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

Memorandum

MIAMI-DADE COUNTY

Date: June 3, 2010

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

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

Resolution No. R-603-10

From: George M. Burgess
County Manager

Subject: Resolution Authorizing an Agreement with the Florida Department of Transportation, for the Construction, Operation and Maintenance of the MIC - Earlington Heights Connector Project Over and Upon the South Florida Rail Corridor Right-of-Way

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the execution of an agreement with the Florida Department of Transportation (FDOT), for the construction, operation and maintenance of the MIC - Earlington Heights Connector project over and upon the South Florida Railroad Corridor Right-of-Way.

SCOPE

The premises site within the South Florida Railroad Corridor vicinity is physically located within Commission Districts 2 and 6. However, the MIC – Earlington Heights Connector project has a countywide impact.

FISCAL IMPACT/FUNDING SOURCE

There is no fiscal impact to Miami-Dade County.

TRACK RECORD/MONITOR

Miami-Dade County (County) has entered into numerous agreements with FDOT in the past. The person responsible for managing this agreement is Froilan I. Baez, Acting Chief, Right of Way, Utilities & Property Management Division.

DELEGATED AUTHORITY

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

BACKGROUND

On May 11, 1988, FDOT and CSX Transportation (CSXT) entered into a purchase agreement for the rail corridor described herein, at which time, FDOT became the owner of said rail corridor property and CSXT retained an easement for the rail freight operations within the rail corridor and under which CSXT agreed to manage and maintain the property on behalf of FDOT pursuant to the purchase agreement entered into on May 11, 1988 by CSXT and FDOT and made a part of this agreement by reference hereto. Furthermore, on July 6, 2006, the Board approved Resolution R-825-06 authorizing the acquisition of land for the Right-of-Way needed for the construction of the MIC – Earlington Heights Connector project, a 2.4 mile double track elevated guideway linking the existing Earlington Heights Metrorail station to the Miami Intermodal Center (MIC).

MDT will be constructing four new overhead bridges and five foundations columns to support the aerial guideway over, across, and upon the South Florida Rail Corridor; located at CSXT mileposts SX 1036.38; SX 1036.64; SX 1036.81; and SX 1036.83. Miami-Dade Transit (MDT) is required to enter into this agreement with FDOT in order to facilitate the construction, occupancy, operation and maintenance of its MIC – Earlington Connector project within the South Florida Rail Corridor right-of-way.

The agreement stipulates the terms and conditions necessary in considerations of the mutual undertakings between the County and FDOT in which both parties must agree, and by approving this resolution as follows, will put into effect these binding terms and conditions.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: June 3, 2010

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

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

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(J)(1)(D)
6-3-10

RESOLUTION NO. **R-603-10**

RESOLUTION AUTHORIZING AN AGREEMENT WITH FLORIDA DEPARTMENT OF TRANSPORTATION, FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF THE MIAMI INTERMODAL CENTER - EARLINGTON HEIGHTS CONNECTOR PROJECT OVER AND UPON SOUTH FLORIDA RAIL CORRIDOR RIGHT-OF-WAY

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

WHEREAS, the State of Florida Department of Transportation (FDOT), in the interest and betterment of the public, is in agreement with Miami-Dade County to permit the occupancy of the airspace above and foundation space below over the South Florida Railroad Corridor Right of Way,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Agreement between Miami-Dade County and FDOT, for construction, operation and maintenance of the Miami Intermodal Center - Earlington Heights Connector project over and upon the South Florida Rail corridor, and hereby authorizes the County Mayor or designee to execute such Agreement as may be required on behalf of Miami-Dade County, Florida, with right to exercise all provisions contained therein.

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of June, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Bruce Libhaber

RAILROAD AGREEMENT
GRADE SEPARATION
SOUTH FLORIDA RAIL CORRIDOR – ONLY

FINANCIAL PROJECT ID	ROAD NAME OR NUMBER	COUNTY NAME	PARCEL AND R/W NUMBER	FAP NUMBER
412795-1-57-01		Miami-Dade		

THIS AGREEMENT, made and entered this _____day of _____, _____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION,** hereinafter called the **DEPARTMENT,** and the **COUNTY** of **MIAMI-DADE** a political subdivision of the State of Florida, hereinafter called the **COUNTY.**

