

Date: July 17, 2012
To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

Agenda Item No. 8(J)(1)

From: Carlos A. Gimenez
Mayor

Subject: Resolution Authorizing Management Agreement between Miami-Dade County
and Port of Miami Crane Management, Inc.

Resolution No. R-638-12

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the accompanying resolution authorizing execution of an agreement for Management of the Maintenance of the Container Handling Cranes and Cargo Handling Equipment ("Agreement") at PortMiami between Miami-Dade County ("County") and Port of Miami Crane Management, Inc., ("Crane Company") and waiving competitive bidding in connection with the approval and execution of the Agreement.

SCOPE

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

FISCAL IMPACT/FUNDING SOURCE

No new fiscal impact. All funding for the Crane Company has come from Port revenues since its inception in 1999. The Crane Company's annual operations budget is approximately \$7.5 million, of which \$3.9 million is utilized for International Longshoremen's Association ("ILA") labor; \$800,000 for parts and inventory, \$800,000 for fuel and insurance, and the remaining balance of \$2 million for engineering and administrative salaries, communication and utility expenses, and rental, repair, and service costs. The Crane Company is 100% funded by the County. Its operating funds are advanced by the Port based on projected expenditures for the following month(s). The County collects all revenues from the rental of the gantry cranes to its users. The Crane Company's budget is included within the Port's budget, approved annually by the Board of County Commissioners.

TRACK RECORD/MONITOR

The Port staff members responsible for monitoring the Agreement are Juan Kuryla, Deputy Director and Miriam Abreu, Assistant Director for Finance.

BACKGROUND

On June 6th, 1999, the Board approved Resolution No. R-671-99, creating the Crane Company as a not-for-profit corporation. The Crane Company's charge is to manage the maintenance of the Port's container gantry cranes. Since its inception, Crane Company operations have been overseen by its board of directors, which is comprised of five voting members, two of whom are appointed by the Board of County Commissioners, one by the Mayor, one by the Port's Gantry Crane Committee, and the Port Director or the Director's designee. The chairperson of the board of directors is appointed by the County Mayor.

On July 23rd, 2002, the Board approved Resolution No. R-872-02, which authorized the County to enter into an operating agreement with the Crane Company ("Original Agreement"). This Original Agreement provided for, among other things, the Crane Company's duties as well as standards and criteria for efficient and proper maintenance of the Port's gantry cranes and container handling equipment. The Original Agreement provided an initial five (5) year term, with five (5) one (1) year renewal options at the County's option. The fifth (5th) one (1) year renewal option expires on August 4th, 2012. From May 1998 through July 2002, this operation was performed by an interim private operator.

Throughout the years the Crane Company has performed well and kept a reliable, high standard of operations for the cranes. The following projects are among the Crane Company's accomplishments

throughout the past few years, in addition to the day to day management of the maintenance of the assets; the commissioning of two Super-Post Panamax cranes in 2005; major refurbishments including painting of the cranes, engine overhauls, and electrification of the diesel cranes; as well as maintaining low levels of downtime. More recently, the Crane Company has been engaged in the acquisition and project management/design review of four new Super-Post Panamax cranes, which are scheduled to arrive at the Port in June of 2013.

In recent years, Port staff has assumed several of the back-office functions of the Crane Company, such as human resources, accounts payable, procurement, safety, and information technology in order to reduce expenses within the corporation. These changes resulted in a reduction in costs of approximately \$500,000. Another financial benefit of operating the Port's cranes through this type of arrangement is the non-payment of any management fees, as was the case with the previous interim private operator, whose fee was approximately \$420,000 a year plus salaries.

Due to the success of this type of governance for the management of the maintenance of the cranes over the past ten (10) years, and its ability to enter into a labor agreement with the ILA as well as expedited procurement capabilities as approved by the Board via Ordinance No. 01-42, it is recommended that the Board approve this new Agreement. The terms of this Agreement are very similar to the Original Agreement; however, the following modifications have been made for the Crane Company to better address current challenges and also for better performance measures and standards:

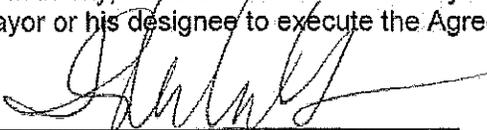
- i) Term of one (1) year with four (4) automatic renewals unless the Mayor issues a written Notice of non-renewal at least sixty (60) days prior to the automatic renewal date or a ninety (90) day cancellation notice is given by the County Mayor to the Crane Company for a default by the Company;
- ii) Authorization for the Crane Company to provide its services and contract with other entities (for revenue) for the benefit of the Port as agreed or requested by the County;
- iii) County may procure listed insurance policies as well as additional insurance on the cranes for coverage it deems necessary on its own;
- iv) Crane Company submitting proposed annual budget to the Seaport Contract Administrator for the County's review and approval at least six (6) months prior to the following fiscal year;
- v) Recognition of the monthly budget as a forecast included in the annual budget;
- vi) Revision of emergency-basis procurement timeline;
- vii) Expansion of the Gantry Crane Area definition.

Additionally, because this Agreement is a Management agreement with a non-profit company which was formed by the County, the Agreement does not contain a provision providing for the deduction of ¼ percent from each invoice for the Independent Private Sector Inspector General services normally required by Miami-Dade County Code Section 2-1076. More specifically, Section 2-1076 exempts management contracts from the ¼ percent invoice deduction.

Finally, the County's costs for services and material under the Agreement are at cost with no mark-up for profit or other expenses. Consequently, this Agreement provides the most cost effective means to the County to obtain the services required. Accordingly, the County Mayor finds it to be in the best interest of the County to recommend the waiver of competitive bidding and bid protest procedures in connection with the approval and execution of the Agreement.

