

## MEMORANDUM

Amended  
Agenda Item No. 8(G)(1)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

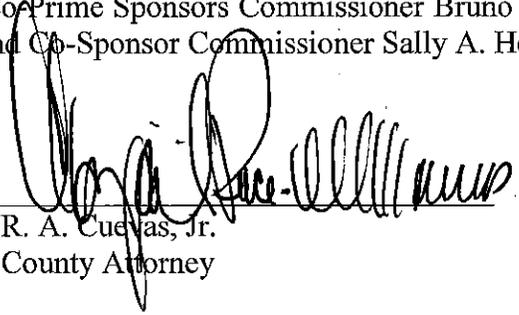
**DATE:** June 30, 2015

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

**SUBJECT:** Resolution approving terms of Interlocal Agreement between Miami-Dade County and South Florida Regional Transportation Authority for the provision of financial support not to exceed \$13,900,000.00 for the Tri-Rail Downtown Miami Link Station improvements at the Miami Central Station; authorizing County Mayor to execute same and exercise provisions contained therein; and authorizing the Use of Charter County Transportation Surtax Funds for such purpose

Resolution No. R-570-15

The accompanying resolution was prepared by Office of Management and Budget Department and placed on the agenda at the request of Co-Prime Sponsors Commissioner Bruno A. Barreiro and Commissioner Audrey M. Edmonson, and Co-Sponsor Commissioner Sally A. Heyman.

  
\_\_\_\_\_  
R. A. Cuevas, Jr.  
County Attorney

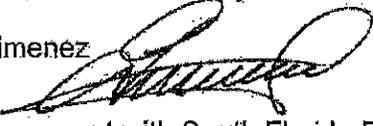
RAC/cp

# Memorandum



**Date:** June 30, 2015

**To:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor 

**Subject:** Interlocal Agreement with South Florida Regional Transportation Authority for Financial Support for Tri-Rail Downtown Miami Service and Authorizing Use of Charter County Transportation Surtax Funds

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## Recommendation

It is recommended that the Board of County Commissioners (Board) approve a resolution authorizing execution of the attached interlocal agreement with the South Florida Regional Transportation Authority (SFRTA) to provide financial support for the Tri-Rail Downtown Miami Service expansion.

This item is placed for Committee review pursuant to Miami-Dade County Code Section 29-124(f). This item may only be considered by the Board if the Citizens' Independent Transportation Trust (CITT) has forwarded a recommendation to the Board prior to the date scheduled for Board consideration, or 45 days have elapsed since the filing with the Clerk of the Board of this item. If the CITT has not forwarded a recommendation and 45 days have not elapsed since the filing of this item, I will request a withdrawal of this item. This item is scheduled for the June 2015 CITT meeting.

## Scope of Agenda Item

The Miami Central Station lies within Commission Districts 3 and 5, which are represented by Commissioner Audrey M. Edmonson and Commissioner Bruno A. Barreiro, respectively.

## Fiscal Impact/Funding Source

The SFRTA has submitted a request for \$13.9 million from Miami-Dade County to support the construction of two (2) platforms to allow for Tri-Rail service to be provided in the planned Miami Central Station. The source of funds to support the payments outline in this interlocal agreement is Charter County Transportation Surtax funds, specifically the Capital Expansion Fund.

## Track Record/Monitor

Compliance with the terms of the interlocal agreement will be monitored jointly by the Office of the Citizens' Independent Transportation Trust, headed by Charles Scurr, Executive Director, and Miami-Dade Transit, headed by Ysela Llorca, Director.

## Background

A unique opportunity has presented itself to allow Miami-Dade County to support the development of infrastructure that will provide the foundation for a public transit link from Downtown Miami to the northeast areas of the county. As part of the development of the Miami Central Station – a privately funded multi-modal transportation hub – the construction of two (2) additional train platforms will allow for the immediate connection of the current Tri-Rail service to Downtown Miami, as well as provide the facilities needed to support the planned coastal link that will ultimately take Tri-Rail service north along the Florida East Coast (FEC) railway corridor to Jupiter.

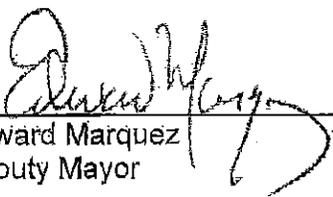
A series of events has led us to this unprecedented opportunity. Substantial improvements have been made to existing tracks linking the Port of Miami to the FEC railway, including portions of the CSX

Corporation's rail corridor on which Tri-Rail currently operates. Also, Florida East Coast Industries, which is building the Miami Central Station for the All Aboard Florida inter-city rail service from Miami to Orlando, has offered free land and discounted railroad access, as well as funding the infrastructure needed within the station to support the Tri-Rail platforms, if SFRTA can fund the marginal construction cost of the additional platforms and a prorated portion of the infrastructure to be shared between SFRTA and All Aboard Florida. Florida East Coast Industries/All Aboard Florida has agreed to advance any funding necessary for construction, as long as agreements are in place with SFRTA to reimburse costs once the service has been established. The value of the contributions by Florida East Coast Industries/All Aboard Florida is estimated to be approximately \$25 million.

The total cost of the project, including the associated trackage and expansion of the Miami Central Station to allow for two (2) additional platforms to accommodate the Tri-Rail connection, is \$68.9 million. SFRTA has already identified a total of \$21.8 million from a combination of SFRTA funds and a contribution from the Florida Department of Transportation for the track improvements needed to connect the current service to Downtown Miami. The platform construction and station infrastructure will be funded through a collaborative effort of a number of agencies currently including, but not limited to, contributions from the Southeast Overtown Park West Community Redevelopment Agency (\$17.5 million), the OMNI Community Redevelopment Agency (\$3 million), the City of Miami (\$7,167 million) and the Downtown Development Authority (\$1,267 million). It should be noted that this interlocal agreement is contingent upon SFRTA coming to agreement with all other funding parties and full funding is guaranteed.

The interlocal agreement outlines a quarterly reimbursement of project cost not to exceed \$13.9 million, based upon invoices provided by SFRTA beginning October 1, 2015. SFRTA will ensure that construction of the improvements will follow all applicable guidelines for public information and involvement and disadvantaged business enterprise requirements. SFRTA will be solely responsible for the operations and maintenance of the improvements. The County will retain 15 percent of the funding for final payment due once SFRTA has issued a final acceptance of the improvements and revenue operations have begun, anticipated to be on or before March 31, 2017. Any cost overruns are the responsibility of SFRTA and All Aboard Florida and any cost savings will be proportionally shared by the funding partners.

Separate and apart from this agreement, my Administration is working with Florida East Coast Industries/All Aboard Florida to determine connectivity issues between our Metrorail Government Center and Overtown stations and the Miami Central Station, as well as discussions regarding a proposed parking garage and bus station facility. Any necessary agreements regarding these activities will be brought to the Board for consideration at some point in the future.



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Edward Marquez  
Deputy Mayor

Attachments



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** June 30, 2015

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

Amended  
**SUBJECT:** Agenda Item No. 8(G)(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 Mayor'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 Amended  
Veto \_\_\_\_\_ Agenda Item No. 8(G)(1)  
Override \_\_\_\_\_ 6-30-15

RESOLUTION NO. R-570-15

RESOLUTION APPROVING TERMS OF INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY FOR THE PROVISION OF FINANCIAL SUPPORT NOT TO EXCEED \$13,900,000.00 FOR THE TRI-RAIL DOWNTOWN MIAMI LINK STATION IMPROVEMENTS AT THE MIAMI CENTRAL STATION; AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE PROVISIONS CONTAINED THEREIN; AND AUTHORIZING THE USE OF CHARTER COUNTY TRANSPORTATION SURTAX FUNDS FOR SUCH PURPOSE

**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 (a) approves the Interlocal Agreement between Miami-Dade County and the South Florida Regional Transportation Authority, in substantially the form attached hereto and incorporated herein by this reference, for the provision of financial support not to exceed \$13,900,000.00 for the Tri-Rail Downtown Miami Link Station improvements at the Miami Central Station; (b) authorizes the County Mayor or County Mayor's designee to execute same and exercise the provisions contained therein; and (c) authorizes the use of Charter County Transportation Surtax Funds for such purpose.

The foregoing resolution was offered by Commissioner **Bruno A. Barreiro** who moved its adoption. The motion was seconded by Commissioner **Audrey M. Edmonson** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman	aye		
Esteban L. Bovo, Jr., Vice Chairman	aye		
Bruno A. Barreiro	aye	Daniella Levine Cava	aye
Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Dennis C. Moss	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye	Xavier L. Suarez	aye
Juan C. Zapata	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 30<sup>th</sup> day of June, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the 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.

A handwritten signature in black ink, appearing to read "B. Libhaber".

Bruce Libhaber

**INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE SOUTH  
FLORIDA REGIONAL TRANSPORTATION AUTHORITY FOR THE TRI-RAIL  
DOWNTOWN MIAMI LINK STATION IMPROVEMENTS AT THE MIAMI CENTRAL  
STATION**

This AGREEMENT ("Agreement"), made and entered into this \_\_\_\_ day of \_\_\_\_, 2015, by and between MIAMI-DADE COUNTY, a political subdivision of the STATE OF FLORIDA, hereinafter referred to as the "County", and the SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY, a body politic and corporate and an agency of the State of Florida created pursuant to Chapter 343, Florida Statutes, hereinafter referred to as "SFRTA" and collectively hereinafter referred to as the "Parties".

**WITNESSETH**

WHEREAS, both Parties herein wish to facilitate the design and construction of additional platform improvements to the proposed Miami Central Station in order to accommodate future Tri-Rail commuter rail service (the "Improvements") via the Florida East Coast Railway ("FECR") corridor to downtown Miami (referred to herein as the "Tri-Rail Downtown Miami Link Service");

WHEREAS, it is estimated that the required design and construction of the necessary Improvements for the Tri-Rail Downtown Miami Link Service will cost an estimated Forty Eight Million Nine Hundred Thousand Dollars (\$48,900,000.00) (the "Estimated Cost") and shall consist of the following: (i) a 62,000 sq. ft. platform and associated trackage for Tri-Rail commuter trains; (ii) mezzanine level consisting of columns and related structures which support the Tri-Rail platform and associated trackage; and (iii) related Miami Central Station

elements including, but not limited to, portions of elevators, escalators, support spaces, and storage areas, all as more particularly described in Exhibit "A"; and

WHEREAS, collectively, All Aboard Florida ("AAF") and FECR have agreed to contribute (i) the land required to accommodate the Improvements, (ii) a reduced access fee for SFRTA's use of the FECR corridor, (iii) the financial carrying costs for the Improvements, (iv) a pro-rated cost sharing for the Miami Central Station infrastructure (the applicable portion of which is included in the Improvements) that will be shared with SFRTA, and (v) any cost overruns over the Estimated Cost, which in total represent financial contribution to SFRTA in excess of Twenty-Five Million and No Dollars (\$25,000,000.00); and

WHEREAS, pursuant to its agreement with SFRTA, AAF has agreed to assume all liability for any costs of in excess of the Estimated Cost of the Improvements; and

WHEREAS, the County wishes to provide financial assistance, i.e. the Funds, as hereinafter defined, to SFRTA for the timely completion of the Improvements given the regional transportation benefits associated therewith, the catalytic impact the Improvements will have on future development in downtown Miami, and the transformative nature of the entire Miami Central Station, including both AAF's portion and the Station Improvements (collectively referred to as the "Project"), subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the Parties agree:

**1. RESPONSIBILITY OF SFRTA:**

- 1.1 **Permits and Approvals:** SFRTA intends to procure the design and construction of the Improvements as a sole source by entering into a contract with AAF, the owner

of the property on which the Improvements will be located and the entity that will be designing, permitting and constructing the Project, of which the Improvements are a part. SFRTA shall ensure that (i) AAF, on behalf of SFRTA, shall obtain all necessary permits and approvals, and shall coordinate the review of design and construction documents by the applicable agencies; and (ii). AAF, subject to SFRTA's approval, shall make all necessary adjustments as required for approval and/or permitting by the applicable agencies.

1.2 **Public Information and Involvement:** Prior to and during construction of the Improvements, SFRTA shall ensure that AAF will provide, on SFRTA's behalf, information to adjacent property owners and area residents about the scope of the proposed Improvements. However, consistent with the exemptions for transit projects located within stations for transit facilities outlined in Implementing Order 10-13, SFRTA, or its agent(s), shall not be required to prepare and submit a Public Involvement Plan.

1.3 **Communications:** SFRTA agrees that it shall ensure that all its publicity, public relations, advertisements and signs recognize and reference both the County and the Citizens' Independent Transportation Trust ("CITT") for their funding support of the Improvements. Such acknowledgment shall include, but is not limited to, all posted signs, pamphlets, wall plaques, cornerstones, dedications, notices, flyers, brochures, news releases, media packages, promotions, and stationary. The use of the official County and CITT logos is permissible for the publicity purposes stated herein. SFRTA, or its agents, shall submit samples or mock-ups of such publicity or

materials to the CITT for review and approval. SFRTA shall ensure that all media representatives, when inquiring about the Improvements, are informed that both the County and CITT have contributed the Funds (as defined herein), which represent a portion of the total funding for the Improvements. Permanent signage at the station, such as a dedication plaque, shall also appropriately recognize the contributions of the County/CITT.

- 1.4 **Accounting**: SFRTA shall at all times maintain a separate accounting of the use of the Funds so those costs and the use of the Funds may be independently verified and audited by the County at its request. SFRTA agrees to permit such auditors to inspect the books, records and accounts of the Improvements for five (5) years after completion of the Improvements, or receipt of Final Payment by the County or any other party providing funding for the construction of the Improvements, whichever is later. These records shall be made available to County for inspection within thirty (30) business days upon written receipt of a written request from the County.
- 1.5 **Contracting for Improvements**: The County agrees that the selection, contracting, retention and discharge of AAF shall be the sole responsibility of SFRTA.
- 1.6 **Claims and Change Orders**: The County shall bear no responsibility for any claims or change orders that may arise.
- 1.7 **Disadvantaged Business Enterprise**: SFRTA shall require AAF to comply with the SFRTA disadvantaged business enterprise ("DBE") requirements, which are attached hereto as Exhibit "B."

1.8 **Construction Administration and Inspection:** SFRTA shall exercise all responsibilities of the owner under the design and construction contract for the Improvements, including construction administration, inspections, and all required safety and operational certifications. SFRTA may delegate this function to an authorized agent or Construction Engineering Inspection consultant. The County, at its sole cost and expense, may assign an inspector to participate in the routine daily inspections. SFRTA's designated representative and the County's designated representative shall jointly perform the inspection of the Improvements which immediately precedes substantial completion. SFRTA, or its agent(s), shall certify upon completion that the Improvements have been constructed pursuant to the design plans, specifications and any change orders approved by SFRTA, or its agent(s). SFRTA shall provide Quarterly Reports to the County/CITT on the progress of the project.

1.9 **Maintenance and Operations:** SFRTA shall be solely responsible for maintenance and operations of the Improvements upon Final Acceptance, as that term is defined in the agreement between SFRTA and AAF. As such, SFRTA, and not the County, shall be responsible for all claims, demands, liabilities and suits arising from allegations or suits in tort as to the condition of the Improvements.

2. **RESPONSIBILITIES OF COUNTY:**

2.1 **Funding Amount, Reimbursement of Project Costs:** The County agrees to reimburse SFRTA in an amount not to exceed Thirteen Million Nine Hundred Thousand and No Dollars (\$13,900,000.00) for eligible costs, as outlined herein,

incurred for the design and construction of the Improvements (the "Funds"). The County shall reimburse the Funds to SFRTA in the manner set forth in Section 4. The County shall incur no liability for any costs overruns in excess of said Funds. In the event the actual costs of the Improvements are less than the Estimated Cost, then the County shall be entitled to share in such cost savings in an amount equivalent to its proportionate contribution to the Estimate Cost of the Improvements. Repayment of any Funds due and owing to the County for such cost savings shall be off-set against the amount of the Final Payment, as such term is hereinafter defined.

