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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: March 15, 2011

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

Agenda Item No. 14(A)(2)
Resolution Number: R-188-11

From: George M. Burgess
County Manager

Subject: Resolution Authorizing the Execution of an Assumption Agreement between Miami-Dade County and Florida East Coast Railway, L.L.C. Relating to Obligations under a U.S. Department of Transportation Grant Program

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the accompanying resolution authorizing the execution of an Assumption Agreement between Miami-Dade County and Florida East Coast Railway, L.L.C. memorializing their various obligations under a U.S. Department of Transportation (U.S. DOT) National Infrastructure Investments Discretionary Grant Program Agreement (TIGER II Grant Agreement).

SCOPE

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

FISCAL IMPACT/FUNDING SOURCE

The attached Assumption Agreement is one of several agreements necessary for the full implementation of the Port of Miami Intermodal and Rail Reconnection Project (Project) under the TIGER II Grant Agreement. The Project in its entirety is estimated to cost $49.4 million and is funded by the U.S. DOT ($22.767 million), the Florida Department of Transportation (FDOT) ($10.9 million), the Florida East Coast Railway ($10.9 million), the Port of Miami ($4.8 million), and the City of Miami ($50,000).

TRACK RECORD/MONITOR

There are no outstanding business issues or financial obligations between the Florida East Coast (FEC) Railway and Miami-Dade County.

The Seaport Department staff members responsible for monitoring the contract(s) will be Kevin Lynskey, Assistant Director, Business Initiatives; and Dorian Valdes, Assistant Director, Capital Development.

DELEGATED AUTHORITY

In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond those specific in the resolution which include the authority for the Mayor or designee to execute the Agreement.

BACKGROUND

On October 15, 2010, the U.S. DOT announced its intent to award the Port of Miami $22.767 million dollars to rehabilitate the existing Port rail lead, repair its bascule bridge, and construct an efficient, high capacity on-dock intermodal rail facility. The Port of Miami Project was one of only 42 selected from an application pool of nearly 1,000, receiving the fifth highest award among all projects and garnering the highest funding by far for any port.

On March 3, 2011, the Board of County Commissioners passed an emergency motion authorizing the County Mayor or Mayor's designee to execute the TIGER II Grant Agreement. This motion became necessary as several resolutions have been introduced in Congress to "sweep back" federal grants that are either unspent or not yet awarded. At the time of the emergency motion, the County Manager informed the Board that the TIGER II Grant Agreement should have been introduced to the Board with a companion agreement with the Florida East Coast Railway, L.L.C., which was not yet finalized. As a consequence, the Board authorized the County Mayor or Mayor's designee to execute the TIGER II Grant Agreement with the caveat that no TIGER II Grant moneys could be drawn prior to Board approval of such an agreement with the Florida East Coast Railway, L.L.C. that, includes among other things, the parties' respective obligations to perform their various rail construction responsibilities under the TIGER II Grant Agreement and the necessary protections. I committed to bring to this Board such an agreement for your consideration. Consistent with this commitment, a more detailed agreement will be brought back to the Board at a future date.

However, at this juncture U.S. DOT is requiring evidence of a non-federal match as a condition of execution of the TIGER II Grant Agreement. The Florida East Coast Railway and FDOT have already executed a Joint Participation Agreement committing a combined $21.8 million to this Project. The approval of the Assumption Agreement should trigger the placement of the Port of Miami's TIGER II Grant Agreement into U.S. DOT's accounting system, thus eliminating the Project from a target list of projects that Congress is considering de-obligating when the U.S. Government Continuing Resolution expires March 18, 2011.

The Port of Miami's Intermodal and Rail Rehabilitation Project is one of three interrelated investments aimed at securing Miami's gateway role in international trade subsequent to the expansion of the Panama Canal scheduled for 2014. The rail improvements will reconnect the Port to the national rail system, while the Port of Miami Tunnel will provide a direct link to the highway system. These infrastructure enhancements are a necessary complement to the deepening of the Miami Harbor to -50 feet.

