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

Memorandum

MIAMI-DADE COUNTY

Date: May 17, 2011

Agenda Item No.8(Q)(1)(B)

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

From: Alina T. Hudak
County Manager

Resolution No. R-410-11

Subject: Resolution Authorizing the Execution of a Rail Improvement Grant and Limited 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

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RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the accompanying resolution authorizing the execution of a Limited Rail Improvement Grant and Limited Assumption Agreement between Miami-Dade County (County) and Florida East Coast Railway, L.L.C. (FEC), memorializing their various obligations under a United States Department of Transportation National Infrastructure Investments Discretionary Grant Program Agreement (TIGER II Grant Agreement) and committing the County to fund up to $2.4 million in FEC Rail Yard improvements.

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

This Agreement commits the Port of Miami to provide $2.4 million in capital asset bond funds (to be issued during the year required) for intermodal improvements to be made in the FEC's Hialeah Rail Yard. This funding commitment is part of an overall $49.4 million Project budget as detailed within the Background section. The attached Rail Improvement Grant and Limited Assumption Agreement (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.

TRACK RECORD/MONITOR

There are no outstanding business issues or financial obligations between the FEC and the 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.

BACKGROUND

On October 15, 2010, the United States Department of Transportation announced its intent to award the Port of Miami (Port) $22.767 million dollars to rehabilitate the existing Port rail lead, repair its bascule bridge, and construct an efficient high capacity on-Port intermodal rail facility. On March 3, 2011, the Board passed an emergency motion authorizing the County Mayor or Mayor's designee to execute the TIGER II Grant Agreement. On March 15, 2011, also on an emergency basis, the Board passed an Assumption Agreement between the County and the FEC, which was required under the terms of the TIGER II Grant

Agreement. These emergency items were made necessary as several resolutions had been introduced in Congress to "sweep back" various federal grants that were either unspent or not yet awarded.

Upon becoming effective, this Agreement will supersede the March 15, 2011 Assumption Agreement between the County and the FEC. In addition to requiring FEC to assume certain of the County's obligations under the TIGER II Grant Agreement, the Agreement commits the County to funding up to $2.4 million in intermodal improvements in the FEC Hialeah Rail Yard to accommodate more and faster-moving, double-stack trains. These improvements, which must be approved by the County, will not be funded until the FEC completes approximately $22 million in required off-Port construction under the TIGER II Grant Agreement.

The Agreement contains provisions concerning its expiration, early termination, and an FEC liability cap, which decreases from $23 million to $5.69 million upon acceptance of completed FEC Project elements by the County, Florida Department of Transportation, and the Maritime Administration (MARAD). The FEC liability cap reduces to zero after the later of several listed dates or events as provided for in Section 4.14 of the Agreement. The County has a cost and liability cap of $2.4 million.

Under the provisions of the TIGER II Grant Agreement, the Port may not draw down funds or incur expenses unless and until the County executed an Assumption Agreement with the FEC. Likewise, the Port must obtain written approval from MARAD prior to any modification or termination of the Assumption Agreement. Failure to obtain MARAD's prior approval shall result in a suspension of the Port's right to draw down funds under the TIGER II Grant Agreement. Accordingly, once approved and executed, the Agreement will not become effective until approved in writing by MARAD.

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.

Assistant County Manager

MEMORANDUM
(Revised)

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

DATE: May 17, 2011

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

SUBJECT: Agenda Item No. 8(Q)(1)(B)

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(Q)(1)(B)
5-17-11

RESOLUTION NO. R-410-11

RESOLUTION APPROVING TERMS OF RAIL IMPROVEMENT GRANT AND LIMITED 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; AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE RAIL IMPROVEMENT GRANT AND LIMITED ASSUMPTION AGREEMENT AND EXERCISE ANY CANCELLATION OR TERMINATION PROVISIONS CONTAINED THEREIN

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 a Rail Improvement Grant and Limited Assumption Agreement between Miami-Dade County and Florida East Coast Railway, L.L.C., in substantially the form attached hereto as Exhibit A and made a part hereof by this reference (the "Agreement").

Section 3. This Board hereby authorizes the County Mayor or the County Mayor's Designee to execute the Agreement after review and approval for form and legal sufficiency by the County Attorney's Office. The County Mayor or the County Mayor's designee is authorized to exercise any and all cancellation or termination provisions contained therein.

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

Joe A. Martinez, Chairman			**absent**
Audrey M. Edmonson, Vice Chairwoman			**aye**
Bruno A. Barreiro	**absent**	Lynda Bell	**aye**
Jose "Pepe" Diaz	**aye**	Sally A. Heyman	**aye**
Barbara J. Jordan	**aye**	Jean Monestime	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of May, 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 **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Steve B. Bass

RAIL IMPROVEMENT GRANT and LIMITED ASSUMPTION AGREEMENT

between

Florida East Coast Railway, L.L.C.

and

Miami-Dade County

Dated _____, 2011

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RAIL IMPROVEMENT GRANT and LIMITED ASSUMPTIONAGREEMENT between FLORIDA EAST COAST RAILWAY, L.L.C. and MIAMI-DADE COUNTY

This Rail Improvement Grant and Limited Assumption Agreement ("Agreement") is entered into 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. ("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 2 grant funds), which improvements will enhance Port-access options for the Port's various cargo users; and

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

WHEREAS, the FEC agrees under the terms expressed herein to fund, design, construct, develop, and otherwise undertake, construct, and develop certain off-Port rail improvements located in Miami-Dade County, including the replacing and upgrading of 4.4 miles of FEC rail facilities leading to the Port of Miami; construction of crossing improvements at certain roadway intersections along the 4.4 mile Port Lead; reconstruction of the FEC's southwest quadrant connection at Little River; installation of new signalization equipment at FEC's Hialeah Rail Yard; 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, FEC believes the development of the Off-Port Project Elements will enhance and improve its overall rail operation within Miami-Dade County and the State of Florida; and

WHEREAS, this Agreement is intended to define e the respective contractual obligations of each party as set forth herein below;

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

c. "Agreement" shall mean this written Rail Improvement Grant and Limited Assumption Agreement between Miami-Dade County (herein, "County") and the Florida East Coast Railway, L.L.C. (herein, "FEC"), which may be referred to herein as the "Agreement", "herein", "hereunder", or "hereof".

d. "FDOT JPA" shall mean the written Joint Participation Agreement (JPA) between the FEC and the Florida Department of Transportation (FDOT), a copy of which is attached for identification purposes only as Attachment "B" hereto.

e. "FEC Hialeah Yard Track Improvements" shall mean all work and improvements included, referenced or described in Exhibit 3 hereto.

f. "FEC O & M Period" shall have the meaning set forth in Section 4.6 of this Agreement.

g. "FEC Reporting Requirements" shall mean the sum of all Off-Port Project Elements related record keeping and reporting requirements set forth herein, in the Grant Agreement, or any other record retention and/or reporting requirements applicable to the Off-Port Project Elements including those that may be further required by MARAD in the future in connection with any of the Off-Port Project Elements.

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

i. "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 Attachment "A" hereto.

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

k. "Off-Port Project Elements" shall include all work, improvements, materials, labor and equipment included, referenced or described in Exhibit 2 hereto or required in order to complete the improvements described in Exhibit 2 hereto or any of the off-Port rail facility improvements described or referenced in the Grant Agreement, and expressly include the design and construction of the Port Lead, the Southwest quadrant connection at Little River, the crossing improvements along the Port Lead, the FEC Hialeah Yard Track Improvements and the FEC Hialeah Yard signalization improvements.

l. "Off-Port Project Elements Construction Schedule" shall mean the bar chart construction schedule attached to this Agreement as Exhibit 4 hereto.

m. "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 to be undertaken or constructed on or within the Port of Miami.

n. "Port Lead" or "Port Rail Lead" shall have the meaning described in the fifth recital clause hereto as further described in Attachment A to the Grant Agreement.

o. "Port Tariff" shall mean Port of Miami Tariff No. 10 as may be amended from time to time in the County's discretion.

p. "Project" shall mean the sum of the Off-Port Project Elements and the On-Port Project Elements.

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. Term. Upon this Agreement becoming effective, the term of this Agreement will be deemed to have commenced on March 15, 2011 [date of Assumption Agreement] and will not expire until the later of (a) the expiration of a three (3) year period from the time the last of the Off-Port Project Elements are completed and put into operation, (b) September 30, 2016, or (c) upon the Parties' mutual written agreement to terminate, which, in the case of the County, shall require the prior approval of the Board of County Commissioners of Miami-Dade County (the "Board") via adopted resolution of the Board, provided, however, that certain obligations and provisions set forth herein shall survive the expiration or early termination of this Agreement if so expressed elsewhere in this Agreement. Notwithstanding (a), (b), and (c) above, the term hereof shall be subject to the potential early-termination hereof by the County, but only to the extent allowed herein and, if so, only provided such termination is in accordance with all applicable terms and conditions set forth herein and further provided that certain obligations and provisions set forth herein shall survive the expiration or early termination of this Agreement as set forth above. 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 in satisfaction of the requirements of Section 4.2 of the Grant Agreement.

4. FEC Performance and Payment Obligations.

4.1 FEC Representation and Warranty. FEC represents and warrants to the County that the FEC has the authority to enter into this Agreement and to undertake all of the FEC payment, performance and other obligations set forth herein. By execution of the Agreement FEC also represents and warrants that it has not paid and, also, agrees not to pay, any bonus or commission for the purpose of obtaining any approval of this Agreement or any funding for any portion of the Off-Port Project Elements or the On-Port Project Elements. By execution hereof, FEC also represents with regard solely to the FEC Hialeah Yard Track Improvements that it has completed and properly executed the Miami-Dade Business Entity Affidavits (Exhibit 1 hereto) and further affirms that, unless otherwise exempt under Applicable Laws, FEC complies with each of the County Ordinances and requirements listed therein.

4.2 FEC Obligations to Design, Construct, Maintain and Operate Off-Port Project Elements. FEC shall design, construct, insure, and maintain the Off-Port Project Elements and all related components and elements thereof at FEC's cost and expense. FEC agrees to prosecute all work in connection therewith using due diligence for completion of the work in compliance with the Off-Port Project Elements Construction Schedule, the requirements of Section 4.3 hereof, 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 Off-Port Project Elements, and FEC shall ensure that its agents, employees, contractors and subcontractors (of all tiers) perform all work and tasks relating to or in connection with the Off-Port Project Elements in compliance with all such requirements. Further, FEC shall design and construct the Off-Port Project Elements to ensure that they can accommodate double-stacked container rail service. Although the FEC's estimate of the cost of the Off-Port Project Elements is $24,240,800, FEC agrees to bear all costs in excess of the total estimated cost of the Off-Port Project Elements contained in Exhibit 2 hereto.

4.3 Time is of the Essence. FEC acknowledges and agrees that time is of the essence with respect to each of the covenants and obligations undertaken by FEC in this Agreement. FEC further agrees to complete the Off-Port Project Elements as described in Exhibit 2 with due diligence and in compliance with the Off-Port Project Elements Construction Schedule and to take all steps necessary to complete the Off-Port Project Elements in compliance with Off-Port Project Element Construction Schedule attached hereto and incorporated herein by reference as Exhibit 4.

4.4 FEC's Procurement Obligations. In partial fulfillment of its obligations hereunder in connection with the Off-Port Project Elements and the FEC Hialeah Yard Track Improvements, FEC shall undertake and complete competitive procurement/selection processes, and reprocurement processes (as may be required) in connection with the retention or procurement of any needed design, consulting, and/or construction services (relating to labor.

materials, and/or equipment) in compliance with all Applicable Laws. FEC hereby agrees to utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of all persons assigned or authorized by FEC 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 include the foregoing E-Verify requirement in contracts to which it is a party, then any failure of FEC to comply with such foregoing E-Verify obligation after such time shall not be considered a breach of this Agreement. As to any design, construction, design-build, consulting or other contracts entered into by FEC to perform any work or services relating to the Off-Port Project Elements, FEC shall contractually require such contractor, consultant or firm to confirm the employment eligibility of all of its U.S. employees that will perform work on or relating to the Off-Port Project Elements utilizing the E-Verify system. A copy of FEC's E-Verify certification to the Florida Department of Transportation is attached hereto as Exhibit 5.

4.5 Business Program Compliance and Oversight. Whenever County funds are used, or may be received by FEC during the Term hereof for partial reimbursement of expenses related to the construction of the FEC Hialeah Yard Track Improvements, FEC agrees to comply with all applicable County ordinances, regulations, and requirements including, but not limited to, the Community Business Enterprise Program. Specifically, to the extent required by Applicable Laws, FEC shall abide by the applicable contract measure recommendation(s) established by the Department of Small Business Project Worksheet for the participation of specified business entities and/or trades as administered by the County's Department of Small Business (SBD).

4.6 FEC's Operating and Maintenance Responsibilities. FEC, at its sole cost and expense, and without any contribution from the County, shall operate, administer, maintain, renew and refurbish the Off-Port Project Elements (and all components thereof and related or necessary equipment) at all times, commencing with the initiation of design or construction of any component thereof, sufficient for operations of the Off-Port Project Elements, in compliance with FRA regulations, and in compliance with all operating and maintenance requirements and standards set forth or incorporated in the Grant Agreement for the greater of (i) any period of required maintenance set forth in or arising from the Grant Agreement, the FDOT JPA, or Applicable Laws, or (ii) a period of six (6) years from the completion of the Off-Port Project Elements (the later of (i) and (ii) above shall be deemed the "FEC O & M Period" for purposes of this Agreement only). Further, FEC shall at all times operate and maintain the Off-Port Project Elements in such a manner as to ensure that such improvements and elements can accommodate double-stacked container rail service. The FEC maintenance and other obligations set forth above in this Section shall include, without limitation, the duty to undertake all scheduled or otherwise required maintenance, capital replacements, renewals, and refurbishments necessary or recommended by FRA to ensure the Off-Port Project Elements can at all times be operated for their intended purposes, and in compliance with all Applicable Laws and all requirements of the Grant Agreement, and to maximize the useful life of such elements and equipment. If the FEC disposes of or sells any facility or equipment that was originally part of the Off-Port Project Elements or later added to same, during the FEC O & M Period, FEC agrees to remit to the County a proportional amount

of the proceeds from the sale or disposal of such equipment or facility. Said proportional amount shall be determined on the basis of the ratio of the County funding of the FEC Hialeah Yard component of the Off-Port Project Elements compared to FEC's funding of the FEC Hialeah Yard construction costs (less the total funds received by FEC from County pursuant to Section 5 hereof) and amortized at 5% per year from the completion of all Off-Port Project Elements. By example, if FEC pays $2.4 million of FEC Hialeah Yard Construction costs, but receives $2.4 million from County toward such costs per Section 5 hereof, the proper ratio would be 100% County and 0% FEC. It is understood, however, that in the event FEC sells or disposes of a facility or equipment that was part of the Off-Port Project Elements, but immediately replaces the disposed equipment or facility with something of equal or superior quality and functionality, then, in such event, the County shall not be entitled to a share of the disposal proceeds received by FEC in connection with selling the old equipment or facility that was timely removed and replaced. The FEC maintenance obligations set forth in this Section shall survive the termination or expiration of this Agreement for the later of (i) the expiration of a period of six months following the expiration of the FEC O & M Period or (ii) the expiration of a six month period after all closeout requirements and procedures referenced in Section 3.4 of the Grant Agreement relating to the Off-Port Project Elements have been completed.

4.7 FEC's Payment and Performance Bond Requirements Per Florida Statutes Section 255.05. To the extent required by Applicable Laws, including, without limitation, Florida Statutes Section 255.05, FEC shall insure that, prior to commencing work on the Off-Port Project Elements, FEC obtains a performance and payment bond (or two separate bonds) for the full amount of the anticipated construction costs of the FEC Hialeah Yard Track Improvements and that FEC executes, delivers to the public owner, and records in the public record of Miami-Dade County such bond(s) in compliance with all requirements set forth in Florida Statutes Section 255.05 *et. seq.* prior to commencing construction on the FEC Hialeah Yard Track Improvements. The performance portion of said bond shall name Miami-Dade County as obligee and shall be in a form acceptable to the County.

4.8 FEC's Insurance Obligations. Prior to commencing construction of any of the Off-Port Project Elements, FEC shall procure 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 later of (i) the expiration or proper termination of this Agreement plus sixty-six months or (ii) the expiration of a sixty-six month period following the expiration of the FEC O & M Period, except as otherwise provided hereinbelow:

4.8.1 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. FEC may elect to self-insure all or part of the above requirements.

4.8.2 FEC Insurance Covenant. In addition to complying with the insurance requirements set forth above, execution of this Agreement by FEC constitutes

FEC's certification to the County that FEC has and will maintain the ability to repair and replace any project equipment or facilities in the event of loss or damage due to ANY accident or casualty for the usual life of such equipment or facilities. In the event of the loss of such equipment or facilities, FEC shall either promptly replace the equipment or facilities at FEC's cost or reimburse the County to the extent of the County's interest in the lost or damaged equipment and/or facility(ies), as calculated in Section 4.6 herein.

4.9 Prohibited Interests. FEC further represents that neither the FEC nor any of its contractors or subcontractors (of any tier) shall enter into any contract, subcontract, or arrangement in connection with the Off-Port Project Elements or any of the FEC Hialeah Yard improvements, in which any member, officer, or employee of FEC during his or her tenure and for two years thereafter acquires any interest, direct or indirect, unless such interest is fully disclose to the FEC and County, and such interest does not prevent the individual or entity from objectively performing the work under this Agreement without bias or any appearance of a conflict of interest.

4.10 Plans and Specifications. In the event this Agreement involves the purchase of capital equipment or the constructing and equipping of facilities, FEC shall submit to the County for approval all plans and specifications covering or addressing the Off-Port Project Elements. The County will review all plans and specifications for the Off-Port Project Elements and, within thirty (30) days from receipt thereof, will issue to FEC written approval or rejection thereof and, if the latter, will provide written comments or recommendations concerning any rejected plans. After resolution of these comments and recommendations to the County's reasonable satisfaction, taking into consideration the construction standards specified or referenced in Section 4.2 herein as well as the purposes of the intended improvements as expressed in the Grant Agreement and recitals four and five of this Agreement, the County will issue to FEC written approval of the modified Off-Port Project Elements plans and specifications. The failure of FEC to obtain this written approval(s) from the County shall be sufficient cause for nonpayment by the County. For purposes of the above portion of this Section 4.10 only, any improvements to the crossings portion of the Off-Port Project Elements (other than to the roadway or other elements between the rails) is expressly excluded, provided such crossing designs shall not be excluded from design review to the extent that such designs will impact or change traffic lane width or configuration or pedestrian access across the tracks. Notwithstanding the foregoing, the exercise by the County or its designee(s) of any approval of or provision of comments to FEC relating to any FEC or FEC consultant designs, drawings or specifications shall not be deemed or construed as the County or its designee(s) assuming or having any responsibility for the propriety, completeness, suitability or accuracy of such FEC designs, drawings or specifications, nor shall such approval or comments absolve FEC or its consultants from any responsibility for such designs, drawings and specifications. In addition, during the Term FEC shall provide the County, upon request and at no cost to the County, with copies of the final as-built drawings for each element of the Off-Port Project Elements and any subsequent revisions or updates thereto.

4.11 Non-Discrimination. FEC shall not discriminate on the basis of race, age, color, national origin, or sex in the award and performance of this Agreement. The FEC

shall insert the foregoing provision in all subcontracts. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the FEC shall post, in conspicuous places available to employees and applicants for employment, the non-discrimination clause.