- 2.2 County Payments of Improvement Costs:** The Funds shall be provided to SFRTA in fiscal years 2015-2016 and 2016-2017 from available proceeds of the Charter County Sales Surtax Capital Expansion Reserve Fund, or such other source as the County determines. The County's payments are in consideration for the completion of the Improvements and revenue operations of the Tri-Rail commuter rail service into the Miami Central Station.
- 3. ELIGIBLE COSTS:** The Parties agree that only expenses incurred by SFRTA that are directly related to the design and construction of the Improvements are eligible for reimbursement from the Funds, provided adequate documentation accompanies the reimbursement request in the form of approved invoices, verified payment requests, documented journal entries, and/or check vouchers.
- 4. SCHEDULE AND MANNER OF REIMBURSEMENTS:** SFRTA shall furnish the County with a copy of the estimated budget for the Improvements, and, thereafter, shall similarly furnish the County with any and all revisions thereto. SFRTA shall also provide to the

County a schedule of values identifying quarterly design and construction milestones and the anticipated construction expenditures payout schedule for such milestones for the Improvements. Quarterly disbursement of Funds by the County/CITT shall be based upon invoices provided by SFRTA accompanied by certified copies of paid contractor invoices for eligible costs (the "Reimbursement Request"). Each Reimbursement Request shall also include a certified copy of all payments made to sub-contracted firms during the reimbursement period. Reimbursement Requests shall be submitted no sooner than October 1, 2015. Payment of Funds by the County upon submittal of a Reimbursement Request by SFRTA shall not exceed the County's proportionate share of the Estimated Cost of the Improvements.

Notwithstanding the receipt of a Reimbursement Request from SFRTA for payment of Funds, the County shall withhold funds in an amount equivalent to fifteen percent (15%) of the Funds or not less than Two Million Eighty Five Thousand Dollars (\$2,085,000.00) (the "Final Payment"). Issuance of the Final Payment to SFRTA shall be subject to the satisfaction of the following conditions: (a) Final Acceptance of the Improvements by SFRTA, which is presently estimated to occur on or before December 31, 2016 ("Construction Completion Date"); and (b) the start of revenue operations of the Tri-Rail commuter rail service into the Miami Central Station, which service is presently estimated to commence on or before March 31, 2017 (the "Service Commencement Date") (where (a) and (b) are collectively defined as the "Conditions of Final Payment").

5. **COMPLIANCE WITH LAWS:** The Parties shall comply with applicable federal, state, and local laws, codes, ordinances, rules and regulations in performing their respective duties, responsibilities, and obligations pursuant to this Agreement and with all applicable laws relating to the Improvements. The Parties shall not unlawfully discriminate in the performance of their respective duties under this Agreement.

6(A). **APPROVALS:** Unless waived by action of the County, this Agreement shall only become effective upon approval by the CITT and the Board of County Commissioners and the SFRTA Governing Board. In the event the Agreement is not approved, the Agreement shall be null and void and be of no force or effect. The Parties also agree that this Agreement shall be conditioned upon approval of all applicable agreements for the Improvements, including the sole source agreement between AAF and SFRTA for the Station Improvements, the loan agreement with an AAF affiliate for a loan for the cost of some of the Improvements, the agreement between AAF, FECR, FDOT and SFRTA for the Improvements and operations and maintenance on the FECR corridor, a separate agreement with FECR (if necessary) for the rail infrastructure improvements and all other funding agreements with other funding partners and SFRTA for the Improvements.

6(B). **ASSIGNMENT OF REIMBURSEMENT AGREEMENT:** SFRTA may execute and deliver to an AAF affiliate or third-party lender such assignment of any and all rights in favor of SFRTA and such Funds due to SFRTA under this Agreement as SFRTA may from time-to-time request while this Agreement remains in force and effect and upon written concurrence of the County which shall not be unreasonably withheld, conditioned or delayed.

7. **INDEMNIFICATION:** To the extent authorized by Florida law and all limitations thereunder, SFRTA hereby agrees to indemnify, defend, save and hold harmless the County and CITT and their respective officers, agents or employees from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of or due to the negligence of SFRTA, its officers, agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the County for its sole negligence.

To the extent authorized by Florida law and subject to all limitations included in Section 768.28, Florida Statutes, the County hereby agrees to indemnify, defend, save and hold harmless the SFRTA to the extent of all the limitations included in Section 768.28, Florida Statutes, from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of or due to the negligence of the County, its officers, agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the SFRTA for its sole negligence.

In the event of breach or non-performance by the persons selected by SFRTA to perform the design and construction of the Improvements, SFRTA shall, upon written request by the County assign to the County any and all rights under the affected contract for purposes of the County's prosecution of claims, actions or causes of action resulting from such breach or non-performance unless SFRTA, at its option, pursues such claims, actions or causes of action through arbitration, administrative proceeding or lawsuit. SFRTA agrees to cooperate fully with the County in the prosecution of any such claim or action. Any damages recovered by the County in the prosecution of any such claim or

action which is attributable to any expenditure by SFRTA shall be returned to SFRTA by the County within sixty (60) business days of receipt of such payment for damages recovered.

8. **DEFAULT:** If through any cause within the reasonable control of SFRTA, SFRTA shall fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements, or stipulations which are material to this Agreement, the County may thereupon give written notice to SFRTA of such default and specify what actions must be taken to cure said default to avoid termination hereunder. SFRTA shall have sixty (60) days to cure said default or such additional period authorized by the County. In the event that SFRTA shall not have cured said default to the satisfaction of the County by such deadline, then this Agreement may be terminated by the County upon notice of termination to SFRTA.

If through any cause within the reasonable control of the County, the County shall fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements, or stipulations which are material to this Agreement, SFRTA may thereupon give written notice to the County of such default and specify what actions must be taken to cure said default and avoid termination hereunder. The County shall have sixty (60) days to cure or additional period authorized by SFRTA. In the event that the County shall not have cured said default by such deadline, then this Agreement may be terminated by SFRTA upon notice of termination to County.

In the event either party terminates this Agreement for cause, the terminating party shall have all remedies available to it under State law against the party being

terminated and the party being terminated shall have available all rights available under State law to defend itself if the terminating party seeks to have any remedies opposed on it.

9. **DISPUTE RESOLUTION, APPLICABLE LAW:** The Parties shall resolve any disputes, controversies or claims between them arising out of this Agreement in accordance with the "Florida Governmental Conflict Resolution Act", Chapter 164, Florida Statutes, as amended. This Agreement shall be governed by the laws of the State of Florida. Venue in any proceedings shall be in Miami-Dade, Florida. Each Party will bear its own attorney's fees.

10. **ENTIRE AGREEMENT, AMENDMENTS:** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms thereof shall be predicated upon any prior representation or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms contained herein shall be effective unless set forth in writing in accordance with this section. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Parties.

11. **JOINT PREPARATION**: The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties from the other.
12. **SEVERANCE**: In the event a portion of this Agreement is found to be invalid by a court of competent jurisdiction, the remaining provisions shall continue to be effective unless the SFRTA or County elect to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) business days after the finding by the court becomes final.
13. **TERM OF AGREEMENT**. This Agreement shall expire upon the receipt of all of the Funds by SFRTA, except Section 1.4, entitled "Accounting" which shall survive for the stated audit period of five (5) years.
14. **NOTICES**: Any and all notices required to be given under this Agreement shall be sent via email, facsimile, hand delivery, FedEx, or U.S. Mail with return receipt , addressed as follows:

**To the County:**

**Attention: Miami-Dade County  
c/o Alina Hudak, Deputy Mayor  
Stephen P. Clark Center  
111 N.W. First Street, Ste 2900  
Miami, FL 33128  
(305) 375-2531**

**With a copy to:**

Attention: Citizens' Independent Transportation Trust  
c/o Charles D. Scurr, Executive Director  
Stephen P. Clark Center  
111 N.W. First Street, Ste. 1010  
Miami, FL 33128  
(305) 375-1357

**To the SFRTA:**

Attention: Jack Stephens, Executive Director  
South Florida Regional Transportation Authority  
800 N.W. 33<sup>rd</sup> Street  
Pompano Beach, FL 33064

(954) 942-7245

**With a copy to:**

Attention: Teresa J. Moore, Esq., General Counsel  
South Florida Regional Transportation Authority  
800 N.W. 33<sup>rd</sup> Street  
Pompano Beach, FL 33064

**[SIGNATURE PAGES TO FOLLOW]**

IN WITNESS WHEREOF, the Parties hereto set their hands and official seals the day and year first above written:

**MIAMI-DADE COUNTY**

ATTEST:

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

HARVEY RUVIN  
CLERK OF THE BOARD

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
County Mayor or County Mayor's Designee

Approved by County Attorney  
as to form and legal sufficiency

\_\_\_\_\_  
County Attorney

**SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY**

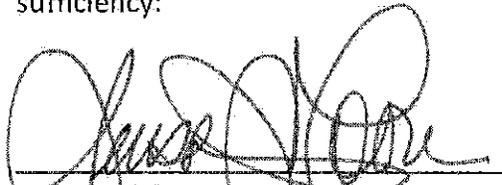
ATTEST:

SOUTH FLORIDA REGIONAL TRANSPORTATION  
AUTHORITY, an agency of the State of Florida

BY:   
Jack L. Stephens  
Executive Director

BY:   
Commissioner Steven L. Abrams

Approved as to legal form and  
sufficiency:

  
Teresa J. Moore, Esq.  
General Counsel

**Exhibit "A"**

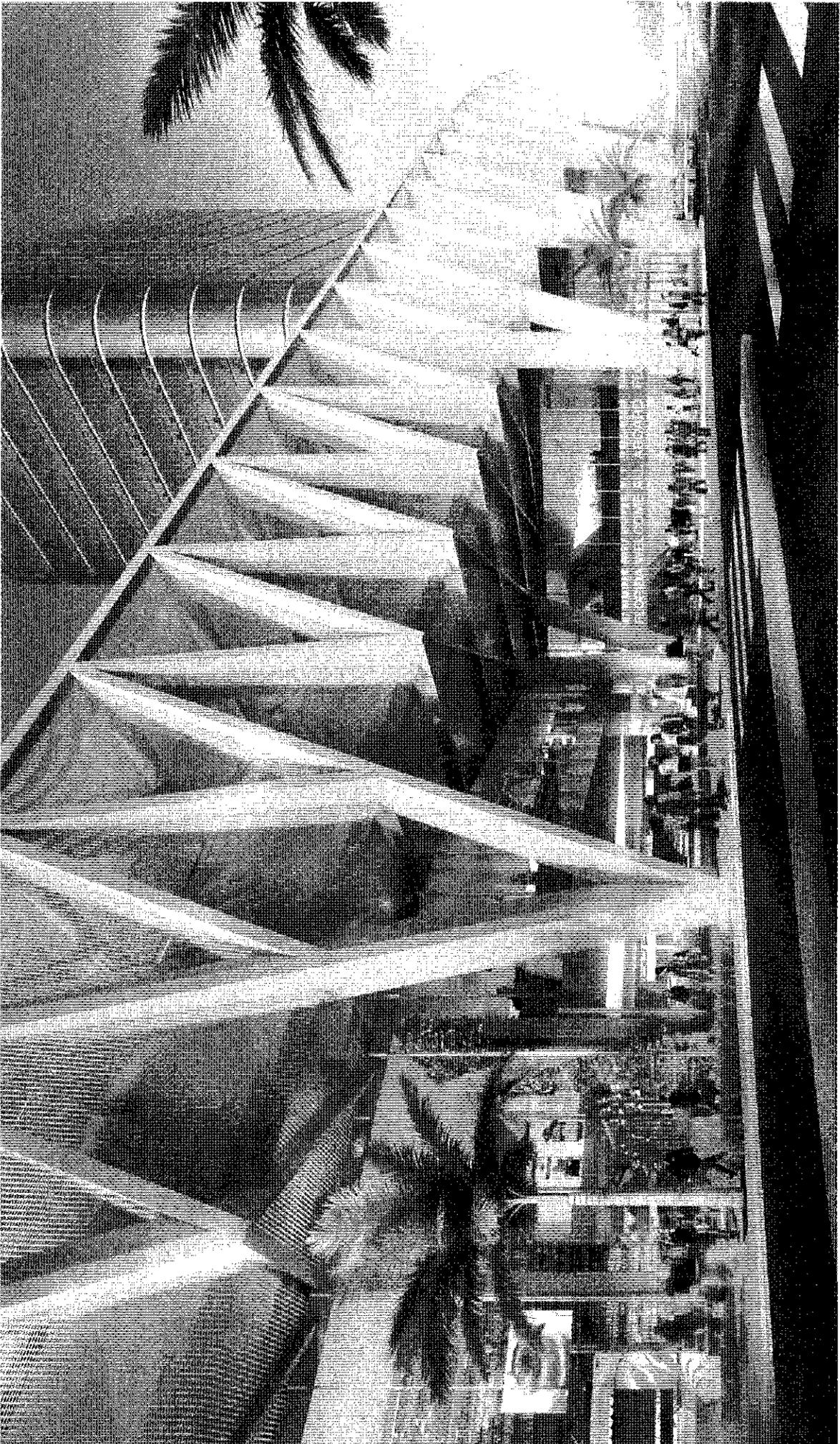
**Description of the Improvements**

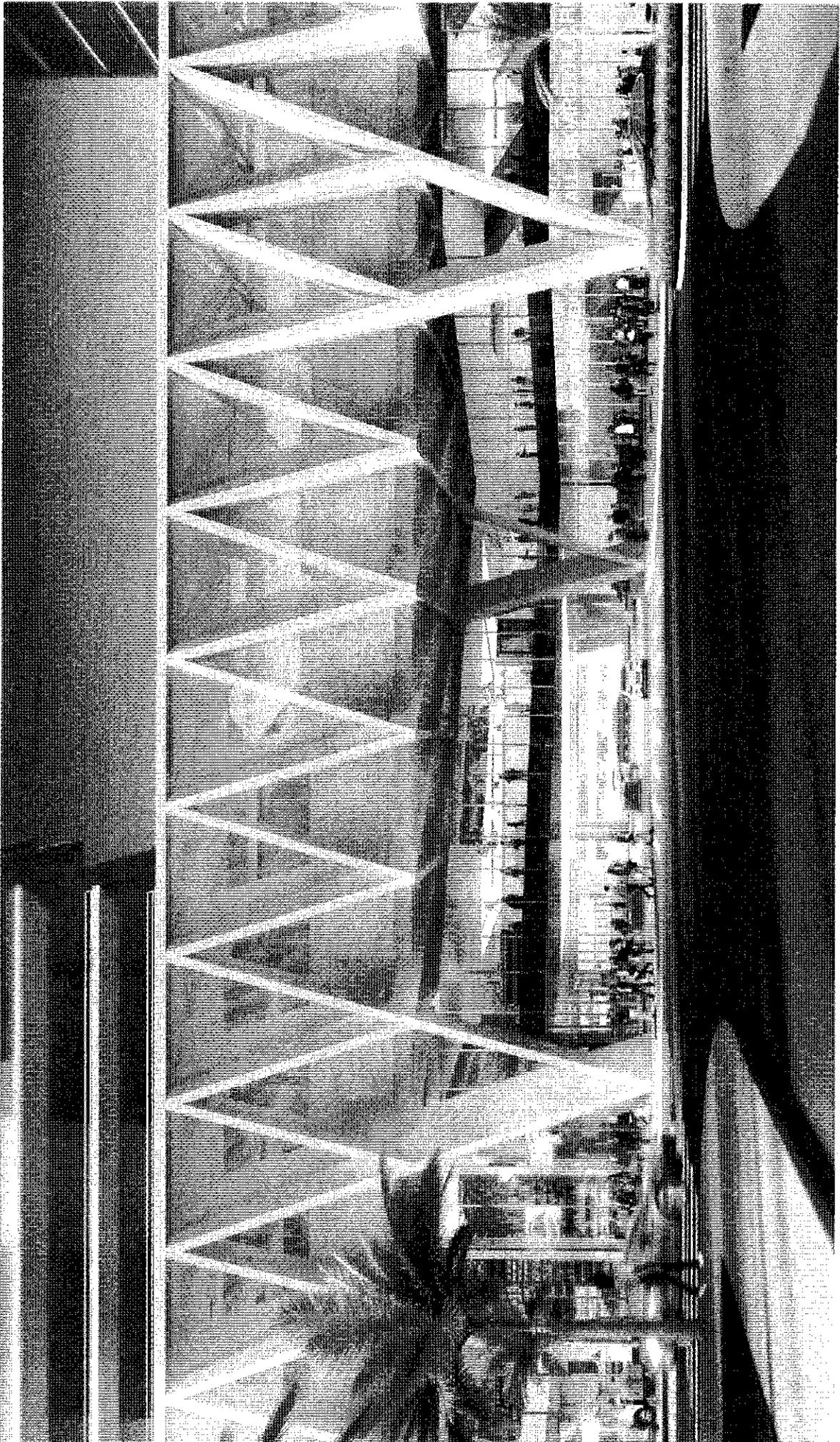


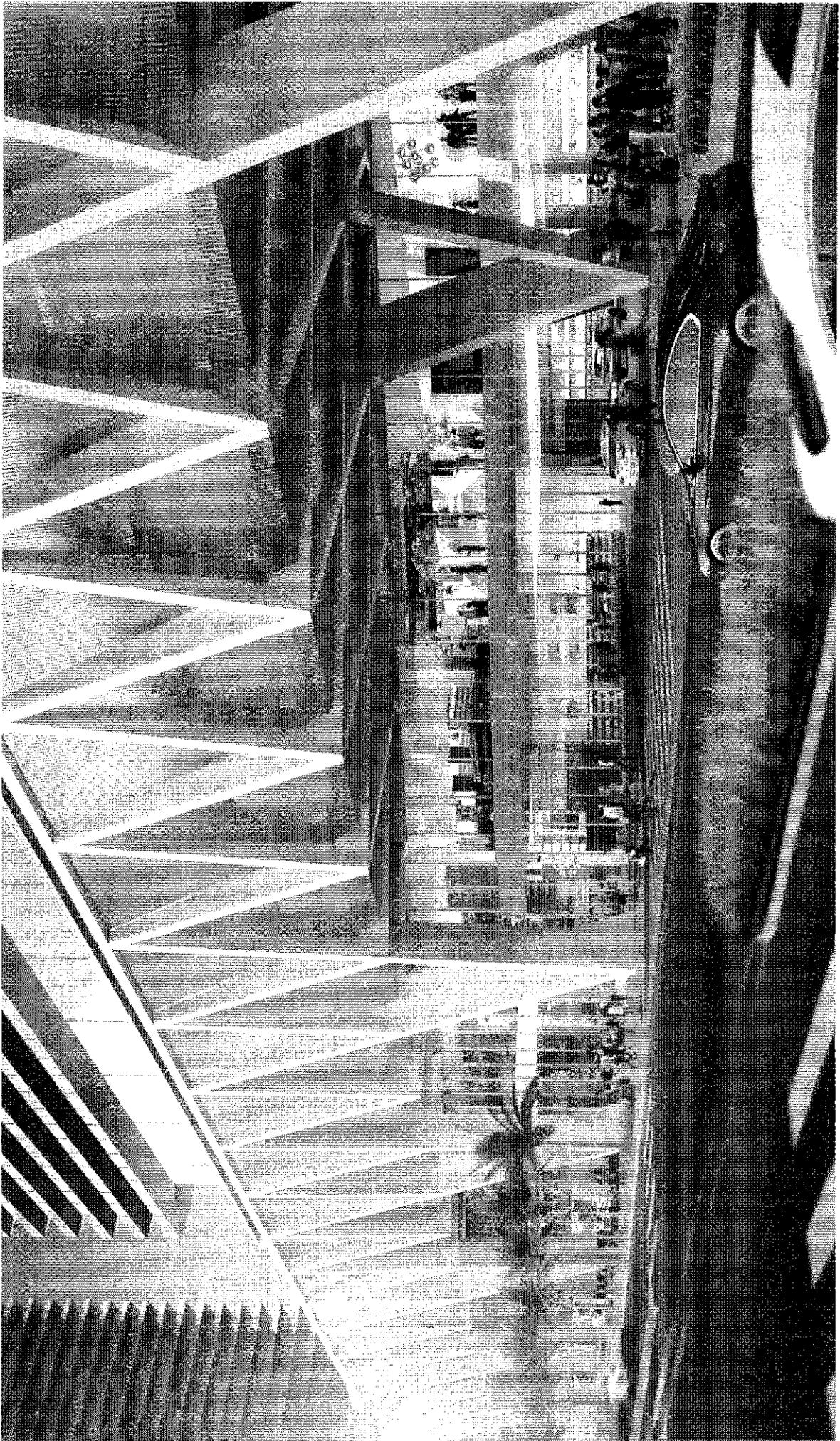
THE  
**TRI & RAIL**

OCTOBER 3, 2014

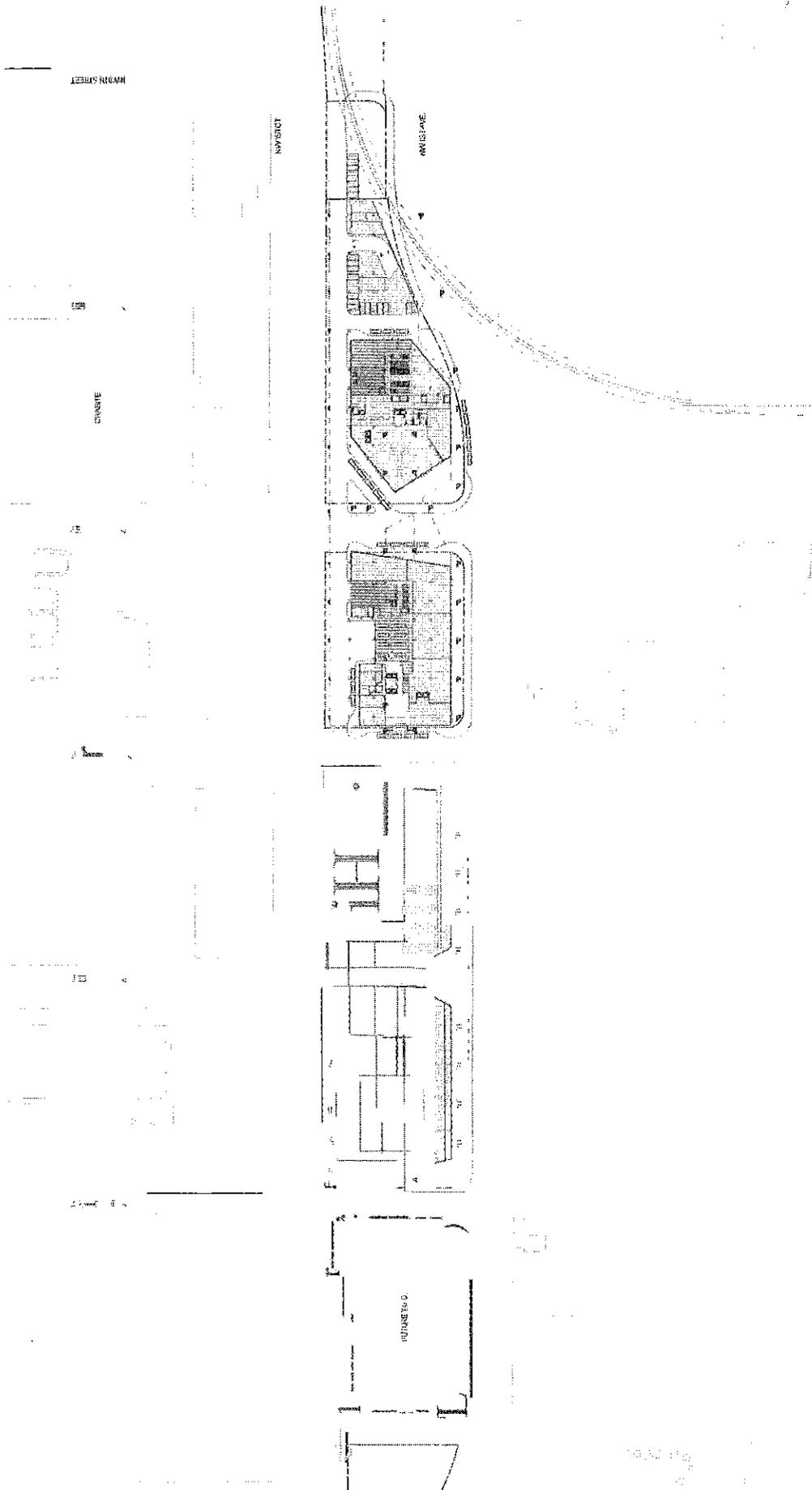








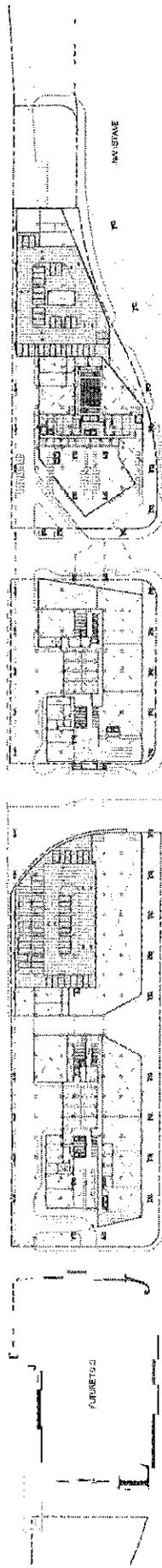
PHASE I DEVELOPMENT PLANNING  
GROUND LEVEL



1" = 25' 0" 100' 150' 200'

AVT COURT BUS RETAIL OFFICE TRUCK

PHASE 1 DEVELOPMENT PLANNING  
**PARKING MEZZANINE LEVEL**

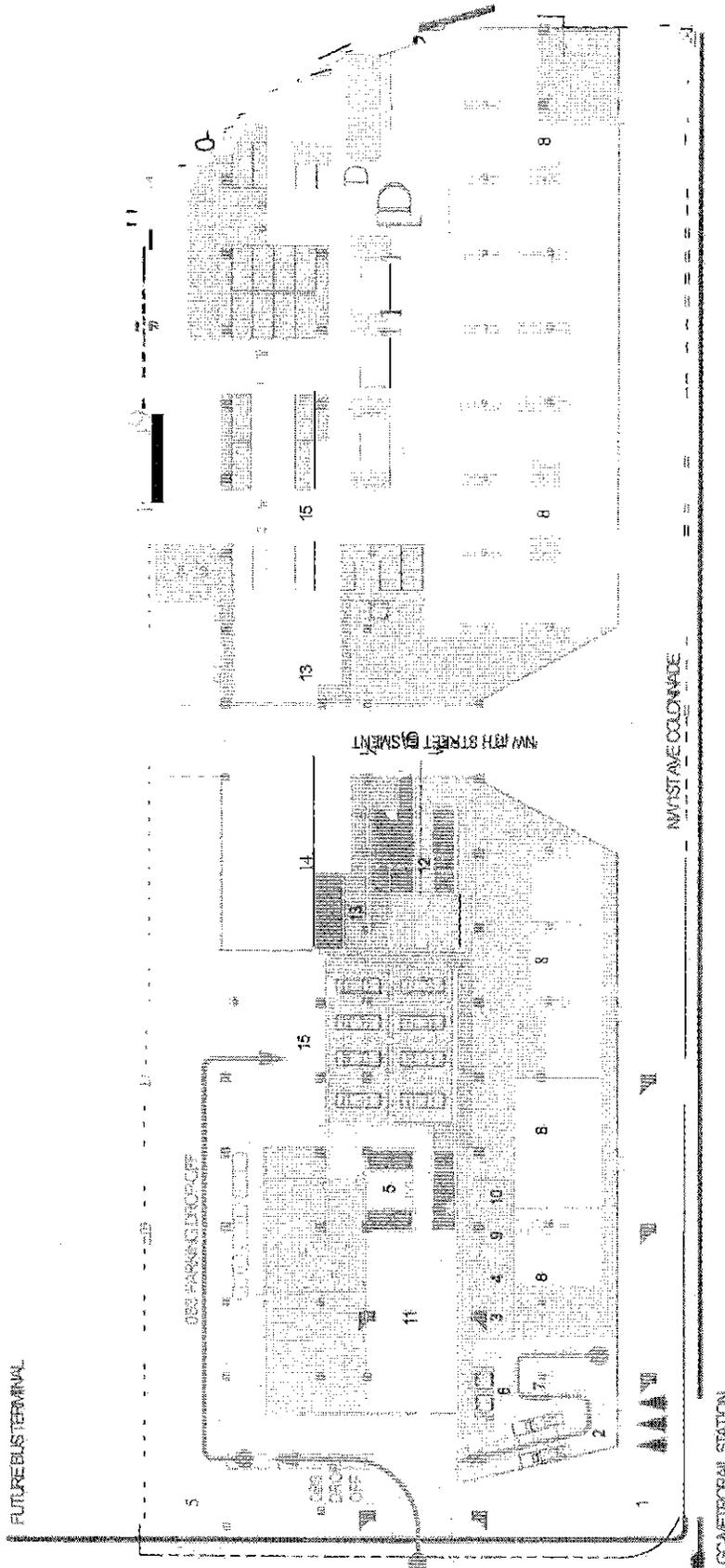


U.S. A.C. P.P. IN ANF CCURR FSH HEDAL CPTZE THA





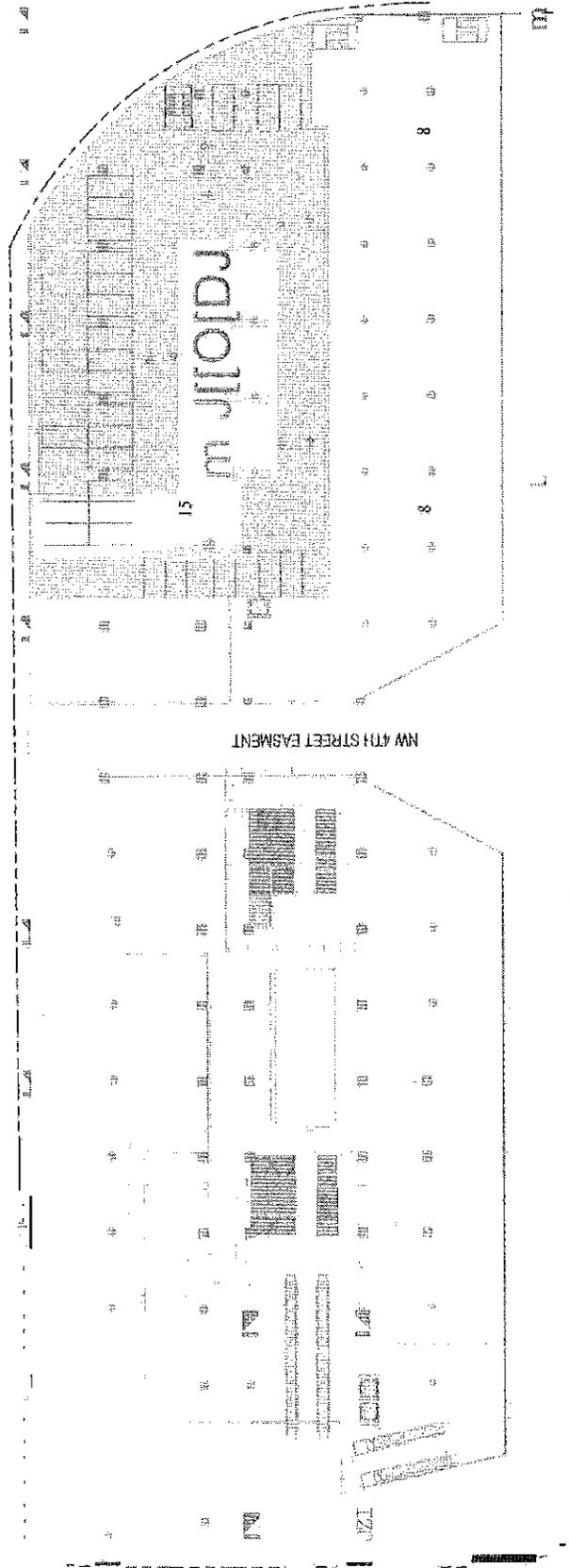
STATION PLANNING  
GROUND LEVEL SOUTH CONCOURSE - A AND B BLOCKS



- 1. OFFICE
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- 14. OFFICE
- 15. OFFICE