In addition to re-establishing direct access to the national rail network - access which was cut off when Hurricane Wilma damaged the bascule bridge in 2005 - this Project will provide two new cargo assets for the Port: a true on-port intermodal yard capable of highly efficient container loading operations and a direct connection to the FEC Hialeah Rail Yard (which is itself being enhanced to accommodate the growth in container trade). The Project will result in major improvements to many rail intersection crossings between the Port and 71st Street. These intersection enhancements will provide for a safer and quieter system, and will position the FEC corridor to accommodate future passenger rail service. The Assumption Agreement effectively links the above on-Port rail improvements with the off-Port improvements, which include the replacement of 4.4 miles of track, multiple intersection upgrades, and the replacement of a missing piece of rail that will provide for a direct connection between the Port and FEC Rail Yard.

The Project is estimated to cost $49.4 million in on-Port ($25.1 million) and off-Port ($24.3 million) improvements. The on-Port improvements are to be entirely owned by the County and are scheduled to be completed 30 months from the execution date of the TIGER II Grant Agreement. The off-Port improvements are to be owned by the FEC Railway, with the majority of the elements expected to be constructed in 18 months or less. The Project will be phased so that the new rail system can be running at 50% capacity by late 2012 and at full capacity in 2014.

The funding entities for the Project include the U.S. DOT ($22.767 million), FDOT ($10.9 million), Florida East Coast Railway ($10.9 million), the Port of Miami ($4.8 million), and the City of Miami ($50,000). One-hundred percent of the TIGER II Grant Agreement funds are to be invested in the on-Port assets, as well as $2.3 million in Port of Miami funds. The remainder of all the funds will be invested in the FEC-owned lead track and Hialeah Rail Yard.

	Port Rail	FEC Rail	TOTAL
TIGER II	$22,767,000		$22,767,000
FDOT		$10,900,000	10,900,000
FEC		10,900,000	10,900,000
Port	2,300,000	2,500,000	4,800,000
City of Miami		50,000	50,000
TOTAL	**$25,067,000**	**$24,350,000**	**$49,417,000**

The Board of County Commissioners will be presented with several additional items concerning this Project over the next several months, including an agreement relating to an engineering study of rail intersection crossings within the City of Miami and construction related agreements for the on-Port rail improvements. All the future items that will be presented to the Board are funded within the $49.4 million as described above.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: March 15, 2011

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

SUBJECT: Agenda Item No. 14(A)(2)

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. 14(A)(2)
3-15-11

RESOLUTION NO. R-188-11

RESOLUTION APPROVING TERMS OF AND AUTHORIZING COUNTY MAYOR OR MAYORS DESIGNEE TO EXECUTE ASSUMPTION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND FLORIDA EAST COAST RAILWAY, L.L.C. RELATING TO UNITED STATES DEPARTMENT OF TRANSPORTATION TIGER II GRANT PROGRAM

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:

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

Section 2. This Board hereby approves the terms of and authorizes the County Mayor or the Mayor's designee to execute the Assumption Agreement between Miami-Dade County and Florida East Coast Railway, L.L.C. in substantially the form attached hereto and made a part hereof.

The foregoing resolution was offered by Commissioner **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **José "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman **aye**
Audrey M. Edmonson, Vice Chairwoman **aye**

Bruno A. Barreiro	**aye**	Lynda Bell	**aye**
Jose "Pepe" Diaz	**aye**	Carlos A. Gimenez	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**absent**
Jean Monestime	**aye**	Dennis C. Moss	**aye**
Natacha Seijas	**absent**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 15th day of March, 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

DIANE COLLINS

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Geri Bonzon-Keenan

ASSUMPTION AGREEMENT

This Assumption Agreement ("Agreement") is entered into and is effective as of _____, 2011 by and between Miami-Dade County ("County"), a political subdivision of the State of Florida, and the Florida East Coast Railway, L.L.C., a Florida limited liability company ("FEC").