An entity or affiliate who has been placed on the State of Florida or federal discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, many not submit bids on leases or real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

4.12 FEC Assumption of County Grant Agreement Obligations Regarding the Off-Port Project Elements. 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 reporting and monitoring 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 and 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. This section shall survive the expiration or early termination of this Agreement for the later of (i) the expiration of a period of six months following the expiration of the FEC O & M Period or (ii) 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 Section 3.4 of the Grant Agreement have been completed.

4.13 Required Mutual Approval of Changes to Scope of FEC Hialeah Rail Yard Improvements and/or Port Lead. Notwithstanding Section 7.4, either FEC or the County may request in writing that the scope of the FEC Hialeah Yard Track Improvements and/or the Port Lead be modified. In such case, the parties may mutually agree in writing to such modification so long as such mutual agreement and deviation of the scope herein does not modify the County Cost and Liability Cap and, in the case of the County, any requested change must be approved in writing in advance by the Port Director and by MARAD.

4.14 FEC Liability Cap. Notwithstanding and prevailing over any contrary term or potential implication contained in this Agreement, under no circumstances shall FEC's

total payment obligations herein (including but not limited to any obligations to indemnify the County pursuant to 7.16) ever exceed $23 million ($23,000,000.) (the "FEC Liability Cap") until such time as FEC has: (x) completed all of the Off-Port Project Elements in accordance with the plans approved by the County for the Off-Port Project Elements, and presented signed and sealed as-built drawings of such completed elements to the County's Assistant Port Director for Capital Development (the "Chief Port Engineer"); (y) delivered to the Chief Port Engineer the FEC self-certification and such other documents required by the Grant Agreement or the Chief Port Engineer certifying that FEC has completed the Off-Port Project Elements, and the Chief Port Engineer thereafter accepts such completed elements and the FEC-certified completion thereof in writing: and (z) delivered to the Chief Port Engineer written and unconditioned acceptances by FDOT and MARAD of FEC's completed Off-Port Project Elements (excluding conditions (if any) that are wholly unrelated to any of the Off-Port Project Elements). After each of the foregoing conditions (x), (y) and (z) has occurred, the FEC Liability Cap shall be reduced to $5.69 million ($5,690,000.). Upon the later of (i) the expiration of a period of six months following the expiration of the FEC O & M Period, (ii) the expiration of a sixty-six month period commencing upon the expiration or proper termination of this Agreement, or (iii) the expiration of a six month period after all closeout requirements and procedures referenced in Section 3.4 of the Grant Agreement relating to the Off-Port Project Elements have been completed, the FEC Liability Cap shall be reduced to zero. Notwithstanding the foregoing, as to any claim hereunder that arises or is asserted against FEC, the level of the FEC Liability Cap that shall apply to such claim, from the time the claim arises until such claim is fully adjudicated, settled, paid and/or otherwise fully resolved (as applicable), shall be the FEC Liability Cap level existing at the time the circumstances that gave rise to the claim first occurred, provided, however, that this provision shall not be construed to in any way toll or extend any applicable statute of limitations.

4.15 Publicity. It is understood and agreed between the parties hereto that FEC, subject to the terms and conditions hereof, is eligible for certain funding in support of the construction of the FEC Hialeah Yard Track Improvements, up to the County Cost and Liability Cap (defined in Section 5.2 below). Further, by acceptance of these funds or the terms hereof, FEC agrees that, as to the portion of the Off-Port Project Elements construction funded by this Agreement and only during the period of time of its construction, FEC shall recognize and reference the County as a funding source. During its construction, FEC shall ensure that all publicity, public relations, advertisements and signs relating to the construction of the FEC Hialeah Yard Track Improvements reference the County for its support of the construction of same. This is to include, but is not limited to, as applicable, all posted signs, pamphlets, wall plaques, cornerstones, dedications, notices, flyers, brochures, news releases, media packages, promotions and stationery promoting, advertising or commemorating the construction of the FEC Hialeah Yard Track Improvements. The use of the official County logo is permissible for the publicity purposes stated herein. FEC shall submit sample or mock up of such publicity or materials to the County for review and approval (such approval to be deemed as granted if the County does not respond within ten (10) days of FEC's delivery to the County). FEC shall ensure that all media representatives, when inquiring about the construction funded by this Agreement, are informed that the County is a funding source.

5. County Obligations.

5.1 County's Payment Obligation to FEC. In consideration of FEC's obligations hereunder to procure, reprocure (as needed), design, construct, operate, maintain, repair, manage, and timely complete the Off-Port Project Elements and the FEC Hialeah Yard improvements, the County agrees to make certain limited grant contributions to FEC in support of the costs incurred by FEC to complete the FEC Hialeah Yard Track Improvement, as reimbursement of a portion of the direct construction costs expended by FEC to complete such improvements, subject to the preconditions, limitations, and procedures contained herein or in the Grant Agreement, and provided such payment may not exceed (in aggregate) the lesser of $2.4 million ($2,400,000) or the amount of documented direct construction costs incurred by FEC during the Term to complete the FEC Hialeah Yard Track Improvements and further provided that no such County payment will be due unless and until (i) all of the work associated with the Off-Port Project Elements is fully, properly and timely completed in accordance with all requirements of the Grant Agreement, (ii) that such work is completed in compliance with all Applicable Laws and the requirements of this Agreement, and the requirements set forth in the Grant Agreement, and (iii) that FEC presents documentation to the County in a form acceptable to the Port Director, or his designee, demonstrating the actual direct construction costs incurred by FEC to complete the FEC Hialeah Yard Track Improvements. Upon the satisfaction of Section 5(i), (ii), and (iii) above, the County shall pay FEC within thirty (30) days the lesser of (x) $2.4 million ($2,400,000) or (y) the actual direct construction costs incurred by FEC during the Term to complete the FEC Hialeah Yard Track Improvements.

5.2 County Cost and Liability Cap. The lesser of (x) or (y) (in Section 5.1 above) shall be the "County Cost and Liability Cap." Notwithstanding and prevailing over any contrary term or potential implication contained in this Agreement, under no circumstances shall the County's total payment obligations hereunder ever exceed the "County Cost and Liability Cap."

5.3 FEC Requisition for Payment. In addition to the requirements and conditions set forth in Sections 5.1 and 5.2 above, in order for FEC to obtain any County funds, FEC shall file with the County its requisition on a form or forms prescribed by the County to substantiate FEC's payment requisition. To facilitate the County's review of FEC's claimed FEC Hialeah Yard Track Improvement costs, FEC agrees, upon request of the County, to promptly provide the County with access to any requested FEC Hialeah Yard Track Improvement 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 Hialeah Yard improvements. If any real property is acquired, the FEC will submit to the County:

(1) the date of FEC acquired the real property,

(2) a statement by FEC certifying that the FEC has acquired said real property, and amount of consideration paid for the real property, and

(3) a statement by FEC certifying that the appraisal and acquisition of the real property together with any attendant relocation of occupants was accomplished in

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compliance with all federal laws, rules, and procedures required by any federal oversight agency, and with all applicable state laws, rules, and procedures.

However, notwithstanding any other provision of this Agreement, the County may elect by notice in writing not to make a payment on the FEC Hialeah Yard Track Improvements if:

(1) FEC 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;

(2) There is then pending litigation with respect to the performance by FEC 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;

(3) FEC 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;

(4) There has been any violation of the conflict of interest provisions contained herein; or

(5) The FEC has been determined by the County to be in default under any of the provisions of the Agreement.

In determining the amount of the payment, the County will exclude all FEC Hialeah Yard Track Improvement costs incurred by or on behalf of the FEC prior to the effective date of this Agreement, costs which are not provided for in the latest approved budget for the Project, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the County, or which were not procured in compliance with Applicable Laws or the terms of this Agreement.

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 FEC pursuant to Section 5.1, FEC agrees to refund to the County, upon its request, the full amount of any such post-payment County claims or offsets.

6 FEC Reporting Requirements; County Audit Rights

6.1 FEC Reporting Requirements. FEC shall at all times comply with all applicable FEC Reporting Requirements relating to all or any portion of the Off-Port Project Elements or any other portion of the project defined in the Grant Agreement, including, without limitation, all reporting requirements set forth herein, in the Grant Agreement or any exhibits or attachments thereto, or in the FDOT JPA (as amended), 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, FEC shall provide copies of same to the County (without cost or charge). This section shall survive the expiration or early termination of this Agreement for the later of (i) the expiration of a period of six months following the expiration of the FEC O & M Period or (ii) 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 Section 3.4 of the Grant Agreement have been completed.

6.2 Books and Records. For a period of five (5) years after the completion of the last of the Off-Port Project Elements, or such longer period as may be required by applicable law (the "Books and Records Retention Period"), FEC shall maintain complete and accurate Off-Port Project Element related records for inspection and copying by County, upon request, within the State of Florida. FEC shall keep and maintain its books and records for this Project separate and identifiable from its books and records for other FEC 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.

6.3 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 FEC (and those of FEC's consultants, contractors, and subcontractors) relating to the Off-Port Project Elements, and, in the event the County elects to do so, FEC shall provide its 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.

6.4 County & FEC Right to Reconciliation. Upon completion of a Project audit by 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.

7. Miscellaneous.

7.1 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 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 FEC from any liability, responsibility, claims, consequential or other damages, or losses to 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 for the later of (i) the expiration of a period of six months following the expiration of the FEC O & M Period or (ii) 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 Section 3.4 of the Grant Agreement have been completed.

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

To the MDC: County Manager or Chief County Administrative Officer
Stephen P. Clark Center
111 N.W. 1st Street, Suite 2900
Miami, Florida 33128

and

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

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.

7.3 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 dated March 15, 2011.

7.4 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.

7.5 Binding Effect. This Agreement shall be binding upon the Parties and their respectiv7.6e representatives, successors and permitted assigns (if any).

7.6 Waiver. Wavier 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 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 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.

7.7 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.

7.8 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.

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7.9 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.

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

7.11 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.

7.12 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.

7.13 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.

7.14 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 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.

7.15 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.

7.16 FEC Obligations re Indemnity, Hold Harmless, and Duty to Defend. 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 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 Off-Port Project Elements, 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"), but not excluding any Claim relating to the FEC Hialeah Yard Track Improvements or any Collision thereon. 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 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 FEC. This section shall survive the expiration or early termination of this Agreement for the later of (i) the expiration or proper termination of this Agreement plus sixty-six months or (ii) the expiration of a sixty-six month period following the expiration of the FEC O & M Period.

7.17 FEC Environmental Indemnity Obligations. 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 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 the later of (i) the expiration or proper termination of this Agreement plus sixty-six months or (ii) the expiration of a sixty-six month period following the expiration of the FEC O & M Period.

7.18 No Lost Profit or Consequential Damages. 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 for the later of (i) the expiration or proper termination of this Agreement plus sixty-six months or (ii) the expiration of a sixty-six month period following the expiration of the FEC O & M Period.

7.19 No FEC Assignment Permitted Without County Consent. FEC may not assign or otherwise transfer any rights conferred herein to any third part without the County's prior written consent.

7.20 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.

7.21 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 FEC is only a recipient of funding support and is not an agent or instrumentality of the County. Furthermore, FEC's agents and employees are not agents or employees of the County.

7.22 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.

7.23 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, 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.

8. Coordination. The Parties have endeavored to exchange information and reach agreement on aspects of the Project that will require continued cooperation and coordination. MDC 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 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 is subject to the further limitations and conditions set forth in Section 7.1 above, as such general (and limited) duty to cooperate 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.

9. 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 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 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 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 FEC the verifiable direct construction costs incurred, after the commencement of this Agreement and up to the date of such termination notice, in constructing the FEC Hialeah Yard Track Improvements, subject to the County Cost and Liability Cap set forth in Section 5.1 and 5.2 hereof.

[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

By:_____
Alina T. Hudak
County Manager

Attest:

Kim Cooper

Name: Kim Cooper
VP, Corporate Controller, Treasurer and Assistant Secretary

FLORIDA EAST COAST RAILWAY, L.L.C.

By:_____
Name: Kenneth G. Charron
Title: VP, General Counsel & Secretary

Seal:

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RAIL IMPROVEMENT GRANT AND LIMITED ASSUMPTION AGREEMENT

LIST OF ATTACHMENTS AND EXHIBITS

ATTACHMENTS:

Attachment A **(attachment for identification purposes only and not incorporated into the Agreement):** **MARAD Grant Agreement**

Attachment B **(attachment for identification purposes only and not incorporated into the Agreement):** **FDOT JPA**

****

EXHIBITS **(Incorporated into the Agreement):**

Exhibit 1: **Executed FEC Affidavit**

Exhibit 2: **Off-Port Project Elements**

Exhibit 3: **FEC Hialeah Yard Track Improvements Description & Estimated Cost Itemization**

Exhibit 4: **Off-Port Project Elements Construction Schedule**

Exhibit 5: **Executed FEC E-Verify Certification**

RAIL IMPROVEMENT GRANT AND LIMITED ASSUMPTION AGREEMENT

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Exhibit 5: Executed FEC E-Verify Certification

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:

7069M0143O 2011 1PMRAG0006 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@Miamidade.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.

David T. Matsuda

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, linage 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

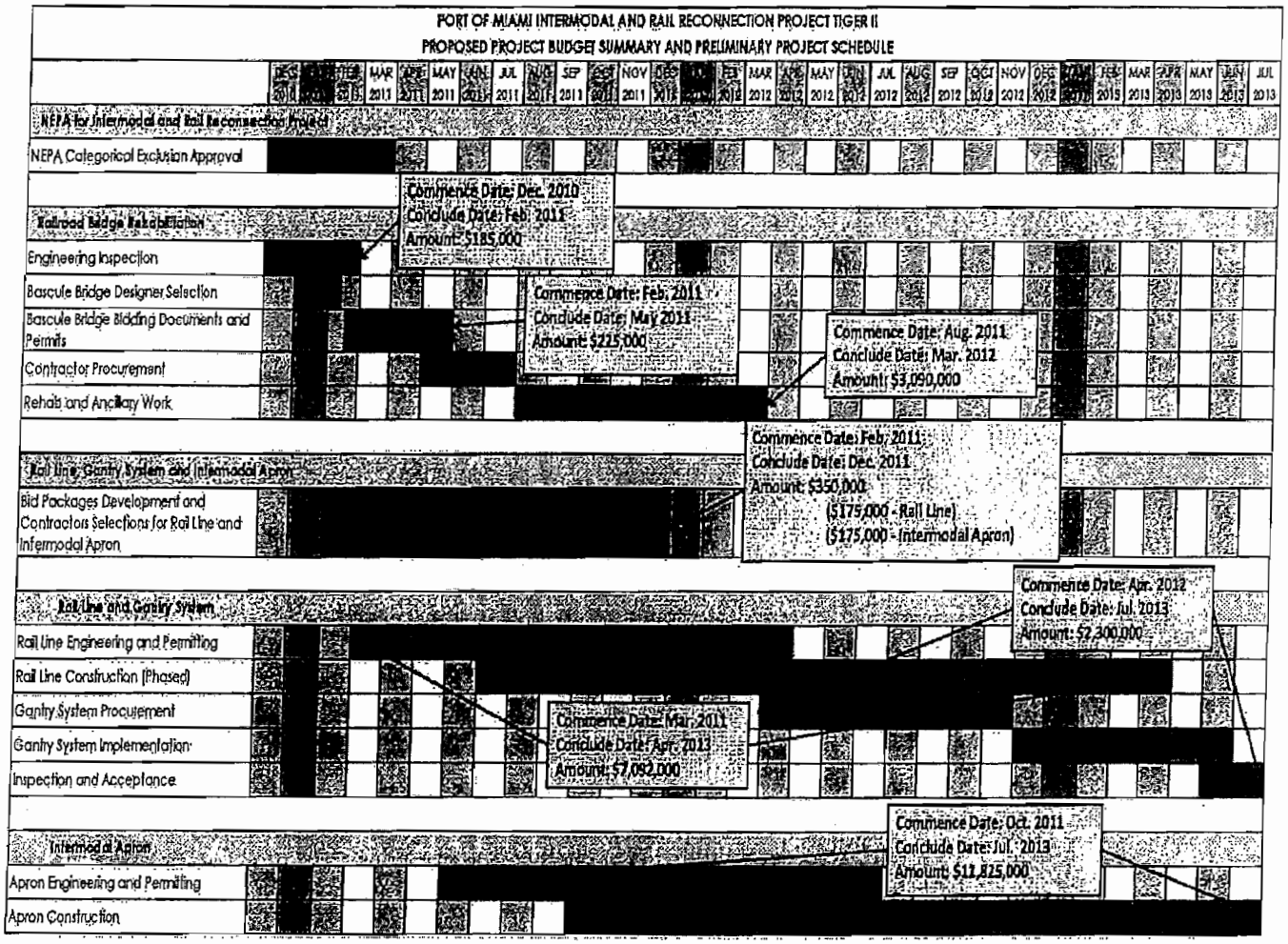
The total space to be occupied by the Intermodal Yard will be approximately 600,000 square feet (13.77 acres). The detailed scope of services includes:

- 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 B
PROJECT SCHEDULE



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	$12,000,000
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 =	$ 2,300,000
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	$ 2,400,000
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.

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/execomp.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/execomp.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 milestone 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.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

PUBLIC TRANSPORTATION

SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT

Number SEVEN

Financial Project No.: 42012415701 (item-segment-phase-sequence)	Fund: DIS/DPTO	FLAIR Category: 088808
	Function: 127	Object Code: 750021
	Federal No.: N/A	Org. Code: 55062020629
Contract No.: ANO51	DUNS No.: N/A	Vendor No.: F596001115001
Catalog of Federal Domestic Assistance Number: N/A		Catalog of State Financial Assistance Number: 55.014, 55.0

THIS AGREEMENT, made and entered into this 24 day of January, 2011, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter referred to as the Department, and FLORIDA EAST COAST RAILWAY, LLC 7411 Fullerton Street, Suite 300, Jacksonville, Florida 32256 hereinafter referred to as Agency.

WITNESSETH:

WHEREAS, the Department and the Agency heretofore on the 7th day of September, 2004, entered into a Joint Participation Agreement; and

WHEREAS, the Agency desires to accomplish certain project items as outlined in the Attachment "A" appended hereto; and

WHEREAS, the Department desires to participate in all eligible items for this project as outlined in Attachment "A" for a total Department Share of $19,164,219.00.

NOW, THEREFORE THIS INDENTURE WITNESSETH: that for and in consideration of the mutual benefits to flow from each to the other, the parties hereto agree that the above described Joint Participation Agreement is to be amended and supplemented as follows:

1.00 Project Description: The project description is amended

- To add the following project:

1. Downtown Lead Improvements (Port Rail Lead) - Reconstruct and upgrade 4.4 miles of track, remove existing track, site preparation (clearing and grubbing), new track construction (27,067 T.F.), construction of 19 "Quiet Zones" crossings as submitted by the City of Miami and approved by the Federal Railroad Administration, five turnouts, 1 crossover, ballast, and associated signal controls.

Additionally, the audit language contained in Paragraphs 7.60, 7.61, 7.62, and 7.63 is superseded with the language contained and incorporated by reference in Attachment 1. Estimated project budget is incorporated by reference as Attachment 2.

2.00 Project Cost:

Paragraph 3.00 of said Agreement is increased by $0.00

bringing the revised total cost of the project to $ 38,328,438.00 .

Paragraph 4.00 of said Agreement is increased by $0.00

bringing the Department's revised total cost of the project to $ 19,164,219.00 .

3.00 Amended Exhibits:

Exhibit(s) B of said Agreement is amended by Attachment "A".

4.00 Contract Time:

Paragraph 18.00 of said Agreement December 31st ,2013 .