WHEREAS, the **DEPARTMENT** and **CSX Transportation (CSXT)** entered into a Purchase and Sale Agreement for the Rail Corridor described herein on May 11, 1988 at which time the **DEPARTMENT** became the owner of said property and **CSXT** retained an easement for Rail Freight Operations within the Rail Corridor, and under which CSXT manages and maintains the property on behalf of the **DEPARTMENT** pursuant to the Phase A Operating and Management Agreement entered into on May 11, 1988 by **CSXT** and the **DEPARTMENT** and made a part of this Agreement by reference hereto;

WHEREAS, the **COUNTY** proposes to construct the Miami Intermodal Center (MIC) – Earlington Heights Connector Project, a 2.4 mile double track elevated guideway which crosses over the South Florida Railroad Corridor. As part of the Earlington Heights Connector Project, the COUNTY will be constructing or cause to be constructed, four new overhead bridges and five foundation columns that will be necessary to support the aerial guideway over, across and upon the South Florida Rail Corridor; located at CSXT mileposts SX 1036.38; SX 1036.64; SX 1036.81; and SX 1036.83 (the "Project") in accordance with the plan sheets attached hereto and incorporated herein as Exhibit "A."

WHEREAS, the DEPARTMENT, in the interest of the betterment and expansion of public transportation, are in agreement with the **COUNTY** to permit the occupancy of the airspace above and foundation space below and/or on the South Florida Rail Corridor for the construction, operation and maintenance of the Project within the corridor.

WHEREAS, the **COUNTY** proposes to construct said infrastructure and the necessary approaches thereto which will either cross over and/or be located upon the right-of-way and shall not interfere with the tracks; and

NOW, THEREFORE, in consideration of the mutual undertaking as herein set forth, the parties agree as follows:

1. The COUNTY recognizes and agrees that all construction, operations, and activities on the corridor are governed by the terms and conditions of the Phase A Operating Agreement referenced above.

2. In so far as it has a right to do so, the DEPARTMENT hereby grants to the COUNTY, without warranty, the right to construct, operate and maintain the Project across its right-of-way and over its tracks at locations in accordance with Exhibit A, and to remain in place as long as the facilities are operational. In the event there is a sale of any of the property which is the subject hereof, including the areas where the structures cross the DEPARTMENT'S right-of-way, said conveyance shall be granted subject to the rights granted herein.

3. In so far as it has a right to do so, the DEPARTMENT, hereby grants to the COUNTY, without warranty, the right to occupy the air space above the tracks and foundation space below and/or on the South Florida Rail Corridor at all locations and to remain in place as long as the facilities are operational. In the event there is a sale of any of the property which is the subject hereof, including the areas where the structures cross the DEPARTMENT'S right-of-way, said conveyance shall be granted subject to the rights granted herein.

4. Other than as provided herein, COUNTY agrees that the construction, operation and maintenance of the Project shall in no way interfere with the DEPARTMENT, CSXT, SFRTA or Amtrak's use of the South Florida Rail Corridor. Any existing or future use by the DEPARTMENT, CSXT, SFRTA or Amtrak shall in no way interfere with the COUNTY's Project as constructed pursuant to this Agreement.

5. COUNTY shall at all times keep the corridor free from obstruction except as may be required temporarily from time to time to effect the construction, inspections, maintenance, repairs, improvements and replacement of the Project. After

completion of the construction of the Project COUNTY shall provide at least thirty (30) days notice to grantor prior to commencement of any work that may result in obstruction of the corridor except in the case of emergency requiring immediate remedial action. Any such work performed must comply with DEPARTMENT and CSXT's specifications rules and procedures.

6. The COUNTY shall be responsible to pay for any and all repairs or damage to the rail corridor resulting from construction, operation or maintenance of the Project by the County or its contractors. All such repairs shall be coordinated with and be approved by CSXT and the DEPARTMENT.

7. The COUNTY will provide, furnish or have furnished, all necessary materials required for, and will construct or have constructed said Project at its expense, said work to be done and materials to be furnished in accordance with approved plans for the Project. Inspections and monitoring of the Project shall be done in accordance with the terms and conditions of the permit issued by the DEPARTMENT and any requirements of CSXT. Upon completion of the Project, the COUNTY will, at its expense, maintain the same in accordance with all applicable safety and maintenance standards. Future maintenance activities will require additional permits, if applicable, from the DEPARTMENT and CSXT.