WITNESSETH

WHEREAS, 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, 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 County desires to undertake certain rail related improvements on the Port of Miami (funded principally with federal TIGER II grant funds), which improvements will be owned by the Port of Miami and enhance Port-access options for the Port's various cargo users; and

WHEREAS, FEC wishes to undertake certain improvements to its (off-Port) railway facilities to better accommodate the needs of current or prospective rail customers and to provide double-stacked container service to the Port of Miami; and

WHEREAS, FEC agrees under the terms expressed herein to design, construct, develop, and otherwise undertake, construct, and develop certain off-Port rail improvements located in Miami-Dade County, including the replacement and upgrade of 4.4 miles of FEC rail facilities leading to the Port of Miami; construction of improvements to certain roadway intersections along the Port Lead; reconstruction of the FEC's southwest quadrant connection at Little River; and installation of new tracks at the FEC Hialeah Rail Yard, as described with greater particularity below as the "Off-Port Project Elements" and, upon the completion thereof, to operate and maintain the Off-Port Project Elements at FEC's cost and expense; and

WHEREAS, the County and FEC will make arrangements subsequent to the signing of this Agreement for the sharing of funding of the installation of new tracks at the FEC Hialeah Rail Yard, provided, however, the County's funding contribution shall not exceed $2.4 million.

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**. For purposes of this Agreement, the following capitalized terms shall have the definitions set forth below:

a. "Grant Agreement" shall mean the written grant agreement between the County and MARAD dated _____, 2011, including all exhibits and attachments thereto.

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

c. "Off-Port Project Elements" shall include all off-Port work and improvements described or referenced in the Grant Agreement, including all work and improvements included or described in Exhibit 1 attached hereto (as revised January 3, 2011).

d. "On-Port Project Elements" shall mean the elements of work described in Section 2.1 or Attachment A of the Grant Agreement as (1) the "Bascule Bridge", (2) the Rail lines and Gantry System", and (3) the "Intermodal Apron", and which are expected to be undertaken or constructed on or within the Port of Miami and which shall be funded principally with the grant funds awarded to the County under the Grant Agreement.

1. Assumption of County's Obligations

FEC acknowledges that the Grant Agreement between County and MARAD imposes on the County numerous requirements and obligations relating to the Off-Port Project Elements. FEC hereby assumes all of the County's obligations and requirements under the Grant Agreement to the extent relating or pertaining to the Off-Port Project Elements, provided, however, FEC does not assume any of the County's obligations under the Grant Agreement relating to the On-Port Project Elements, and further provided that with respect to the Grant Agreement monitoring and reporting obligations relating to the Off-Port Project Elements, rather than timely providing all such required information directly to MARAD, FEC shall provide same to the County at least fifteen (15) days prior to the time the County is required to present such information to MARAD. FEC further agrees to provide the County, promptly upon request, with any information and documents sought to demonstrate the respective compliance by FEC in connection with applicable Grant Agreement requirements pertaining to the Off-Port Project Elements. FEC also agrees to provide the County, promptly upon request, with any information or documents that may assist the County in demonstrating compliance by the County in connection with applicable Grant Agreement requirements pertaining to the Off-Port Project Elements.

2. Effect

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, legal representatives, successors and assigns.

3. Governing Law

This Agreement and all performances hereunder shall be governed by and construed in accordance with the laws of the State of Florida.

4. Modifications

This Agreement may not be altered or amended and no rights hereunder may be waived except by an instrument in writing signed by the party against whom such amendment or waiver is asserted and, as to the County, subject to the prior approval by a duly adopted and effective resolution of the Board of County Commissioners of Miami-Dade County.

5. Applicable Laws

At all times each party shall perform all of its respective obligations in compliance with all applicable federal, state, county, and local laws, building codes, ordinances, rules and regulations, administrative and other orders and tariffs.

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

Attest:

_____

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

By:_____
George M. Burgess
County Manager

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

_____
County Attorney

Attest:

_____

FLORIDA EAST COAST RAILWAY, L.L.C.

By:_____
Hunein Cumber
EVP Corporate Development

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Exhibit 1

Attached to the Assumption Agreement entered into by and between Miami-Dade County ("County"), a political subdivision of the State of Florida, and the Florida East Coast Railway, L.L.C., a Florida limited liability company ("FEC").