OFFICE    RES.    COURT    RES.    OFFICE    TRAIL

STATION PLANNING  
 PARKING MEZZANINE LEVEL SOUTH CONCOURSE - A AND B BLOCKS

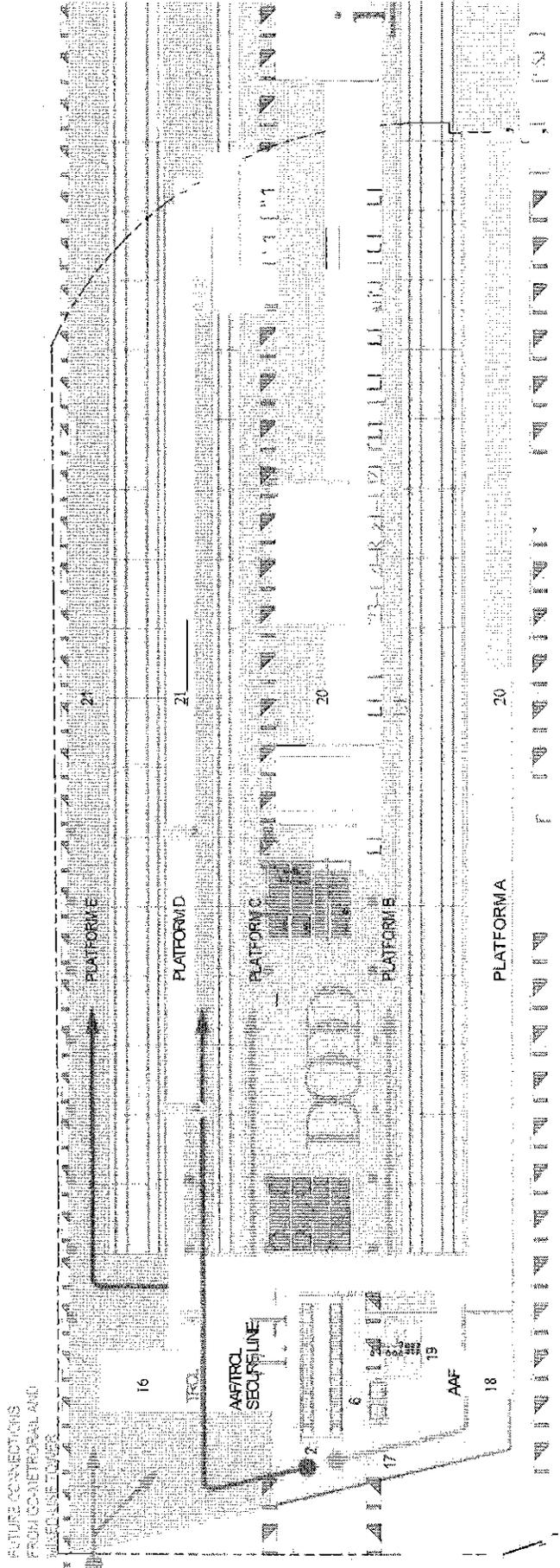


- 1. PROPOSED WORK
- 2. EXISTING WORK
- 3. EXISTING STRUCTURE
- 4. EXISTING UTILITIES
- 5. EXISTING FINISHES
- 6. EXISTING FLOOR FINISHES
- 7. EXISTING CEILING FINISHES
- 8. EXISTING WALL FINISHES
- 9. EXISTING DOOR FINISHES
- 10. EXISTING WINDOW FINISHES
- 11. EXISTING LIGHT FIXTURES
- 12. EXISTING MECHANICAL EQUIPMENT
- 13. EXISTING ELECTRICAL EQUIPMENT
- 14. EXISTING PIPING
- 15. EXISTING CONCRETE
- 16. EXISTING MASONRY
- 17. EXISTING METAL
- 18. EXISTING WOOD
- 19. EXISTING GLASS
- 20. EXISTING OTHER

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 1" = 10'-0"  
 AFV    COURT    RES    RETAIL    OFFICE    TRCL



STATION PLANNING  
 PLATFORM LEVEL SOUTH CONCOURSE - A AND B BLOCKS

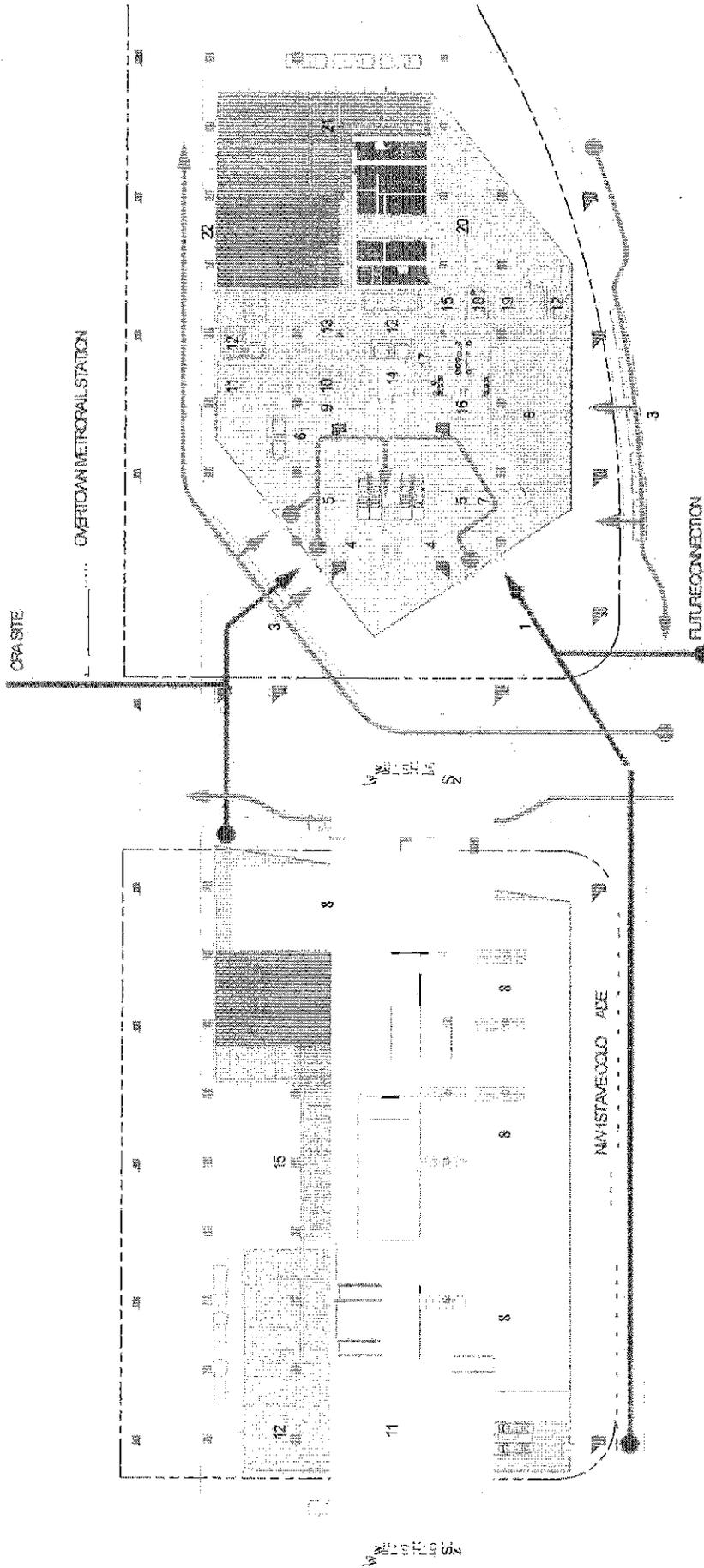


- 1. CONSTRUCTION
- 2. EXISTING
- 3. FUTURE
- 4. METRO LINE TUNNEL
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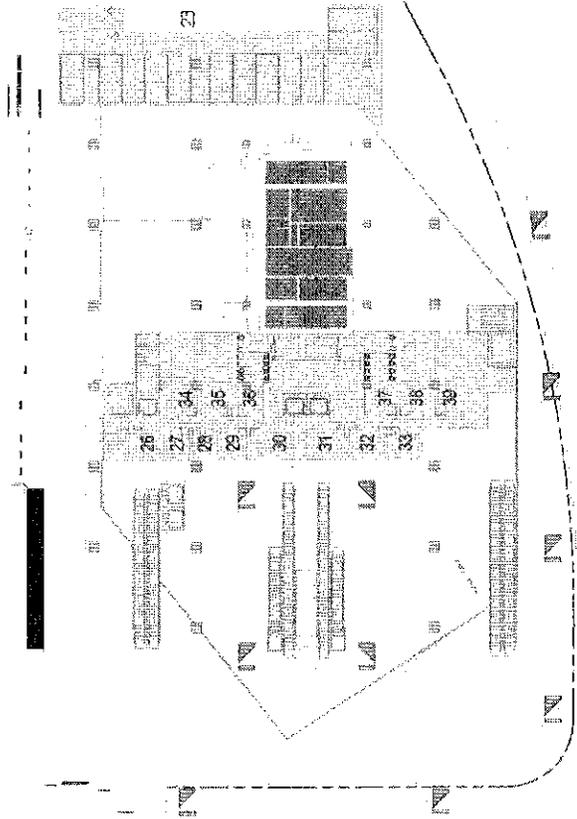
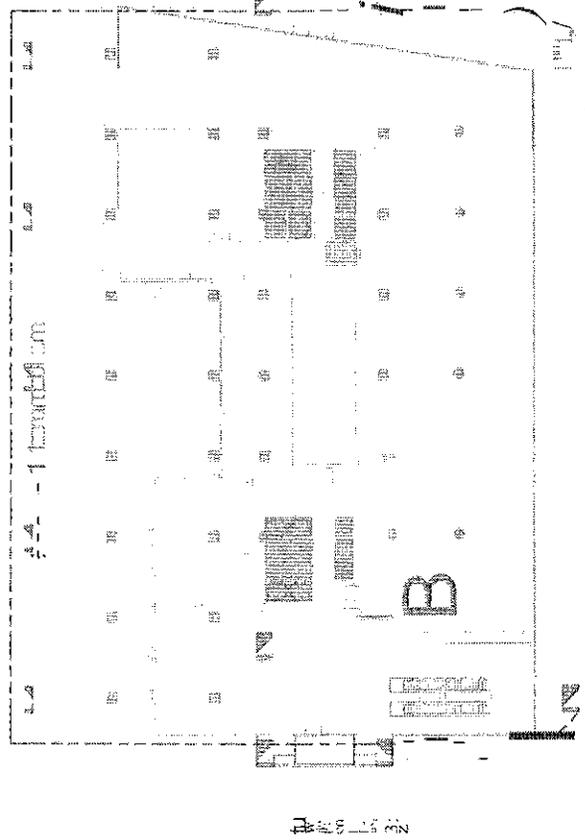
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STATION PLANNING  
GROUND LEVEL NORTH CONCOURSE - CAND D BLOCKS



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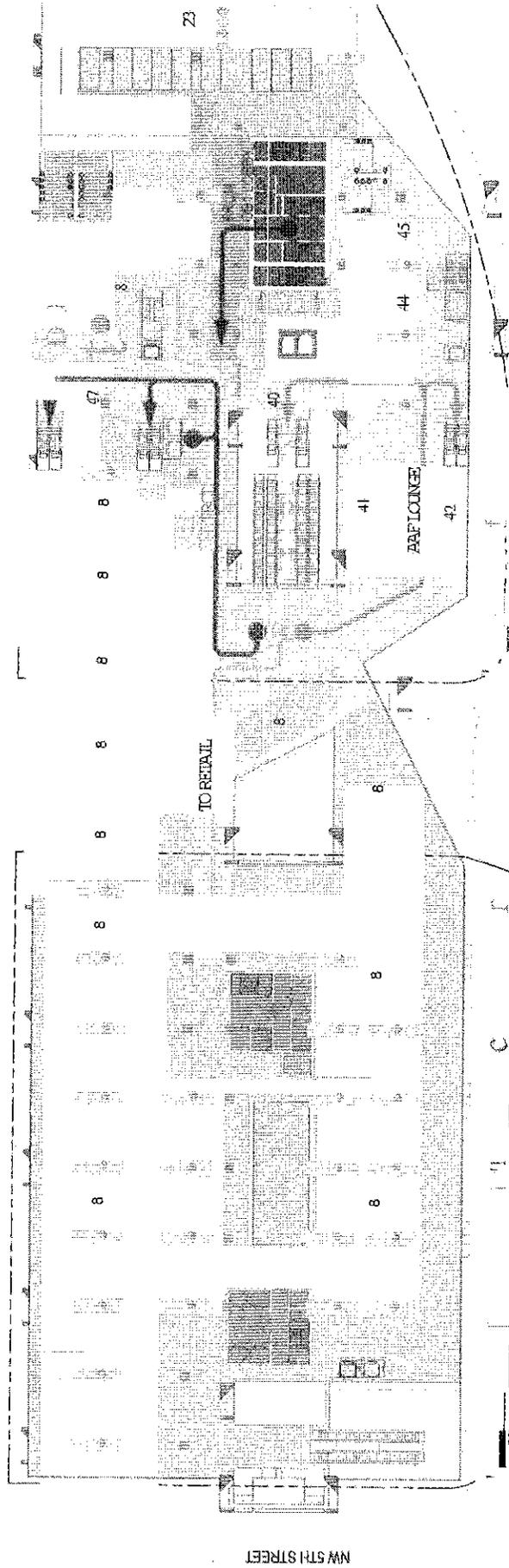
STATION PLANNING  
 PARKING MEZZANINE LEVEL NORTH CONCOURSE - CAND D BLOCKS



- 1. MEZZANINE LEVEL
- 2. CONCOURSE
- 3. STAIRS
- 4. ELEVATOR
- 5. SERVICE AREA
- 6. SECURITY
- 7. MECHANICAL
- 8. ELECTRICAL
- 9. PLUMBING
- 10. FINISHES
- 11. SIGNAGE
- 12. FURNITURE
- 13. LIGHTING
- 14. VENTILATION
- 15. SOUND
- 16. SAFETY
- 17. ACCESSIBILITY
- 18. SECURITY
- 19. MAINTENANCE
- 20. STORAGE
- 21. OFFICE
- 22. RETAIL
- 23. COURT
- 24. AAF
- 25. TRAIL

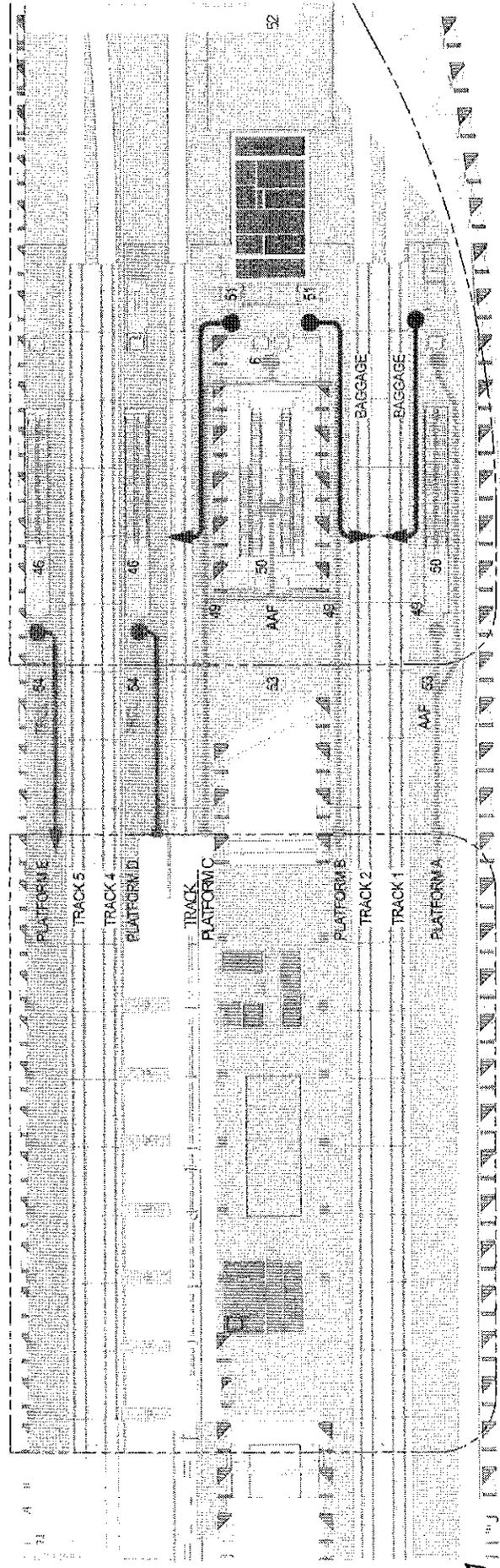
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STATION PLANNING  
 MEZZANINE LEVEL, NORTH CONCOURSE - CAND D BLOCKS