8. All work contemplated hereunder shall at all times be subject to the approval of the DEPARTMENT and CSXT. In addition to all the notice requirements of CSXT for performance of the work on the rail corridor, the COUNTY, or the COUNTY'S contractor, shall give the DEPARTMENT at least seventy-two (72) hours notice prior to the performance of any work within the limits of the DEPARTMENT'S right-of-way. The COUNTY agrees to obtain necessary permits and comply with applicable requirements from CSXT prior to proceeding with construction of the Project within the South Florida Rail Corridor.

9. The COUNTY will pay for the cost of CSXT watchman or flagging service when the COUNTY'S contractor is carrying out work adjacent to DEPARTMENT'S tracks and whenever the contractor is performing work requiring the movement of employees, trucks, or other equipment across the tracks.

10. In addition to the insurance that COUNTY requires of its contractor, COUNTY shall acquire or require its contractor to purchase and maintain insurance in compliance with the insurance requirements attached to this Agreement as Exhibit B. Neither COUNTY nor contractor shall commence work on the Project until such policy or policies have been submitted and approved by the DEPARTMENT.

11. The COUNTY will bear the cost of all temporary and permanent changes made necessary in the DEPARTMENT'S signal wire line or other facilities and in the wire line facilities of any utilities located on the DEPARTMENT'S right-of-way occasioned by the construction, operation and maintenance of the Project.

12. The COUNTY agrees to do all work with its own forces or by a contractor paid under a contract let by the COUNTY, all under the supervision and approval of the DEPARTMENT and CSXT as set forth herein.

13. The COUNTY has obtained, or will obtain, at its sole expense, all authorizations, permits and approvals from all local, state and federal agencies, including CSXT, COUNTY and FDOT, and their respective governing bodies and regulatory agencies, necessary to proceed with the Project and to appropriate all funds necessary to construct the Project.

14. Attached hereto, and by this reference made a part hereof, are plans and specifications of the work to be performed by the COUNTY pursuant to the terms hereof, attached as Exhibit "A" (the "Plans"). All work on the Project shall be performed in substantial conformance with the plans and specifications as approved by the DEPARTMENT, and CSXT, and all subsequent plan changes shall likewise be approved by the DEPARTMENT and CSXT Transportation, when applicable.

15. Should the use of the Project be abandoned prior to completion of construction, then all rights hereby granted to the COUNTY shall thereupon cease and terminate and the COUNTY will, at its sole cost and in a manner satisfactory to the DEPARTMENT and CSXT, remove said structure(s) and restore the DEPARTMENT'S property to the condition previously found. In the event that the COUNTY fails and refuses to do so, then the DEPARTMENT may, at its option, remove such structures and restore its property, and the COUNTY will, in such event, upon bill rendered, pay to the DEPARTMENT the costs incurred by it in such removal and restoration.

16. The COUNTY agrees that it will indemnify and hold harmless the DEPARTMENT, SFRTA and CSXT and all of their officers, agents, employees, and affiliates, to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of such statute whereby the COUNTY shall not be held liable to pay a personal injury or property damage

claim or judgment by any one person which exceeds the sum of $100,000, or any claim or judgment or portion thereof, which, when totaled with all other occurrence, exceeds the sum of $200,000, from and against any claim, demand, payment, suits, actions, judgments, settlements, loss, damage, cost charge, fine, penalty, liability, or expense arising out of any act, action, neglect, omission, or delay by the COUNTY or its contractors during construction, operation or maintenance of the Project, whether direct or indirect, except that the COUNTY shall not be deemed to indemnify the DEPARTMENT, SFRTA and CSXT from any liability or claim arising out of the negligence of the DEPARTMENT, SFRTA, CSXT, or any unrelated third party. The provisions of this section shall survive the termination or expiration of this Agreement.

17. COUNTY shall comply, and shall require its contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction operation and maintenance of the Project.

18. COUNTY shall notify DEPARTMENT promptly of any loss, damage, injury or death arising out of or in connection with the Project work.

19. All plans, specifications, drawings and other documents necessary or appropriate for the design and construction of the Project within DEPARTMENT'S right-of-way shall be prepared, at COUNTY's sole cost and expense, by the COUNTY, CSXT, or their respective contractors.

20. By its review, DEPARTMENT signifies only that such Plans and improvements satisfy DEPARTMENT requirements, and DEPARTMENT expressly disclaims all other representations and warranties in connection with the plans, including, but not limited to, the integrity, suitability or fitness for the intended purpose or whether the improvements are constructed in accordance with the plans. Review of the plans by the DEPARTMENT does not relieve the COUNTY or its consultants and contractors of any professional or other liability for the Plans.