Financial Project No. 42012415701

Contract No. ANO51

Agreement Date January 24, 2011

Except as hereby modified, amended or changed, all other terms of said Agreement dated September 7th 2004 and any subsequent supplements shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

AGENCY

FLORIDA EAST COAST RAILWAY, LLC
AGENCY NAME

JAMES R HERTWIG
SIGNATORY (PRINTED OR TYPED)

James R Hertwig
SIGNATURE

PRESIDENT AND CEO
TITLE

FDOT

See attached Encumbrance Form for date of Funding Approval by Comptroller

LEGAL REVIEW
DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

Director of Transportation Development - D6
TITLE

Baez, Paola

From: The job FI989HLR
Sent: Monday, March 16, 2009 3:28 PM
To: Baez, Paola
Subject: FUNDS APPROVAL/REVIEWED FOR CONTRACT AN051

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
FUNDS APPROVAL

Contract #AN051 Contract Type: AK Method of Procurement: R
Vendor Name: FL E CST RAILWAY
Vendor ID: VF596001115001
Beginning date of this Agmt: 09/07/04
Ending date of this Agmt: 12/31/13
Contract Total/Budgetary Ceiling: ct = $20,164,219.00

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**********************************************************************
Description:
FEC UPGRADE AT MEDLEY-TRACK REARRANGEMENT

**********************************************************************
ORG-CODE      *EO  *OBJECT *AMOUNT           *FIN PROJECT  *FCT  *CFDA
(FISCAL YEAR)      *BUDGET ENTITY            *CATEGORY/CAT YEAR
AMENDMENT ID       *SEQ.   *USER ASSIGNED ID *ENC LINE(6S)/STATUS
**********************************************************************

Action: SUPPLEMENTAL   Funds have been: APPROVED

55 062020629 *PT  *750021  *    11594000.00 *42012415701  *127  *
2009              *55100100                 *088808/09
S004              *00      *     4          *0006/04
----------------------------------------------------------------------

Action: SUPPLEMENTAL   Funds have been: REVIEWED*

55 062020629 *PT  *750098  *     2454326.00 *41821229401  *127  *
2012               55100100                  088809 12
S004              *01      *     4          *    /04
----------------------------------------------------------------------
         TOTAL AMOUNT:   *$   14,048,326.00 *
----------------------------------------------------------------------
FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER
DATE: 03/16/2009
```

Filer, Carl

From: Knox, Dana
Sent: Monday, April 13, 2009 8:19 AM
To: Filer, Carl
Subject: FW: FUNDS APPROVAL/REVIEWED FOR CONTRACT AN051

-----Original Message-----
From: The job FI989NDR
Sent: Friday, April 10, 2009 2:51 PM
To: Knox, Dana
Subject: FUNDS APPROVAL/REVIEWED FOR CONTRACT AN051

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
FUNDS APPROVAL

Contract #AN051 Contract Type: AK Method of Procurement: R
Vendor Name: FL E CST RAILWAY
Vendor ID: VF596001115001
Beginning date of this Agmt: 09/07/04
Ending date of this Agmt: 12/31/13
Contract Total/Budgetary Ceiling: ct = $19,164,219.00

****
Description:
FEC UPGRADE AT MEDLEY-TRACK REARRANGEMENT

****

```
ORG-CODE      *EO  *OBJECT *AMOUNT            *FIN PROJECT  *FCT  *CFDA
(FISCAL YEAR)      *BUDGET ENTITY             *CATEGORY/CAT YEAR
AMENDMENT ID       *SEQ.   *USER ASSIGNED ID *ENC LINE(6S)/STATUS
```

****

Action: SUPPLEMENTAL Funds have been: REVIEWED*

```
55 062020629 *PT  *750098  *    -1000000.00 *41821229401  *127  *
2012               55100100                  088809 12
S004              *02      *     4          *    /04
```

TOTAL AMOUNT: *$ -1,000,000.00 *

FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER
DATE: 04/10/2009

The job FI989NDR; user I.D. FI989ND <MVS@DOT>
01/30/2007 03:21 PM

To PT629CF@dot.state.fl.us
cc
bcc
Subject FUNDS APPROVAL/REVIEWED FOR CONTRACT ANC51

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
FUNDS APPROVAL

Contract #ANO51 Contract Type: AK Method of Procurement: R
Vendor Name: FL E CST RAILWAY
Vendor ID: VF596001115001
Beginning date of this Agmt: 09/07/04
Ending date of this Agmt: 12/31/07
Contract Total/Budgetary Ceiling: ct = $6,115,893.00

****
Description:
FEC UPGRADE AT MEDLEY-TRACK REARRANGEMENT

****

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ORG-CODE      *EO  *OBJECT *AMOUNT            *FIN PROJECT  *FCT  *CFDA
(FISCAL YEAR)      *BUDGET ENTITY             *CATEGORY/CAT YEAR
AMENDMENT ID       *SEQ.   *USER ASSIGNED ID  *ENC LINE(6S)/STATUS
```

****

Action: SUPPLEMENTAL Funds have been: APPROVED

```
                   750021
55 062020629 *PT   *~~134004~~  *     2337343.00 *42012415701  *127  *
2007               *55100100                     *088808/07
S003               *00      *    04              *0005/04
```

TOTAL AMOUNT: *$ 2,337,343.00 *

FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER
DATE: 01/30/2007

$871,646.96 balance

The job FI989HLR; user I.D. FI989HL <MVS@DOT>
12/27/2005 02:58 PM

To PT629CF@dot.state.fl.us
cc
bcc
Subject FUNDS APPROVAL/REVIEWED FOR CONTRACT ANO51

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
FUNDS APPROVAL

Contract #ANO51 Contract Type: AK Method of Procurement: R
Vendor Name: FLORIDA EAST COAST RAILWAY CO
Vendor ID: VF596001115001
Beginning date of this Agmt: 09/07/04
Ending date of this Agmt: 12/31/06

****
Description:
FEC UPGRADE AT MEDLEY-TRACK REARRANGEMENT

****

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ORG-CODE      *EO  *OBJECT *AMOUNT            *FIN PROJECT  *FCT  *CFDA
(FISCAL YEAR)      *BUDGET ENTITY             *CATEGORY/CAT YEAR
AMENDMENT ID       *SEQ.   *USER ASSIGNED ID  *ENC LINE(6S)/STATUS
```

****

Action: SUPPLEMENTAL Funds have been: APPROVED

```
                   750021
55 062020629 *PT   *~~134004~~ *      770000.00 *42012415701  *127  *
2006               *55100100                   *088808/06
S002               *00      *    03            *0004/04
```

TOTAL AMOUNT: *$ 770,000.00 *

FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER
DATE: 12/27/2005

Zero balance

The job FI989NDR; user I.D.
FI989ND <MVS@DOT>
09/16/2005 03:54 PM

To PT629CF@dot.state.fl.us
cc
bcc
Subject FUNDS APPROVAL/REVIEWED FOR CONTRACT AN051

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
FUNDS APPROVAL

Contract #AN051 Contract Type: AK Method of Procurement: R
Vendor Name: FLORIDA EAST COAST RAILWAY CO
Vendor ID: VF596001115001
Beginning date of this Agmt: 09/07/04
Ending date of this Agmt: 12/31/06

****
Description:
FEC UPGRADE AT MEDLEY-TRACK REARRANGEMENT

****

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ORG-CODE      *EO  *OBJECT *AMOUNT            *FIN PROJECT  *FCT  *CFDA
(FISCAL YEAR)      *BUDGET ENTITY             *CATEGORY/CAT YEAR
AMENDMENT ID       *SEQ.   *USER ASSIGNED ID  *ENC LINE(6S)/STATUS
```

****

Action: SUPPLEMENTAL Funds have been: APPROVED

```
                   750021
55 062020627 *PT   *~~134004~~  *      200000.00 *41610819402  *127  *
2006               *55100100                    *088808/06
S001               *00      *    01             *0003/04
```

TOTAL AMOUNT: *$ 200,000.00 *

FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER
DATE: 09/16/2005

Zero balance

Renuka Patel/CO/FDOT
07/27/2005 12:50 PM

To Paola G Baez/D6/FDOT@FDOT
cc
bcc
Subject Fw: FUNDS APPROVAL/REVIEWED FOR CONTRACTAN051

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
FUNDS APPROVAL

Contract #AN051 Contract Type: AK Method of Procurement: R
Vendor Name: FLORIDA EAST COAST RAILWAY
Vendor ID: VF596001115001
Beginning date of this Agmt: 07/23/04
Ending date of this Agmt: 06/30/06

```
**********************************************************************
ORG-CODE      *EO  *OBJECT *AMOUNT            *FIN PROJECT  *FCT  *CFDA
(FISCAL YEAR)      *BUDGET ENTITY             *CATEGORY/CAT YEAR
AMENDMENT ID       *SEQ.   *USER ASSIGNED ID *ENC LINE(6S)/STATUS

**********************************************************************

Action: ORIGINAL            Funds have been: APPROVED

55 062020629 *PT  *750098  *   1404275.00   *41610819401   *637 *
2006              *55100300                 *088809/06
A001              *00      *                *0002/10

----------------------------------------------------------------------
          TOTAL AMOUNT:   *$   1,404,275.00 *

----------------------------------------------------------------------
FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER
DATE: 07/02/2005
```

Zero balance

The job FI913RPR; user I.D. FI913RP <MVS@DOT>
07/23/2004 02:50 PM

To FT629PB@dot.state.fl.us
cc
bcc
Subject FUNDS APPROVAL/REVIEWED FOR CONTRACT AN051

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
FUNDS APPROVAL

Contract #AN051 Contract Type: AK Method of Procurement: R
Vendor Name: FLORIDA EAST COAST RAILWAY CO
Vendor ID: VF596001115001
Beginning date of this Agmt: 07/23/04
Ending date of this Agmt: 06/30/06

****
Description:
FEC UPGRADE AT MEDLEY-TRACK REARRANGEMENT

****

ORG-CODE	*EO	*OBJECT	*AMOUNT	*FIN PROJECT	*FCT	*CFDA
(FISCAL YEAR)		*BUDGET	ENTITY	*CATEGORY/CAT YEAR		
AMENDMENT ID		*SEQ.	*USER ASSIGNED ID	*ENC LINE(6S)/STATUS		

****

Action: ORIGINAL Funds have been: APPROVED

55 062020629	*PT	*750098 *	1404275.00	*41610819401	*637	*
2005		*55100300		*088809/05		
0001		*00 *		*0001/04		

TOTAL AMOUNT: *$ 1,404,275.00 *

FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER
DATE: 07/23/2004

zero balance

Financial Project No. 42012415701

Contract No. AN051

Agreement Date JANUARY 24, 2011

ATTACHMENT "A"
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT

This Attachment forms an integral part of that certain Supplemental Joint Participation Agreement between the State of Florida, Department of Transportation and FLORIDA EAST COAST RAILWAY, LLC 7411 Fullerton Street, Suite 300, Jacksonville, Florida 32256 dated 9/7/2004.

DESCRIPTION OF SUPPLEMENT (Include justification for cost change):

The agreement expiration date remains December 31, 2013.

I.	Project Cost:	As Approved	As Amended	Net
		$38,328,438.00	$38,328,438.00	$0.00
	Total Project Cost	$38,328,438.00	$38,328,438.00	$0.00

II.	Fund	As Approved	As Amended	Net
	Department:	$19,164,219.00	$19,164,219.00	$0.00
	Agency:	$19,164,219.00	$19,164,219.00	$0.00
		$0.00	$0.00	$0.00
	Total Project Cost	$38,328,438.00	$38,328,438.00	$0.00

Comments:

Attachment 1
Financial Project No. 42012415701
Contract No. AN051
CSFA No. 55.021, 55.014

The administration of resources awarded by the Department to the Florida East Coast Railway may be subject to audits and/or monitoring by the Department, as described in this section.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department staff to Florida East Coast Railway regarding such audit. Florida East Coast Railway further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the FDOT's Office of Inspector General (OIG) and Florida's Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

Recipients of federal funds (i.e. state, local government, or non-profit organizations as defined in OMB Circular A-133, as revised) are to have audits done annually using the following criteria:

1. In the event that the recipient expends $500,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. EXHIBIT 1 to this agreement indicates Federal resources awarded through the Department by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.

2. In connection with the audit requirements addressed in Part I, paragraph 1., the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

3. If the recipient expends less than $500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. However, if the recipient elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).

4. Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency.

PART II: STATE FUNDED

Recipients of state funds (i.e. a nonstate entity as defined by Section 215.97(2)(m), Florida Statutes) are to have audits done annually using the following criteria:

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of $500,000 in any fiscal year, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the

Department of Financial Services and the CFO; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Attachment 2 to this agreement indicates state financial assistance awarded through the Department by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the recipient expends less than $500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. However, if the recipient elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

4. State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

PART III: OTHER AUDIT REQUIREMENTS

The recipient shall follow up and take corrective action on audit findings. Preparation of a summary schedule of prior year audit findings, including corrective action and current status of the audit findings is required. Current year audit findings require corrective action and status of findings.

Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and audit work papers shall be given to the FDOT, the Department of Financial Services, and the Auditor General. This section does not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:

   A. The Department at each of the following addresses:

FDOT District Six-Public Transportation Office ATTN: Public Transportation Manager 1000 NW 111th Avenue, Rm. 6114 Miami, FL 33172-5800	&	FDOT District Six-Professional Services ATTN: JPA Coordinator 1000 NW 111th Avenue, Rm. 6202-B Miami, FL 33172-5800

   B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

   Federal Audit Clearinghouse
   Bureau of the Census
   1201 East 10th Street
   Jeffersonville, IN 47132

   C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

2. In the event that a copy of the reporting package for an audit required by PART I of this agreement and conducted in accordance with OMB Circular A-133, as revised, is not required to be submitted to the Department for reasons pursuant to section .320 (e)(2), OMB Circular A-133, as revised, the recipient shall submit the required written notification pursuant to Section .320 (e)(2) and a copy of the recipient's audited schedule of expenditures of Federal awards directly to each of the following:

FDOT District Six-Public Transportation Office ATTN: Public Transportation Manager 1000 NW 111th Avenue, Rm. 6114 Miami, FL 33172-5800	&	FDOT District Six-Professional Services ATTN: JPA Coordinator 1000 NW 111th Avenue, Rm. 6202-B Miami, FL 33172-5800

In addition, pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department at each of the following addresses:

FDOT District Six-Public Transportation Office ATTN: Public Transportation Manager 1000 NW 111th Avenue, Rm. 6114 Miami, FL 33172-5800	&	FDOT District Six-Professional Services ATTN: JPA Coordinator 1000 NW 111th Avenue, Rm. 6202-B Miami, FL 33172-5800

3. Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:

A. The Department at each of the following addresses:

FDOT District Six-Public Transportation Office ATTN: Public Transportation Manager 1000 NW 111th Avenue, Rm. 6114 Miami, FL 33172-5800	&	FDOT District Six-Professional Services ATTN: JPA Coordinator 1000 NW 111th Avenue, Rm. 6202-B Miami, FL 33172-5800

B. The Auditor General's Office at the following address:

Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

4. Copies of reports or the management letter required by PART III of this agreement shall be submitted by or on behalf of the recipient directly to:

A. The Department at each of the following addresses:

FDOT District Six-Public Transportation Office ATTN: Public Transportation Manager 1000 NW 111th Avenue, Rm. 6114 Miami, FL 33172-5800	&	FDOT District Six-Professional Services ATTN: JPA Coordinator 1000 NW 111th Avenue, Rm. 6202-B Miami, FL 33172-5800

5. Any reports, management letter, or other information required to be submitted to the Department pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

6. Recipients, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

1. The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of at least five years from the date the audit report is issued, and shall allow the Department, or its designee, CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department, or its signee, CFO, or Auditor General upon request for a period of at least five years from the date the audit report is issued, unless extended in writing by the Department.

FEDERAL and/or **STATE** resources awarded to the recipient pursuant to this agreement should be listed below. If the resources awarded to the recipient represent more than one Federal or State program, provide the same information for each program and the total resources awarded. **Compliance Requirements** applicable to each Federal or State program should also be listed below. If the resources awarded to the recipient represent more than one program, list applicable compliance requirements for each program in the same manner as shown here:

- (e.g., What services or purposes the resources must be used for)
- (e.g., Eligibility requirements for recipients of the resources)
- (Etc...)

NOTE: Instead of listing the specific compliance requirements as shown above, the State awarding agency may elect to use language that requires the recipient to comply with the requirements of applicable provisions of specific laws, rules, regulations, etc. The State awarding agency, if practical, may want to attach a copy of the specific law, rule, or regulation referred to.

FEDERAL RESOURCES

Federal Agency	Catalog of Federal Domestic Assistance (Number & Title)	Amount
N/A	N/A	N/A

STATE RESOURCES

State Agency	Catalog of State Financial Assistance (Number & Title)	Amount
FDOT	55.021 Rail Development Grants	$14,901,343

Compliance Requirements

N/A

Allowed Activities

Projects related to rail maintenance, rail safety, rail revitalization, rail system expansion and rail planning as authorized by Section 341, Florida Statutes.

Allowable Costs

Costs for design, engineering and construction of rail projects. Costs for development of rail planning and research. All allowable costs must be consistent with contract scopes and budgets.

Cash Management

N/A

Eligibility

Dependent on funding program used.

Matching
Match requirements vary by funding source.

State Agency	Catalog of State Financial Assistance (Number & Title)	Amount
FDOT	55.014 Intermodal Development Program	$4,262,876

Compliance Requirements

In developing audit procedures to test compliance with the requirements for a state project, the auditor should first look to Part Two, Matrix of Compliance Requirements, to identify which of the 10 types of compliance requirements described in Part Three of the Compliance Supplement are applicable and then look to Parts Three and Four for the details of the requirements.

Allowed Activities

The department is authorized to fund projects within the Intermodal Development Program, which are consistent, to the maximum extent feasible, with approved local government comprehensive plans of the units of local government in which the project is located. Projects that are eligible for funding under this program include major capital investments in public rail and fixed-guideway transportation facilities and systems which provide intermodal access; road, rail, intercity bus service, or fixed-guideway access to, from, or between seaports, airports, and other transportation terminals; construction of intermodal or multimodal terminals; development and construction of dedicated bus lanes; and projects which otherwise facilitate the intermodal or multimodal movement of people and goods.
(Section 341.053(6), Florida Statutes)

Allowable Costs

See Part Three

Cash Management

See Part Three

Eligibility

Not Applicable

Matching

Matching requirements are as follows:
(a) The department may fund up to 50 percent of the nonfederal share of the costs, not to exceed the local share, of any eligible public transit capital project or commuter assistance project that is local in scope; except, however, that departmental participation in the final design, right-of-way acquisition, and construction phases of an individual fixed-guideway project which is not approved for federal funding shall not exceed an amount equal to 12.5 percent of the total cost of each phase.

(b) The department is authorized to fund up to 100 percent of the cost of any eligible transit capital project, intercity bus service project, or commuter assistance project that is statewide in scope or involves more than one county where no other governmental entity or appropriate jurisdiction exists.

(c) The department is authorized to advance up to 80 percent of the capital cost of any eligible project that will assist Florida's transit systems and intercity bus services in becoming fiscally self-

sufficient. Such advances shall be reimbursed to the department on an appropriate schedule not to exceed 5 years after the date of provision of the advances.

(d) The department is authorized to fund up to 100 percent of the capital and net operating costs of statewide transit service development projects or transit corridor projects. All transit service development projects shall be specifically identified by way of a departmental appropriation request, and transit corridor projects shall be identified as part of the planned improvements on each transportation corridor designated by the department. The project objectives, the assigned operational and financial responsibilities, the timeframe required to develop the required service, and the criteria by which the success of the project will be judged shall be documented by the department for each such transit service development project or transit corridor project.