DELEGATED AUTHORITY

In accordance with Section 28.3 of the Miami-Dade County Code related to identifying delegation of the Board authority, there are no authorities beyond that specified in the resolution which include the authority for the Mayor or his designee to execute the Agreement.



Jack Osterholt, Deputy Mayor



MEMORANDUM
(Revised)

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

DATE: July 17, 2012

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

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

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(J)(1)
7-17-12

RESOLUTION NO. R-638-12

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE A MANAGEMENT AGREEMENT BETWEEN THE COUNTY AND PORT OF MIAMI CRANE MANAGEMENT INC., TO PROVIDE MANAGEMENT SERVICES FOR THE MAINTENANCE AND REPAIR SERVICES FOR THE SEAPORT DEPARTMENT'S CONTAINER GANTRY CRANES AND OTHER CARGO HANDLING EQUIPMENT IN AN APPROXIMATE ANNUAL AMOUNT OF \$7.5 MILLION AND TOTAL AUTHORIZED APPROXIMATE AMOUNT OF \$37.5 MILLION IF ALL RENEWAL OPTIONS ARE EXERCISED; AUTHORIZING THE COUNTY MAYOR OR THE MAYOR'S DESIGNEE TO EXERCISE ALL TERMINATION, RENEWAL, AND OTHER COUNTY RIGHTS CONTAINED THEREIN; AND WAIVING COMPETITIVE BIDDING BY TWO-THIRDS VOTE PURSUANT TO SECTION 5.03(D) OF THE HOME RULE CHARTER IN CONNECTION WITH THE APPROVAL AND EXECUTION OF THE AFOREMENTIONED MANAGEMENT AGREEMENT

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

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

Section 1. Approves the Agreement between Miami-Dade County and Port of Miami Crane Management, Inc. ("Agreement"), in substantially the form attached hereto and made a part hereof; and

Section 2. Authorizes the Mayor or the Mayor's Designee to execute this Agreement after review and approval by the County Attorney's Office and to exercise any cancellation and renewal provisions therein; and

Section 3. Waives formal competitive bid procedures and bid protest procedures in connection with the approval and execution of the Agreement, hereby finding it is the best interest of the County to waive competitive bidding in this instance, formal bidding being waived by two-thirds (2/3) vote of the Board members present pursuant to Section 5.03(D) of the Home Rule Charter and Section 2-8.1 of the Code of Miami-Dade County.

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

Joe A. Martinez, Chairman	aye		
Audrey M. Edmonson, Vice Chairwoman	aye		
Bruno A. Barreiro	aye	Lynda Bell	aye
Esteban L. Bovo, Jr.	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	aye
Xavier L. Suarez	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of July, 2012. 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: Christopher Agrippa
Deputy Clerk



Approved by County Attorney as
to form and legal sufficiency.

Richard Seavey

**AGREEMENT FOR MANAGEMENT OF THE MAINTENANCE OF THE
CONTAINER HANDLING CRANES AND CARGO HANDLING EQUIPMENT**

THIS AGREEMENT FOR MANAGEMENT OF THE MAINTENANCE OF THE CONTAINER HANDLING CRANES AND CARGO HANDLING EQUIPMENT ("Agreement"), is entered into on this _____ day of _____, 2012, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (hereafter, "the County"), and PORT OF MIAMI CRANE MANAGEMENT, INC., a Florida not-for-profit corporation, (hereafter, "the Company"), on the terms, conditions, and covenants enumerated herein below.

WITNESSETH:

WHEREAS, the County owns certain container handling cranes and cargo handling equipment located at the Dante B. Fascell Port of Miami ("Port"); and

WHEREAS, the County formed the Company under the laws of the State of Florida as a not-for-profit corporation, the primary purpose of which is to manage, maintain and repair the County's container handling cranes and cargo handling equipment on behalf of the County; and

WHEREAS, the County now desires to enter into this agreement with the Company to provide management of the maintenance services for such cranes and cargo handling equipment pursuant to the terms, conditions, and requirements set forth below:

NOW, THEREFORE, in consideration of the premises, and the mutual covenants, terms, conditions, and agreements hereinafter contained, the sufficiency of which are hereby acknowledged, the parties hereto do hereby mutually agree and bind themselves as follows:

1. RULES OF CONSTRUCTION

For all purposes of this Agreement, unless otherwise expressly provided:

- (a) A term has the meaning assigned to it;
- (b) An accounting term not otherwise defined has the meaning ordinarily given to it by accountants in accordance with generally accepted accounting principles;
- (c) Words in the singular include the plural, and words in the plural include the singular;
- (d) A pronoun in one gender includes and applies to other genders as well;
- (e) The terms "hereunder," "herein," "hereof," "hereto," and such similar terms shall refer to this Agreement in its entirety and not to individual sections or articles;
- (f) The parties hereto agree that this Agreement shall not be more strictly construed against either the County or the Company;
- (g) All exhibits and appendices attached hereto shall be deemed incorporated herein;
- (h) All Recitals set forth above shall be deemed incorporated herein.

2. DEFINITIONS

- (a) **"Agreement"** means the subject Agreement for Management of the Maintenance of the Container Handling Cranes and Cargo Handling Equipment, and shall include all exhibits, attachments and appendices.
- (b) **"Applicable Laws"** shall have the meaning set forth in Section 5 hereof.
- (c) **"Budget Supplement Request Form"** shall have the meaning provided in Exhibit A, Section 4 (c) hereof.

