Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(J)(1)(F)
03-06-07

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

RESOLUTION NO. R-232-07

RESOLUTION AUTHORIZING EXECUTION OF A PRELIMINARY ENGINEERING AGREEMENT IN THE AMOUNT OF $30,000.00 BETWEEN MIAMI-DADE COUNTY AND CSX TRANSPORTATION, INC., FOR THE REVIEW AND APPROVAL OF PRELIMINARY AND FINAL ENGINEERING PLANS FOR THE MIC – EARLINGTON HEIGHTS CONNECTOR OVERHEAD BRIDGES; AND AUTHORIZING THE COUNTY MANAGER TO EXPEND FUNDS PURSUANT TO THE AGREEMENT

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:

Section 1. That this Board approves the agreement between Miami-Dade County and the CSX Transportation, Inc. in substantially the form attached hereto and made a part hereof, for the review and approval of preliminary and final engineering plans for two overhead bridges over CSXT milepost SX-1036.37 to milepost SX-1036.55 for the MIC – Earlington Heights Connector Project.

Section 2. That this Board further authorizes the County Mayor or his designee to execute such contracts and agreements as are approved by the County Attorney's Office; to expend funds in accordance with such aforementioned agreement; and to file and execute any additional agreements, revisions, or amendments as required to carry out the project for, and on behalf of Miami-Dade County, Florida.

The foregoing resolution was offered by Commissioner Katy Sorenson, who moved its adoption. The motion was seconded by Commissioner Sally A. Heyman and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	aye		
Barbara J. Jordan, Vice-Chairwoman	aye		
Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Joe A. Martinez	aye	Dennis C. Moss	aye
Dorrin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of March, 2007. This resolution shall become effective as follows: (1) 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, and (2) either i) the Citizens' Independent Transportation Trust (CITT) has approved same, or ii) in response to the CITT's disapproval, the County Commission re-affirms its award by two-thirds (2/3) vote of the Commission's membership and such reaffirmation becomes final.

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

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency.
Bruce Libhaber

COUNTY COMMISSIONERS DADE COUNTY FLORIDA

By: KAY SULLIVAN
Deputy Clerk

Memorandum

MIAMI-DADE COUNTY

Date: March 6, 2007

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

Agenda Item No. 8(J)(1)(F)

From: George M. Burgess
County Manager

Subject: Resolution Authorizing Execution of a Preliminary Engineering Agreement Between Miami-Dade County and CSX Transportation, Inc., for the Review and Approval of Preliminary and Final Engineering Plans for the MIC-Earlington Heights Connector Overhead Bridges in the Amount of $30,000

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing the execution of a Preliminary Engineering Agreement in the amount of $30,000.00 between Miami-Dade County and CSX Transportation, Inc. (CSXT) for the review and approval of preliminary and final engineering plans and other documents pertaining to the MIC-Earlington Heights Connector project's construction of two overhead bridges over CSXT located between CSXT Milepost SX-1036.37 to Milepost SX-1036.55. It is further recommended that the Board authorize the expenditure of funds under this Agreement.

BACKGROUND

On July 9, 2002, the Board adopted Ordinance No. 02-116, authorizing the levy of one half cent transit system surtax for the People's Transportation Plan (PTP), subsequently approved by voters on November 5, 2002. A program for rail corridor improvements, over a period of 30 years, was identified and included in the PTP. This provided the local funding match required for future Federal and State funding to support the design and construction of countywide rapid transit lines. Among the corridors identified was the 2.4 mile Metrorail connection between the Earlington Heights Metrorail Station and the MIC (Miami Intermodal Center), located on the east side of the Miami International Airport (MIA). The MIC will serve as a central transfer point for Metrorail, Metrobus, and South Florida Regional Transportation.

The work to be performed by CSXT under this agreement consists of the review and approval of preliminary and final engineering design plans, specifications, drawings, agreements and other documents pertaining to the MIC-Earlington Heights Connector Project's construction of two overhead bridges over the CSX Railroad. It also includes the preparation of cost estimates, site surveys, assessments, studies, agreements and related construction documents submitted to CSXT by the County in reference to the construction of two overhead bridges over the CSX Railroad located between CSXT Milepost SX-1036.37 and Milepost SX-1036.55.