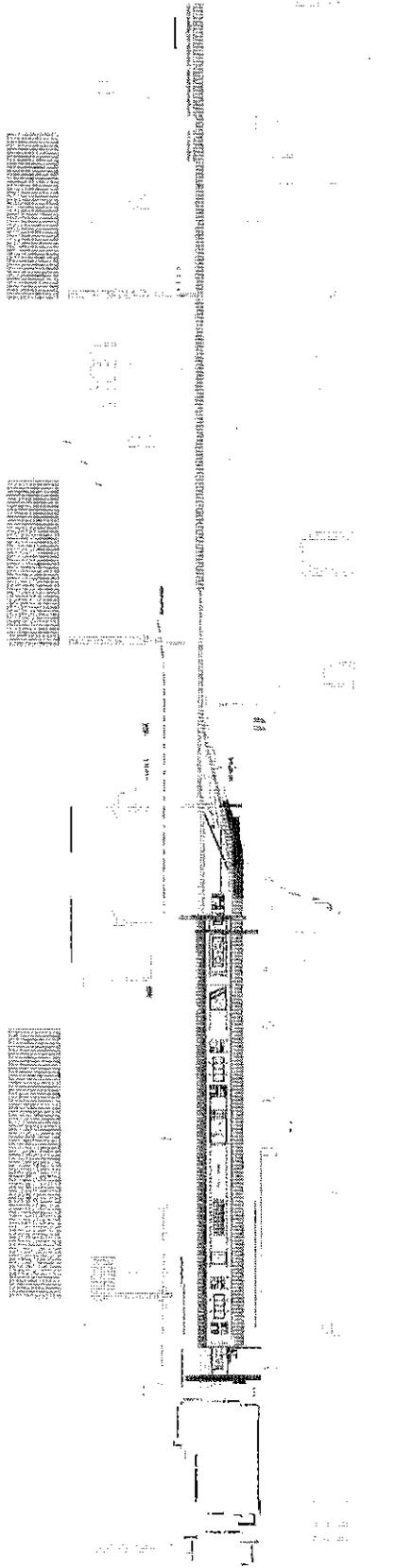
- 1. MEZZANINE LEVEL
- 2. NORTH CONCOURSE
- 3. CAND D BLOCKS
- 4. TO RETAIL
- 5. APPLIANCE
- 6. NW 5TH STREET
- 7. RETAIL
- 8. RES
- 9. COURT
- 10. OFFICE
- 11. OFFICE
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STATION PLANNING  
 PLATFORM LEVEL NORTH CONCOURSE - CAND D BLOCKS



- 1. PLATFORMS
- 2. TRACKS
- 3. BAGGAGE
- 4. OFFICE
- 5. RESTROOM
- 6. WAITING AREA
- 7. CONCESSIONS
- 8. TICKET OFFICE
- 9. SECURITY
- 10. STAIRS
- 11. ELEVATORS
- 12. SERVICE
- 13. STORAGE
- 14. MECHANICAL
- 15. ELECTRICAL
- 16. TELEPHONE
- 17. SIGNAGE
- 18. FENCE
- 19. LIGHTING
- 20. VENTILATION
- 21. SECURITY CAMERA
- 22. FIRST AID
- 23. POLICE
- 24. CUSTOMER SERVICE
- 25. INFORMATION
- 26. CONCESSIONS
- 27. WAITING AREA
- 28. BAGGAGE
- 29. TRACKS
- 30. PLATFORMS
- 31. STAIRS
- 32. ELEVATORS
- 33. SERVICE
- 34. STORAGE
- 35. MECHANICAL
- 36. ELECTRICAL
- 37. TELEPHONE
- 38. SIGNAGE
- 39. FENCE
- 40. LIGHTING
- 41. VENTILATION
- 42. SECURITY CAMERA
- 43. FIRST AID
- 44. POLICE
- 45. CUSTOMER SERVICE
- 46. INFORMATION
- 47. CONCESSIONS
- 48. WAITING AREA
- 49. BAGGAGE
- 50. TRACKS
- 51. PLATFORMS
- 52. STAIRS
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- 54. SERVICE
- 55. STORAGE
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- 60. FENCE
- 61. LIGHTING
- 62. VENTILATION
- 63. SECURITY CAMERA
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- 65. POLICE
- 66. CUSTOMER SERVICE
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TRCL SCOPEDRAWING  
SITE PLAN



STATION

APPROACH

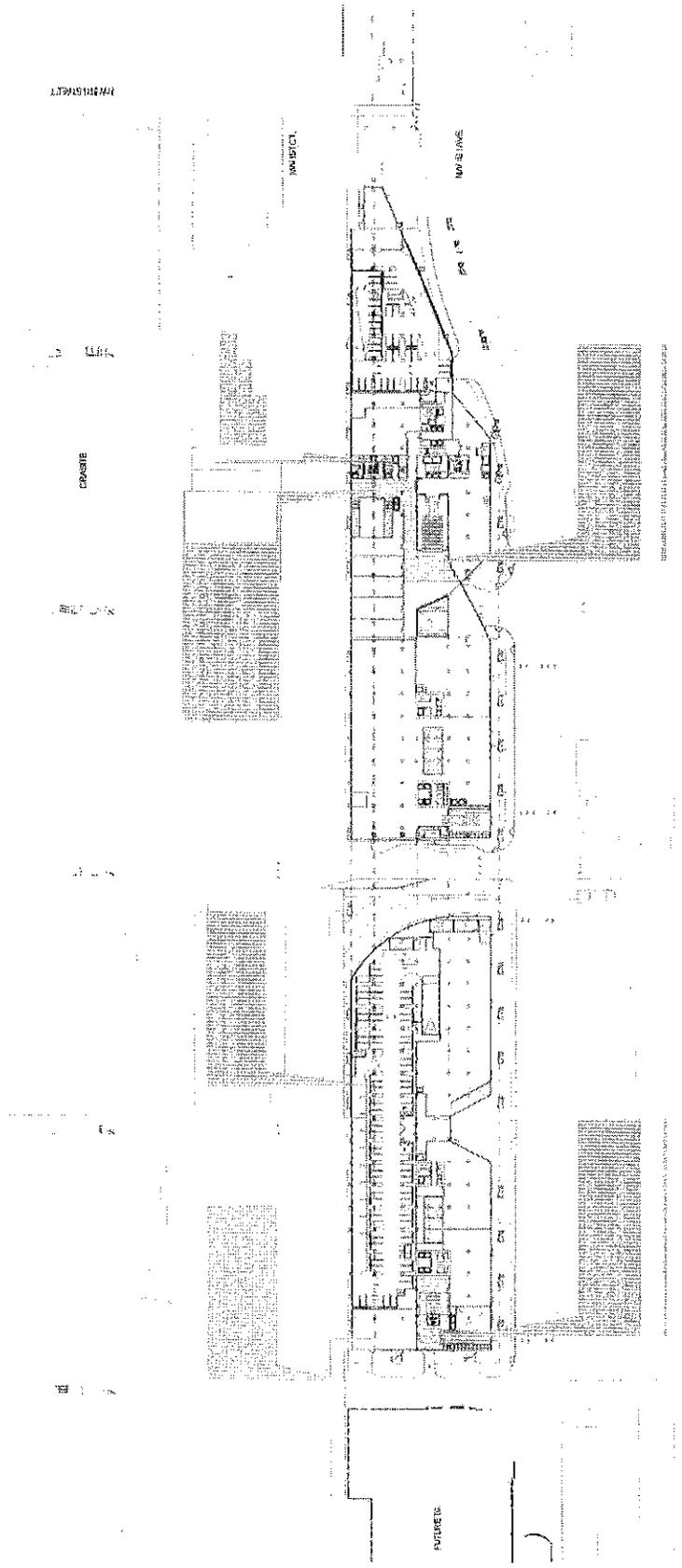
TARGET  
(NORTH TO UTILE PROJECT)

- DEDICATED TRCL SPACE
- SHARED AA/TRCL SPACE
- SHARED COUNTY/TRCL SPACE

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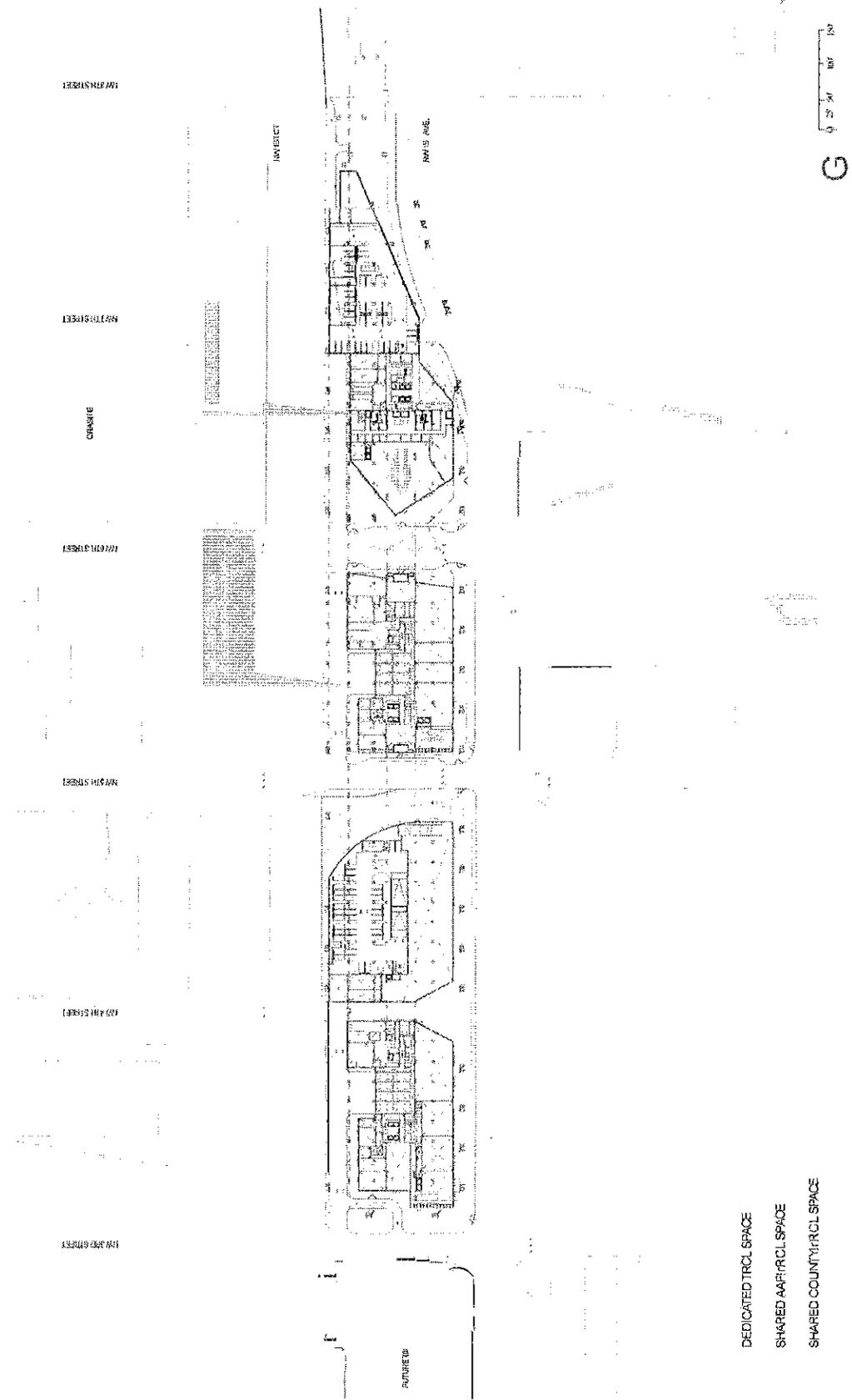
TRCL SCOPE DRAWING  
**MEZZANINE PLAN (+XX FT)**



- DEDICATED TRCL SPACE
- SHARED AREA/TRCL SPACE
- SHARED COUNTY/TRCL SPACE

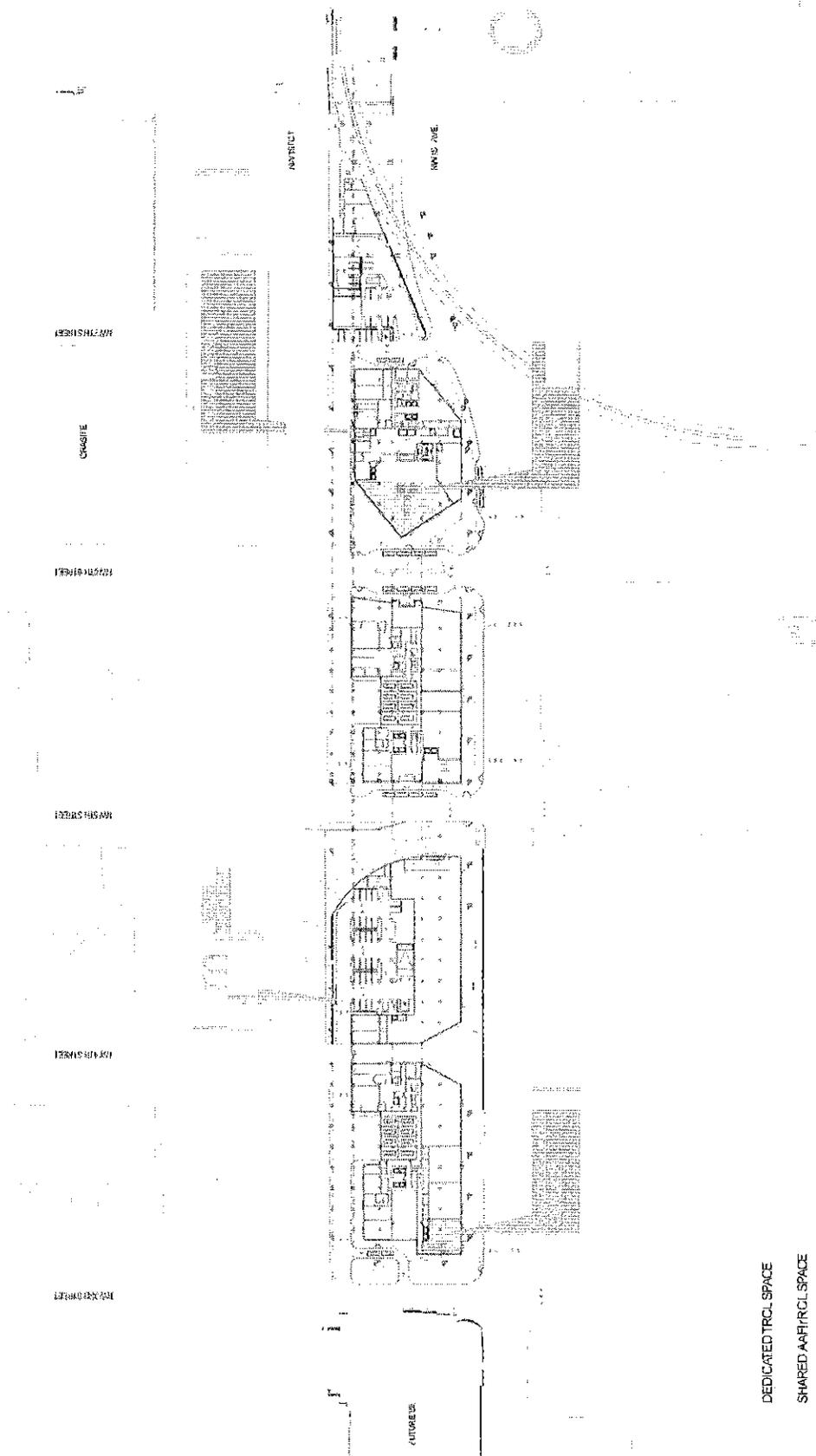
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TECHNICAL DRAWING  
**PARKING MEZZANINE PLAN (+XX.FT)**