21. Upon request by DEPARTMENT, COUNTY shall furnish to DEPARTMENT descriptions and parcel sketches for the permits.

22. For any reason, COUNTY may terminate this Agreement by delivery of written notice to DEPARTMENT. Should the COUNTY terminate this Agreement, then all rights hereby granted to the COUNTY shall thereupon cease and terminate and the COUNTY will, at its sole cost and in a manner satisfactory to the DEPARTMENT and CSXT, remove said structure(s) and restore the DEPARTMENT'S property to the condition previously found. In the event that the COUNTY fails and refuses to do so, then the DEPARTMENT may, at its option, remove such structures and restore its property, and the COUNTY will, in such event, upon bill rendered, pay to the DEPARTMENT the costs incurred by it in such removal and restoration.

23. COUNTY shall own and, without cost to DEPARTMENT, shall maintain, repair, replace and renew, or cause same to be done, in good condition and repair to DEPARTMENT's and CSXT's reasonable satisfaction, the guideway overpass structure, the roadway surfacing, the roadway slopes, the retaining walls, drainage facilities and any other element of said Project. In the event that COUNTY fails to properly maintain such structures and improvements, and such failure, in the reasonable discretion of DEPARTMENT or CSXT, jeopardizes the safe and efficient operation of its property, DEPARTMENT shall be entitled to remedy such failure and recover from COUNTY the costs incurred by DEPARTMENT in doing so.

24. After construction of the Project, COUNTY shall not undertake any alteration, modification or expansion of the constructed Project, without the prior approval of DEPARTMENT.

25. The parties agree that neither COUNTY nor its contractors shall be deemed either agents or independent contractors of DEPARTMENT. Except as otherwise provided by this Agreement, DEPARTMENT shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by COUNTY or COUNTY's contractors, or the construction practices, procedures, and professional judgment employed by COUNTY or its contractor to complete the Project. Notwithstanding the foregoing, COUNTY shall be required to comply with all applicable regulations of CSXT relating to construction of the Project. This Section 25 shall in no way affect the absolute authority of DEPARTMENT to prohibit COUNTY or its contractors or anyone from entering DEPARTMENT's right-of-way, or to require the removal of any person from its property, if it determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the Project exist.

26. This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral

understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.

27. If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.

28. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the parties at the addresses set forth below, or such other addresses as either party may designate by delivery of prior notice to the other party:

If to FDOT:
Florida Department of Transportation
3400 W. Commercial Blvd.
Ft. Lauderdale, Florida 33309
Attention: Gerry O'Reilly, Director of Transportation Development

If to County:
Miami-Dade Transit
701 N.W. First Court, Ste. 1500
Miami, Florida 33136
Attention: Surinder Sahota

29. The parties agree that if any part, term, or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term, or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable.

30. This Agreement shall be governed by the laws of the State of Florida.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, each by its duly authorized officers, as of the date of this Agreement.

ATTEST
HARVEY RUBIN, CLERK
State of Florida

By:

_____
Deputy Clerk

Approved by Office of County Attorney
As to form and sufficiency

By:

Bruce Libhabe

Miami-Dade County, Florida
a political subdivision of the State of Florida
BY ITS BOARD OF COMMISIONERS

