements must include the Pollution Exclusion Amendment - CG 28 31, unless using form CG 00 35 version 96 and later.

   g. Authorized endorsements may include:

      (i). Broad Form Nuclear Exclusion - IL 00 21
      (ii) 30-day Advance Notice of Non-renewal or cancellation
      (iii) Required State Cancellation Endorsement
      (iv) Quick Reference or Index - CL/IL 240

h. Authorized endorsements may not include:

(i) A Pollution Exclusion Endorsement except CG 28 31
(ii) A Punitive or Exemplary Damages Exclusion
(iii) A "Common Policy Conditions" Endorsement
(iv) Any endorsement that is not named in Section 4 (f) or (g) above.
(v) Policies that contain any type of deductible

5. Such additional or different insurance as CSXT may require.

II. Additional Terms

1. Agency and/or Contractor must submit its original insurance policies and two copies and all notices and correspondence regarding the insurance policies to:

Jonathan MacArthur
Manager – Insurance
CSX Transportation, Inc.
500 Water Street, C907
Jacksonville, FL 32202

Phone: (904) 359-3394
Fax: (904) 306-5325
Email: Jonathan_MacArthur@csx.com

2. Neither Agency nor Contractor may begin work on the Project until it has received CSXT's written approval of the required insurance policies.

Project: Preemption Interconnection with traffic signals located at intersection of SW 39th Street and SW 72nd Avenue at CSXT Milepost SXH-44.11, DOT No. 672901H, CSXT OP No. FL1533

SCHEDULE I

CONTRACTOR'S ACCEPTANCE

To and for the benefit of CSX Transportation, Inc. ("CSXT") and to induce CSXT to permit Contractor on or about CSXT's property for the purposes of performing work in accordance with the Agreement dated _____, 2011, between Miami-Dade County Public Works and CSXT, Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to, Exhibit C and Sections 3, 7 and 9 of the Agreement.

Contractor: _____

By: _____
Name: _____
Title: _____
Date: _____

CSXT Schedule PA

(Advance Payment – Preliminary Engineering Agreement)

PAYMENT SUBMISSION FORM

PROJECT INFORMATION
CSX OP No.: **FL1533**
Description: **Coral Gables, Miami-Dade County, FL; Preemption at SW 39th Street**

****

Payment is hereby provided in accordance with the terms of Section 3.3.1 Payment Terms of the Agreement dated _____, between Agency and CSXT.

****

A copy of this Payment Submission Form shall accompany all payments delivered by Agency to CSXT which shall be forwarded to the following address:

CSX Transportation, Inc.
P.O. Box 116651
Atlanta, GA 30368-6651

****

Payment due within ten (10) days of Agency's receipt of fully executed agreement

****

(All information below to be completed by Agency providing Payment)

Payment Date	Payment Amount	Check No.
_____	_____	_____

****

Date: _____

By: _____

Name: _____

Title: _____

Phone: _____

Email: _____

Please send copy of check to:
CSX Transportation
Hal Gibson Project
Principal Engineer – Public Projects
500 Water Street J-301
Jacksonville, FL 32202

EXHIBIT D

General Services Administration
Risk Management Division
Property and Casualty Unit
111 NW 1st Street • Suite 2340
Miami, Florida 33128-1987
T 305-375-4282 F 305-375-1477

miamidade.gov

MIAMI-DADE COUNTY

ADA Coordination
Agenda Coordination
Art in Public Places
Audit and Management Services
Aviation
Building Code Compliance
Building
Business Development
Capital Improvements
Citizen's Independent Transportation Trust
Communications
Community Action Agency
Community & Economic Development
Community Relations
Consumer Services
Corrections & Rehabilitation
Countywide Healthcare Planning
Cultural Affairs
Elections
Emergency Management
Employee Relations
Enterprise Technology Services
Environmental Resources Management
Fair Employment Practices
Finance
Fire Rescue
General Services Administration
Historic Preservation
Homeless Trust
Housing Agency
Housing Finance Authority
Human Services
Independent Review Panel
International Trade Consortium
Juvenile Assessment Center
Medical Examiner
Metropolitan Planning Organization
Park and Recreation
Planning and Zoning
Police
Procurement Management
Property Appraiser
Public Library System
Public Works
Safe Neighborhood Parks
Seaport
Solid Waste Management
Strategic Business Management
Team Metro
Transit
Urban Revitalization Task Force
Vizcaya Museum and Gardens
Water and Sewer

May 17, 2011

Eva Olsen
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

RE: PREEMPTION INTERCONNECTION AGREEMENT
SW 39th Street and SW 72nd Avenue

Dear Ms. Olsen:

This is to inform you that Miami-Dade County has an on-going self-insurance program for Worker's Compensation, General Liability, Railroad Protective Liability and Automobile Liability covering employees and officials of the County.

Since the County does not carry insurance with an insurance company, we cannot provide you with a Certificate of Insurance.

However, in compliance with and subject to the limitations of Florida Statutes, Section 768.28, provisions have been made in this office to process any claims that may arise and the same protection will be afforded as would be provided by a policy of insurance.

Sincerely,

Barbara Dunlop

Barbara Dunlop, ARM
Risk Management Property and Casualty Manager

BD/lv

Delivering Excellence Every Day