- DEDICATED TRCL SPACE
- SHARED AAR/TRCL SPACE
- SHARED COUNTY/TRCL SPACE

TRULSCOPE DRAWING  
 GROUND FLOOR PLAN (+00 FT)



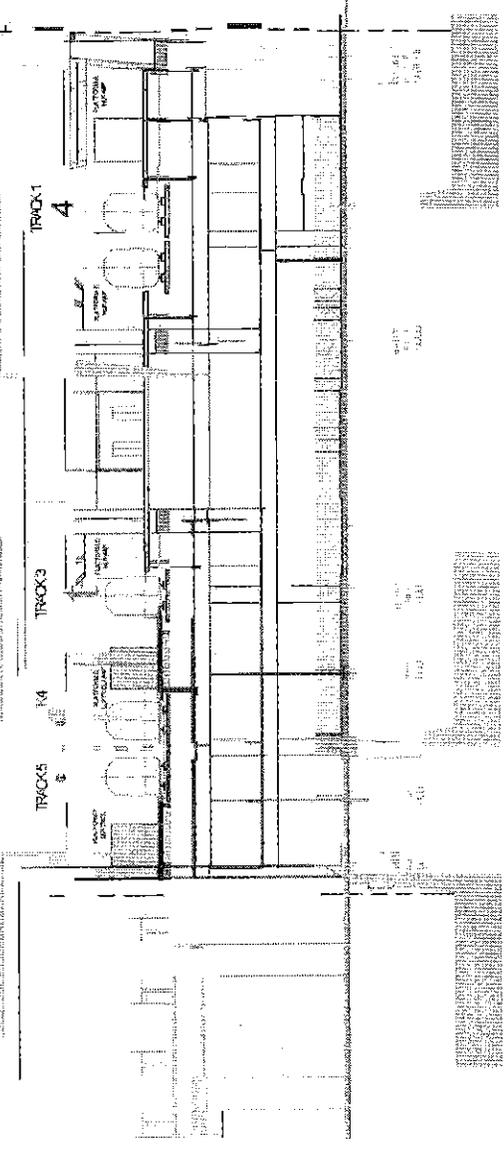
- DEDICATED TRCL SPACE
- SHARED AA/RCL SPACE
- SHARED COUNTY/RCL SPACE

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TRCSCOPE DRAWING  
CROSS SECTION AT STATION

0 0 0 0 0 0

PROPERTY LINES



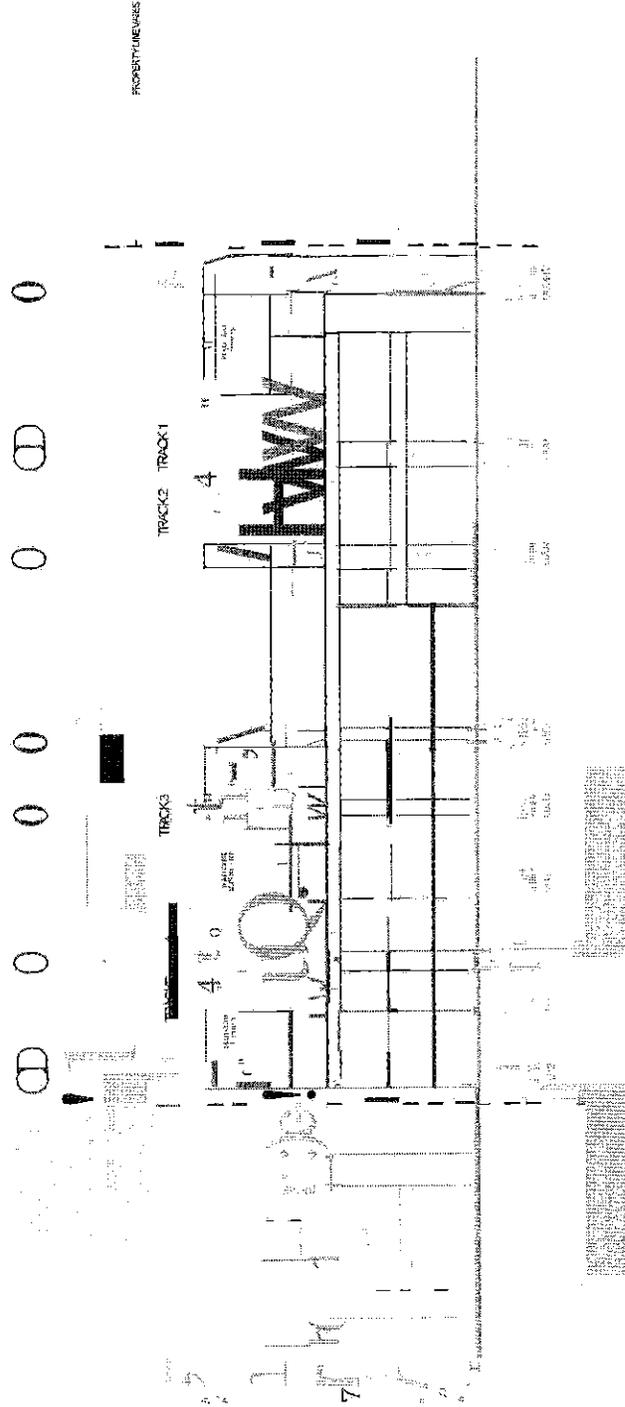
80 OVERBUILD

- 50'-0" CHL PLATE
- 5'-8" (ANTORM) 50' RAIL
- 0'-6" PARKING MEZANINE 0'-6" RND. E0'-0"

- DEDICATED TRCL SPACE
- SHARED AAR TRCL SPACE
- SHARED COUNTY TRCL SPACE

NE 45

TRILSCOPE DRAWINGS  
 CROSS SECTION NOT AT STATION



- + HL OVERBUILD
- TO: HL PLATFORM 50'-0"
- TO: LL PLATFORM 46'-8"
- BO: RA 37'-5"
- PR: MEZZANINE 4'-5"
- GRADE 0'

- DEDICATED TROL SPACE
- SHARED AA/TROL SPACE
- SHARED COUNTY TROL SPACE

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Miami, Florida

10/2/2014

# MIAMI STATION TRI RAIL BUDGET

## BUDGET CATEGORY

1	LAND & ENTITLEMENTS	\$18,500
2	INFRASTRUCTURE & SITE DEVELOPMENT	\$499,000
3	BUILDING CONSTRUCTION	\$36,674,000
4	FURNITURE, FIXTURES & ACCESSORIES (FF&A)	\$886,000
5	SITE IMPROVEMENTS	\$2,874,000
6	OPERATING SUPPLIES & EQUIPMENT (OS&E)	\$0
7	PROFESSIONAL FEES	\$3,394,800
8	PROJECT MANAGEMENT	\$0
9	FINANCE & ADMINISTRATION	\$0
10	CONTINGENCY	\$4,284,130

**TOTAL: \$48,630,431**

# MIAMI STATION TRI RAIL BUDGET DETAIL

	\$0
<b>CATEGORY 1 - LAND &amp; ENTITLEMENTS</b>	
Pre Development Studies	
Pursuit Costs	\$0
<b>Subtotal:</b>	
Land Acquisition	\$0
Land Allocation	\$0
Brokerage Fees	\$0
Due Diligence Costs	\$0
Legal Support Costs (outside)	\$0
Survey	\$0
Transaction Costs	\$0
Appraisal	\$0
Environmental Studies / Remediation	\$0
Zoning and Entitlement Costs	\$18,500
Real Estate Taxes	\$0
Interim Property Maintenance	\$0
<b>CATEGORY 1 TOTAL:</b>	
	<b>\$18,500</b>

# MIAMI STATION TRI RAIL BUDGET DETAIL

## CATEGORY 2 - INFRASTRUCTURE & SITE DEVELOPMENT

	\$0
Permit and Fees	
Demo	\$47,000
Site Earthwork	\$98,000
Site Utilities	\$275,000
<b>Subtotal:</b>	<b>\$420,000</b>
Contractor Costs	
Suffolk Contingency	3.0%
General Conditions (included BR Insurance @ 1.28%)	7.5%
Contractor Overhead & Profit	4.0%
Management Reserve	\$17,000
	\$13,000
	\$32,000
	\$17,000
	\$17,000
<b>CATEGORY 2 TOTAL:</b>	<b>\$499,000</b>

# MIAMI STATION TRI RAIL BUDGET DETAIL

## CATEGORY 3 - BUILDING CONSTRUCTION

Permits		\$0
Impact Fees		\$0
General Requirements		\$62,000
Concrete		\$15,248,000
Masonry		\$229,000
Metals		\$2,281,000
Woods and Plastics		\$131,000
Thermal / Moisture Protection		\$1,865,000
Doors and Windows		\$3,551,000
Finishes		\$1,001,000
Specialties		\$0
Equipment		\$0
Furnishings		\$0
Special Construction		\$801,000
Conveying Systems		\$1,451,000
Mechanical		\$2,363,000
Electrical		\$1,716,000
Building Signage		\$250,000
	<b>Subtotal:</b>	<b>\$30,949,000</b>
Contractor Costs		
Suffolk Contingency	3.0%	\$928,000
General Conditions (included BR Insurance @ 1.28%)	7.5%	\$2,321,000
Contractor Overhead & Profit	4.0%	\$1,238,000
<b>Management Reserve</b>		<b>\$1,238,000</b>
<b>CATEGORY 3 TOTAL:</b>		<b>\$36,674,000</b>

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# MIAMI STATION TRI RAIL BUDGET DETAIL

CATEGORY 4 - FURNITURE, FIXTURES & ACCESSORIES (FF&A)		\$0
Permit and Fees		
Tenant Improvement Allowances		\$0
Furniture & Fixtures		\$735,000
	<b>Subtotal:</b>	<b>\$735,000</b>
Tax Allowances	6.0%	\$44,000
Freight Allowances	7.0%	\$51,000
Installation Allowances	3.0%	\$22,000
	<b>Subtotal:</b>	<b>\$117,000</b>
<i>Management Reserve</i>		<i>\$34,000</i>
<b>CATEGORY 4 TOTAL:</b>		<b>\$886,000</b>

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# MIAMI STATION TRI RAIL BUDGET DETAIL

	\$0
<b>CATEGORY 5 - SITE IMPROVEMENTS</b>	
Permit and Fees	
Landscaping and Pavers	\$1,794,000
Site Concrete	\$64,000
Site Amenities	\$48,000
Site Lighting	\$269,000
Site Signage	\$250,000
<b>Subtotal:</b>	<b>\$2,425,000</b>
<b>Contractor Costs</b>	
Suffolk Contingency	3.0%
General Conditions (included BR Insurance @ 1.28%)	7.5%
Contractor Overhead & Profit	4.0%
<b>Management Reserve</b>	
<b>CATEGORY 5 TOTAL:</b>	<b>\$2,874,000</b>

# MIAMI STATION TRI RAIL BUDGET DETAIL

CATEGORY 6 - OPERATING SUPPLIES & EQUIPMENT (OS&E)		\$0
I.T / Telecom Equipment		\$0
Building Maintenance Equipment		\$0
Kitchen Equipment		\$0
Vehicles		\$0
P.O.S. Equipment (Cabling)		\$0
Security Systems & Equipment		\$0
Parking Systems & Equipment		\$0
Monitors		\$0
Misc. Equipment		\$0
Subtotal:		\$0
<b>CATEGORY 6 TOTAL:</b>		<b>\$0</b>

# MIAMI STATION TRI RAIL BUDGET DETAIL

CATEGORY 7 - PROFESSIONAL FEES		\$450,000
Architecture/Interior Design		\$25,000
Associate Architect		\$120,000
Structural Engineering		\$400,000
Rail Infrastructure Engineer		\$250,000
Third Party Building Inspection		\$200,000
Threshold Inspection		\$190,000
MEP Engineers		\$90,000
Lighting Design		\$35,000
Vertical Transportation		\$20,000
Pedestrian Modeling/NFPA 103 Analysis		\$75,000
Landscape Architect		\$50,000
Civil Engineering		\$50,000
Fire, Life Safety, Smoke Modeling		\$25,000
Building Envelope/Waterproofing		\$10,000
Facade Access/Maintenance		\$15,000
ADA Consulting		\$0
IT - Telecom		\$0
Audio-Visual / CCTV		\$70,000
Acoustics		\$225,000
Wayfinding/Signage		\$12,000
LEED - Management		\$21,000
LEED - Energy Modeling		\$15,000
LEED - Commissioning		\$60,000
CM - Pre-Construction		\$40,000
Cost Estimating		\$45,000
Utility Surveying		\$50,000
Site Surveying		\$35,000
Geotechnical		\$55,000
Traffic Study		\$175,000
Construction Material Testing		\$120,000
Interior Design		\$50,000
Ticketing - Train Scheduling		\$2,978,000
Subtotal:		\$297,800
Reimbursables and Travel		\$119,000
Management Reserve		
<b>CATEGORY 7 TOTAL:</b>		<b>\$3,394,800</b>

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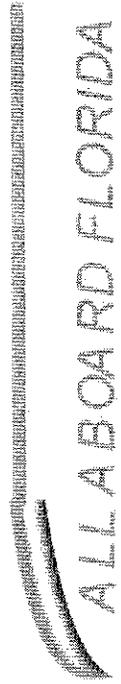
# MIAMI STATION TRI RAIL BUDGET DETAIL

<b>CATEGORY 8 - PROJECT MANAGEMENT</b>		\$0
Development Staff SG&A		\$0
Project Management System		\$0
Travel & Related		\$0
Site Office Expense		\$0
Misc Project Mgmt Costs		\$0
<i>Management Reserve</i>		\$0
<b>CATEGORY 8 TOTAL:</b>		\$0
<b>CATEGORY 9 - FINANCE &amp; ADMINISTRATION</b>		\$0
Operating Cash Reserve		\$0
Corporate SG&A Allocations		\$0
Outside Legal Fees		\$0
	Subtotal:	\$0
Loan Fees		\$0
Capitalized Interest Expenses		\$0
<b>CATEGORY 9 TOTAL:</b>		\$0

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# MIAMI STATION TRI RAIL BUDGET DETAIL

CATEGORY 10 - CONTINGENCY	
Category 1	\$1,850
Category 2	\$48,200
Category 3	\$3,543,600
Category 4	\$85,200
Category 5	\$277,700
Category 7	\$327,580
<b>CATEGORY 10 TOTAL:</b>	
	<b>\$4,284,130</b>



**TRI & RAIL™**

**Exhibit "B"**

**SFRTA DBE Program**



SOUTH FLORIDA  
REGIONAL  
TRANSPORTATION  
AUTHORITY

**SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY  
(SFRTA)  
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

**Policy Statement/Objectives**

The South Florida Regional Transportation Authority (SFRTA) formerly known as Tri-County Commuter Rail Authority (Tri-Rail), has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. SFRTA receives Federal financial assistance from the DOT, and as a condition of receiving this assistance, SFRTA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of SFRTA to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT assisted contracts. SFRTA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

Annually, SFRTA develops an overall goal for the agency. This overall goal shows the level of DBE participation which allows for reasonable expectation of achieving Program compliance as well as an opportunity to enhance service delivery to our customers.

It is SFRTA's policy:

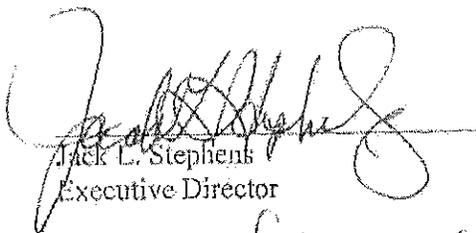
- To ensure nondiscrimination in the award and administration of DOT assisted contracts;
- To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in DOT assisted contracts; and

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- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Director of Administration/EEO Officer is designated as the DBE Liaison Officer. In that capacity, he/she is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by SFRTA in its financial assistance agreements with the DOT.