_____
Name:
Title: County Manager

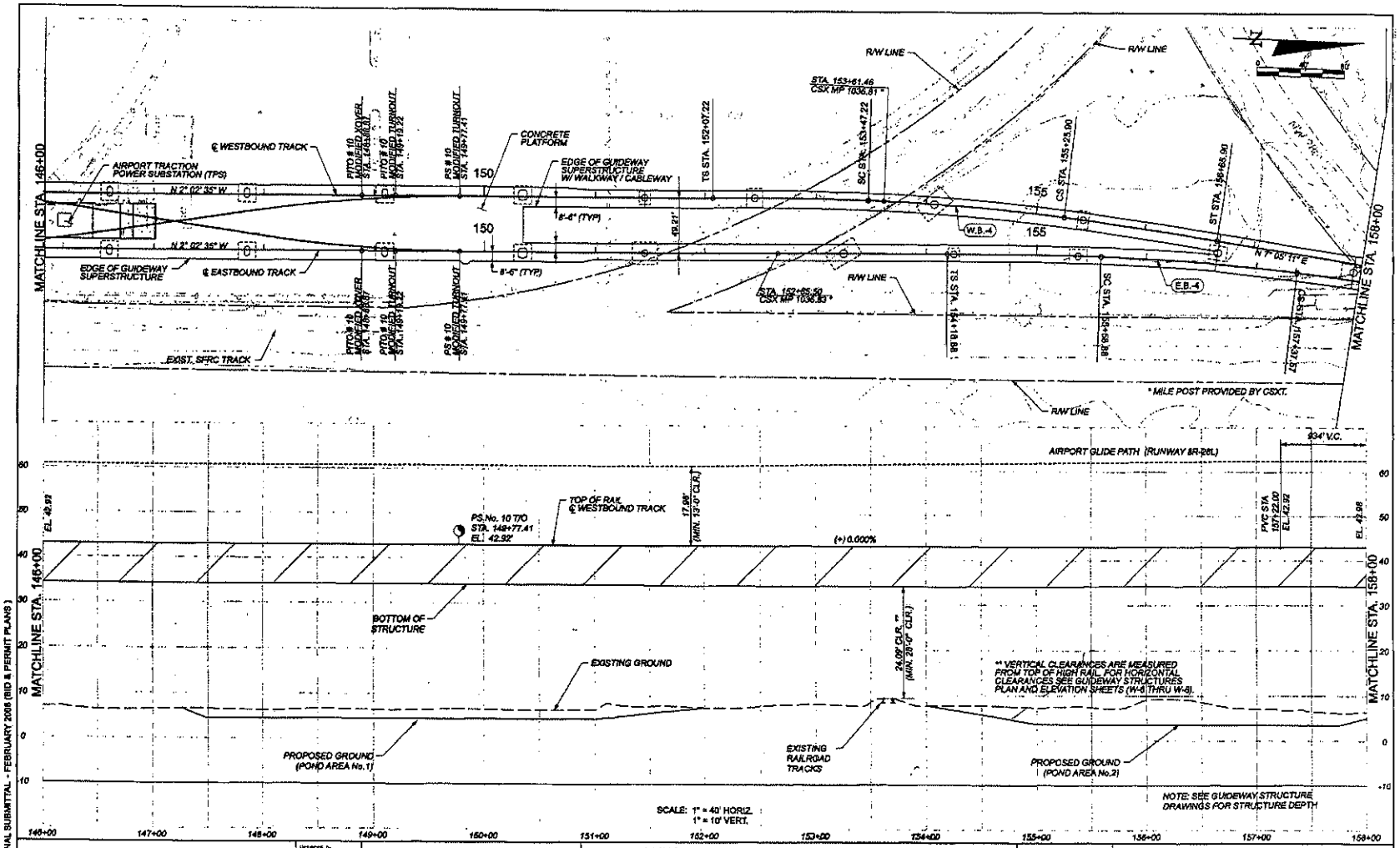
_____
Date:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

By:

_____

_____
TITLE DATE



FINAL SUBMITTAL - FEBRUARY 2008 (BID & PERMIT PLANS)

Designed by G.Hunt	MIAMI-DADE COUNTY	MIAMI-DADE TRANSIT	MIC-EARLINGTON HEIGHTS CONNECTOR - NCP004-TR06-CT2
Drawn by M. Torres			URS Corporation Southern 7650 Corporate Center Drive Suite 400 Miami, FL 33126-1220 Tel: (305) 262-7455 C.A. No. EB 00000002
Checked by B.Houppermans			
Drawing Scale As Noted	PEOPLE'S TRANSPORTATION PLAN		