(e) The department is authorized to fund up to 50 percent of the capital and net operating costs of transit service development projects that are local in scope and that will improve system efficiencies, ridership, or revenues. All such projects shall be identified in the appropriation request of the department through a specific program of projects, as provided for in s. 341.041, that is selectively applied in the following functional areas and is subject to the specified times of duration:

1. Improving system operations, including, but not limited to, realigning route structures, increasing system average speed, decreasing deadhead mileage, expanding area coverage, and improving schedule adherence, for a period of up to 3 years;

2. Improving system maintenance procedures, including, but not limited to, effective preventive maintenance programs, improved mechanics training programs, decreasing service repair calls, decreasing parts inventory requirements, and decreasing equipment downtime, for a period of up to 3 years;

3. Improving marketing and consumer information programs, including, but not limited to, automated information services, organized advertising and promotion programs, and signing of designated stops, for a period of up to 2 years; and

4. Improving technology involved in overall operations, including, but not limited to, transit equipment, fare collection techniques, electronic data processing applications, and bus locators, for a period of up to 2 years.

(f) The department may fund up to 100 percent of the federal-aid apportionment for intercity bus service.

For purposes of this section, the term "net operating costs" means all operating
(Section 341.051(5), Florida Statutes)

NOTE: Section .400(d) of OMB Circular A-133, as revised, and Section 215.97(5)(a), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the recipient.

Attachment 2
FM 42012415701
Contract No. AN051
CSFA: 55.014, 55.021

Budget

PROJECT COST:			
Medley Lead			$16,487,638
Downtown Lead (Port Lead)			$21,840,800
TOTAL PROJECT COST:			**$38,328,438**
PARTICIPATION:			
Medley Lead			
Agency Participation	Cash	50%	$8,243,819
Department Participation	(DIS/DPTO)	50%	$8,243,819
Downtown Lead			
Agency Participation	Cash	50%	$10,920,400
Department Participation	(DIS/DPTO)	50%	$10,920,400
TOTAL PROJECT COST			**$38,328,438**

PUBLIC TRANSPORTATION JOINT PARTICIPATION AGREEMENT

Financial Project No.: 41610819401 (item-segment-phase-sequence)	Fund: DS	FLAIR Approp.: 088809
	Function: 637	FLAIR Obj.: 750098
		Org. Code: 062020629
Contract No.: ANO51	Federal No.: N/A	Vendor No.: F596001115001
Catalog of Federal Domestic Assistance Number: N/A		Catalog of State Financial Assistance Number: 55.014

THIS AGREEMENT, made and entered into this 7th day of September, 2004, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter referred to as the Department, and Florida East Coast Railway, L.L.C., a Florida Limited Liability Company One Malaga Street, P.O. Box 1048, St. Augustine, Florida 32085-1048 hereinafter referred to as Agency.

WITNESSETH:

WHEREAS, the Agency has the authority to enter into said Agreement and to undertake the project hereinafter described, and the Department has been granted the authority to function adequately in all areas of appropriate jurisdiction including the implementation of an integrated and balanced transportation system and is authorized under Chapter 341.053, Florida Statutes, to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

1.00 Purpose of Agreement: The purpose of this Agreement is "The Track Rearrangement of Medley Rock Train Movements". The project consists of constructing and rearranging 34,007' of track so that rock cars can be ordered and classified by rock size in the Medley area rather than in the Hialeah Yard. This project complements the City Point Loop Track and North Leg Wye at the Hialeah Yard funded in 2002 by TOP. The project is located in D-6, encompassing a one-mile strech of FEC railroad in the Medley area between NW 74 St. and NW 121 Way. The impact area is the 5 mile corridor between Medley and the Hialeah Rail Yard, which has 11 crossings.

and as further described in Exhibit(s) A, B & C attached hereto and by this reference made a part hereof, hereinafter referred to as the project, and to provide Departmental financial assistance to the Agency and state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the project will be undertaken and completed.

2.00 Accomplishment of the Project

2.10 General Requirements: The Agency shall commence, and complete the project as described in Exhibit "A" attached hereto and by this reference made a part hereof, with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws.

2.20 Pursuant to Federal, State, and Local Law: In the event that any election, referendum, approval, permit, notice, or other proceeding or authorization is requisite under applicable law to enable the Agency to enter into this Agreement or to undertake the project hereunder, or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters so requisite.

2.30 Funds of the Agency: The Agency shall initiate and prosecute to completion all proceedings necessary including federal aid requirements to enable the Agency to provide the necessary funds for completion of the project.

2.40 Submission of Proceedings, Contracts and Other Documents: The Agency shall submit to the Department such data, reports, records, contracts and other documents relating to the project as the Department may require as listed in Exhibit "C" attached hereto and by this reference made a part hereof.

3.00 Project Cost: The total estimated cost of the project is $ 5,617,100.00 . This amount is based upon the estimate summarized in Exhibit "B" attached hereto and by this reference made a part hereof. The Agency agrees to bear all expenses in excess of the total estimated cost of the project and any deficits involved.

4.00 Department Participation: The Department agrees to maximum participation, including contingencies, in the project in the amount of $ 2,808,550.00 as detailed in Exhibit "B", or in an amount equal to the percentage(s) of total project cost shown in Exhibit "B", whichever is less.

4.10 Project Cost Eligibility : Project costs eligible for State participation will be allowed only from the effective date of this agreement. It is understood that State participation in eligible project costs is subject to:

(a) Legislative approval of the Department's appropriation request in the work program year that the project is scheduled to be committed;

(b) Availability of funds as stated in paragraph 17.00 of this Agreement;

(c) Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement;

(d) Department approval of the project scope and budget (Exhibits A & B) at the time appropriation authority becomes available.

4.20 Front End Funding : Front end funding ○ is ⦿ is not applicable. If applicable, the Department may initially pay 100% of the total allowable incurred project costs up to an amount equal to its total share of participation as shown in paragraph 4.00.

5.00 Retainage : Retainage ○ is ⦿ is not applicable. If applicable, _____ percent of the Department's total share of participation as shown in paragraph 4.00 is to be held in retainage to be disbursed, at the Department's discretion, on or before the completion of the final project audit.

6.00 Project Budget and Payment Provisions:

6.10 The Project Budget: A project budget shall be prepared by the Agency and approved by the Department. The Agency shall maintain said budget, carry out the project and shall incur obligations against and make disbursements of project funds only in conformity with the latest approved budget for the project. No budget increase or decrease shall be effective unless it complies with fund participation requirements established in paragraph 4.00 of this Agreement and is approved by the Department Comptroller.

6.20 Payment Provisions: Unless otherwise allowed under paragraph 4.20, payment will begin in the year the project or project phase is scheduled in the work program as of the date of the agreement. Payment will be made for actual costs incurred as of the date the invoice is submitted with the final payment due upon receipt of a final invoice.

7.00 Accounting Records:

7.10 Establishment and Maintenance of Accounting Records: The Agency shall establish for the project, in conformity with requirements established by Department's program guidelines/procedures and "Principles for State and Local Governments", separate accounts to be maintained within its existing accounting system or establish independent accounts. Such accounts are referred to herein collectively as the "project account". Documentation of the project account shall be made available to the Department upon request any time during the period of the Agreement and for three years after final payment is made.

7.20 Funds Received Or Made Available for The Project: The Agency shall appropriately record in the project account, and deposit in a bank or trust company which is a member of the Federal Deposit Insurance Corporation, all payments received by it from the Department pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received on account of the project, which Department payments and other funds are herein collectively referred to as "project funds". The Agency shall require depositories of project funds to secure continuously and fully all project funds in excess of the amounts insured under federal plans, or under State plans which have been approved for the deposit of project funds by the Department, by the deposit or setting aside of collateral of the types and in the manner as prescribed by State Law for the security of public funds, or as approved by the Department.

7.30 Costs Incurred for the Project: The Agency shall charge to the project account all eligible costs of the project. Costs in excess of the latest approved budget or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs.

7.40 Documentation of Project Costs: All costs charged to the project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

7.50 Checks, Orders, and Vouchers: Any check or order drawn by the Agency with respect to any item which is or will be chargeable against the project account will be drawn only in accordance with a properly signed voucher then on file in the office of the Agency stating in proper detail the purpose for which such check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other such documents.

7.60 Audit Reports: In addition to the requirements below, the Agency agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department, including but not limited to site visits and limited scope audits. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the State Comptroller or Auditor General. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of three years from the date the audit report is issued, and shall allow the Department access to such records and working papers upon request. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any state agency inspector general, the Auditor General, or any other state official.

7.61 Federal Audit: In the event the Agency expends a total of $300,000 or more in Federal awards in its fiscal year, the Agency must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133. Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding Federal agency. If the Agency expends less than $300,000, this audit is not required and if the Agency elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, the cost of the audit must be paid from non-Federal funds.

The Agency agrees to allow the Department or an independent auditor of the Department, the State Comptroller, and the Auditor General access to the Agency's records and financial statements as may be necessary for complying with the requirements of 31 U.S.C. 7501 et seq.

Pursuant to OMB Circular A-133, Subpart C, .320(d), the Agency shall provide a copy of the reporting package and any management letters to the Department, or copies of audit reports for audits conducted in accordance with OMB Circular A-133, to the Department and to:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

7.62 State Audit: In the event that the Agency expends a total of $300,000 or more in State awards in its fiscal year, the Agency must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes and the applicable rules of the Executive Office of the Governor, the State Comptroller, and the Auditor General. In determining the State awards expended in its fiscal year, the Agency shall consider all sources of State awards except State awards received for Federal program matching requirements which shall be excluded from consideration. Sta te awards will be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the awarding State agency. If the Agency expends less than $300,000, this audit is not required and if the Agency elects to have an audit conducted in accordance with the provisions of Section 215.97, F.S., the cost of the audit must be paid from non-State funds.

The Agency agrees to allow the Department, the State Comptroller, and the Auditor General access to records and independent auditor's working papers, as necessary for complying with the requirements of Section 215.97, F.S.

The Agency shall provide annual financial reporting package of audits prepared in accordance with Section 215.97, F.S., and applicable Rules of the Auditor General to the Department and to:

State of Florida Auditor General
Room 574, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32302-1450

7.63 Other Requirements: If an audit discloses any significant audit findings relating to any award, including material noncompliance with individual project compliance requirements or reportable conditions in internal controls of the Agency, the Agency shall submit as part of the audit package to the Department a plan for corrective action to eliminate such audit findings or a statement describing the reasons that corrective action is not necessary. The Agency shall take timely and appropriate corrective action to any audit findings, recommendations, and corrective action plans.

7.70 Insurance: Execution of this Joint Participation Agreement constitutes a certification that the Agency has and will maintain the ability to repair or replace any project equipment or facilities in the event of loss or damage due to any accident or casualty for the useful life of such equipment or facilities. In the event of the loss of such equipment or facilities, the Agency shall either replace the equipment or facilities or reimburse the Department to the extent of its interest in the lost equipment or facility.

In the event this Agreement is for purchase of land or for the construction of infrastructure such as airport runways the Department may waive or modify this section with an Exhibit "C".

8.00 Requisitions and Payments:

8.10 Action by the Agency: In order to obtain any Department funds, the Agency shall file with the Department of Transportation, District VI Public Transportation Office 1000 NW 111 Ave, Rm 6114, Miam , FL, 33172 its requisition on a form or forms prescribed by the Department, and any other data pertaining to the project account (as defined in paragraph 7.10 hereof) to justify and support the payment requisitions.

8.11 Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

8.12 Invoices for any travel expenses shall be submitted in accordance with Chapter 112.061, F.S. The Department may establish rates lower than the maximum provided in Chapter 112.061, F.S.

8.13 For real property acquired, submit;

(1) the date the Agency acquired the real property,
(2) a statement by the Agency certifying that the Agency has acquired said real property, and actual consideration paid for real property.
(3) a statement by the Agency certifying that the appraisal and acquisition of the real property together with any attendant relocation of occupants was accomplished in compliance with all federal laws, rules and procedures required by any federal oversight agency and with all state laws, rules and procedures that may apply to the Agency acquiring the real property.

8.20 The Department's Obligations: Subject to other provisions hereof, the Department will honor such requisitions in amounts and at times deemed by the Department to be proper to ensure the carrying out of the project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment on the project if:

8.21 Misrepresentation: The Agency 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;

8.22 Litigation: There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the project, the Agreement, or payments to the project;

8.23 Approval by Department: The Agency shall have taken any action pertaining to the project which, under this agreement, requires the approval of the Department or has made related expenditures or incurred related obligations without having been advised by the Department that same are approved;

8.24 Conflict of Interests: There has been any violation of the conflict of interest provisions contained herein; or

8.25 Default: The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

8.26 Federal Participation (If Applicable): Any federal agency providing federal financial assistance to the project suspends or terminates federal financial assistance to the project. In the event of suspension or termination of federal financial assistance, the Agency will reimburse the Department for all disallowed costs.

8.30 Disallowed Costs: In determining the amount of the payment, the Department will exclude all projects costs incurred by the Agency prior to the effective date of this Agreement, costs which are not provided for in the latest approved budget for the project, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

8.40 Payment Offset: If, after project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this agreement, the Department may offset such amount from payments due for work or services done under any public transportation joint participation agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting amounts shall not be considered a breach of contract by the Department.

9.00 Termination or Suspension of Project:

9.10 Termination or Suspension Generally: If the Agency abandons or, before completion, finally discontinues the project; or if, by reason of any of the events or conditions set forth in paragraphs 8.21 to 8.26 inclusive, or for any other reason, the commencement, prosecution, or timely completion of the project by the Agency is rendered improbable, infeasible, impossible, or illegal, the Department will, by written notice to the Agency, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or the Department may terminate any or all of its obligations under this Agreement.

9.11 Action Subsequent to Notice of Termination or Suspension. Upon receipt of any final termination or suspension notice under this paragraph, the Agency shall proceed promptly to carry out the actions required therein which may include any or all of the following: (1) necessary action to terminate or suspend, as the case may be, project activities and contracts and such other action as may be required or desirable to keep to the minimum the costs upon the basis of which the financing is to be computed; (2) furnish a statement of the project activities and contracts, and other undertakings the cost of which are otherwise includable as project costs; and (3) remit to the Department such portion of the financing and any advance payment previously received as is determined by the Department to be due under the provisions of the Agreement. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and budget as approved by the Department or upon the basis of terms and conditions imposed by the Department upon the failure of the Agency to furnish the schedule, plan, and budget within a reasonable time. The approval of a remittance by the Agency or the closing out of federal financial participation in the project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

9.12 The Department reserves the right to unilaterally cancel this Agreement for refusal by the contractor or Agency to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F.S. and made or received in conjunction with this Agreement.

10.00 Remission of Project Account Upon Completion of Project: Upon completion of the project, and after payment, provision for payment, or reimbursement of all project costs payable from the project account is made, the Agency shall remit to the Department its share of any unexpended balance in the project account.

11.00 Audit and Inspection: The Agency shall permit, and shall require its contractors to permit, the Department's authorized representatives to inspect all work, materials, payrolls, records; and to audit the books, records and accounts pertaining to the financing and development of the project.

12.00 Contracts of the Agency:

12.10 Third Party Agreements: Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department joint participation funds, including consultant, construction or purchase of commodities contracts or amendments thereto, with any third party with respect to the project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department as provided in paragraph 8.23. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same.

12.20 Compliance with Consultants' Competitive Negotiation Act: It is understood and agreed by the parties hereto that participation by the Department in a project with an Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency complying in full with provisions of Chapter 287, F.S., Consultants' Competitive Negotiation Act. At the discretion of the Department, the Agency will involve the Department in the Consultant Selection Process for all contracts. In all cases, the Agency's Attorney shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.

12.30 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

12.31 DBE Policy: It is the policy of the Department that disadvantaged business enterprises as defined in 49 CFR Part 26, as amended, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of 49 CFR Part 26, as amended, apply to this Agreement.

12.32 DBE Obligation: The Agency and its contractors agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26, as amended, have the maximum opportunity to participate in the performance of contracts and this Agreement. In this regard, all recipients, and contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Grantees, recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department assisted contracts.

13.00 Restrictions, Prohibitions, Controls, and Labor Provisions:

13.10 Equal Employment Opportunity: In connection with the carrying out of any project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin. The Agency will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Agency shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development or operation of the project, except contracts for standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

13.20 Title VI - Civil Rights Act of 1964: Execution of this Joint Participation Agreement constitutes a certification that the Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et. seq.), the Regulations of the Federal Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto.

13.30 Title VIII - Civil Rights Act of 1968: Execution of this Joint Participation Agreement constitutes a certification that the Agency will comply with all the requirements imposed by Title VIII of the Civil Rights Act of 1968, 42 USC 3601,et seq., which among other things, prohibits discrimination in housing on the basis of race, color, national origin, creed, sex, and age.

13.40 Americans with Disabilities Act of 1990 (ADA): Execution of this Joint Participation Agreement constitutes a certification that the Agency will comply with all the requirements imposed by the ADA (42 U.S.C. 12102, et. seq.), the regulations of the federal government issued thereunder, and the assurance by the Agency pursuant thereto.

13.50 Prohibited Interests: Neither the Agency nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement in connection with the project or any property included or planned to be included in the project, in which any member, officer, or employee of the Agency during his tenure or for two years thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the Agency, the Agency with prior approval of the Department, may waive the prohibition contained in this subsection: Provided, that any such present member, officer or employee shall not participate in any action by the Agency relating to such contract, subcontract, or arrangement. The Agency shall insert in all contracts entered into in connection with the project or any property included or planned to be included in any project, and shall require its contractors to insert in each of their subcontracts, the following provision:

> "No member, officer, or employee of the Agency during his tenure or for two years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

The provisions of this subsection shall not be applicable to any agreement between the Agency and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a Governmental agency.

13.60 Interest of Members of, or Delegates to, Congress: No member or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

14.00 Miscellaneous Provisions:

14.10 Environmental Pollution: Execution of this Joint Participation Agreement constitutes a certification by the Agency that the project will be carried out in conformance with all applicable environmental regulations including the securing of any applicable permits. The Agency will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the Department for any loss incurred in connection therewith.

14.20 Department Not Obligated to Third Parties: The Department shall not be obligated or liable hereunder to any party other than the Agency.

14.30 When Rights and Remedies Not Waived: In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist, on the part of the Agency, and the making of such payment by the Department while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

14.40 How Agreement Is Affected by Provisions Being Held Invalid: If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

14.50 Bonus or Commission: By execution of the Agreement the Agency represents that it has not paid and, also, agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

14.60 State or Territorial Law: Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable State law: Provided, that if any of the provisions of the Agreement violate any applicable State law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the project.

14.70 Use and Maintenance of Project Facilities and Equipment: The Agency agrees that the project facilities and equipment will be used by the Agency to provide or support public transportation for the period of the useful life of such facilities and equipment as determined in accordance with general accounting principles and approved by the Department. The Agency further agrees to maintain the project facilities and equipment in good working order for the useful life of said facilities or equipment.

14.71 Property Records: The Agency agrees to maintain property records, conduct physical inventories and develop control systems as required by 49 CFR Part 18, when applicable.

14.80 Disposal of Project Facilities or Equipment: If the Agency disposes of any project facility or equipment during its useful life for any purpose except its replacement with like facility or equipment for public transportation use, the Agency will comply with the terms of 49 CFR Part 18 relating to property management standards. The Agency agrees to remit to the Department a proportional amount of the proceeds from the disposal of the facility or equipment. Said proportional amount shall be determined on the basis of the ratio of the Department financing of the facility or equipment as provided in this Agreement.

14.90 Contractual Indemnity: To the extent provided by law, the Agency shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Agency, its agents, or employees, during the performance of the Agreement, except that neither the Agency, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees during the performance of the Agreement.