- (d) **"Annual Budget"** means the yearly projection of costs put forth by Port of Miami Crane Management, Inc. to the Seaport Contract Administrator for approval by the County.
- (e) **"Budget/Forecast"** means the fluctuating, monthly projection of costs, initially included in the Annual Budget, put forth by Port of Miami Crane Management, Inc. to the Seaport Contract Administrator for approval by the County.
- (f) **"Cargo Handling Equipment"** or **"Container Equipment"** or **"Container Handling Equipment"** means all cargo handling equipment located at the Port and owned, leased or otherwise in the possession of the County as owner of the Port, as such equipment may be changed from time to time, including but not limited to cranes, spreaders, trucks, vans, forklifts, rubber tire gantries and rail-mounted gantries.
- (g) **"County"** means Miami-Dade County, a political subdivision of the State of Florida.
- (h) **"Crane"** means the fixed and mobile container handling gantry cranes and rubber tire gantry cranes located at the Port and owned, leased or otherwise in the possession of the County as owner of the Port, as such equipment may be changed from time to time.
- (i) **"Emergency Request"** shall have the meaning set forth in Exhibit A, Section 7 (d) hereof.
- (j) **"Gantry Crane Area"** shall mean any wharfs or other areas throughout the Port where container operations are handled.

- (k) **"Container Handling Equipment Maintenance & Repair Actual Costs"** means the actual, reasonable, and necessary costs incurred by the Company to maintain and repair the County's Cranes and cargo handling equipment in accordance with the requirements of this Agreement.
- (l) **"Port" or "Port Miami" or "Seaport" or "Seaport Department"** shall mean the Dante B. Fascell Port of Miami-Dade, a department of Miami-Dade County.
- (m) **"Seaport Contract Administrator"** means the person or entity designated in writing by the Port Director to, among other things, monitor the Company's performance hereunder.
- (n) **"Tariff" or "Port Tariff"** means Port Miami Terminal Tariff No. 010, as it may be amended from time to time, which is incorporated by reference herein.
- (o) **"Term"** shall mean the Initial Term plus any properly exercised and agreed upon renewal period pursuant to Section 3.

3. **TERM AND SCOPE OF SERVICES**

(a) **Initial Term.** This Agreement shall commence on the date when executed by all parties hereto or August 4, 2012, whichever is later, (the "Effective Date") and shall continue for an initial term of one (1) year with four (4) one (1) year automatic renewals unless the County Mayor provides written notice at least sixty (60) days prior to such renewal date that the County does not seek to renew this Agreement, or unless this Agreement is otherwise terminated by the County. The Company shall fully sustain its duties under this Agreement with full responsibility for management of the maintenance of the Container Handling Cranes and Cargo Handling Equipment.

(b) At least six (6) months prior to the commencement of each fiscal year, which shall commence on October 1 of every year, the Company shall submit its proposed annual budget to the Seaport Contract Administrator for the County's review and approval as set forth in Exhibit A.

(c) The Company shall provide the management of the maintenance services to the County as set forth in Exhibit A.

(d) The Company may provide its services and contract with other companies for the benefit of the County's Port as agreed or requested by the County.

4. HEADINGS

Article, section, and paragraph headings are not to be considered part of this Agreement, are included solely for convenience and are not intended to be full or accurate descriptions of the contents thereof.

5. EXCLUSIVE VENUE AND CHOICE OF LAW

It is mutually understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue for any such actions shall lie exclusively in Miami-Dade County, Florida. This provision shall not apply to matters in regard to which exclusive jurisdiction is conferred by law upon the Federal Maritime Commission (if any).

6. NO ORAL CHANGE OR TERMINATION

This Agreement, which includes the exhibits, attachments, and appendices appended

hereto and/or incorporated herein by reference, constitute the entire Agreement between the parties with respect to the subject matter hereof, supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof, and no change, modification, or discharge hereof in whole or in part shall be effective unless such change, modification, or discharge is in writing and signed by the party against whom enforcement of the change, modification, or discharge is sought, and in the case of the County, such change is approved by the Board of County Commissioners. This Agreement cannot be changed or terminated orally.

7. COMPLIANCE WITH APPLICABLE LAWS, CODES, ETC.

Throughout the Term, while conducting any activity in the Gantry Crane Area or on any other County property or waterways contemplated by this Agreement or otherwise related to this Agreement, the Company and its employees, agents, affiliates, contractors, invitees, and guests shall comply with all applicable federal, state, and local laws, codes, rules, ordinances, resolutions, administrative orders, schedules, permits, decrees, tariffs (including the Tariff), and orders.

8. TAXES AND OTHER CHARGES

The Company shall pay all applicable property, sales, excise, and other taxes and governmental charges of any kind whatsoever which are at any time lawfully assessed, levied, or imposed with respect to any purchase or act of the Company or its employees, agents, contractors, sub-contractors, or consultants pursuant to the Company's fulfillment of its obligations hereunder and such costs shall be included as part of the Company's proposed Budgets/Forecasts, except to the extent the Company incurs unnecessary or excessive fees or taxes due to the negligence or willful breach of this Agreement by the Company or any of its

employees, agents, contractors, subcontractors, or consultants.

9. NUISANCE

The Company shall not commit, nor permit its employees, agents, contractors, or subcontractors to permit, any nuisance in the Gantry Crane Area or on any other County property or do or permit to be done anything that may result in the creation or commission of a nuisance in the Gantry Crane Area, any other County property, or on the waterways surrounding, or in close proximity to, the Port.

10. CONDITION OF CRANES AND COUNTY ASSETS

The Company shall complete inspections and inventory of Crane-related parts, components, supplies, tools, and materials, as requested by the County.

11. NO EXCLUSIVE REMEDIES

No remedy or election given by any provision in this Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon default of the other party shall be cumulative and in addition to all other remedies at law or equity arising from such event of default, except where otherwise expressly provided.

12. FAILURE TO EXERCISE RIGHTS NOT A WAIVER

The failure by either party to promptly exercise any right arising hereunder shall not constitute a waiver of such right unless otherwise expressly provided herein.

13. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall

continue in full force and effect.