The elevated Metrorail guideway for the MIC-Earlington Heights Project crosses the at-grade railroad at two (2) locations. The agreement refers to these two overhead crossings as "bridges." Both proposed overhead crossings are located south of the Miami River Canal between South River Drive and NW 25th Street. One crossing is over the South Florida Rail Corridor mainline south of South River Drive and the other is over the south leg of the South Florida Rail Corridor adjacent to NW 28th Street.

CSXT procedures require that any project which may encroach or be near CSXT right of way be evaluated in advance by CSXT. Further, CSXT requires payment for the costs and expenses of reviewing plans and other activities necessary to support the review of the project. As a result, in order to initiate CSXT project review, the attached Preliminary Agreement must be approved and executed by the County. Other County departments which have entered into similar agreements include Public Works.

PRELIMINARY ENGINEERING AGREEMENT

This Preliminary Engineering Agreement (this **"Agreement"**) is made as of , 2007, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida ("CSXT"), and **Miami Dade County,** a body corporate and political subdivision of the **State of Florida** ("County").

EXPLANATORY STATEMENT

1. County wishes to facilitate the development of the proposed **construction of two new Over Head Bridges over CSX for the MIC- Earlington Heights Connector Project located at CSXT Mileposts SX-1036.37, to Milepost SX 1036.55** (the **"Project"**). The MIC-Earlington Heights Connector Project 2.4 mile double-track elevated guide-way crosses over the South Florida Railroad Corridor **in two locations (the south leg of the wye and the mainline).**

2. County has requested that CSXT proceed with certain necessary engineering and/or design services for the Project to facilitate the parties' consideration of the Project.

3. Subject to the approval of CSXT, which approval may be withheld for any reason directly or indirectly related to safety or CSXT operations, property, or facilities, the Project is to be constructed, if at all, at no cost to CSXT, under a separate construction agreement to be executed by the parties at a future date.

NOW, THEREFORE, for and 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. Scope of Work

Generally. The work to be done by CSXT under this Agreement shall consist of: (i) the preparation or review and approval of preliminary and final engineering and design plans, specifications, drawings, agreements and other documents pertaining to the Project, (ii) the preparation of cost estimates for CSXT's work in connection with the Project, and (iii) the review of construction cost estimates, site surveys, assessments, studies, agreements and related construction documents submitted to CSXT by County for the Project (collectively, the **"Engineering Work"**). Engineering Work may also include office reviews, field reviews, attending hearings and meetings, and preparing correspondence, reports, and other documentation in connection with the Project. Nothing contained in this Agreement shall oblige CSXT to perform work which, in CSXT's opinion, is not relevant to CSXT's participation in the Project.

1.2. Effect of CSXT Approval or Preparation of Documents. By its review, approval or preparation of plans, specifications, drawings or other documents pursuant to this Agreement (collectively, the **"Plans"**), CSXT signifies only that the Plans and the Project proposed to be constructed in accordance with the Plans satisfy CSXT's requirements. 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 County or any other persons of such Plans or the Project constructed in accordance with the Plans.

2. Project Construction. Nothing contained in this Agreement shall be deemed to constitute CSXT's approval of or consent to the construction of the Project, which approval or consent may be withheld for any reason directly or indirectly related to safety or CSXT operations, property, or facilities. The

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: March 6, 2007

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 8(J)(1)(F)

Please note any items checked.

_____ **"4-Day Rule" ("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**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

This project is currently at the 60% stage of design. CSXT will review the design documents at various submittal stages inclusive of the 90% plans. (Engineering plans are typically reviewed at 30%, 60%, 90% and 100%). Any improvements within the railroad corridor require CSXT review and approval. This cost for this agreement will compensate CSXT for all expenses related to the review of the MIC-Earlington Heights Project documents.

FISCAL IMPACT

The $30,000 cost associated with this agreement is included as part of the MIC-Earlington Heights Connector project which is included among the rapid transit improvement projects listed in the People's Transportation Plan (PTP). The project will be funded through a combination of the $100 million awarded by Florida Department of Transportation (FDOT) towards this project and proceeds from the Charter County Transit System Surtax (Surtax).

Assistant County Manager

2/5/02
Date

Project if constructed is to be constructed, if at all, under a separate construction agreement to be executed by the parties at a future date.