When the Department receives a notice of claim for damages that may have been caused by the Agency in the performance of services required under this Agreement, the Department will immediately forward the claim to the Agency. The Agency and the Department 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 Department will determine whether to require the participation of the Agency in the defense of the claim or to require that the Agency defend the Department in such claim as described in this section. The Department's failure to promptly notify the Agency of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Agency. The Department and the Agency will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all expenses at trial.

15.00 Plans and Specifications: In the event that this Agreement involves the purchasing of capital equipment or the constructing and equipping of facilities, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the project and comments or recommendations concerning any remainder of the project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval with said remainder of the project. Failure to obtain this written approval shall be sufficient cause for nonpayment by the Department as provided in paragraph 8.23.

16.00 Project Completion, Agency Certification: The Agency will certify in writing on or attached to the final invoice, that the project was completed in accordance with applicable plans and specifications, is in place on the Agency facility, that adequate title is in the Agency and that the project is accepted by the Agency as suitable for the intended purpose.

17.00 Appropriation of Funds:

17.10 The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

17.20 Multi-Year Commitment: In the event this Agreement is in excess of $25,000 and has a term for a period of more than one year, the provisions of Chapter 339.135(6)(a), F.S., are hereby incorporated: "(a) The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of 25,000 dollars and which have a term for a period of more than 1 year."

18.00 Expiration of Agreement: The Agency agrees to complete the project on or before June 30, 2006. If the Agency does not complete the project within this time period, this Agreement will expire unless an extension of the time period is requested by the Agency and granted in writing by the District Six Secretary or Designee. Expiration of this Agreement will be considered termination of the project and the procedure established in paragraph 9.00 of this Agreement shall be initiated.

18.10 Final Invoice: The Agency must submit the final invoice on this project to the Department within 120 days after the expiration of this Agreement. Invoices submitted after the 120 day time period will not be paid.

1 9.00 Agreement Format: All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

20.00 Execution of Agreement: This Agreement may be simultaneously executed in a minimum of two counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

21.00 Restrictions on Lobbying:

21.10 Federal: The Agency agrees that no federal appropriated funds have been paid or will be paid by or on behalf of the Agency, to any person for influencing or attempting to influence any officer or employee of any federal 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 cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federal appropriated funds have been paid by the Agency to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Joint Participation Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Agency shall require that the language of this section be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

21.20 State: No funds received pursuant to this contract may be expended for lobbying the Legislature or a state agency.

22.00 Vendors Rights: Vendors (in this document identified as Agency) providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services unless the bid specifications, purchase order or contract specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. Th e 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

If a payment is not available within 40 days after receipt of the invoice and receipt, inspection and approval of goods and services, a separate interest penalty in accordance with Section 215.422(3)(b), F.S. will be due and payable, in addition to the invoice amount to the Agency. The interest penalty provision applies after a 35 day time period to health care providers, as defined by rule. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices which have to be returned to an Agency because of vendor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from the Department. The Vendor Ombudsman may be contacted at (850)410-9724 or by calling the Department of Financial Services Hotline, 1-800-848-3792.

23.00 Public Entity Crime: Pursuant to 287.133(3)(a) F.S. the following is applicable to this agreement. 287.133(2)(a) "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017, F.S. for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

24.00 Discrimination: An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

Financial Project No. 41610819401

Contract No. ANO51

Agreement Date 9-7-04

IN WITNESS WHEREOF, the parties hereto have caused these presents be executed, the day and year first above written.

AGENCY	FDOT
Florida East Coast Railway, L.L.C.	See attached Encumbrance Form for date of Funding Approval by Comptroller
AGENCY NAME	
J. McPherson	
SIGNATORY (PRINTED OR TYPED)	LEGAL REVIEW DEPARTMENT OF TRANSPORTATION
SIGNATURE	DEPARTMENT OF TRANSPORTATION
President & C.O.O.	Director of Planning and Public Transportation
TITLE	TITLE

EXHIBIT "A"
PROJECT DESCRIPTION AND RESPONSIBILITIES

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and FLORIDA EAST COAST RAILWAY, L.L.C., a Florida Limited Liability Company with its principal place of business in the City of St. Agustine, St. Johns County, in the State of Florida

Dated SEP 07 2004.

PROJECT LOCATION: The corridor between Medley / NW 74th Street and the Hialeah Rail Yard / NW 121st Way, in Miami-Dade County.

PROJECT DESCRIPTION: The purpose of the Agreement is to supply Intermodal funding for The Track Rearrangement of Medley Rock Train Movements The project consists of constructing and rearranging 34,007 ft. of track so that rock cars can be made up (order and classified by size of rock) in the Medley area rather than in the Hialeah Yard. This project is the companion project of the City Point Loop Track and North Leg Wye at the Hialeah Yard funded in 2002 by TOP. The North leg Wye will allow rock trains to move east (eventually north) from Medley without entering the Hialeah Yard. The project is located in D-6, encompassing a one-mile stretch of FEC railroad in the Medley area. The primary impact area is the 5 mile corridor between Medley and the Hialeah Rail Yard, which has 11 crossings. By improving the efficiency of rock train movements in the Medley/Hialeah area, this project will increase the overall efficiency and speed of commodity movement on the only east coast rail line providing intermodal sea-to-rail and truck-to-rail freight movement for the Ports of Miami, Everglades, and Palm Beach

SEE ATTACHMENT NO. 1

SPECIAL CONSIDERATIONS BY AGENCY:

1. The requirements of paragraph 18.10 Final Invoice of the agreement are replaced by the following: Upon completion of work, the Agency shall, within one hundred eighty (180) days, furnish the Department with two (2) copies of its final and complete billing of all costs incurred in connection with the work performed hereunder. The totals for labor, overhead, travel expenses, transportation, equipment, materials, supplies, handling costs and other services shall be shown in such manner as will permit ready comparison with the approved plans and estimates. Materials shall be itemized when they represent major components of cost in the relocation following the pattern set out in the approved estimate as closely as possible. Salvage credits from recovered and replaced permanent and recovered temporary materials shall be reported in said bills in relative position with the charge for the replacement or the original charge for temporary use. The final invoice shall show a

description and site of the project; the date on which the first work was performed, or if preliminary engineering or right-of –way items are involved; the date on which the earliest item of billed expense was incurred; the date on which the last work was performed or the last item of billed expense was incurred; and the location where the records and accounts billed can be audited. Adequate reference shall be made in the billing to the Agency's records, accounts and other relevant documents. All cost records and accounts shall be subject to audit by a representative of the Department. Upon receipt of invoices, prepared in accordance with the provisions of the above indicated reimbursement policy, the Department agrees to reimburse the Agency in the amount of such actual costs as approved by the Department's auditor.

2. The Agency hereby agrees to adjust the necessary parts of its facilities along said corridor in accordance with the attached detailed statement of the work , plans and specifications, and in accordance with the provisions set forth in the Department procedure No.725-80-002 appendix D.4, and rule 014-57.011 "Public Railroad-Highway Grade Crossings Costs", dated July 01, 2004.

3. The Agency must provide the Department with a written statement certifying that the Agency has an interest on the project's property before any reimbursement of State funds is requested. This statement must be accompany by the proper agreements, documents, and records.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

1. The Department hereby agrees to reimburse the Agency, as detailed in this agreement, for all costs incurred by it in the adjustment of the above mentioned facilities, in accordance with the provisions of procedure No.725-080-002, Appendix D-4, "billing requirements", and any supplements thereto or revisions thereof .

2. Approval of the invoice by the Department (person to whom the grantee sends the invoice for processing) must occur no later than five (5) calendar days after receipt of said invoice.

EXHIBIT "B"
PROJECT BUDGET

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and FLORIDA EAST COAST RAILWAY, L.L.C., a Florida Limited Liability Company with its principal place of business in the City of St. Agustine, St. Johns County, in the State of Florida.

Dated SEP 07 2004.

PROJECT COST:

	Estimated Cost of Improvements		$ 5,617,100.00
	TOTAL PROJECT COST:		**$ 5,617,100.00**
II.	PARTICIPATION:		
	Maximum Federal Participation FTA Discretionary	(0 %) or	$ 0.00
	Agency Participation	(50 %)	$ 2,808,550.00
	Maximum Department Participation, Primary	(50 %)	$ 2,808,550.00
	TOTAL PROJECT COST:		**$ 5,617,100.00**

- Funds are to be reimburse on a 50/50 matching basis
- $1,404,275 participation for Fiscal Year 2004/2005
- $1,404,275 participation for Fiscal Year 2005/2006

EXHIBIT "C"
(GENERAL)

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and FLORIDA EAST COAST RAILWAY, L.L.C., a Florida Limited Liability Company with its principal place of business in the City of St. Agustine, St. Johns County, in the State of Florida.

Dated SEP 07 2004.

1. Only cost incurred after the execution date of this agreement shall be eligible for reimbursement under this Agreement.

2. The Agency must submit an invoice to the Department no later than one hundred and eighty (180) days after the period of services covered by said invoice; failure to do so will result in this invoice being rejected.

3. Upon completion of work, the Agency shall, within one hundred eighty (180) days, furnish the Department with two (2) copies of its final and complete billing of all costs incurred in connection with the work performed hereunder.

4. In accordance with section 287.058, Florida Statutes , the following provisions are included in this agreement : If this contract involves units of deliverables, then such units must be received and accepted in writing by the contract manager prior to payments.

5. Bills for fees of other compensation for services of expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

6. The requirements of paragraph 8.12 under Requisitions and Payments of the agreement are replaced by this section: Bills for travel expenses specifically authorized in this agreement shall be submitted and paid in accordance with Department Rule 014-57.011 "Public Railroad-Highway Grade Crossings Costs", dated July 01, 2004; and the Federal Highway Administration federal-aid policy guide, subchapterB, part 140, subpart 1 "Reimbursement for Railroad Work."

7. The Department reserves the right to unilaterally cancel this agreement for refusal by the contractor of Agency to allow public access to all documents, papers, letters, or other material subject to the provisions of chapter 119, Florida Statutes and made or received in conjunction with this agreement.

8. Records of costs incurred under terms of this agreement shall be maintained and made

available upon request to the Department at all times during the period for this Agreement and for three (3) years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred includes the Agency's general accounting project records, together with supporting documents and records of the contractor and all subcontractors performing work on the project, and all other records of the Agency, contractor and subcontractors consider necessary by the Department for a proper audit of costs.

9. The Agency shall not execute any third-party contracts in excess of $10,000.00, without the prior written consent of the Department. Methods of procurement must comply with all federal, state, and local laws and regulations.

Attachment No. 1

Track Rearrangement for Medley Rock Train Movements

Prepared for

Florida East Coast Railway

Prepared by

Wilbur Smith Associates

EXECUTIVE SUMMARY OF PROJECT

Grant Recipient/Sponsor Name:

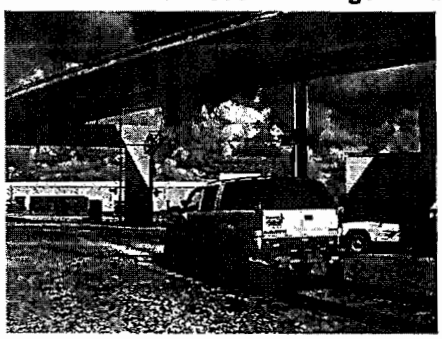
Florida East Coast Railway (FECR) operates a Class II railroad along 351 miles of mainline track between Jacksonville and Miami, Florida, serving some of the most densely populated areas of the state. The Railroad owns and operates approximately 276 miles of branch, switching and other secondary track, and 159 miles of yard track, totally within the State of Florida. The Railroad has the only north-south Atlantic coastal railroad right-of-way between Jacksonville and Miami and is the exclusive rail-service provider to the Ports of Palm Beach, Everglades (Ft. Lauderdale), Miami, and Florida's Space Coast.

Project Description: FDOT District: ***District 6***

The project described in this application is entitled Track Rearrangement for Medley Rock Train Movements. The project consists of constructing and rearranging 34,007 feet of track so that rock cars can be made-up (ordered and classified by size of rock) in the Medley area rather than at the Hialeah Rail Yard. *(See Appendix 1 for Proposed Plans.)* **Under the current operating scenario, 16 trains move 400 to 500 rock cars on a daily basis from the Medley area to the Hialeah Rail Yard where they are ordered and classified into large unit trains. The proposed project will reduce the number of trains that transport rock cars along the corridor from 16 trains to 4 trains daily. This reduction in the number of trains will reduce gate-down time at 11 at-grade crossings along the corridor.**

Project Site

Traffic counts collected between 1997 and 1999 indicate that approximately 85,000 vehicles utilize these crossings on a daily basis. Roughly 66% of this traffic is on roads that provide through connections for commuters while the remaining 34% of this traffic is on roads that provide access to local industrial facilities. Reducing the number of rock trains that travel through this area by nearly 75% will result in major mobility improvements for both local residents and commuters traveling through the Medley area. *(See Appendix 2 for Site Map and Location of Impacted Crossings.)*



N.W. 74th Street Crossing
An Impact Area

This project is the companion project of the City Point Loop Track and North Leg Wye at Hialeah Yard that was funded in the 2002 TOP's Funding Cycle. The North Leg Wye will allow rock trains to move east (eventually north) from Medley without entering the Hialeah Rail Yard. It should be noted that one of the primary purposes of the City Point Loop Track and North Leg Wye Project is to allow rock trains to avoid going into the Hialeah Rail Yard. Therefore, the full potential public benefits of the North Leg Wye Project will not be realized until the Track Rearrangement for the Medley Rock Train Movements can be constructed.

Canal at North Leg Wye Site

Project Location:

The project is located in Florida Department of Transportation District 6, Miami-Dade County, encompassing a one-mile stretch of Florida East Coast railroad in the Medley area between N.W. 74th Street and N.W. 121st Way. The primary impact area of this project is the corridor between Medley and the Hialeah Rail Yard, which is approximately 5 miles long and contains 11 crossings.

Total Project Cost for all Phases:

$ 5,617,100.00 *(See Appendix 3 for Estimate of Costs)*

Total Amount of Funding Request for fiscal year 2003-04:

$ 2,808,550.00

List Amount of local, federal or **private matching funds** for 2003-04:

$ 2,808,550.00

List Amount of funds received through Fast Track in 2000 or Transportation Outreach Program in 2001 or 2002:

$ - 0.00 –

Benefits:

This project will reduce rail bottlenecks that regularly block area roads at the eleven (11) rail crossings between Medley and the Hialeah Rail Yard. Traffic counts indicate that as many as 85,000 vehicles cross this corridor on a daily basis. The proposed track reconfiguration will reduce the number of trains that travel along the corridor from 16 to 4 a day, thereby reducing wait time for commuter and local traffic by nearly 75%. The benefits to the local community will come in the form of increased automobile traffic flow, reduced commute times, reduced air pollution and decreased activity around railroad intersections. The estimated annual cost to the local economy of over $1,350,000 associated with the delays, wasted fuel and gridlock around the rail crossings in the project impact area will be reduced to just over $337,502. Therefore the project represents a benefit of over $1,012,507 to the local economy per year.

By improving the efficiency of rock train movements in the Medley/Hialeah area, this project will increase the overall efficiency and speed of commodity movement on the only

east coast rail line providing intermodal sea-to-rail and truck-to-rail freight movement for the Ports of Miami, Everglades (Ft. Lauderdale), and Palm Beach, enhancing railroad transit times from South Florida to connecting carriers and the national railroad system in Jacksonville. Any increase in efficiency or elimination of "bottlenecks" on the Florida East Coast Railway's Miami-Jacksonville route will improve the competitive position of both the South Florida ports and local industries that depend on commodity flow along I-95 and the Atlantic Coast Trade Corridor. The increased efficiency and speed of commodity movement on the railroad resulting from this project will undoubtedly make rail transport of freight along the north-south I-95 corridor an attractive alternative to ever increasing truck congestion and operations.

Phase to be undertaken with 2003-04 funds:

Single Phase Project to be completed in total within the fiscal year 2003-04.

Supports Local and/or Statewide Plans:

Florida East Coast Railway's application for FY 2003-04 funds to complete this project are consistent and complement policies, goals, and objectives for enhanced freight mobility as outlined in the *Florida Transportation Plan* (Agency Functional Plan), the *Florida Rail System Plan-2002*, the *2020 Florida Statewide Intermodal System Plan-Draft Final Report*, and the *Florida Freight Network and Modal Linkages Study-2002.*

PROJECT DETAIL

Date: **December 31, 2002** FDOT District: **District 6**

Grant Recipient/Sponsor Name:

Florida East Coast Railway (FECR)

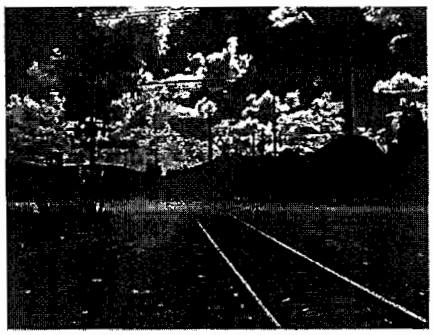
Project Description:

The project described in this application is entitled Track Rearrangement for Medley Rock Train Movements. The project consists of constructing and rearranging 34,007 feet of track so that rock cars can be made-up (ordered and classified by size of rock) in the Medley area rather than at the Hialeah Rail Yard. Under the current operating scenario, 16 trains move 400 to 500 rock cars on a daily basis from the Medley area to the Hialeah Rail Yard where they are ordered and classified into large unit trains. The proposed project will reduce the number of trains that transport rock cars along the corridor from Medley to the Hialeah Rail Yard from 16 trains to 4 trains daily. The reduction in the number of trains will reduce gate-down time at 11 at-grade crossings along the corridor.

Project Location

The project is located in Florida Department of Transportation District 6, Miami-Dade County, encompassing a one-mile stretch of Florida East Coast railroad in the Medley area between N.W. 74th Street and N.W. 121st Way. The primary impact area of this project is the corridor between Medley and the Hialeah Rail Yard, which is approximately 5 miles long and contains 11 crossings. The crossings that will be positively impacted as a result of this project are listed below:

CROSSING	ADT
NW 74th Street	38,000
NW 72nd Ave	10,070
NW 77th Street	450
NW 74th Ave	2,513
NW 79th Ave	5,285*
NW 93rd Street	3,696
SW 89th Ave	5,314
NW 106th Street	6,207
NW 97th Ave	5,285*
NW 116th Way	5,285*
NW 121st Way	3 750
	85,855



Crossing at NW 121st Way

*** Estimated counts based on the average count for the corridor excluding the high and low counts.**

Total Project Cost for all Phases:

$ 5,617,100.00

Total Amount of Funding Request for fiscal year 2003-2004:

$ 2,808,100.00

Amount of Local, Federal, or **Private Matching Funds** Proposed for fiscal year 2003-2004:

$ 2,808,100.00

Amount of Funds Received through Fast Track in 2000 or Transportation Outreach Program in 2001 or 2002:

$ - 0.00 -

Sponsor Contact Info (to answer questions about this application):

Name:	**Husein Cumber**	**Charles R. Lynch**
Address:	**One Malaga Street** **P.O. Box 1048** **St. Augustine, FL 32805**	**One Malaga Street** **P.O. Box 1048** **St. Augustine, FL 32085**
Telephone:	**(904) 826-2280**	**(904) 826-2427**
E-Mail Address:	**hcumber@feci.com**	**clynch@feci.com**

Project is production-ready and will be completed within one fiscal year if funding is made available.

The project is not currently in the FDOT 5-year work program. It will be necessary to amend the project into the work program prior to funds being committed and a Joint Participation Agreement being executed. Applicant requests a waiver to this provision since this will be a public/private venture.