14. ASSIGNMENT

This Agreement shall inure to the exclusive benefit of and be binding upon the Company and the successors and permitted assigns of the Company, provided, however, that the Company may not assign or transfer this Agreement, or any rights hereunder, without the prior written consent of the County. The County may not assign or transfer this agreement to another organization without approval by the Board of County Commissioners.

15. LACK OF AGENCY RELATIONSHIP

Nothing contained herein shall be construed as establishing an agency relationship between the County and the Company and neither the Company, nor its employees, agents, contractors, affiliates or guests, shall be deemed agents, instrumentalities, employees, or contractors of the County for any purpose. Similarly, the County, its contractors, agents, and employees shall not be deemed contractors, agents, or employees of the Company.

16. AUDIT AND INSPECTION RIGHTS OF COUNTY

The County shall have the right to, upon three (3) calendar days' written notice to the Company, during normal business hours and at the County's cost, audit, inspect, and copy the books and records of the Company or any of its employees, agents, subcontractors, constituent members or related companies that the County reasonably deems relevant to any services, bills, accounts, or obligations arising from, relating to, or within the scope of this Agreement. In addition, the County shall have all auditing and document inspection rights necessary or appropriate to enable the County to comply with the requirements of Section 125.012(24), Florida Statutes. Pursuant to Chapter 119, Florida Statutes, the Company shall have the right to inspect upon reasonable prior notice any public records of the Port.

17. INSURANCE

(a) **Insurance Coverage Required.** The Company shall procure and maintain throughout the Initial Term and any applicable Renewal Period at its cost and expense, the following insurance policies on which the County must be named as an additional insured on all policies required hereunder (other than that required under subparts (i) and (vi) below) and in a form or type acceptable to the Dade County Risk Management Department and with not less than the limits and terms specified for each policy below:

(i) **Workmen's Compensation Insurance.** Said insurance shall cover all persons employed, hired, or otherwise retained by the Company in the performance of its duties and responsibilities hereunder (including longshoremen and harbor workers coverage) as required by Florida Statute 440 or any successor thereto. Whenever applicable, protection shall also be provided for liability under the Jones Act, 46 U.S.C. Section 688, and under General Maritime Law.

(ii) **Public Liability Insurance.** With respect to the use and activities of the Company and its employees, contractors, agents, customers and guests in and around the Gantry Area or pursuant hereto, Public Liability Insurance in the amount of \$1,000,000.00 combined single limits for the death of, or personal injury to one or more persons and for property damage for each occurrence in connection with the use thereof, or the activities of the Company thereon.

(iii) **Automobile Liability Insurance.** Said insurance shall cover all owned, non-owned and hired vehicles used in connection with the Company's operations or activities in the amount of \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

(iv) **Maritime Liability Insurance.** Said insurance shall be in the amount of \$5,000,000 per occurrence.

(v) **Excess Liability Insurance.** Said insurance shall be in the amount of \$25,000,000 per occurrence/aggregate. This coverage shall be in excess of coverage required in subparts (ii), (iii), and (iv) of this Section 19.

(vi) **All-Risk Property Insurance.** Said insurance shall cover all the Cranes and related equipment in accordance with the schedules attached hereto and incorporated by reference herein, with such enumerated limits being subject to amendment as necessary, in the discretion of the County, to cover additional or different equipment as required. Such coverage shall also include loss-of-use earnings in the amount of \$1,400 per crane, per day, for a maximum of 360 days. The County shall be the sole named insured for all coverage required under this subpart (vi).

(b) **Insurance Policy Requirements, Generally.** All insurance policies required under subpart (a) above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division, or Companies holding a valid Florida Certificate or Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to do Business in Florida," issued by the State of Florida Department of Insurance and which are members of the Florida Guaranty Fund, or any other insurance companies approved in writing by the Miami-Dade County Risk Management Division in its sole discretion.

Such insurance policies shall contain a provision to the effect that the insurance company shall not materially modify such policy without first giving written notice thereof to the County at least 30 days in advance of such cancellation or material modification. Prior to commencement of operations, the Company shall promptly provide to the County certificates evidencing that insurance has been obtained meeting the requirements of this Section. The County may change by reasonable amounts, consistent with prevailing commercial practices at the Port, the limits of insurance coverage required by subpart 19 (a) above upon written notice to the Company stating such changed limits of coverage and the reasons for the change.

(c) **Injury or Damage, Notification to County.** In the event of any injury or damage to persons or property in or around the Gantry Area or any vessel, the Company shall immediately notify Miami-Dade County Seaport Department in writing and shall promptly thereafter furnish to the Port copies of all related reports given to the Company's insurance carrier or carriers.

(d) The County-approved costs of such required insurance policies shall be included in the Company's proposed Budget/Forecast.

(e) At the County's sole option, the County may procure the above listed insurance policies as well as any additional insurance directly on the cranes for coverages it deems necessary at its own cost.

18. INDEMNITY

(a) **The Company Indemnity.** The Company shall indemnify and hold the County harmless from and against any claims, liability, loss, or damages (including, without limitation, all reasonable attorney's fees and costs) against or incurred by the County which arise from, relate to, or are in connection with any negligent act or omission, any willful

misconduct, or any breach of this agreement by the Company or any of its employees, agents, contractors, sub-contractors, constituent members or consultants, except to the extent such claims, liability, damages, or loss is caused solely by the negligence or breach of this Agreement by the County. In addition, upon the request of the County, the Company shall undertake to defend and investigate, at its sole cost and expense, any and all suits brought against the County in connection with indemnified matters or claims specified above in this subsection 18 (a). This indemnity obligation of the Company shall survive the expiration and termination of this Agreement.