TRACKWORK

ALIGNMENT PLAN AND PROFILE
STA. 146+00 TO STA. 158+00

TW-015 | 40

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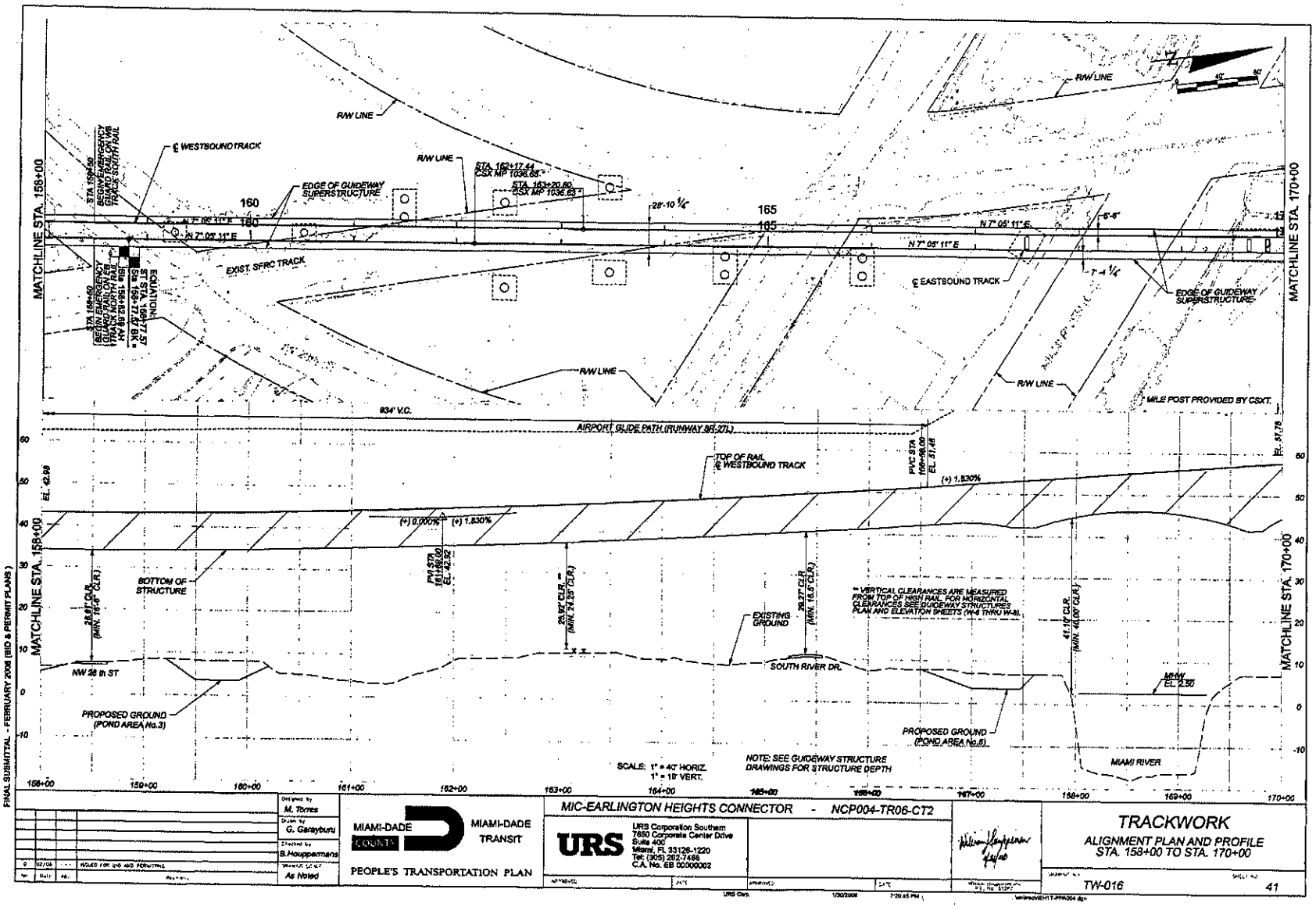

FINAL SUBMITTAL - FEBRUARY 2008 (BID & PERMIT PLANS)

Designed by	M. Torres	MIAMI-DADE COUNTY / MIAMI-DADE TRANSIT	MIC-EARLINGTON HEIGHTS CONNECTOR - NCP004-TR06-CT2
Drawn by	G. Garayburu		
Checked by	B.Houppermans	URS Corporation Southern, 7650 Corporate Center Drive, Suite 400, Miami, FL 33126-1220, Tel: (305) 262-7466, C.A. No. EB 00000002	TRACKWORK
Scale	As Noted	PEOPLE'S TRANSPORTATION PLAN	ALIGNMENT PLAN AND PROFILE STA. 158+00 TO STA. 170+00
0 02/08	ISSUED FOR BID AND PERMITTING		TW-016 41