The project requested for funding through this application is consistent and complements policies, goals, and objectives outlined for freight mobility in the *Florida Transportation Plan* (Agency Functional Plan), the *Florida Rail System Plan-2002*, the *2020 Florida Statewide Intermodal System Plan-Draft Final Report*, and the *Florida Freight Network and Modal Linkages Study -2002.*

The project is not inconsistent with existing local comprehensive plans. All required local permits and requirements for undertaking the project will be met. The project is not currently listed in any local government comprehensive plan since this project will be constructed on private property and represents a joint public/private partnership enhancing Florida's railroad transportation system.

Project Importance:

Rock train (aggregate) movements represented approximately 97% of the gross tonnage handled by FECR over the past year. Rock trains also represent the largest commodity handled by FECR. This product is a basic export for the local economy and for Florida as a whole. Enhancing the operating efficiencies of this income generating industry while reducing congestion on local roadways will help support an important component of South Florida's economy. It is a known fact that Florida's aggregate companies are facing increasing competition from foreign sources of raw material. The efficiency of rock train movements will provide cost benefits to Florida's aggregate companies. This will make local aggregate companies less susceptible to barge competitors and allow them to maintain and grow market share. Thus, increasing efficiency and reducing the cost of transport will help contribute to Florida's growing economy.

This project is the companion project of the North Leg Wye at Hialeah Yard Project that was funded in the 2002 TOP's Funding Cycle. The North Wye Project will allow rock trains to move east (eventually north) from Medley without entering the Hialeah Rail Yard. Together, both projects will result in the following increased operational efficiencies:

- **Four large trains traveling from Medley to Hialeah instead of 16 smaller trains will reduce gate-down time at the 11 at-grade crossings along the corridor.**
- **Operating efficiencies will increase for FECR because the number of times trains traveling in opposite directions that meet will be reduced. This increase in efficiency will result in less gate-down time at the 11 at-grade crossings along the corridor.**

- **In additional to fewer trains traveling this section of the corridor, the existing trains will be able to maintain a more uniform speed as they travel through the corridor because they will not have to run slow in order to stop at the Hialeah Rail Yard. As the trains move faster, they will further reduce vehicular delay and significantly increase traffic mobility.**

Entrance to Hialeah Rail Yard

The project will also enhance and facilitate improved operations and safety for commuters and commercial vehicular traffic currently being delayed by Florida East Coast Railway rock trains during train meets and yard operations. The elimination of railroad and vehicular congestion in the areas surrounding the project area will make those areas more accessible, safer, reduce pollutants, and reduce idle delay times.

This project will also increase the efficiency and cost effectiveness of freight and passenger railroad operations along the vital North-South Atlantic Coastal Trade Corridor (I-95, I-595, US 1, A1A/State Route 200, South Florida Rail Corridor, Florida East Coast Railway's Jacksonville to Miami main line). Though this specific project addresses east-west travel and rock train movements, all industries and railroad users all along Florida's east coast will realize the benefits of enhanced railroad operations. During the 2001 calendar business year, Florida East Coast Railway served approximately 750 business customers, and hundreds of others directly and indirectly, through Florida East Coast trucking and intermodal operations. During the 2001 reporting year, Florida East Coast Railway generated approximately $300M in revenues from all its Florida operations, paid over $17M in corporate income taxes and over $13M in real estate taxes in the State of Florida.

Project's impact on economic competitiveness:

Accessible and efficient transportation infrastructure is a critical factor for industry and commerce decision-makers to consider when evaluating where to locate, transport products, or expand facilities. In addition to the rock (aggregate) industry served by this improvement, Florida industries requiring east coast rail services include:

Chemical	**Paper and Pulp**
Automobile	**Machinery Manufacturing**
Transportation Equipment	**Rubber**
Construction Supply	**Energy Production**
Raw Material Supply and Distribution	**Freight Forwarding**
Raw and Finished Lumber	**Logistics and Distribution**
Furniture	**Food and Kindred Products**

If Florida is to remain a competitive location and environment for international and domestic trade of these commodities and the industries that utilize them, the state must ensure the continued viability of efficient and cost effective rail service to the South Florida region. While it is extremely difficult to predict the size and number of industries that will home-base operations on the Florida east coast solely on the availability of railroad service, it is known that approximately 750 Florida companies and four (4) major

international seaports are responsible for over 150,000 jobs that currently rely on Florida East Coast Railway direct rail and intermodal services.

Enhanced economic productivity for the local and regional community will come in two forms resulting from this railroad project.

Increased commodity flow and efficiency via railroad will be available to local industry resulting in shorter supply/product transport times, increased transport reliability and more competitive pricing for services with, and possible reduction of, long-haul truck/highway transport. It is important to note that one rock (aggregate) rail car is equal to approximately four trucks on the highway system. This equates to keeping 1600 to 2000 rock trucks off the highway system on a daily basis.

Reduced traffic congestion at affected railroad/highway at-grade crossings will enhance mobility of local commuters, reduce auto and locomotive fuel usage and increase worker productivity through reduced commute times, lower railroad labor costs, and enhanced safety and response times for emergency vehicles.

There are approximately 14,000 trains (38.5 trains/day on average) per year in the project impact area. Currently, average gate-down time or road-crossing blockage has been computed to be 3.02 minutes per train per crossing or over 7,780 hours of road blockage per year (21.3 hours/day). Vehicle delay time for purposes of this analysis has been computed as half the gate down time because delay time varies based on the time a vehicle arrives at the crossing.

Assuming that 313 vehicles are delayed an average of 1.5 minutes per day at each of the eleven affected crossings in the project area, the cost to the local economy in terms of lost productivity and decreased spending opportunity can be estimated. This example uses the following conservative and generally accepted costs from the trucking industry and Federal Aviation Administration regarding per hour direct labor opportunity costs and per hour values:

1. Over-the-Road (OTR) Truck and driver:	$67.00 per hour
2. Traveler engaged in business or commerce:	$35.50 per hour
3. Leisure Traveler (non-business):	$20.00 per hour

Over the course of one-day in the Medley area it is estimated that each train will stop approximately 109 OTR trucks (35% of the trips), 109 business travelers (35% of the trips) and 94 (30% of the trips) personal/leisure travelers at the eleven at-grade crossings in the study for an average of 1.5 minutes. Each train blockage at this time costs the local economy in terms of lost productivity and opportunity the following:

1. OTR Truck and driver:	$183/day ($66,978/ year) [1]
2. Traveler engaged in business or commerce:	$98.60/day ($35,988/year)
3. Leisure Traveler (non-business):	$46.95/day ($17,137/year)
Total lost wages for one crossing	$329.50/day ($120,105/year)
Total lost wages for crossings in project area	$3,620/day ($1,32,156/year)

[1] NOTE METHODOLOGY
Hourly wage of OTR Trucker * (1.5minutes delay/60 minutes) * Number of OTR Truckers stopped per day at crossing = Lost wages daily due to delays at one crossing. Therefore, Lost wages daily due to delays at one crossing * number of crossing in project area = Lost wages in project area due to delays for OTR Truckers.

At an estimated 14,000 such train blockages per year totaling 3,864 hours of vehicle delay/year in the project area, equates to an estimated negative economic impact to the local economy of $1.3 million per year.

Also to be considered is the wasted fuel and daily environmental impact of 3,443 vehicles idling for 1.5 minutes, an average of 38.5 times a day in the project area. An estimated $2.50 worth of fuel is burned by idling vehicles during each train pass at each crossing, equating to an estimated $28,845 annual loss in wasted fuel in the project area.

Wasted fuel costs and negative economic impact due to delays combine for a total $1.35 million in the project impact area.

Approximately 75% of the above-specified costs, lost productivity and environmental impacts will be avoided with the implementation of this project. This represents an annual reduction in wasted labor and fuel costs of $1.012 million. None of the above analysis includes railroad related delays or opportunity costs for lost productivity.

Idling vehicles generate large amounts of pollution. Further study is required to fully quantify the environmental impact of the vehicles and railroad equipment delayed by the train pass/meets.

Project's impact on regional or state tax base:

The reduction in rail and automobile congestion in the Medley to Hialeah area from the completion of this project will provide a benefit to land adjacent to the eleven intersections impacted by this project. The adjacent land may appreciate in value as it becomes more attractive to business and industry to locate there due to better ingress and egress. As property values increase with the potential of attracting new businesses, revenue for local government will increase through property tax increases on the land adjacent to the five miles impacted by this corridor. There is also the potential for the state to realize additional revenue through sales tax charges from new or expanded business activity in the project area.

State of Florida's Return on Investment:

The increased traffic flow and associated benefits in the Medley to Hialeah area, detailed in the previous section, will result in the elimination of lost productivity, wasted fuel, and inefficient commerce estimated to be costing the local economy over $1.3 million per year. This figure alone indicates that a full 100 percent return to the Florida economy can be achieved in just over two years (based on the requested $2.8 million investment). These ROI figures do not take into account the increased commerce and land values, and associated tax revenue, that will result from this project (further study is required to estimate that figure).

On a macroeconomic level, this project will assist in keeping Florida an attractive state in which to locate industry, distribution facilities and multi-modal freight operations. Transport infrastructure is vital in order to attract, expand, and keep industry, efficient and cost effective. The Florida East Coast Railway plays a vital role in the movement of both domestic and international freight flowing through the Ports of South Florida originating from and destined for points throughout the nation (51% of traffic in 2000 connected to other railroads, 49% remained within Florida on Florida East Coast's system). Any increase in efficiency or elimination of "bottlenecks" on the Atlantic Coast Trade Corridor, including the FECR, will increase the competitive position of both the south Florida ports and local industry that depend on commodity flow along this vital trade corridor.

Project's affect on intermodal linkages:

The increase in transportation efficiencies, increase in speed, and lower railroad transport costs attributed to the improvements outlined for this project will facilitate truck-to-rail and ship-to-rail intermodal freight movement and promote faster and cheaper transit times for both product (freight) and potential passenger operations. The improvements outlined in this application are truly "intermodal" in nature. For the year ended December 31, 2001, intermodal container (TOFC/COFC) and vehicle traffic represented 66 percent of the total traffic moved by the Florida East Coast Railway. The Florida East Coast Railway connects with Norfolk Southern and CSX at Jacksonville and is able to offer Florida industry and freight forwarders competitive rail connections to the rest of North America.

Project's impact on access and/or connections to regionally significant intermodal facilities such as seaports, airports, cargo facilities and rail terminals:

The Florida East Coast Railway is the exclusive rail service provider to the Ports of Miami, Everglades (Ft. Lauderdale) and Palm Beach. It has the only coastal right-of-way between Jacksonville, and Miami, connecting to a nationwide railroad system in Jacksonville (via Norfolk Southern and CSX). Any initiative to eliminate bottlenecks and choke points on the single source of rail service to Florida's seaports positively impacts growth potential of sea-to-rail freight movement. Between 1991 and 2001, the value of waterborne international trade through Florida increased from $22.9 billion dollars to $53.7 billion dollars eclipsing tourism as Florida's number one economic generator. This number is expected to almost double by 2008 to $97 billion dollars resulting in huge volumes of freight and containers that will need to be moved from Florida's seaports to destinations within Florida and points beyond. Fast, efficient, and cost competitive rail service will be critical in facilitating this increase in international and domestic trade.

Project's ability to help connect different travel modes:

This project will increase Florida East Coast Railway efficiency in moving a raw material used in the construction of Florida's roadways and in the road building industry. Thus, improvement of the rock handling efficiency of the Florida East Coast Railway system should aid in reducing highway maintenance costs and enhance the efficiency, the construction and improvement to Florida's roadway system.

- Project's impact on increasing "through-put" of freight:

The amount of freight that is through-put on the FEC Railway will increase because the make-up yard at the Medley Lead will eliminate the movement of 12 trains to the Hialeah Rail Yard. FECR will therefore spend less time moving rock cars to the Hialeah Rail Yard to be classified, which will increase operating efficiencies. Fewer trains traveling back and forth to the Hialeah Rail Yard from Medley will also mean fewer train meets occur in this area. Less train meets result in greater operational efficiency.

There are eleven (11) crossings affected during each of the 14,000 annual train passes on the east-west section of FECR track. Each pass delays traffic at these intersections for as much as 3.02 minutes. Local commuters and commerce can expect, as a result of this project, the elimination of over nearly 3000 hours of road delay per year benefiting over 1.2 million drivers.

Project's impact on improving the quality of the trip for freight:

In the business of freight/commodity transport, "quality" of the trip is often defined in terms of speed, cost, and efficiency. This project will be able to produce increased efficiency for both FECR customers and local residents of the Medley area. Mobility and productivity for the residents of the project area will be greatly improved as nearly 3000

hours a year of delay will be eliminated. Further, this project will enhance the comfort and transit time of potential future passenger operations in the project region. Not only will quality-of-life improve in the Medley to Hialeah area, but so should business/commerce prospects and land values, as congestion eases and accessibility increases.

Project's impact on travel safety for freight and/or passengers:

This project will result in much more efficient passing and train meet operations for the Florida East Coast Railway by eliminating congestion during often-complex pass/meet operations. Automobile traffic congestion at multiple rail crossings will also be eliminated, thus reducing the potential for auto accidents and train-auto collisions caused by impatient or careless drivers trying to navigate blocked/closed crossings. Response times for emergency vehicles can also be expected to improve.

An additional benefit may be reduced heavy truck traffic on highways as more freight can be diverted to the railway as a result of implementing this project. It is important to note that one rock (aggregate) rail car is equal to approximately four trucks on the highway system. This equates to keeping 1600 to 2000 rock trucks off the highway system on a daily basis.

Conclusion:

- **Estimated Total Project Cost: $ 5,617,100.00**
- **Private FECR Matching Funds: $ 2,808,550.00**
- **Private Funds Matching Ratio: 50%**

This project is solely about the improvement of existing facilities, both rail and road. Existing road and rail crossings will be improved, increasing safety and efficiency.

The most unique aspect of this project is that it is a companion project of the North Leg Wye at Hialeah Yard that was funded in the 2002 TOP's Funding Cycle. The North Leg Wye Connection will allow rock trains to move east (eventually north) from Medley without entering the Hialeah Rail Yard. Unless the Medley Lead Project is constructed, the rock trains will still have to go into the Hialeah Rail Yard to be made-up. Therefore, the full potential public benefit of the North Leg Wye at Hialeah will not be realized until the Medley Lead project is completed.

This project is also unique because its benefits are felt by so many distinct Florida entities throughout the state, from industry, to citizens, to the environment. The benefits include:

- **Increased road and railroad operating efficiency for the make-up area for the rock (aggregate) trains will enhance the entire vital North-South Atlantic Coastal Trade Corridor that includes the intermodal (sea-rail, truck-rail) connection for major South Florida ports in Miami, Ft. Lauderdale, and Palm Beach and to the national railroad hubs in Jacksonville.**
- **Increased productivity and quality of life for Florida citizens in the Medley to Hialeah area due to reduced delay times.**
- **Industries located in the Medley to Hialeah area will experience reduced delay times when accessing their facilities.**
- **Promotes economic growth and development in the Medley to Hialeah area due to improved ingress and egress.**
- **Provides a positive environmental impact and results in fuel conservation.**

Renuka Patel/CO/FDOT
07/27/2005 12:50 PM

To Paola G Baez/D6/FDOT@FDOT
cc
bcc
Subject Fw: FUNDS APPROVAL/REVIEWED FOR CONTRACTAN051

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
FUNDS APPROVAL

Contract #AN051 Contract Type: AK Method of Procurement: R
Vendor Name: FLORIDA EAST COAST RAILWAY
Vendor ID: VF596001115001
Beginning date of this Agmt: 07/23/04
Ending date of this Agmt: 06/30/06

```
*********************************************************************
ORG-CODE      *EO  *OBJECT *AMOUNT            *FIN PROJECT  *FCT  *CFDA
(FISCAL YEAR)      *BUDGET ENTITY             *CATEGORY/CAT YEAR
AMENDMENT ID       *SEQ.   *USER ASSIGNED ID  *ENC LINE(6S)/STATUS

*********************************************************************

Action: ORIGINAL            Funds have been: APPROVED

55 062020629 *PT   *750098  *   1404275.00    *41610819401   *637 *
2006               *55100300                 *088809/06
A001               *00      *                *0002/10

---------------------------------------------------------------------
          TOTAL AMOUNT:    *$   1,404,275.00 *

---------------------------------------------------------------------
FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER
DATE: 07/02/2005
```

The job FI913RPR; user I.D. FI913RP <MVS@DOT>
07/23/2004 02:50 PM

To PT629PB@dot.state.fl.us
cc
bcc
Subject FUNDS APPROVAL/REVIEWED FOR CONTRACT ANO51

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
FUNDS APPROVAL

Contract #ANO51 Contract Type: AK Method of Procurement: R
Vendor Name: FLORIDA EAST COAST RAILWAY CO
Vendor ID: VF596001115001
Beginning date of this Agmt: 07/23/04
Ending date of this Agmt: 06/30/06

****
Description:
FEC UPGRADE AT MEDLEY-TRACK REARRANGEMENT

****

```
ORG-CODE      *EO  *OBJECT *AMOUNT            *FIN PROJECT  *FCT  *CFDA
(FISCAL YEAR)      *BUDGET ENTITY             *CATEGORY/CAT YEAR
AMENDMENT ID       *SEQ.   *USER ASSIGNED ID  *ENC LINE(6S)/STATUS
```

****

Action: ORIGINAL Funds have been: APPROVED

```
55 062020629 *PT  *750098  *     1404275.00 *41610819401  *637  *
2005              *55100300                 *088809/05
0001              *00      *                *0001/04
```

TOTAL AMOUNT: *$ 1,404,275.00 *

FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER
DATE: 07/23/2004

PUBLIC TRANSPORTATION
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT
Number 01

Financial Project No.: 41610819402 (item-segment-phase-sequence)	Fund: DS	FLAIR Approp.: 088808
	Function: 127	FLAIR Obj.: 134004
		Org. Code: 55062020629
Contract No.: ANO51	Federal No.:	Vendor No.: F596001115001
Catalog of Federal Domestic Assistance Number:	Catalog of State Financial Assistance Number: 55014	

THIS AGREEMENT, made and entered into this 13th day of October, 2005, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter referred to as the Department, and Florida East Coast Railway, LLC, a Florida Limited Liability Company One Malaga Street, P.O. Box 1048, St. Augustine, Florida 32085-1048 hereinafter referred to as Agency.

WITNESSETH:

WHEREAS, the Department and the Agency heretofore on the 7th day of September, 2004, entered into a Joint Participation Agreement; and

WHEREAS, the Agency desires to accomplish certain project items as outlined in the Attachment "A" appended hereto; and

WHEREAS, the Department desires to participate in all eligible items for this project as outlined in Attachment "A" for a total Department Share of $3,008,550.00.

NOW, THEREFORE THIS INDENTURE WITNESSETH: that for and in consideration of the mutual benefits to flow from each to the other, the parties hereto agree that the above described Joint Participation Agreement is to be amended and supplemented as follows:

1.00 Project Description: The project description is amended
this project consists of constructing and rearranging 34,000' of track so that rock cars can be ordered and classified by rock size in the west Medley area rather in the Hialeah Yard.

2.00 Project Cost:

Paragraph 3.00 of said Agreement is increased by $ 400,000.00

bringing the revised total cost of the project to $ 6,017,100.00 .

Paragraph 4.00 of said Agreement is increased by $ 200,000.00

bringing the Department's revised total cost of the project to $ 3,008,550.00 .

3.00 Amended Exhibits:

Exhibit(s) _____ of said Agreement is amended by Attachment "A".

4.00 Contract Time:

Paragraph 18.00 of said Agreement December 31st, 2006 .