SFRTA has disseminated this Policy Statement to all departments within our organization and to the DBE and non-DBE business communities that perform work for SFRTA on DOT assisted contracts. SFRTA's DBE policy and program will be incorporated by reference in every DOT assisted agreement. This policy statement is also available on SFRTA's website.

  
Jack L. Stephens  
Executive Director

\*\*Date: 11/20/14

  
Diane Hernandez Del Calvo  
DBE Liaison Officer/  
Director of Administration/EEO Officer

Date: 11/20/14

\*\*Administrative change -- Signature Update

## SUBPART A - GENERAL REQUIREMENTS

### **Section 26.1 Objectives**

The objectives are found in the policy statement on the first page of this program.

### **Section 26.3 Applicability**

The South Florida Regional Transit Authority (SFRTA) is the recipient of federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II and V of the Teas-21, Pub. L. 105-178.

### **Section 26.5 Definitions**

SFRTA will adopt the definitions contained in Section 26.5 of Part 26 for this program.

### **Section 26.7 Non-discrimination Requirements**

SFRTA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, SFRTA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

### **Section 26.11 Record Keeping and Reporting**

#### Uniform Report of DBE Awards or Commitments and Payments: 26.11(a)

SFRTA will report DBE participation to the Federal Transit Administration using the Uniform Report of DBE Awards or Commitments and Payments, The reports will be submitted at the times specified on the form.

#### Bidders List: 26.11(c)

The SFRTA will create a bidders list, consisting of information about all DBE and non-DBE firms that bid on prime contracts and bidding, proposing or quoting on subcontracts federally funded.

The bidder list will include the name, address, DBE non-DBE status. A form will be included in each Request for Proposal and Invitation to Bid requesting the above information. Failure to submit this information may render the bid non-responsive.

### **Section 26.13 Assurances**

The SFRTA has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

#### Federal Financial Assistance Agreement Assurance: 26.13(a)

SFRTA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the SFRTA of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

#### Contract Assurance: 26.13(b)

SFRTA will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

## **SUBPART B – ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

As a condition of receiving funds from the Department of Transportation (DOT), SFRTA is required to have a DBE Program. SFRTA will continue to carry out this DBE Program until all funds from DOT financial assistance has been expended. SFRTA will provide DOT with updates representing significant changes in the Program. SFRTA has signed and dated a Policy Statement, which expresses its commitment to the DBE Program, states its objectives, and outlines responsibilities for its implementation.

## Section 26.25 DBE Liaison Officer

The designated DBE Liaison Officer (DBELO) of SFRTA's DBE Program is Diane Hernandez Del Calvo, Director of Administration/EEO Officer. She can be contacted at:

Diane Hernandez Del Calvo  
South Florida Regional Transportation Authority  
800 NW 33rd Street,  
Pompano Beach, Florida 33064  
Telephone No. (954) 942-7245  
Fax No. (954) 788-7961  
E-mail Address: hernandezdelcalvod@sfrta.fl.gov

Ms. Hernandez Del Calvo is responsible for implementing all aspects of the DBE Program and ensuring that SFRTA complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to, SFRTA's Executive Director, Jack L. Stephens concerning DBE Program matters. An organization chart displaying the DBELO's position within the organization is attached. (Attachment1).

The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other designated officials. The DBELO has adequate staff to assist. Duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by DOT;
- Reviews third party contracts for compliance with this program;
- Works with all departments to set overall goals;
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner;
- Identifies contracts and procurements so that DBE goals are included in solicitations (both race neutral methods and contract specific goals) and monitors results;
- Analyzes SFRTA's progress toward goal attainment and identifies ways to improve progress;
- Participates in pre-bid meetings;
- Advises the Executive Director and Governing Board on DBE matters and achievements;
- Plans and participates in DBE training seminars;

- Acts as liaison to the Uniform Certification Process in Florida;
- Provides outreach to DBEs and community organizations to advise them of opportunities.

### Section 26.27 DBE Financial Institutions

It is the policy of SFRTA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and we encourage prime contractors on DOT-assisted contracts to make use of these institutions. We will re-evaluate the availability of DBE financial institutions every 5 years

SFRTA has investigated services offered by DBE financial institutions within Miami-Dade, Broward and Palm Beach Counties. These services include but are not limited to:

- Financial Services
- Financial Accounting and Management Consulting Services
- Financial Marketing Services
- Government Approved Local Funding Sources
- Loans and Grants
- Underwriting and Financial Advisory Services
- Venture Capital Services

Many of these services can be obtained through the Small Business Administration Information South Florida District Office, 100 S. Biscayne Blvd. – 7<sup>th</sup> Floor, Miami, FL 33131. These services can also be obtained at the following county offices in the above mentioned counties in SFRTA's service area:

Palm Beach County Office of Small Business Assistance (OSBA)  
 50 S. Military Trail, Suite 202  
 West Palm Beach, FL 33415  
 Phone: 561-616-6840

Broward County Office of Economic and Small Business Development  
 115 S. Andrews Ave., Room A-680  
 Fort Lauderdale, FL 33301-1802  
 Phone: 954-357-6400

Small Business Development  
 Stephen P. Clark Center  
 111 NW 1st Street, 19th Floor  
 Miami, FL 33128-1900  
 Phone: (305) 375-3111

## Section 26.29 Prompt Payment Mechanisms

### Prompt Payment: 26.29(a)

The SFRTA will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from SFRTA. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the SFRTA. This clause applies to both DBE and non-DBE subcontracts.

### Retainage: 26.29(b)

The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from SFRTA. This clause applies to both DBE and non-DBE subcontracts.

### Monitoring and Enforcement: 26.29(d)

SFRTA includes Payment Certification Forms in its solicitation packages. Contractor shall obtain from the Subcontractor an executed sworn Payment Certification Form and shall submit the form to SFRTA with each of the Contractor's requests for payment, with the exception of the first request for payment. Prior to receipt of any progress (partial) payment, the Contractor shall certify that all Subcontractors having an interest in the Contract have received their pro rata share of previous progress payments made to the Contractor for all Work completed and materials furnished in the previous period. Contractor shall provide this certification in the form designated by SFRTA, and shall include the DBE utilization percentage to date and the percentage of the total Contract price that will be performed by DBE subcontractors. SFRTA will not make any progress payments after the initial partial payment until the Contractor certifies that it has disbursed to all Subcontractors having an interest in the Contract their pro rata shares of the payment it has previously received.

The Contractor's failure to submit the Payment Certification Forms covering all payments made to Subcontractors, within thirty (30) days after receiving progress payments, is sufficient grounds for SFRTA to suspend further payment until certifications are received.

### **Section 26.31 DBE Directory**

The SFRTA maintains a directory indentifying firms including DBEs and non-DBEs. The SFRTA also utilizes the Florida Department of Transportation (FDOT) DBE directory. The Directory is available on-line at the following website:

<https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp>

### **Section 26.33 Overconcentration**

The SFRTA has not identified that overconcentration exists in the type of work that DBEs perform. SFRTA monitors DBE participation on contract to ensure there is not an overconcentration of DBE. The SFRTA will continue to monitor DBE participation and usage and will re-evaluate for overconcentration every 3 years

### **Section 26.35 Business Development Programs**

SFRTA has not established a business development program. SFRTA will re-evaluate the need for such a program every 3 years.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

The SFRTA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by monitoring payment records, work sites on which DBEs are performing.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award

### **Section 26.39 Small Business Participation**

The SFRTA has incorporated the following non-discriminatory actions/elements in its DBE program in an effort to facilitate competition by small business concerns (both DBEs and non-DBE small businesses). The SFRTA will take reasonable steps to include small business participation in procurements as prime contractors or subcontractors.

SFRTA will administer the Small Business Participation program on a race neutral basis.

For the purposes of this section, SFRTA will use the definition of Small Businesses Concern set out in 49 CFR Section 26.5 and Section 3 of the Small Business Act (SBA) and does not exceed the cap on average gross receipts specified in 49 CFR part 26.65(b).

Program participants will be required to establish eligibility via:

- Certification in connection with the Florida Unified Certification Program;
- Certification in connection with the Counties (Miami-Dade, Broward and Palm Beach) small business certifications.

This documentation must be provided to SFRTA in order to verify eligibility.

None of the provisions of this section shall be interpreted to impose any geographic preferences or limitations and the program is open to all small business concerns regardless of their location.

As part of this program element SFRTA will include the following strategies:

- On prime contracts not having DBE contract goals, prospective prime contractor/bidders will be encouraged to provide subcontracting opportunities of a size that small businesses, including DBEs can reasonably perform, rather than self-performing all the work involved. This will be stated in solicitation documents and reinforced at pre-bid / pre-proposal conferences
- SFRTA will analyze small business contracting opportunities in connection with contract awards. The DBELO will work with the Procurement Department to identify potential goods and services that may be unbundled, as appropriate, to create contracting opportunities for certified small businesses.
- SFRTA will reach out to small businesses in an effort to make them aware of potential contracting and subcontracting opportunities that will exist. SFRTA will utilize the Southern Florida Minority Supplier Development Council (SFMSDC), the Minority Enterprise Development (MED) and the National Institute of Government Purchasing (NIGP) Southeast Florida Chapter to increase outreach efforts.
- SFRTA attends multiple minority, DBE and small business tradeshows and conferences (including those mentioned above – SFMSDC Business Expo, MEDWeek and NIGP Trade show) on an annual basis to encourage small businesses to register to do business with SFRTA and to explain to firms “how to do business” with SFRTA.
- SFRTA’s on-line vendor registration system captures identification of small businesses, DBE and minority firms. This allows SFRTA to solicit quotations from and award Purchase Orders to small businesses registered per the commodity code of the requested goods or services.

- SFRTA provides information to small business regarding the means to obtain certification in accordance with the Florida Unified Certification Program.
- SFRTA will continue to place upcoming contracting opportunities on its website

SFRTA will begin undertaking the Small Business Program immediately and expects to have the program implemented by July 1, 2013.

### SUBPART C – GOALS, GOOD FAITH EFFORTS AND COUNTING

#### **Section 26.43 Set-Asides or Quotas**

The SFRTA does not use quotas in any way in the administration of this DBE program

#### **Section 26.45 Overall Goals**

In accordance with Section 26.45, SFRTA will submit its triennial overall goal to the FTA on August 1 of the year specified by FTA. The SFRTA is included in Group B for goal submission, with next goal submission due August 2014.

SFRTA will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by FTA.

The process generally used by the SFRTA to establish overall goal follows the two-step process described in Section 26.45 of the DBE regulation and is based on the demonstrable evidence of the availability of ready, willing and able DBE's relative to all businesses ready, willing and able to participate/perform contracting opportunities derived from DOT assisted projects/contracts. SFRTA began the goal setting process by determining a base figure for the relative availability of DBEs. SFRTA first assessed the UCP statewide directory to obtain the number of ready, willing and able DBE's. Firms are identified based on the federally funded contract projections made by SFRTA. The SFRTA also utilizes data from the Census Bureau's County Business Patterns (CBP) database to determine businesses that are ready, willing and able to do business with SFRTA in the local market area.

In the step two process, SFRTA considers the median past participation based on the volume of work DBE's have performed in recent years. The step one base figure is then adjusted. The detailed methodology for setting the overall goal is **Attachment 4**

Before establishing the overall DBE goal, SFRTA will consult with various organizations, including the DOT Office of Equal Opportunity, and Minority Organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and SFRTA's efforts to establish a level playing field for the participation of DBEs.

Following this review and consultation, SFRTA will publish a notice of the proposed overall goal in local newspapers, send to minority focused organizations; post at the SFRTA's

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administrative offices, and on the SFRTA's webpage. The notice will inform the public that the proposed goal and its rationale are available for inspection during normal business hours at SFRTA's administrative headquarters for 30 days following the date of the notice, and informing the public that SFRTA will accept comments on the goal for 45 days from the date of the notice. Normally, the SFRTA will issue this notice on or before June 15<sup>th</sup>. The notice will include the address to which comments may be sent and the proposal may be viewed.

SFRTA's overall goal submission to DOT will include the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate), a copy of the methodology used to develop the goal, a summary of information and comments received during this public participation process and responses and proof of publication of the goal.

The SFRTA will begin using the overall goal on October 1<sup>st</sup> of the specified year, unless SFRTA received other instructions from DOT. If SFRTA establish as goal on a project basis, SFRTA will begin using the goal by the time of the first solicitation for a DOT-assisted contract for the project. The goal will remain effective for the duration of the three-year period established and approved by FTA.

#### **Section 26.47 Goal Setting and Accountability**

If the awards and commitments shown on SFRTA's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, we will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Implement a corrective action plan to correct the problems identified in the analysis; and
3. Maintain information/records regarding the analysis and efforts made for at least 3 years

#### **Section 26.49 Transit Vehicles Manufacturers Goals**

SFRTA will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section.

#### **Section 26.51 Meeting Overall Goals/Contract Goals**

The SFRTA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. SFRTA will do so by the following means:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses participation
2. Providing names of agencies that can assist in overcoming limitations such as inability to obtain bonding or financing
3. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate)-
4. Ensure potential prime contractors are made aware of the UCP DBE directory listing of certified DBE firms;

SFRTA will use contract goals to meet any portion of the overall goal that SFRTA does not project being able to meet using race-neutral means. Contract goals are established so that over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

SFRTA will establish contract goals only on those DOT assisted contracts that have subcontracting possibilities. SFRTA is not required to set a contract goal on every DOT assisted contract and is not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved the location of the work, and the availability of DBEs for the work of the particular contract. SFRTA will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

SFRTA's contract goals will provide for participation by all certified DBEs and will not be subdivided into group-specific goals.

### **Section 26.53 Good Faith Efforts**

#### Award of Contracts with a DBE Contract Goal: 26.53(a)

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, SFRTA will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

#### Evaluation of Good Faith Efforts: 26.53(a) & (c)

The DBELO, or designee, and the project manager are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to

be regarded as responsive. The process used to determine whether good faith efforts have been made will be based on an evaluation made by the SFRTA, by reviewing the bidder/offerer's efforts and the evidence provided to support its efforts to determine if they are sufficient. The quality, quantity and intensity of the various efforts will be examined.

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Successful achievement of good faith efforts will be based on criteria specified by SFRTA, which includes the following areas;

- Advertisement
- Community Outreach
- Defining Scope of Work
- Written Requests for Proposal
- Solicitation Follow-up
- Assistance in Bonding and Insurance
- Attend Pre-Bid/Proposal Conference
- List of Proposals for DBE's

SFRTA will ensure that all information is complete and accurate and adequately documents the bidder/offerer's good faith efforts before SFRTA commit to the performance of the contract by the bidder/offeror.

Information to be Submitted: 26.53(b)

SFRTA treats bidders/offers' compliance with good faith efforts' requirement as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative Reconsideration: 26.53(d)

Within 5 days of being informed by SFRTA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Jack Stephens  
SFRTA's Deputy Executive Director  
800 NW 33rd Street, Suite 100  
Pompano Beach, Florida 33064  
Telephone No. (954) 942-7245  
Fax No. (954) 788-7961  
E-mail Address: [stephensj@sfirta.fl.gov](mailto:stephensj@sfirta.fl.gov)

As part of the reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. SFRTA will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or made adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals: 26.53(f)

SFRTA requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without prior written consent from the SFRTA Executive Director or designee. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation

Before transmitting to SFRTA its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to SFRTA prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise SFRTA of why it objects to the proposed termination.

When a DBE subcontractor is terminated for "good cause", or fails to complete its work on the contract for any reason, SFRTA will require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the procurement. We will require the prime contractor to notify the DBELO

immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

SFRTA will include in each prime contract a provision for appropriate administrative remedies that it will invoke if the prime contractor fails to comply with the DBE requirements of the contract.

SFRTA will apply the same requirements to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, SFRTA will count only the work the DBE has committed to performing with its own forces and/or the work that it has committed to be performed by DBE subcontractors and DBE suppliers. In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

Contractor's failure to comply with DBE requirements shall be considered a material breach of contract that may result in contract termination or any such other remedy as the SFRTA deems appropriate, including but not limited to all remedies provided in the event of a default of contract.