(b) **County Indemnity.** During the Term the County shall indemnify and defend the Company, to the extent of any uninsured loss and subject to the limitations and conditions set forth in Florida Statute Section 768.28, from any liability, loss, or claim arising solely from the negligent acts or omissions or breach of this Agreement by the County, including, without limitation, all reasonably incurred attorney's fees and costs, except to the extent such claims, loss, damage, or liability is caused or contributed to by the Company or its agents, employees, contractors, constituent members or related companies. This indemnity obligation of the County shall survive the expiration and termination of this Agreement.

19. COUNTERPARTS

This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by all parties hereto, and all such counterparts shall together constitute one and the same agreement.

20. NOTICE

All notices required to be given or made pursuant to the terms of this Agreement shall be in writing and shall be delivered personally or mailed by the United States Postal Service

certified or registered mail, postage pre-paid, or by Federal Express or by facsimile in conjunction with the two methods above, and addressed as follows:

If to the County: Port Director
Dante B. Fascell Port of Miami-Dade
1015 North America Way, 2nd Floor
Miami, FL 33132

County Mayor
111 N.W. First Street, Suite 2900
Miami, FL 33128

With a copy to: Miami-Dade County Attorney's Office
111 N.W. First Street, Suite 2810
Miami, FL 33128

If to the Company: Chairperson of the Board of Directors
Port of Miami Crane Management, Inc.
Port Miami
1015 North America Way, 2nd Floor
Miami, FL 33132

Chief Executive Officer
Port of Miami Crane Management, Inc.
2886 Port Boulevard
Miami, FL, 33132

21. EVENT OF DEFAULT

An event of default shall mean any material breach of this Agreement by the County or the Company, or its employees, agents, consultants, contractors, or subcontractors of the Company or the County.

22. NOTICE OF DEFAULT/TERMINATION

If a Company event of default occurs, in the determination of the County, the County may so notify the Company ("Default Notice"), specifying the basis(es) for such default, and advising the Company that such default must be cured within twelve (12) days if the default is of any payment obligation hereunder, and within thirty (30) days if such default is of any

other obligation hereunder. The County, through the Mayor or the Mayor's designee may, in its sole discretion, grant an additional cure period of such duration as the County deems appropriate without waiver of any of the County's rights hereunder, so long as the Company has commenced curing such default to the satisfaction of the County. If the Company does not cure the default within the cure period allowed by the County, the County Mayor or the Mayor's designee may terminate this Agreement upon ninety (90) days written notice.

23. INSPECTOR GENERAL REVIEWS

(a) **Independent Private Sector Inspector General Reviews** Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Company shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Company, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Company in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Company or any third party.

(b) **Miami-Dade County Inspector General Review** According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade

County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below.

The application of one quarter (1/4) of one percent fee assessment pursuant to Miami-Dade County Code Section 2-1076 shall not apply to this Agreement because it is a management agreement, exempt from the fee assessment pursuant to Section 2-1076. *Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.*

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and

employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Company from the Inspector General or IPSIG retained by the Inspector General, the Company shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Company's possession, custody, or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to, original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

24. DEBARMENT

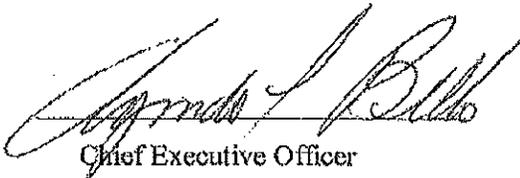
If the Company or any employee, agent, or contractor of the Company attempts to meet any of the Company's obligations hereunder through fraud, misrepresentations, or material misstatement, the County, in addition to any other right or remedy existing hereunder or otherwise, may terminate this Agreement without any recourse from or penalty to the Company. The Company acknowledges that pursuant to section 2-8.4.1 of the Miami-Dade County Code, that any individual or entity who attempts to meet its contractual obligations to the County through fraud, misrepresentation, or material misstatement may be debarred from County contracting for up to five (5) years.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by its duly-authorized officers.

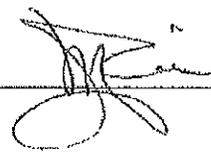
MIAMI-DADE COUNTY, FLORIDA,
a political subdivision of the State of Florida

**PORT OF MIAMI CRANE
MANAGEMENT, INC.**

By: _____
County Mayor

By: 
Chief Executive Officer

Attest: _____
CLERK OF THE BOARD

Attest
By: 

Approved as to legal form and sufficiency

Assistant County Attorney

EXHIBIT A - "ADMINISTRATIVE SPECIFICATIONS"

I. GENERAL DESCRIPTION

The Company shall provide competent, experienced management, engineers, supervisors, technicians, mechanics, and support personnel at all times to perform its duties and fulfill its responsibilities hereunder in a competent, workman like and professional manner satisfactory to the County and in compliance with the terms and conditions of this Agreement.

(a) The Company shall properly manage and maintain, in good working order, the County's Container and Cargo Handling Equipment (the "Equipment"), including but not limited to, container handling ship-to-shore gantry cranes, spreaders, vehicles, and RTGs, in the manner set forth in the written specifications, instructions, and recommendations from the original manufacturers, as may be updated or revised from time to time, as the Company is able to obtain upon the exercise of due diligence or as is made available to the Company by the County. The Company acknowledges that prior to the execution hereof the County has made available to it certain Equipment information, instructions, specifications, reports, surveys, and recommendations. The Port shall coordinate and schedule equipment surveys with the Company and with the survey and inspection firm(s). The Company shall exercise all appropriate diligence and take all appropriate action to maximize Crane availability for service. The Company shall be responsible for performance and safety of its employees and shall additionally provide appropriate preventative maintenance, and carry out appropriate preventative maintenance programs, to (i) maximize the long term reliable performance of the Crane in accordance with the specifications, instructions, and recommendations referenced above and (ii) maximize overall Crane availability for service.