Financial Project No. 41610819402

Contract No. ANO51

Agreement Date _____

Except as hereby modified, amended or changed, all other terms of said Agreement dated September 7th, 2004 and any subsequent supplements shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

AGENCY

Florida East Coast Railway, LLC, a Florida Limited Liabilit
AGENCY NAME

C. A. Stone
SIGNATORY (PRINTED OR TYPED)

C. A. Stone
SIGNATURE

Director Engineering
TITLE

FDOT

See attached Encumbrance Form for date of Funding Approval by Comptroller

LEGAL REVIEW
DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

Director of Transportation Development - D6
TITLE

Financial Project No. 41610819402

Contract No. ANO51

Agreement Date _____

ATTACHMENT "A"
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT

This Attachment forms an integral part of that certain Supplemental Joint Participation Agreement between the State of Florida, Department of Transportation and Florida East Coast Railway, LLC, a Florida Limited Liability Compan One Malaga Street, P.O. Box 1048, St. Augustine, Florida 32085-1048

dated _____.

DESCRIPTION OF SUPPLEMENT (Include justification for cost change):

to provide additional funding for the Medley Lead track rearrangement project and the purchase and installation of light poles along the southwest side of the Medley Lead tracks to provide lighting for the night car inspectors.

I.	Project Cost:	As Approved	As Amended	Net Change
		$5,617,100.00	$6,017,100.00	$400,000.00
	Total Project Cost	$5,617,100.00	$6,017,100.00	$400,000.00

I.	Fund Participation:	As Approved	As Amended	Net Change
	Department:	$2,808,550.00	$3,008,550.00	$200,000.00
	Agency:	$2,808,550.00	$3,008,550.00	$200,000.00
	Other:			$0.00
	Total Project Cost	$5,617,100.00	$6,017,100.00	$400,000.00

Comments:

III. MULTI-YEAR OR PREQUALIFIED PROJECT FUNDING

If a project is a multi-year or prequalified project subject to paragraphs 4.10 and 17.20 of this agreement, funds are programmed in the Department's Work program in the following fiscal year(s):

FY
FY
FY
FY

Project years may be advanced or deferred subject to Legislative appropriation or availabity of funds.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

PUBLIC TRANSPORTATION
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT
Number 02

Financial Project No.: 41610819402 (item-segment-phase-sequence)	Fund: DS	FLAIR Approp.: 088808
	Function: 127	FLAIR Obj.: 134004
		Org. Code: 55062020629
Contract No.: ANO51	Federal No.:	Vendor No.: F596001115001
Catalog of Federal Domestic Assistance Number:		Catalog of State Financial Assistance Number: 55014

THIS AGREEMENT, made and entered into this 14th day of DECEMBER, 2005, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter referred to as the Department, and Florida East Coast Railway, LLC, a Florida Limited Liability Company One Malaga Street, P.O. Box 1048, St. Augustine, Florida 32085-1048 hereinafter referred to as Agency.

W I T N E S S E T H :

WHEREAS, the Department and the Agency heretofore on the 7th day of September, 2004, entered into a Joint Participation Agreement; and

WHEREAS, the Agency desires to accomplish certain project items as outlined in the Attachment "A" appended hereto; and

WHEREAS, the Department desires to participate in all eligible items for this project as outlined in Attachment "A" for a total Department Share of $3,008,550.00.

NOW, THEREFORE THIS INDENTURE WITNESSETH: that for and in consideration of the mutual benefits to flow from each to the other, the parties hereto agree that the above described Joint Participation Agreement is to be amended and supplemented as follows:

1.00 Project Description: The project description is amended
this project consists of constructing and rearranging 34,000' of track so that rock cars can be ordered and classified by rock size in the west Medley area rather in the Hialeah Yard, installation of light poles along the southwest side of the Medley Lead tracks to provide lighting for the night car inspectors, and installation of security cameras for this facility with a command center in Miami or Jacksonville. Scope change only, no additional funding required.

2.00 Project Cost:

Paragraph 3.00 of said Agreement is increased by $ 0.00

bringing the revised total cost of the project to $ 6,017,100.00 .

Paragraph 4.00 of said Agreement is increased by $ 0.00

bringing the Department's revised total cost of the project to $ 3,008,550.00 .

3.00 Amended Exhibits:

Exhibit(s) B of said Agreement is amended by Attachment "A".

4.00 Contract Time:

Paragraph 18.00 of said Agreement December 31st, 2006 .

Financial Project No. 41610819402

Contract No. ANO51

Agreement Date DEC 1 4 2005

Except as hereby modified, amended or changed, all other terms of said Agreement dated September 7th, 2004 and any subsequent supplements shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

AGENCY

Florida East Coast Railway, LLC, a Florida Limited Liabilit
AGENCY NAME

Charles A. Stone
SIGNATORY (PRINTED OR TYPED)

Charles A. Stone
SIGNATURE

Director Engineering
TITLE

FDOT

See attached Encumbrance Form for date of Funding Approval by Comptroller

LEGAL REVIEW
DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

Director of Transportation Development - D6
TITLE

Financial Project No. 41610819402

Contract No. ANO51

Agreement Date DEC 1 4 2005

ATTACHMENT "A"
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT

This Attachment forms an integral part of that certain Supplemental Joint Participation Agreement between the State of Florida, Department of Transportation and Florida East Coast Railway, LLC, a Florida Limited Liability Compan One Malaga Street, P.O. Box 1048, St. Augustine, Florida 32085-1048 dated 9/7/2004.

DESCRIPTION OF SUPPLEMENT (Include justification for cost change):

to provide additional funding for the Medley Lead track rearrangement project and the purchase and installation of security cameras for this facility with a command center in Miami or Jacksonville. Scope change only, no additional funding required.

I.	Project Cost:	As Approved	As Amended	Net Change
		$6,017,100.00	$6,017,100.00	$0.00
	Total Project Cost	$6,017,100.00	$6,017,100.00	$0.00

I.	Fund Participation:	As Approved	As Amended	Net Change
	Department:	$3,008,550.00	$3,008,550.00	$0.00
	Agency:	$3,008,550.00	$3,008,550.00	$0.00
	Other:			$0.00
	Total Project Cost	$6,017,100.00	$6,017,100.00	$0.00

Comments:

III. MULTI-YEAR OR PREQUALIFIED PROJECT FUNDING

If a project is a multi-year or prequalified project subject to paragraphs 4.10 and 17.20 of this agreement, funds are programmed in the Department's Work program in the following fiscal year(s):

FY
FY
FY
FY

Project years may be advanced or deferred subject to Legislative appropriation or availabity of funds.

SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT
Number 03

Financial Project No.: 42012415701 (item-segment-phase-sequence)	Fund: DS	FLAIR Approp.: 088808
	Function: 127	FLAIR Obj.: 134004
		Org. Code: 55062020629
Contract No.: ANO51	Federal No.:	Vendor No.: F596001115001
Catalog of Federal Domestic Assistance Number:	Catalog of State Financial Assistance Number: 55014	

THIS AGREEMENT, made and entered into this 23RD day of January, 2006, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter referred to as the Department, and Florida East Coast Railway, LLC, a Florida Limited Liability Company One Malaga Street, P.O. Box 1048, St. Augustine, Florida 32085-1048 hereinafter referred to as Agency.

WITNESSETH:

WHEREAS, the Department and the Agency heretofore on the 7th day of September, 2004, entered into a Joint Participation Agreement; and

WHEREAS, the Agency desires to accomplish certain project items as outlined in the Attachment "A" appended hereto; and

WHEREAS, the Department desires to participate in all eligible items for this project as outlined in Attachment "A" for a total Department Share of $3,778,550.00.

NOW, THEREFORE THIS INDENTURE WITNESSETH: that for and in consideration of the mutual benefits to flow from each to the other, the parties hereto agree that the above described Joint Participation Agreement is to be amended and supplemented as follows:

1.00 Project Description: The project description is amended
this project consists of constructing and rearranging 34,000' of track so that rock cars can be ordered and classified by rock size in the west Medley area rather in the Hialeah Yard, installation of light poles along the southwest side of the Medley Lead tracks to provide lighting for the night car inspectors, installation of security cameras for this facility with a command center in Miami or Jacksonville, and install 1 number 20 turnout and removing 3 number 8 turnouts connecting two (2) setout tracks together making for 1.2 miles of double track. Scope change and additional funding required.

2.00 Project Cost:

Paragraph 3.00 of said Agreement is increased by $ 1,540,000.00

bringing the revised total cost of the project to $ 7,557,100.00.

Paragraph 4.00 of said Agreement is increased by $ 770,000.00

bringing the Department's revised total cost of the project to $ 3,778,550.00.

3.00 Amended Exhibits:

Exhibit(s) _____ of said Agreement is amended by Attachment "A".

4.00 Contract Time:

Paragraph 18.00 of said Agreement December 31st, 2007.

Financial Project No. 42012415701

Contract No. ANO51

Agreement Date

Except as hereby modified, amended or changed, all other terms of said Agreement dated September 7th, 2004 and any subsequent supplements shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

AGENCY	FDOT
Florida East Coast Railway, LLC, a Florida Limited Liabilit AGENCY NAME	See attached Encumbrance Form for date of Funding Approval by Comptroller
Charles A. Stone SIGNATORY (PRINTED OR TYPED)	LEGAL REVIEW DEPARTMENT OF TRANSPORTATION
C. A. Stone 12/28/05 SIGNATURE	DEPARTMENT OF TRANSPORTATION
Director - Engineering TITLE	Director of Transportation Development - D6 TITLE

Financial Project No. 42012415701

Contract No. ANO51

Agreement Date _____

ATTACHMENT "A"
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT

This Attachment forms an integral part of that certain Supplemental Joint Participation Agreement between the State of Florida, Department of Transportation and Florida East Coast Railway, LLC, a Florida Limited Liability Compan One Malaga Street, P.O. Box 1048, St. Augustine, Florida 32085-1048

dated _____.

DESCRIPTION OF SUPPLEMENT (Include justification for cost change):

to provide Strategic Intermodal System Growth Management funding to install 1 number 20 turnout and removing 3 number 8 turnouts connecting two (2) setout tracks together making for 1.2 miles of double track.

I.	Project Cost:	As Approved	As Amended	Net Change
		$6,017,100.00	$7,557,100.00	$1,540,000.00
	Total Project Cost	$6,017,100.00	$7,557,100.00	$1,540,000.00

I.	Fund Participation:	As Approved	As Amended	Net Change
	Department:	$3,008,550.00	$3,778,550.00	$770,000.00
	Agency:	$3,008,550.00	$3,778,550.00	$770,000.00
	Other:			$0.00
	Total Project Cost	$6,017,100.00	$7,557,100.00	$1,540,000.00

Comments:

III. MULTI-YEAR OR PREQUALIFIED PROJECT FUNDING

If a project is a multi-year or prequalified project subject to paragraphs 4.10 and 17.20 of this agreement, funds are programmed in the Department's Work program in the following fiscal year(s):

FY
FY
FY
FY

Project years may be advanced or deferred subject to Legislative appropriation or availablty of funds.

OFFICE OF MANAGER-ENGINEERING SERVICES
SAINT AUGUSTINE, FLORIDA

MEDLEY LEAD: Proposed Track Relay and Track connection on the Medley lead For the Medley Rock Tracks — ML 5/11 — July 21,2005

Estimate of cost to relay and connect the Medley Rock Tracks

Description	Number	Units	Price	Cost
Construction				
No. 10 Turnout, 136# Insulated (Rail & OTM)(RTI equipped)R.H. for x-over	1	Each	$70,300.00	$70,300.00
No. 10 Turnout, 136# Insulated (Rail & OTM)	3	Each	$45,000.00	$135,000.00
Install No. 10 Turnout (Labor & Equipment)	4	Each	$10,500.00	$42,000.00
No. 20 Turnout, 136# Insulated (Rail & OTM)(RTI equipped) R.H.	1	Each	$85,000.00	$85,000.00
No. 10 Turnout, 136# Insulated (Rail & OTM)	1	Each	$25,000.00	$25,000.00
Track, 132# Salvage value	5900	T.F.	$6.50	$38,350.00
Ties,Plates,Anchors, Spikes (OTM)	5900	T.F.	$27.00	$159,300.00
Install Track (Labor & Equipment)	5900	T.F.	$18.00	$106,200.00
Welds	45	Each	$350.00	$15,750.00
Ballast (Inculding Switches)	315	Cars	$1,000.00	$315,000.00
Surface Track	5900	T.F.	$5.50	$32,450.00
Load & Unload Scond Hand Rail	1	L.S.	$100,000.00	$100,000.00
Grading	1	L.S.	$55,000.00	$55,000.00
Signal Car Scanner - Reader	1	L.S.	$60,000.00	$60,000.00
Construct Grade Crossing & Relocate Sig.	1	L.S.	$150,000.00	$150,000.00
Engineering	1	L.S.	$50,000.00	$50,000.00
Material Additive (6.06%)	1	L.S.	$41,183.76	$41,183.76
Miscellaneous & Contingencies	1	L.S.	$21,966.24	$21,966.24
Total Construction				$1,502,500.00
Removal				
Labor To Remove Turnouts	5	Each	$3,000.00	$15,000.00
Labor To Remove Track	4000	Each	$3.00	$12,000.00
Labor Additive (58.36%)	1	L.S.	$7,003.20	$7,003.20
Supervision	1	L.S.	$4,000.00	$4,000.00
Miscellaneous & Contingencies	1	L.S.	$496.80	$496.80
Total Removal				$38,500.00
Total Cost				**$1,541,000.00**

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STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

PUBLIC TRANSPORTATION
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT
Number 4

Financial Project No.: 42012415701 (item-segment-phase-sequence)	Fund: GMR	FLAIR Approp.: 088808
	Function: 127	FLAIR Obj.: 134004
		Org. Code: 55062020629
Contract No.: ANO51	Federal No.: N/A	Vendor No.: F596001115001
Catalog of Federal Domestic Assistance Number: N/A		Catalog of State Financial Assistance Number: 55014

THIS AGREEMENT, made and entered into this _____ day of _____, _____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter referred to as the Department, and FLORIDA EAST COAST RAILWAY 7411 Fullerton Street, Suite 300, Jacksonville, Florida 32256 hereinafter referred to as Agency.

WITNESSETH:

WHEREAS, the Department and the Agency heretofore on the 7th day of September ,2004, entered into a Joint Participation Agreement; and

WHEREAS, the Agency desires to accomplish certain project items as outlined in the Attachment "A" appended hereto; and

WHEREAS, the Department desires to participate in all eligible items for this project as outlined in Attachment "A" for a total Department Share of $6,115,893.00.

NOW, THEREFORE THIS INDENTURE WITNESSETH: that for and in consideration of the mutual benefits to flow from each to the other, the parties hereto agree that the above described Joint Participation Agreement is to be amended and supplemented as follows:

1.00 Project Description: The project description is amended

To provide extra funding since the Medley lead has deterioated to the point that spot maintenance is no longer viable. The existing 112 lb. rail was rolled in 1946. It was cascaded from the Main Line in 1974 to the Medley Lead when the Main Line was being upgraded with 132 lb. rail. The turnouts were also laid in conjunction with the relocation of the 112lb. rail. The majority of the existing turnouts are number 8 turnouts and are no longer a FEC standard not withstanding the deterioated condition of the turnout components.The rehabilitation will also include the installation of 4500 AREMA No. 5 dual treated crossties, addition of 60,000 tons of ballast, reclaim and clean 4.5 miles of existing ballast and the renewal of 4 road crossings.
Following are quanities and costs of each of the new components for the Project:
Capital Expense, Relay 4.2 miles rail with new 141 lb. rail, scrap tie removal, Install 4500 crossties, Restore embankment, Install 17, 136 lb. turnouts, renew 162 feet of road crossing, Reclaim and clean 4.2 miles of ballast, Add 60,000 tons of AREMA #4 ballast , Surface 4.5 miles of track (includes runoff).

2.00 Project Cost:

Paragraph 3.00 of said Agreement is increased by $4,674,686.00

bringing the revised total cost of the project to $ 12,231,786.00.

Paragraph 4.00 of said Agreement is increased by $2,337,343.00

bringing the Department's revised total cost of the project to $ 6,115,893.00.

3.00 Amended Exhibits:

Exhibit(s) B of said Agreement is amended by Attachment "A".

4.00 Contract Time:

Paragraph 18.00 of said Agreement December 31st ,2007.

Financial Project No. 42012415701

Contract No. ANO51

Agreement Date _____

Except as hereby modified, amended or changed, all other terms of said Agreement dated September 7th 2004 and any subsequent supplements shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

AGENCY

FLORIDA EAST COAST RAILWAY
AGENCY NAME

X John D. McPherson
SIGNATORY (PRINTED OR TYPED)

X JMcPherson
SIGNATURE

President & Chief Operating Officer
TITLE

FDOT

See attached Encumbrance Form for date of Funding Approval by Comptroller

LEGAL REVIEW
DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

D-6 Director of Transportation Development
TITLE

Financial Project No. 42012415701

Contract No. ANO51

Agreement Date _____ , _____

ATTACHMENT "A"
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT

This Attachment forms an integral part of that certain Supplemental Joint Participation Agreement between the State of Florida, Department of Transportation and FLORIDA EAST COAST RAILWAY 7411 Fullerton Street, Suite 300, Jacksonville, Florida 32256 dated _____.

DESCRIPTION OF SUPPLEMENT (Include justification for cost change):

Following are quanities and costs of each of the new components for the Project:
Capital Expense, Relay 4.2 miles rail with new 141 lb. rail, scrap tie removal, Install 4500 crossties, Restore embankment, Install 17, 136 lb. turnouts, renew 162 feet of road crossing, Reclaim and clean 4.2 miles of ballast, Add 60,000 tons of AREMA #4 ballast , Surface 4.5 miles of track (includes runoff).

I.	Project Cost:	As Approved	As Amended	Net
		$7,557,100.00	$12,231,786.00	$4,674,686.00
	Total Project Cost	$7,557,100.00	$12,231,786.00	$4,674,686.00

I.	Fund	As Approved	As Amended	Net
	Department:	$3,778,550.00	$6,115,893.00	$2,337,343.00
	Agency:	$3,778,550.00	$6,115,893.00	$2,337,343.00
		$0.00	$0.00	$0.00
	Total Project Cost	$7,557,100.00	$12,231,786.00	$4,674,686.00

Comments:

PUBLIC TRANSPORTATION
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT
Number 5

Financial Project No.: 42012415701 (item-segment-phase-sequence)	Fund: DIS/DPTO	FLAIR Approp.: 088808
	Function: 127	FLAIR Obj.: 750021
	Federal No.: N/A	Org. Code: 55062020629
Contract No.: ANO51	DUNS No.: N/A	Vendor No.: F596001115001
Catalog of Federal Domestic Assistance Number: N/A		Catalog of State Financial Assistance Number: 55021

THIS AGREEMENT, made and entered into this _____ day of _____, _____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter referred to as the Department, and FLORIDA EAST COAST RAILWAY 7411 Fullerton Street, Suite 300, Jacksonville, Florida 32256 hereinafter referred to as Agency.

WITNESSETH:

WHEREAS, the Department and the Agency heretofore on the 7th day of September ,2004, entered into a Joint Participation Agreement; and

WHEREAS, the Agency desires to accomplish certain project items as outlined in the Attachment "A" appended hereto; and

WHEREAS, the Department desires to participate in all eligible items for this project as outlined in Attachment "A" for a total Department Share of $19,164,219.00.