3. Reimbursement of CSXT Expenses.

3.1. Reimbursable Expenses. County shall reimburse CSXT for all costs and expenses incurred by CSXT in connection with the Engineering Work, 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").**

3.2. Estimate. CSXT has estimated the total Reimbursable Expenses for the Project to be approximately ~~$30,000~~ (the **"Estimate"** as amended or revised). In the event CSXT anticipates that actual Reimbursable Expenses may exceed such Estimate, it shall provide County with the revised Estimate of total Reimbursable Expenses for County'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 County, to immediately cease all further Engineering Work, unless and until County provides such approval and confirmation.

3.3. Payment Terms.

3.3.1. Progress Payments in Arrears. County shall pay CSXT in arrears for its Reimbursable Expenses. CSXT shall request such payment by delivery of an invoice to County. County shall make such payment within thirty (30) days following delivery of the invoice to County. CSXT invoice information shall be included with the payment to identify the specific project and invoice.

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 County and shall submit to County a final invoice if required. County 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 County 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 County fails to pay CSXT any sums due CSXT under this Agreement: (i) County 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 County: (A) to immediately cease all further work on the Project, unless and until County pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.

3.4. Effect of Termination. County's obligation to pay CSXT Reimbursable Expenses in accordance with this Section shall survive termination of this Agreement for any reason.

4. Appropriations. County represents to CSXT that: (i) County has obtained appropriations sufficient to reimburse CSXT for the Reimbursable Expenses encompassed by the initial Estimate; (ii) County shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses

encompassed by subsequent Estimates approved by County; and (iii) County shall promptly notify CSXT in the event that County is unable to obtain such additional appropriations.

5. Termination.

5.1. By County. County 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.

5.2. By CSXT. CSXT may terminate this Agreement (i) as provided pursuant to Section 3.3.3., or (ii) upon County's breach of any of the terms of, or its obligations under, this Agreement and such breach continues without cure for a period of ninety (90) days after written notification from CSXT to County of such breach.

5.3. 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 to immediately stop the Engineering Work. Accordingly, both parties agree that, in such instance a party may continue to perform Engineering Work until it has reached a point where it may reasonably and/or safely suspend the Engineering Work. County shall reimburse CSXT pursuant to this Agreement for the Engineering Work performed, plus all costs reasonably incurred by CSXT to discontinue the Engineering Work and all other costs of CSXT incurred as a result of the Project up to the time of full suspension of the Engineering Work. Termination of this Agreement or Engineering Work on the Project, for any reason, shall not diminish or reduce County's obligation to pay CSXT for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Engineering Work for any reason, CSXT's only remaining obligation to County shall be to refund to County payments made to CSXT in excess of Reimbursable Expenses in accordance with Section 2.

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

7. Notices. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered (i) on the expiration of three (3) days following mailing by first class U.S. mail, (ii) on the next business day following mailing by a nationally recognized overnight carrier, or (iii) on the date of transmission, as evidenced by written confirmation of successful transmission, if by facsimile or other electronic transmission if sent on a business day (or if not sent on a business day, then on the next business day after the date sent), 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: Leslie Scherr

If to County: Jerry Borbolla
Chief Right of Way & Utilities
Miami Dade Transit County 111
NW First Street, Suite 1510
Miami, Florida, 33128-1999

8. 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.

9. 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.

10. 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. County shall not assign its rights or obligations under this Agreement without CSXT's prior written consent, which consent may be withheld for any reason.

11. 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 Miami Dade County, Florida, and the parties agree to submit to the personal jurisdiction of any State or Federal court situated in Miami Dade County, Florida.

Project **Bridges over CSX for the MIC- Earlington Heights Connector Project in Miami**
CSXT OP#TBD

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.

ATTEST
HARVEY RUVIN, CLERK
State of Florida.

By:

_____
Deputy Clerk

Approved by Office of County Attorney as
To form and Sufficiency:

By:

_____

Assistant County Attorney

MIAMI-DADE COUNTY,
FLORIDA, a political subdivision of the
State of Florida, BY ITS BOARD OF
COUNTY COMMISSIONERS

By:

_____
Name: George M. Burgess
Title: County Manager

_____
Date:

CSX TRANSPORTATION, INC.

By: Eric G. Peterson
Assistant Chief Engineer - Public Projects

Base Form: PE/PI CSXT 051206

This Document File:

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