(b) The Company shall at all times account for all spare parts and materials (i) distributed by the County or its agents to the Company, or (ii) procured or otherwise obtained by the Company, their employees, agents, subcontractors, or consultants for usage hereunder.

(c) The Company shall acquire and maintain the following items, which shall be purchased by the Company or obtained from the County, pursuant to the Purchase Requirements set forth in Section 7 hereof, and paid for by the County to the extent such costs have been approved by the County in accordance with the budget approval process set forth in Section 7 hereof, and each of the items so purchased shall immediately become the sole property of the County and shall be properly inventoried and serial numbered as reasonably required by the County:

(i) all necessary hand tools and hand-held meters necessary for the fulfillment of its maintenance obligations hereunder with the exception of the mechanics' personal tools;

(ii) all customary office supplies and equipment necessary for the fulfillment of its obligations hereunder;

(iii) motor vehicles, in sufficient numbers for the transportation of its personnel, equipment, and parts as may be reasonably required to satisfy its performance obligations hereunder; and

(iv) necessary communications equipment as required to meet its operations and maintenance obligations hereunder.

(d) The Company will be responsible for the replacement costs of lost or damaged equipment, components and parts, reasonable wear and tear excepted, provided that the Company may be entitled to reimbursement for such expenses in accordance with the terms of

Section 7 as applicable hereof.

(e) **Standards to Be Followed.** All maintenance and repairs are to be undertaken and completed in a timely and professional manner. All regular maintenance schedules and programs shall be conducted in accordance with manufacturers' specifications and/or industry standards.

(f) **Reports to Be Issued By Company.** The Company shall be required as requested and reasonable to regularly issue the following written reports to the Port a copy of which must be given to the Seaport Contract Administrator, at the intervals listed below:

(i) **Issued as Needed**

- (1) log entry;
- (2) personnel work assignments and specifically identify overtime not charged to a vessel;
- (3) crane management system reports and logs;
- (4) work orders;
- (5) parts and materials use reports and/or inventory report;
- (6) crane damage report on day of occurrence;
- (7) scheduled plan of preventative maintenance;
- (8) spreader status report;
- (9) fuel usage report;
- (10) pay records by employee for each hourly compensated as well as salaried employee;
- (11) pre-operation crane inspection report;
- (12) post-operation crane inspection reports and logs; and

(13) equipment inspection and certification reports.

(iii) Issued Bi-Monthly

- (1) financial report;
- (2) operational status report; and
- (3) project reports.

(iv) Issued Annually

- (1) inventory report;
- (2) contingency and hurricane plan; and
- (3) annual audit report.

(v) Issued as Directed

- (1) crane manufacturer's recommended inspection reports;
- (2) interpretation of oil analysis; and
- (3) any other report requested by the Seaport Contract Administrator and/or the County.

(g) **Staffing Requirements.** The Company shall maintain a sufficient number of experienced managers, engineers, supervisors, technicians, and mechanics at all times the cranes are operational. The Port Director or the Director's designee shall determine minimum staffing requirements. Salaries will be determined by the Company's Board of Directors or the Company's CEO or, as applicable, by the Company's contractual labor agreements.

(h) The Port Berthing Office shall provide the Company with written request of the daily Crane Order. Said order shall indicate: ship assignment, specific crane(s) to work ship, type of spreader, time the crane is to commence LO-LO (Load On-Load Off) operation, and time for the crane to be removed from ship LO-LO operation.

2. COMPENSATION

The County agrees to pay the Company its actual costs in fulfilling its Crane and other Cargo Handling Equipment management of the maintenance duties, materials and responsibilities hereunder, on a monthly basis and pursuant to the payment procedures set forth in this Exhibit A, Section 7 hereof, including those costs incurred directly or through permitted contractor(s) provided that:

- (a) such costs have been incurred;
- (b) such costs can be properly documented in writing through invoices, work orders, purchase orders, general ledgers, check registers, processed checks, receipts, and other appropriate documentation;
- (c) such costs are reasonable and necessary to fulfill the Company's obligations hereunder and, to the extent the Company retains or hires any employees, agents, contractors, affiliates, or companies such retention or hire must be on a cost-only basis and may not include any markup or profit of any kind whatsoever;
- (d) such costs were incurred pursuant to a monthly budget approved by the County in accordance with the budget submission and/or approval procedures set forth in Exhibit A, Section 4 hereof;
- (e) no portion of such costs arise from or relate to any negligent act or omission, misconduct, or any breach of this Agreement by the Company or any employee, agent, or contractor of the Company; and
- (f) the sum of the Company's total annual costs, in aggregate, shall not exceed the approved budget and any approved unanticipated expenditures by the Port Director unless otherwise agreed upon.

3. ANNUAL BUDGET

At least six (6) months prior to the commencement of each fiscal year, the Company shall submit its proposed annual budget to the Seaport Contract Administrator for the County's review and approval. Annual Budgets should include monthly Budgets/Forecasts that shall include those costs that the Company reasonably anticipates it will incur in the upcoming fiscal year (hereafter, the "Budget/Forecast"). The County shall review and approve or reject such Annual Budget, or at the County's option, object to specific items or amounts in such Annual Budget, within ten (10) business days of receipt of same from the Company, provided such Annual Budget is submitted to the County in the correct form and with all required supporting and backup documentation. In the event the County approves such Annual Budget and monthly Budget/Forecast, the County (without waiving any of its reconciliation or other rights or protections hereunder) shall transfer funds in the amount of same to the Company by the first (1st) business day of each calendar month or shall attempt to respond as soon as is reasonably practicable. In the event the County rejects the Annual Budget or objects to any items or amounts contained in such proposed monthly Budget/Forecast, the County and the Company shall promptly meet to discuss and attempt to resolve such objections. In the event such objections can be amicably resolved and agreed upon, the County shall pay to the Company no later than the fifth (5th) business day of the Annual Budget period the sum required under the mutually agreed-upon Annual Budget. In the event the Company and the County cannot amicably resolve and agreed upon an Annual Budget, then the County shall have the right in its sole discretion to determine the Annual Budget. At no time can the sum of actual costs incurred to date and the forecasted cost of the remaining months exceed the amount allocated in the Annual Budget without prior approval

from the Board of Directors of the Company and the Port.