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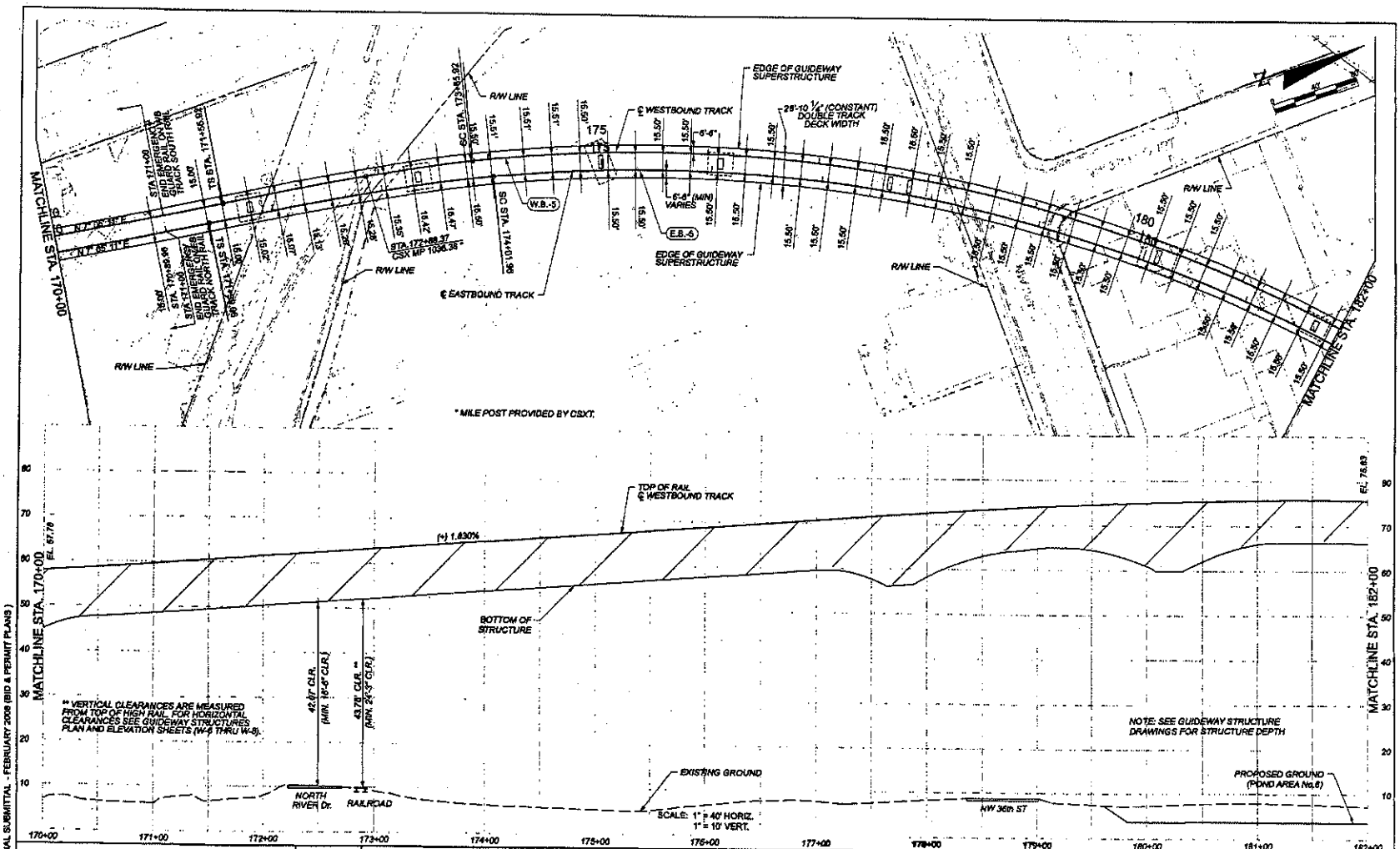

FINAL SUBMITTAL - FEBRUARY 2008 (BID & PERMIT PLANS)

Designed by	G. Hunt	MIAMI-DADE COUNTY / MIAMI-DADE TRANSIT	MIC-EARLINGTON HEIGHTS CONNECTOR - NCP004-TR06-CT2
Drawn by	G. Garayburu	PEOPLE'S TRANSPORTATION PLAN	URS Corporation Southern, 7650 Corporate Center Drive, Suite 400, Miami, FL 33126-1220, Tel: (305) 262-7496, C.A. No. EB 00000002
Checked by	B. Houppermans		
Drawing Scale	As Noted		
0	02/08	ISSUED FOR BID AND PERMITTING	

TRACKWORK

ALIGNMENT PLAN AND PROFILE STA. 170+00 TO STA. 182+00

Drawing No. TW-017

Sheet No. 42