NOW, THEREFORE THIS INDENTURE WITNESSETH: that for and in consideration of the mutual benefits to flow from each to the other, the parties hereto agree that the above described Joint Participation Agreement is to be amended and supplemented as follows:

1.00 Project Description: The project description is amended to provide state financial assistance to begin the second phase of improvements in the Medley area. This agreement will rehabilitate and implement double tracking along the FEC Medley Lead, from RRMP ML 0 to RRMP ML 4.8 at NW 121st Way. The work to be performed includes extension of culverts, earthwork (includes clearing, filling and grading), construct and surface 25,344 feet of 141# track, rehabilitate 9 grade crossings (includes surface and signal), 2-No. 15 turnouts, 3 No.8 turnouts, 3-No.10 turnouts, 12,672 crossties, 510 cars of ballast, construct 1 ballast deck bridge, and relocate fiber optic cable.

2.00 Project Cost:

Paragraph 3.00 of said Agreement is increased by $26,096,652.00

bringing the revised total cost of the project to $ 38,328,438.00.

Paragraph 4.00 of said Agreement is increased by $13,048,326.00

bringing the Department's revised total cost of the project to $ 19,164,219.00.

3.00 Amended Exhibits:

Exhibit(s) B of said Agreement is amended by Attachment "A".

4.00 Contract Time:

Paragraph 18.00 of said Agreement December 31st ,2013.

Financial Project No. 42012415701

Contract No. ANO51

Agreement Date _____

Except as hereby modified, amended or changed, all other terms of said Agreement dated September 7th 2004 and any subsequent supplements shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

AGENCY

FLORIDA EAST COAST RAILWAY
AGENCY NAME

Michael Scott Linn
SIGNATORY (PRINTED OR TYPED)

Michael Scott Linn
SIGNATURE

VP Engineering
TITLE

FDOT

See attached Encumbrance Form for date of Funding Approval by Comptroller

LEGAL REVIEW
DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

D6-Director of Transportation Development
TITLE

Financial Project No. 42012415701

Contract No. ANO51

Agreement Date _____

ATTACHMENT "A"
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT

This Attachment forms an integral part of that certain Supplemental Joint Participation Agreement between the State of Florida, Department of Transportation and FLORIDA EAST COAST RAILWAY 7411 Fullerton Street, Suite 300, Jacksonville, Florida 32256 dated _____.

DESCRIPTION OF SUPPLEMENT (Include justification for cost change):

The work to be performed includes extension of culverts, earthwork (includes clearing, filling and grading), construct and surface 25,344 feet of 141# track, rehabilitate 9 grade crossings (includes surface and signal), 2-No. 15 turnouts, 3 No.8 turnouts, 3-No.10 turnouts, 12672 crossties, 510 cars of ballast, construct 1 ballast deck bridge, and relocate fiber optic cable. Reimbursement on 50/50 matching basis.

I.	Project Cost:	As Approved	As Amended	Net
		$12,231,786.00	$38,328,438.00	$26,096,652.00
	Total Project Cost	$12,231,786.00	$38,328,438.00	$26,096,652.00

I.	Fund	As Approved	As Amended	Net
	Department:	$6,115,893.00	$19,164,219.00	$13,048,326.00
	Agency:	$6,115,893.00	$19,164,219.00	$13,048,326.00
		$0.00	$0.00	$0.00
	Total Project Cost	$12,231,786.00	$38,328,438.00	$26,096,652.00

Comments:

FY 2009 $11,594,000.00 DIS Funds under FM No. 42012415701
FY 2012 $ 1,454,326.00 DPTO Funds under FM No. 41821229401

$13,048,326.00 Total Funds this supplemental agreement

III. MULTI-YEAR OR PREQUALIFIED PROJECT FUNDING

If a project is a multi-year or prequalified project subject to paragraphs 4.10 and 17.20 of this agreement, funds are programmed in the Department's Work program in the following fiscal year(s):

FY	2009	$11,594,000.00	FY	$0.00
FY	2012	$1,454,326.00	FY	$0.00
FY		$0.00	FY	$0.00
FY		$0.00	FY	$0.00
FY		$0.00	FY	$0.00
FY		$0.00	FY	$0.00
FY		$0.00	FY	$0.00
FY		$0.00	FY	$0.00
FY		$0.00	FY	$0.00
FY		$0.00	FY	$0.00

Project years may be advanced or deferred subject to Legislative appropriation or availabity of funds.

FINANCIAL PROJECT NO.42012415701/41821229401

EXHIBIT "B"
PROJECT BUDGET

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and FLORIDA EAST COAST RAILWAY, LLC., a Florida Limited Liability Company with its principal place of business in Jacksonville Florida.

referenced by the above Financial Project Number.

I.	PROJECT COST:			$38,328,438.00
	TOTAL PROJECT COST:			$38,328,438.00
II.	PARTICIPATION:			
	Maximum Federal Participation FTA, FAA	(0 %)	or	$ 0.00
	Agency Participation	(50 %)		$ 19,164,219.00
	Maximum Department Participation, Primary (DPTO)(DIS)	(50 %)	or	$19,164,219.00
	TOTAL PROJECT COST			$38,328,438.00

- Funds are to be reimburse on a 50/50 matching basis
- Department Participation:
  - Fiscal Year 2008/2009 DIS funds $11,594,000.00
  - Fiscal Year 2011/2012 DPTO Funds $ 1,454,326.00

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

PUBLIC TRANSPORTATION
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT
Number 56

Financial Project No.: 42012415701/418212-2-94-01 (item-segment-phase-sequence)	Fund: DIS/DPTO	FLAIR Approp.: 088808
	Function: 127	FLAIR Obj.: 750021
	Federal No.: N/A	Org. Code: 55062020629
Contract No.: ANO51	DUNS No.: N/A	Vendor No.: F596001115001
Catalog of Federal Domestic Assistance Number: N/A		Catalog of State Financial Assistance Number: 55021

THIS AGREEMENT, made and entered into this 11TH day of JUNE, 2009, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter referred to as the Department, and FLORIDA EAST COAST RAILWAY 7411 Fullerton Street, Suite 300, Jacksonville, Florida 32256 hereinafter referred to as Agency.

WITNESSETH:

WHEREAS, the Department and the Agency heretofore on the 7th day of September, 2004, entered into a Joint Participation Agreement; and

WHEREAS, the Agency desires to accomplish certain project items as outlined in the Attachment "A" appended hereto; and

WHEREAS, the Department desires to participate in all eligible items for this project as outlined in Attachment "A" for a total Department Share of $19,164,219.00.

NOW, THEREFORE THIS INDENTURE WITNESSETH: that for and in consideration of the mutual benefits to flow from each to the other, the parties hereto agree that the above described Joint Participation Agreement is to be amended and supplemented as follows:

1.00 Project Description: The project description is amended to provide state financial assistance to begin the second phase of improvements in the Medley area. This agreement will rehabilitate and implement double tracking along the FEC Medley Lead, from RRMP ML 0 to RRMP ML 4.8 at NW 121st Way. The work to be performed includes extension of culverts, earthwork (includes clearing, filling and grading), construct and surface 25,344 feet of 141# track, rehabilitate 9 grade crossings (includes surface and signal), 2-No. 15 turnouts, 3 No.8 turnouts, 3-No.10 turnouts, 12,672 crossties, 510 cars of ballast, construct 1 ballast deck bridge, and relocate fiber optic cable.

2.00 Project Cost:

Paragraph 3.00 of said Agreement is increased by $26,096,652.00

bringing the revised total cost of the project to $ 38,328,438.00.

Paragraph 4.00 of said Agreement is increased by $13,048,326.00

bringing the Department's revised total cost of the project to $ 19,164,219.00.

3.00 Amended Exhibits:

Exhibit(s) B of said Agreement is amended by Attachment "A".

4.00 Contract Time:

Paragraph 18.00 of said Agreement December 31st ,2013.

Financial Project No. 42012415701

Contract No. ANO51

Agreement Date 06-11-09

Except as hereby modified, amended or changed, all other terms of said Agreement dated September 7th 2004 and any subsequent supplements shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

AGENCY

FLORIDA EAST COAST RAILWAY
AGENCY NAME

Michael Scott Linn
SIGNATORY (PRINTED OR TYPED)

Michael Scott Linn
SIGNATURE

VP Engineering
TITLE

FDOT

See attached Encumbrance Form for date of Funding Approval by Comptrolier

LEGAL REVIEW
DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

D6-Director of Transportation Development
TITLE

Financial Project No. 42012415701

Contract No. ANO51

Agreement Date 06-11-09

ATTACHMENT "A"
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT

This Attachment forms an integral part of that certain Supplemental Joint Participation Agreement between the State of Florida, Department of Transportation and FLORIDA EAST COAST RAILWAY

7411 Fullerton Street, Suite 300, Jacksonville, Florida 32256

dated 09-07-04

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FY 2012 $ 1,454,326.00 DPTO Funds under FM No. 41821229401

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FY	2012	$1,454,326.00	FY	$0.00
FY		$0.00	FY	$0.00
FY		$0.00	FY	$0.00
FY		$0.00	FY	$0.00
FY		$0.00	FY	$0.00
FY		$0.00	FY	$0.00
FY		$0.00	FY	$0.00
FY		$0.00	FY	$0.00
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Project years may be advanced or deferred subject to Legislative appropriation or availabity of funds.

FINANCIAL PROJECT NO.42012415701/41821229401

EXHIBIT "B"
PROJECT BUDGET

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referenced by the above Financial Project Number.

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	TOTAL PROJECT COST			$38,328,438.00

- Funds are to be reimburse on a 50/50 matching basis
- Department Participation:
  - Fiscal Year 2008/2009 DIS funds $11,594,000.00
  - Fiscal Year 2011/2012 DPTO Funds $ 1,454,326.00

Exhibit 1

MIAMI-DADE BUSINESS ENTITY AFFIDAVITS

I, Robert Stevens, being first duly sworn state:

The full legal name and business address of the person(s)or entity contracting or transacting business with Miami-Dade County are (Post Office addresses are not acceptable):

59-6001115
Federal Employer Identification Number (If none, Social Security Number)

Florida East Coast Railway, L.L.C.
Name of Entity, Individual(s), Partners, or Corporation

Doing Business As (If same as above, leave blank)

7411 Fullerton Street, Jacksonville, FL 32256
Street Address City State Zip Code

I. MIAMI-DADE COUNTY OWNERSHIP DISCLOSURE AFFIDAVIT
(Sec. 2-8.1 of the County Code)

1. If the contract or business transaction is with a corporation, the full legal name and business address shall be provided for each officer and director and each stockholder who holds directly or indirectly five percent (5%) or more of the corporation's stock. If the contract or business transaction is with a trust, the full legal name and address shall be provided for each trustee and each beneficiary. All such names and addresses are (Post Office addresses are not acceptable).

Full Legal Name	Address	Ownership
Florida East Coast Railway Corp.	7411 Fullerton St. Jacksonville, FL 32256	100 %
		%
		%

2. The full legal names and business address of any other individual (other than subcontractors, materialmen, suppliers, laborers, or lenders) that have, or will have, any interest (legal, equitable beneficial or otherwise) in the contract or business transaction with Dade County are (Post Office addresses are not acceptable).

If "not applicable (N/A)" or "None", please indicate in space below.

N/A

II. MIAMI-DADE COUNTY EMPLOYMENT DISCLOSURE AFFIDAVIT - County Ordinance No. 90-133, amending Section 2.8-1(d)(2) of the County Code. The following information and attachments are provided and are in compliance with all items in the aforementioned Section:

1. Does your firm have a collective bargaining agreement with its employees? ☑ Yes ☐ No

2. Does your firm provide paid health care benefits for its employees? ☑ Yes ☐ No

3. Provide a current breakdown (number of persons) of your firm's work force and ownership as to race, national origin and gender:

White:	312 Males	47 Females	Asian:	6 Males	0 Females
Black:	108 Males	7 Females	Native American:	0 Males	0 Females
Hispanics:	33 Males	7 Females	Alaskan Natives:	0 Males	0 Females
2 or More Races:	1 Males	1 Females	_____:	____ Males	____ Females

III MIAMI-DADE EMPLOYMENT DRUG-FREE WORKPLACE AFFIDAVIT
Section 2-8.1.2(b) of the County Code.

That in compliance with Ordinance No. 92-15 of the Code of Miami-Dade County, the above named firm is providing a drug-free workplace. A written statement to each employee shall inform the employee about:

1. Danger of drug abuse in the workplace
2. The firms' policy of maintaining a drug-free environment at all workplaces
3. Availability of drug counseling, rehabilitation and employee assistance programs
4. Penalties that may be imposed upon employees for drug abuse violations

The firm shall also require an employee to sign a statement, as a condition of employment that the employee will abide by the terms of the drug-free workplace policy and notify the employer of any criminal drug conviction occurring no later than five (5) days after receiving notice of such conviction and impose appropriate personnel action against the employee up to and including termination.

IV. DISABILITY NONDISCRIMINATION AFFIDAVIT
Miami-Dade County Resolution R-385-95.

I, being duly sworn, state that this firm, is in compliance with and agrees to continue to comply with, and assure that any subcontractor, or third party contractor shall comply with all applicable requirements of the laws listed below including, but not limited to, those provisions pertaining to employment, provision of programs and services, transportation, communications, access to facilities, renovations, and new construction.

1. The American with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat 327, 42 U.S.C. Sections 225 and 611 including Titles I, II, III, IV and V.
2. The Rehabilitation Act of 1973, 29 U.S.C. Section 794
3. The Federal Transit Act, as amended 49 U.S.C. Section 1612
4. The Fair Housing Act as amended, 42 U.S.C. Section 3601-3631

V. MIAMI-DADE COUNTY DEBARMENT DISCLOSURE AFFIDAVIT
Section 10.38 of the County Code.

I, being duly sworn, confirm that none of this firms agents, officers, principals, stockholders, subcontractors or their affiliates are debarred by Miami-Dade County.

VI. MIAMI-DADE COUNTY COLLECTION OF TAXES, FEES AND PARKING TICKETS AFFIDAVIT Section 2-8.1(C) of the County Code.

I, being duly sworn, confirm that all delinquent and currently due fees or taxes (including, but not limited to, real and personal property taxes, convention and tourist development taxes, utility taxes, and occupational license taxes) collected in the normal course by the Miami-Dade County Tax Collector and County issued parking tickets for vehicles registered in the name of the above firm, have been paid.

VII. MIAMI-DADE COUNTY CODE OF BUSINESS ETHICS AFFIDAVIT
Sections 2-8.1(i) and 2-11(b)(1) of the County Code.

I, being duly sworn, confirm that this firm has adopted a Code of business ethics which complies with the requirements of Sections 2-8.1 of the County Code, and that such code of business ethics shall apply to all business that this firm does with the County and shall, at a minimum, require the contractor to comply with all applicable governmental rules and regulations.

VIII. CURRENT STATUS OF OBLIGATIONS TO THE COUNTY
Section 2-8.1 of the County Code.

I, being duly sworn, confirm that this firm complies with Section 2-8.1, which requires that no individual or entity who is in arrears in any payment under a contract, promissory note or other document with the County shall be allowed to receive any new business.

IX. FAMILY LEAVE

I being duly sworn, confirm that if applicable, this firm complies with Section 11A-30 of the County Code, which requires that firms contracting business with Miami-Dade County which have more than fifty (50) employees for each working day during each of twenty (20) or more work weeks in the current or preceding calendar year are required to certify that they provide family leave to their employees. Firms with less than the number of employees indicated above are exempt from this requirement, but must indicate by letter signed by an authorized agent) that it does not have the minimum number of employees required by the County Code.

X. LIVING WAGE

I being duly sworn, confirm that if applicable, this firm complies with Section 2-8.9 of the County Code, which requires that all applicable contractors entering a contract with County shall agree to pay the prevailing living wage required by the section of the County Code.

XI. DOMESTIC LEAVE

I being duly sworn, confirm that if applicable, this firm complies with 11A-60 of the County Code, which requires that firms wishing to transact business with the County must certify that it is in compliance with the Domestic Leave Ordinance. This ordinance applies to employers that have, in the regular course of business, fifty (50) or more employees working in Miami-Dade County for each working day during current or preceding calendar year.

NOTE

BY SIGNING AND NOTARIZING THIS PAGE YOU ARE ATTESTING TO AFFIDAVITS I THRU XI, PAGES 6, 7, 8, AND 9 OF THIS APPLICATION.

IT IS THE VENDOR'S RESPONSIBILITY TO COMPLY WITH AND KEEP CURRENT ALL STATEMENTS SWORN TO IN THE ABOVE AFFIDAVITS.

By: Robert B Stevens
(Signature of Affiant) (Date)

Robert B Stevens
(Printed Name of Affiant and Title)

/ - / / / / / / / /
(Federal Employer Identification Number)

Florida East Coast Railway
(Name of Firm) (Address of Firm)

SUBSCRIBED AND SWORN TO (or affirmed) before me this 11th day of March, 20 11.

by Robert B. Stevens (He/She is personally known to me or has presented

_____ as identification.
(Type of Identification)

Kathleen M. Lowe
(Signature of Notary)

DD0787058
(Serial Number)

Kathleen M. Lowe
(Print or Stamp of Notary)

6/21/12
(Expiration Date)

Notary Public - State of FL
(State)

Notary Seal

KATHLEEN M. LOWE
Comm# DD0787058
Expires 6/21/2012
Florida Notary Assn., Inc

As to any facts material to this affidavit that I did not independently establish or verify, I have relied upon statements and representations of officers and other representatives of the Entity and others and of public officials. The Entity's compliance with all requirements hereunder is subject to any state or federal law that might conflict with such requirements.

Exhibit 2

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

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

Estimate of cost to rebuild the Port Lead,(4.4Miles) 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.	94.68	2,562,703.56
Install Track (Labor & Equipment)	27067	T.F.	65.00	1,759,355.00
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.TOFC 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.TOFC 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				**$24,240,800.00**

Total MH 370,768

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Exhibit 3

FLORIDA EAST COAST RAILWAY COMPANY
OFFICE OF ASSISTANT CHIEF ENGINEER DESIGN AND CONSTRUCTION
JACKSONVILLE, FLORIDA

HIALEAH YARD:	Improve Hialeah Yard to facilitate increased Port to Rail Traffic	April 12, 2011

Estimate of cost for surfacing of intermodal tracks. Install automated crossing protection and Signals to increase freight train speed to 25 MPH. Extend paved area for additional container and chassis storage. Additional equipment will be purchased to stack chassis and utility vehicles to allow a safer and more efficient handling of Inter Box Connectors,IBCs.

Description	Number	Units	Price	Cost
Construction				
Surface track	14500	T.F.	6.50	94,250.00
Install Automated Crossing Protection	4	Each	151,000.00	604,000.00
Extend Signal Protection into Hialeah Yard	1	L.S.	150,000.00	150,000.00
Rebuild Intermodal Traffic Lanes (internal to Rail Yard)	300	L.F.	1,895.00	568,500.00
Pave Chassis Parking Area	20000	Sq. Yds.	38.00	760,000.00
Purchase Chassis Stackers	2	Each	79,500.00	159,000.00
Purchase Utility Vehicles (Grunt)	2	Each	60,000.00	120,000.00
Total Construction				**$2,455,750.00**

H:Special Projects

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Exhibit No. 4

FEC Construction & Implementation Schedule for Off-Port Project Elements

	2010	2011									2012											
	Dec.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
Off-Port Project Elements Construction Schedule																						
Engineering Design - Bid & Award																						
Purchase Material																						
Track & Grade Crossing removal																						
Site preperation (clearing & grading)																						
Material Delivery for Track and Signal																						
Track & Signal Construction, road crossing renewal																						
Signal Cutover Clear up & final inspection																						
FEC Hialeah Yard Track Improvements																						

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STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

375-040-68
PROCUREMENT
01/11

E-VERIFY

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