4. METHOD OF PAYMENT AND MONTHLY BUDGET/FORECAST

(a) At least five (5) days prior to the commencement of each calendar month, the Company shall submit its proposed monthly Budget/Forecast to the Seaport Contract Administrator for the County's review and approval. Such Budgets/Forecasts shall include those costs that the Company reasonably anticipates it will incur in the upcoming month. The County shall review and approve or reject such Budget/Forecast, or at the County's option, object to specific items or amounts in such Budget/Forecast, within ten (10) business days of receipt of same from the Company, provided such Budget/Forecast is submitted to the County in the correct form and with all required supporting and backup documentation. In the event the County approves such Budget/Forecast, the County (without waiving any of its reconciliation or other rights or protections hereunder) shall transfer funds in the amount of same to the Company by the first (1st) business day of the said calendar month or shall attempt to respond as soon as is reasonably practicable. In the event the County rejects the Budget/Forecast or objects to any items or amounts contained in such proposed monthly Budget/Forecast, the County and the Company shall promptly meet to discuss and attempt to resolve such objections. In the event such objections can be amicably resolved and agreed upon, the County shall pay to the Company no later than the fifth (5th) business day of the said Budget/Forecast period the sum required under the mutually agreed-upon monthly Budget/Forecast. In the event the Company and the County cannot amicably resolve and agreed upon a Budget/Forecast, then the County shall have the right in its sole discretion to determine the Budget/Forecast.

(b) Within fifteen (15) days following the end of such monthly period, the Company

shall supply the County with all requested written documentation demonstrating how the costs included in the prior month's Budget/Forecast were incurred, including the Profit and Overhead Statement and the Balance Sheet, and that such incurred costs were reasonable and necessary to fulfill the Company's obligations hereunder. In the event the County determines, upon examining all such documentation, or any other documentation that the County deems relevant, that the costs incurred in such prior month by the Company, its agents or contractors, were either excessive, not authorized, not incurred in whole or in part, or were not reasonable and necessary to fulfill the Company's obligations hereunder, or were incurred in breach of this Agreement, the County may, in its sole discretion, reconcile all improper, unauthorized, excessive, or unincurred costs previously advanced by the County. In such instance, at the County's option, such reconciliation can be implemented either through payments from the overcompensated party to the other upon demand or through credits or setoffs against future Budgets/Forecasts.

(c) Whenever the Company believes that reasonable and necessary management of the maintenance costs (including labor costs) must be incurred that were not included in the County-approved Budget/Forecast for that budget period, the Company shall as promptly as possible furnish the Seaport Contract Administrator with a written Budget Supplement Request Form containing the following information: (i) the amount of the budget supplement requested; (ii) the reason for such request, including a description of the items, services, or labor costs for which the supplement is needed together with a cost itemization for each; and (iii) the reasons such costs were not included in that month's budget (hereafter, the "Budget Supplement Request Form"). Upon receipt of a completed Budget Supplement Request Form, the County shall approve or reject such request within three (3) business days, but shall

attempt to respond as soon as is reasonably practicable. Notwithstanding and prevailing over any contrary term or provision herein, the County shall not be responsible for any the Company expenditures in excess of those authorized in the County-approved Budgets/Forecasts unless and until such excess expenditures are approved in writing by the County via either (i) a County approved Budget Supplement Request Form, pursuant to the procedures set forth in this Exhibit A, Section 4 (c), or (ii) an Emergency Request approved by the County in writing in accordance with the procedures set forth in Exhibit A, Section 7 (d) hereof.

5. BERTHING AND CRANE ASSIGNMENTS

The County shall at all times retain responsibility for the approval and assignment of all berthing requests of, and Crane assignments to, any vessels wishing to dock anywhere at the Port.

6. WATER AND ELECTRICITY.

The County represents that electric energy and water services are, and will at all times be, available to the Gantry Crane Area or any other area where maintenance is provided to cargo handling equipment through fixtures and service points provided by the County, and the Company agrees to pay for all such services provided at customary rates to be set by the County through the Tariff or otherwise, provided that such costs may be eligible for inclusion in the Budgets/Forecasts as appropriate and in accordance with the provisions of Exhibit A, Section 4 (b) hereof. At the County's sole election, the County may furnish all or certain utilities to the Company without charge and, in such event, no such utility costs shall be included by the Company in the applicable Budgets/Forecasts.

7. PROCUREMENT

(a) The procurement and rental of any spare parts, materials, equipment, and/or services necessary for the proper management, operation, upgrade, maintenance and/or repair of the Cranes and Cargo Handling Equipment shall be carried out by the Company, which shall, whenever possible, procure such items only after seeking the best available service, quality and price from at least three (3) vendors. Notwithstanding the foregoing, the County acknowledges that in certain limited circumstances, services, equipment, materials, or parts necessary for proper crane management, maintenance or repairs may either not be commercially available and therefore require special fabrication or may be available only from a single source or under emergency situations; provided, however, whenever items are not necessary on an expedited/emergency basis that would preclude competitive bidding or whenever needed items are available from multiple sources or vendors, the Company shall procure such items after seeking the best available service, quality and price from at least three vendors; it being the mutual intent of the parties to procure needed material, parts, supplies, and services whenever practicable at the best available service, quality and price to minimize the Company's actual costs.

(b) The Company shall retain on premises, and shall make available to the County for inspection and copying upon request, all procurement records, including, without limitation, invoices, purchase orders, quotes, receipts, price quotes, product literature and specifications, warranty information, instructions, and the like.