FLORIDA EAST COAST RAILWAY COMPANY
OFFICE OF GENERAL DIRECTOR OF ENGINEERING SERVICES
JACKSONVILLE, FLORIDA

Rev. 1/3/11
Rev. 12/30/10
Rev. 7/21/10
Rev. 6/22/09
Rev. 6/17/09
Mar. 03/09
Rev. 3/17/09

MIAMI: Proposed Rebuild & Realign of the Miami Port lead 4.40 Miles

Estimate of cost to rebuild the Port Lead(4.40Miles) 19 Grade Crossings and restore Wye for connection to the Main Track.

Description	Number	Units	Price	Cost
Construction				
Site Preparation (Clearing, Grubbing,Grading & Drainage) (50'x27,067')	25	Acs.	$12,000.00	$300,000.00
Rehabilitate 19 existing grade crossings (W/Conc. crossing panels)	1581	T.F.	1,895.00	2,995,995.00
Rehabilitate 19 existing grade crossings (Crossing Warning devices)	19	Each	350,000.00	6,650,000.00
Track, 136# New Ties (Entire Port Lead & South Leg Wye)	27067	T.F.	94.58	2,562,703.56
Install Track (Labor & Equipment)	27067	T.F.	65.00	1,758,355.00
Wood Ties	17131	Each	40.00	685,240.00
No 20 Turnouts - 136#	3	Each	98,115.00	294,345.00
No.20 Crossover - 136#	1	Each	199,500.00	199,500.00
No 10 Turnouts - 136#	2	Each	54,000.00	108,000.00
Labor to Install Turnouts No. 20 T.O.	3	Each	27,000.00	81,000.00
Labor to Install No. 20 Crossover	1	Each	85,040.00	85,040.00
Labor to Install Turnouts No.10 T.O.	2	Each	18,000.00	36,000.00
Ballast	320	Each	2,450.00	784,000.00
Surface Track	38016	L.F.	6.50	247,104.00
Surface Track No. 20 TO	3	L.S.	1,000.00	3,000.00
Surface Track No. 10 TO	2	L.S.	750.00	1,500.00
Signal Controls Devices for Port Lead	1	L.S.	1,000,000.00	1,000,000.00
Signal Controls Devices for No. 20 T.O'S @ Wye	3	L.S.	250,000.00	750,000.00
Signal Controls Devices for No. 20 Crossover	1	L.S.	400,000.00	400,000.00
Signal Controls Devices (TCS) from N.Miami To Hialeah Yd.	1	L.S.	1,000,000.00	1,000,000.00
Remove pavement over tracks in Hialeah Yd.TOPC to provide for 25 MPH	1	L.S.	300,000.00	300,000.00
Hialeah Yard Capacity Improvements	1	L.S.	2,400,000.00	2,400,000.00
Signal Controls Devices for grade crossing in Hialeah Yd.TOPC for 25 MPH	1	L.S.	151,000.00	151,000.00
Engineering (5%)	1	L.S.	1,139,689.13	1,139,689.13
Miscellaneous & Contingencies	1	L.S.	$307,328.31	307,328.31
Total Cost				$24,240,860.00
		Total MH	370,768	

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*** Hialeah Yard Capacity Improvements shall include the following work which is expected to facilitate increased Port traffic, which includes surfacing intermodal ramp tracks, installing automated crossing protection and signals in Hialeah Yard in order to increase speed to 25MPH, extends paved areas to store containers and chassis and includes the acquisition of equipment needed to stack chassis and utility vehicles to allow safer and more efficient handling of Inter Box Connectors (IBCs). The specific tasks and approximate cost of each are noted below.

Specific Task	Unit Cost	Total
Surface 14,500 ft track	$6.50	$94,250.00
Install automated crossing protection 4 crossings	$151,000	$604,000.00
Extend signals into yard for higher speed		$150,000.00
Renew road crossings, 300 feet	$1895.00	$568,500.00
Pave Chassis Parking area, 20,000 sg.yd	$38.00	$760,000.00
Chassis Stacker, 2	$79,500	$159,000.00
Utility Vehicles, GRUT	$60,000	$120,000.00
Grand total		**$2,455,750.00**