#### Sample Bid Specification:

The requirement of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the SFRTA to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of \_\_\_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts

#### **Section 26.55 Counting DBE Participation**

The SFRTA will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

## SUBPART D & E - CERTIFICATION STANDARDS

### **Section 26.61 – 26.73 Certification Process**

The SFRTA is not a certifying agency and will utilize the Unified Certification Program (UCP). It is the policy of the SFRTA to accept DBE certifications from agencies that have reviewed and certified DBE firms in accordance with 49 CFR, Part 26. For information about the certification process, firms should contact the FDOT's Equal Opportunity Office at (<http://www.dot.state.fl.us/equalopportunityoffice/>)

### **Section 26.81 Unified Certification Programs**

SFRTA is the member of a Unified Certification Program (UCP) administered by the Florida Department of Transportation Equal Opportunity Office. The UCP will meet all of the requirements of this section. SFRTA will use and count for DBE credit only those DBE firms certified by the State of Florida UCP.

Additional information regarding the Florida UCP can be found at <http://www.dot.state.fl.us/equalopportunityoffice/>

### **Section 26.83 – 26.91 Procedures for Certification Decisions**

Any firm or complainant may appeal a Florida UCP's decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation  
Office of Civil Rights Certification Appeals Branch  
1200 New Jersey Ave. SE  
West Building, 7<sup>th</sup> Floor  
Washington, D.C., 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting.

## SUBPART F - COMPLIANCE AND ENFORCEMENT

### **Section 26.109 Information, Confidentiality, Cooperation**

We will safeguard from disclose to third party information that may reasonable be regarded as confidential business information, consistent with Federal, state and local law.

#### **General**

Florida's Public Records Law, Ch. 119, F.S. (the "Public Record Law), requires governmental entities to provide access to public records, absent a statutory exemption.

Section 119.011(12), F.S., defines "public records" to include: all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

Section 119.011(2), F.S., defines "agency" to include: any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." SFRTA is an agency, pursuant to this statutory definition, and therefore, subject to the Public Record Law.

Financial records received by agencies are generally open to inspection unless a specific statutory exemption exists. The following is a discussion of the pertinent Public Records Law exemptions that could apply to "confidential business information" received by the agency.

### **Personal Financial Records**

In the absence of a statutory exemption, financial information prepared or received by an agency is subject to Ch. 119, F.S.<sup>1</sup>

### **Competitive Procurements**

If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. Section 119.071(1)(b)3., F.S.

Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a public works project is exempt from disclosure requirements. Section 119.071(1)(c), F.S.

### **Copyrighted material obtained by agencies**

<sup>1</sup> See *Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997) (personal income tax returns and financial statements submitted by housing finance authority members as part of the authority's application to organize a bank are subject to disclosure). See also *Inf. Op. to Lovelace*, April 3, 1992 (records identifying mortgage recipients held by a bank acting as agent of a housing finance authority in granting mortgages funded by the authority are public records).

The federal copyright law vests in the owner of a copyright, subject to certain limitations, the exclusive right to do or to authorize, among other things, the reproduction of the copyrighted work and the distribution of the copyrighted work to the public by sale or other transfer of ownership. See AGO 97-84, citing to pertinent federal law and interpretive cases. However, the Attorney General's Office has concluded that the fact that material received by a state agency may be copyrighted does not preclude the material from constituting a public record.<sup>2</sup>

The federal copyright law, when read together with Ch. 119, F.S., authorizes and requires the custodian of records for an agency to make available copyrighted materials in compliance with federal copyright laws.<sup>3</sup>

### **Trade secrets and proprietary confidential business information**

While there is no generic exemption for information claimed to be "proprietary confidential business information," Florida law does contain an exemption for "trade secret information." Specifically, Section 815.045, F.S. states:

The Legislature finds that it is a public necessity that trade secret information as defined in s. 812.081, and as provided for in s. 815.04(3), be expressly made confidential and exempt from the public records law because it is a felony to disclose such records. Due to the legal uncertainty as to whether a public employee would be protected from a felony conviction if otherwise complying with chapter 119, and with s. 24(a), Art. I of the State Constitution, it is imperative that a public records exemption be created.

### **"Trade secret" is defined in Section 812.081, F.S. to mean:**

The whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

<sup>2</sup> See AGOs 75-304 and 90-102 and *State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy*, 636 So.2d 1377 (Fla. 1<sup>st</sup> DCA 1994).

<sup>3</sup> See AGOs 03-26 and 97-84 and *State v. Allen*, 14 F.L.W. Supp. 172a (Fla. 7<sup>th</sup> Cir. Ct. Nov. 2, 2006).

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Section 815.045, F.S., states that it, "should be read to exempt from disclosure as public records all trade secrets as defined in [s. 812.081(1)(c), F.S.],<sup>4</sup> The law in Florida is that documents submitted by a private party which constitute trade secrets as defined in s. 812.081, and which are stamped as confidential at the time of submission to an agency, are not subject to public access.<sup>5</sup> But see *Cubic Transportation Systems, Inc. v. Miami-Dade County*, 899 So. 2d 453, 454 (Fla. 3d DCA 2005) (company, which supplied documents to an agency and failed to mark them as "confidential" and which continued to supply them without asserting even a legally ineffectual post-delivery claim to confidentiality for some thirty days, failed adequately to protect an alleged trade secret claim). However, the claimed trade secrets must actually constitute trade secrets as defined by law.<sup>6</sup>

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent to the submitter.

#### Monitoring work/Payment to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the SFRTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

SFRTA will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amounts paid to DBE subcontractors equal or exceed the dollar amounts stated in the schedule of DBE participation.

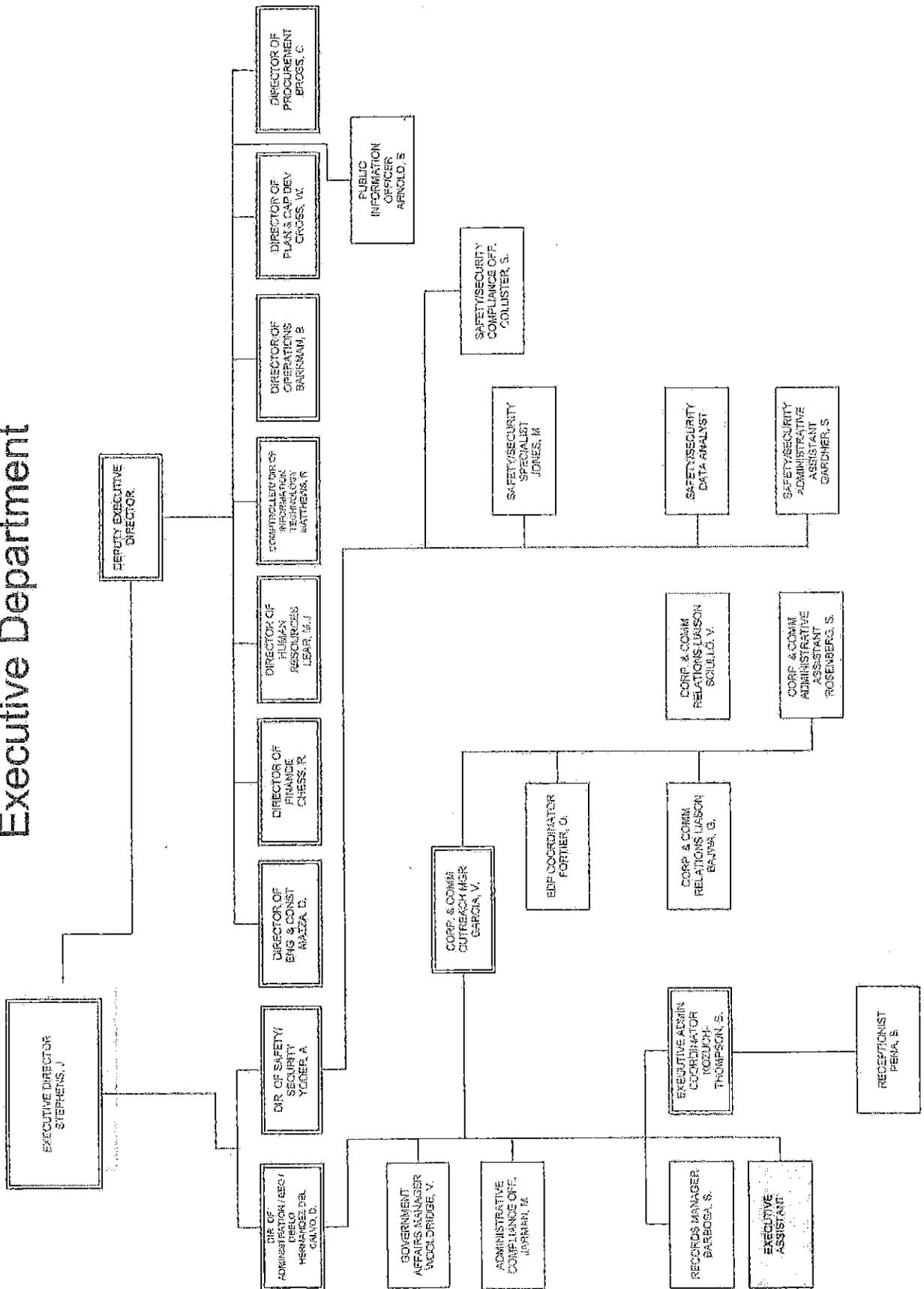
<sup>4</sup> *Sepro Corporation v. Florida Department of Environmental Protection*, 839 So. 2d 781, 785-787 (Fla. 1st DCA 2003), review denied sub nom., *Crist v. Florida Department of Environmental Protection*, 911 So. 2d 792 (Fla. 2005)  
<sup>5</sup> *Id.* at 784, and see *Seta Corporation of Boca, Inc. v. Office of the Attorney General*, 756 So. 2d 1093 (Fla. 4th DCA 2000).

<sup>6</sup> See s. 812.081, F.S. For example, in *James, Hoyer, Newcomer, Smiljanich, & Yanchunis, P.A., v. Rodale, Inc.*, 41 So. 3d 386, 389 (Fla. 1st DCA 2010).

## ATTACHMENTS

- Attachment 1: Organization Chart
- Attachment 2: DBE Directory Instructions
- Attachment 3: Monitoring and Enforcement mechanism
- Attachment 4: Overall Goal Calculation
- Attachment 5: Form 1 & 2 for Demonstration of Good Faith Efforts
- Attachment 6: Regulation: 49 CFR Part 26

# Executive Department



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Attachment 2

Florida UCP DBE Directory

A link to the Florida UCP DBE directory is listed below

<https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp>

### Attachment 3

#### Monitoring and Enforcement Mechanisms/Legal Remedies

The South Florida Regional Transportation Authority's (SFRTA's) remedy to enforce the DBE requirements is contained in its contracts:

- Breach of contract action, pursuant to the terms of the contract;

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including but not limited to the following:

- Suspension or debarment proceedings pursuant to 49 CFR part 26
- Enforcement action pursuant to 49 CFR part 31 (Program Fraud and Civil Remedies)
- Prosecution pursuant to 18 USC 1001 (Department of Justice – Fraud)



**METHODOLOGY FOR SETTING THE OVERALL GOAL FOR DBE PARTICIPATION IN SFRTA PROJECTS FOR FISCAL YEARS 2012 - 2014**

The Disadvantaged Business Enterprise (DBE) Regulation, 49 Code of Federal Regulations Part 26, has established requirements for setting an overall goal for DBE participation in Federally funded projects. The Rule provides a two-step process for overall goal setting, measuring the current percentage of ready, willing and able DBE's in the local market area.

**Step 1**

The South Florida Regional Transportation Authority (SFRTA) began the goal setting process by determining a base figure for the relative availability of DBEs. SFRTA first assessed the statewide directory to obtain the number of ready, willing and able DBE's in the tri-county area (Miami-Dade, Broward and Palm Beach Counties). Firms were identified based on the federally funded contract projections made by SFRTA. The resulting number of DBE's available in the statewide directory becomes the numerator. The denominator was derived from the Census Bureau's County Business Patterns (CBP) database and represents all businesses that are ready, willing and able to do business with SFRTA in the local market area.

$$\frac{\text{DBE's}}{\text{All Businesses}} = \frac{(398)}{(4,857)} \times 100 = 8\% \text{ Base Figure}$$

The 8% base figure is the presumed level of participation by DBE's absent discrimination.

**Step 2**

To adjust the base figure in Step One, SFRTA considered the median past participation based on the volume of work DBE's have performed in recent years. The following was determined:

**Past DBE Participation**

<u>FY 2007</u>		
Total DBE Dollars	\$ 330,889	= 15%
Total Contract Dollars	\$2,279,543	

<u>FY 2008</u>			
Total DBE Dollars	<u>\$ 353,101</u>	=	8%
Total Contract Dollars	\$4,313,614		
 <u>FY 2009</u>			
Total DBE Dollars	<u>\$ 312,103</u>	=	8%
Total Contract Dollars	\$3,674,047		
 <u>FY 2010</u>			
Total DBE Dollars	<u>\$ 4,057,277</u>	=	13%
Total Contract Dollars	\$31,329,237		

Arriving at the Median Past Participation:

SFRTA arrived at the median by arranging the past participation values in order from low to high: 8%, 8%, 13% and 15%. The median percentage was then arrived at by taking the middle two values (8% and 13%) and deriving the average as follows:

$$\frac{8 + 13}{2} = 10.5\%$$

Adjusting Step One Base Figure

SFRTA then added the Step One Base Figure to the median and divided the total by two and arrived at the following result:

$$\frac{8 + 10.5}{2} = 9\%$$

After analyzing the above data and reviewing upcoming contract procurements for fiscal years (FY) 2012 through 2014, SFRTA will utilize the 9% as the Agency's overall projected DBE goal for FY 2012 through 2014.

SFRTA estimates that it will meet its overall projected goal of 9%, through race-neutral measures. SFRTA will use contract goals to meet any portion of the overall goal that cannot be met using race-neutral means.

**Attachment 5 – Form 1**

**Request for Good Faith Efforts Determination**

Date: \_\_\_\_\_

\_\_\_\_\_ [insert name of Successful Proposer or PMC] is seeking a Good Faith Efforts Determination from SFRTA by submittal of this form and associated backup information. The following information is included in support of this request:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

[Insert more lines, as needed]

\_\_\_\_\_ [insert name of Successful Proposer or PMC] requests that SFRTA amend the Contract DBE Goal or Goal of Record [circle whichever applies] from \_\_\_\_% to \_\_\_\_%.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Printed name of Notary Public)

My Commission Expires:

Personally Known

Produced \_\_\_\_\_  
as Identification

Attachment 5 - Form 2

INTENT TO PERFORM AS A SUBCONTRACTOR

TO: \_\_\_\_\_  
(Name of Contractor)

ITB/RFP NUMBER:

PROJECT TITLE:

The undersigned intends to perform subcontract work in connection with the above project as  
(Check One):

- an individual
- a partnership
- a corporation

The DBE status of the undersigned has been described in connection with the above project.

The undersigned is prepared to perform the following described work in connection with the above project:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and at the following price: \$ \_\_\_\_\_

NOTE: Eliminate Price on Professional Service Contracts ONLY

The prime contractor has projected the following commencement date for such work, and the undersigned project's completion of such work as follows:

\_\_\_\_\_ Projected Commencement Date  
 \_\_\_\_\_ Projected Completion Date

With respect to the proposed subcontract described above, \_\_\_\_\_% of the dollar value of such subcontract will be sublet and/or awarded to non-DBE contractors and/or non-DBE suppliers.

The undersigned will enter into a formal agreement for the above work with the prime contractor conditioned upon execution of a contract with SFRTA. As a DBE subcontractor, I will cooperate with the certification and monitoring process set forth by DBE for the referenced project.

Signature of DBE	Date	Name of DBE Firm
Typed Name		Address of DBE Firm
Typed Title		Telephone Number

**Attachment 6**

**Regulations: 49 CFR Part 26**

A link to the DBE regulation is available on the Federal Transit Administration's Civil Rights DBE web page (link below)

<http://www.fia.dot.gov/civilrights/12326.html>

The following link is for the U.S. Government Printing Office (GPO) that has current versions of the CFR.

[http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.pl](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26_main_02.pl)