(c) The Company shall seek and obtain the County's prior written approval for each proposed purchase of materials, parts, tools, or equipment in excess of \$50,000. The County shall designate in writing a person or persons to whom the Company shall submit all written

expenditure requests or proposed purchase orders in excess of \$50,000. Other than for emergency purchases, all proposed Company purchases over \$50,000 shall be submitted to the County for approval pursuant to the monthly Budget/Forecast approval process set forth in the last two sentences of Exhibit A, Section 4 (b) hereof.

(d) Notwithstanding the foregoing, the parties acknowledge that circumstances may arise when Crane spare parts or other Crane-related materials are needed on an emergency basis and that such needed materials or parts may cost in excess of \$50,000. In such circumstances, the Company shall provide the Port with a written Emergency Request indicating the item needed, the reason for the Emergency Request and the need for the item requested, the identity of the proposed vendor, the cost of the item and whether it is available from more than one vendor and, if so, whether other price quotes have been obtained, and any other pertinent information requested by the County (hereafter, the "Emergency Request"). Upon receipt of the completed Emergency Request, the County shall approve or reject such request as soon as it is reasonably practicable. All non-emergency purchases proposed by the Company of over \$50,000 shall be submitted to the County for approval pursuant to the monthly budget approval process set forth in this Section 7. In connection with such procurement approval requests, the Company shall provide the Port, as part of its monthly proposed budget submission, with a written proposed Emergency Request identifying the item needed, and delineating the need for the item requested, the identity of the proposed vendor, the total cost of the item and whether it is available from more than one vendor and, if so, whether other price quotes have been obtained, and any other pertinent information requested by the County.

(e) All equipment, parts, supplies, tools, and materials purchased by the Company, its

agents, employees, contractors, subcontractors, or consultants pursuant to this Agreement, to fulfill any obligation hereunder, with funds provided by the County hereunder, or for which the Company has been reimbursed by the County, shall immediately become County property and shall be properly inventoried and identified as such, and shall at all times be properly maintained by the Company. At the expiration or termination of this Agreement, all such equipment, tools, parts, and materials shall be immediately turned over to the County in good working condition less normal wear and tear. In addition, any licenses, certifications, or authorizations sought or obtained by the Company, its employees, agents, contractors, or subcontractors in connection with this Agreement shall, whenever possible, be applied for and obtained in the name of the County (with the County's prior written approval which must be timely requested by the Company), and, to the extent such applications cannot be made in the County's name and on the County's behalf, such licenses, certifications, and authorizations shall whenever possible be automatically assignable to the County either upon the County's request or upon the earlier of the expiration or termination of this Agreement.

(f) In the event the Company seeks to satisfy any of its performance obligations hereunder by leasing equipment or vehicles, such leases must (i) be approved by the Port (ii) be necessary to satisfy the Company of the maintenance obligations hereunder, (iii) be with a third party vendor in an "arms length" transaction, provided that this Exhibit A, Section 7, Subsection (f) (iv) shall not preclude the Company from entering into reasonable and necessary written lease or use agreements with its constituent members as long as such agreements are approved in writing in advance by the County, (v) be pursuant to a written lease agreement on commercially reasonable and competitive terms, which agreement must be assignable to the County, at the County's sole election, upon the expiration or termination

of this Agreement and which agreement shall be subject to the County's prior written approval, which shall not be unreasonably withheld or delayed.

(g) At the County's sole election, the County may procure certain parts, materials, equipment, and/or tools, in lieu of the Company, and allow the Company to utilize same in the fulfillment of the Company's obligation's hereunder. In such instances, such equipment, tools, parts, and materials, as the case may be, shall at all times be the property of the County, shall be properly maintained by the Company, and, at the earlier of the expiration or termination hereof, shall be immediately turned over to the County in good working order less normal wear and tear. The Company should regularly keep the County advised of potential Crane Maintenance cost savings that can be achieved by the County directly procuring Crane-related parts, tools, materials, or supplies in lieu of the Company, in the event such opportunities arise. In those instances when the County elects to utilize this subsection to directly procure Crane parts, equipment, or materials, the Company shall furnish the County upon request with a purchase order which (i) identifies specifically the item(s) being procured, (ii) the vendors from whom such item(s) are being procured, (iii) the price of each item(s) being procured, and (iv) the County's tax exempt number. Upon the County's review and approval of such purchase order, the County shall execute and issue same. Upon the County's issuance of such purchase order, the Company's applicable monthly Budget/Forecast, the Company's annual management of the maintenance budget, and the annual budget caps set forth in Exhibit A, Section 4 hereof shall be immediately reduced by the amount of such purchase order(s), to reflect that the costs of such materials or equipment were actually incurred by the County rather than the Company, and such reductions shall be subject to later reconciliation pursuant to the terms hereof. Notwithstanding the foregoing, with respect to items procured directly by

the County pursuant to this Exhibit A, Section 7, subsection (f), the Company shall retain sole responsibility for;

- (i) properly specifying the type, size, and quantity of items procured;
- (ii) ensuring the suitability of such items for their intended purpose;
- (iii) ensuring that at least three (3) bids are secured (where practicable) to minimize the costs of such procurement;
- (iv) the proper delivery, storage, installation and use of such items; and
- (v) that such items remain insured to the same extent the Company-procured items are required to be insured hereunder.

Without waiving any of the County's rights or remedies hereunder, the County shall bear the risk of casualty loss for any item procured by the County under this Exhibit A, Section 7, subsection (g) from the time such item is delivered to the Gantry Area at the Port until the time the item is used on or incorporated into the Cranes, provided that any insurance proceeds available or turned over to the Company on account of such casualty loss must be immediately turned over to the County.