

FIRST AMENDMENT

to

PORT EVERGLADES INTERMODAL CONTAINER TRANSFER FACILITY
LEASE AND OPERATING AGREEMENT

This First Amendment to Agreement is made by and between BROWARD COUNTY, a political subdivision of the state of Florida, acting by and through its Board of County Commissioners (hereinafter referred to as "County,") and FLORIDA EAST COAST RAILWAY, LLC, a Florida limited liability company (hereinafter referred to as "FEC.")

WITNESSETH, THAT:

WHEREAS, County and FEC have entered into that certain Port Everglades Intermodal Container Transfer Facility (ICTF) Lease and Operating Agreement effective March 20, 2012, hereinafter referred to as ("Agreement"); and

WHEREAS, FEC at its expense will finance, design, develop, construct, own, maintain and operate the ICTF within the Southport area of Port Everglades; and

WHEREAS, County will make certain land in the Southport portion of its Port Everglades facility available for the construction and operation of the ICTF; and

WHEREAS, FEC has finalized its design plans for the ICTF; and

WHEREAS, in order to construct an ICTF facility equipped to efficiently handle project cargo which will directly benefit Port Everglades an additional ±.904 acres of County owned land is required for the ICTF at Port Everglades; and

WHEREAS, FEC has completed the final legal description for the Premises which legal description includes the additional acreage; and

WHEREAS, County and FEC are desirous of amending the Agreement to provide for a final legal description of the Premises; County's reimbursement to FEC for costs associated with the installation of subsurface piping and related drainage infrastructure under FEC's tracks; and a cost sharing agreement for the radiation portal monitor(s) and related security infrastructure required by the U.S. Department of Homeland Security for ICTF operations.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, County and FEC hereby agree as follows:

1. The above recitals are true and correct and are incorporated herein by reference.
2. ARTICLE I, entitled DEFINITIONS/EXHIBITS is hereby amended to read as follows:

ARTICLE I

DEFINITIONS/EXHIBITS

1.1 Definitions. The following terms shall have the following meanings:

...

(n) "ICTF" or "Facility" means the Intermodal Container Transfer Facility to be constructed on the Land. Generally, the ICTF will include both domestic and international intermodal operations, each of which will have separate gate entrances. The Facility will include wide-span electric cranes or other equipment that accomplishes the same objective to quickly transfer containers to and from railcars; allow for the building of up to 9,000-foot-long trains by providing approximately 18,000 feet of working track; provide adequate storage for trailers, reefer cargos, and containers; provide approximately five hundred (500) feet of project cargo track; and allow for a throughput of up to 400,000 twenty-foot equivalent units (TEUs) annually. The ICTF project also includes a double track spur from the FEC mainline to the ICTF which will run under the Eller Drive overpass. A conceptual sketch layout of the ICTF is attached hereto as Exhibit A.

(o) "Initial Term" is defined in Section 2.1, below.

(p) "Land" or "Premises" means that certain parcel of real property owned by the County in the Southport portion of the County's Port Everglades facility and consisting of ~~approximately forty two and one half (42.5) ±~~43.404 acres, as set forth in Exhibit B attached hereto and made a part hereof. ~~the conceptual sketch layout attached hereto as Exhibit A hereto. Following final design of the ICTF by FEC, a final legal description of the "Premises" will be prepared by FEC at its sole expense and provided to the Port Everglades Chief Executive for final review and approval. Following such review and written approval, the final legal description of the Premises will be incorporated into this Agreement as Exhibit B and made a part hereof. In no event shall the final legal description of the Premises include any County owned land outside the boundaries of the conceptual sketch layout of the ICTF mutually agreed to between the parties or exceed a total of forty two and one half (42.5) acres.~~

3. ARTICLE III, entitled FACILITY is hereby amended to read as follows:

ARTICLE III

FACILITY

...

3.3. FEC's Rights and Obligations. Except as specifically provided in this Agreement, FEC shall be exclusively responsible for managing, operating, and maintaining the Facility at its sole discretion and expense during the Term in accordance with the Maintenance Standards, with the exception of reasonable wear and tear. During the Term, FEC shall have, but not be limited to, the following rights, responsibilities, and obligations in connection with the Facility:

...

(g) If required by U.S. Customs and Border Protection ("CBP"), permit the installation, operation and repair and/or maintenance of radiation portal monitors ("RPM'(s)") for scanning waterborne cargo adjacent to or within the Facility as required by CBP at the portside entrance to the ICTF, subject to: (i) the right of CBP personnel to have access at any time to the RPM'(s) for the purpose of operation and maintenance of the RPM'(s); and (ii) the need for installation and maintenance of the utilities required for the effective operation of such RPM'(s). The exact location and the maintenance of the RPM'(s) shall be coordinated among County, FEC and CBP. The Port Everglades Chief Executive is authorized to negotiate and execute on behalf of County, a cost-sharing agreement with FEC to provide for the allocation of installation and maintenance costs and expenses for the RPM(s) and address available governmental grants to provide additional sources of revenue to pay for such costs and expenses;

...

4. ARTICLE IV, entitled MAINTENANCE RESPONSIBILITIES is hereby amended to read as follows:

ARTICLE IV

MAINTENANCE RESPONSIBILITIES

...

4.5 Limitations. FEC's rights and obligations under this Agreement are subject to the following additional limitations:

(a) No contract entered into pursuant to this Agreement may impair any right of the County hereunder.

(b) Prior to the Effective Date hereof, County, has provided FEC with a copy of the Port Everglades Master/Vision Plan that was approved by the County's Board of County Commissioners

on March 1, 2011 (the "Port Everglades Master/Vision Plan"). FEC acknowledges that County, at its own cost and expense, for its own benefit or for the benefit of others at Port Everglades, may elect to install the underground conveyor proposed in the Port Everglades Master/Vision Plan that was approved by the County's Board of County Commissioners on March 1, 2011 (the "Port Everglades Master/Vision Plan"); provided however that the plans and specifications therefor are subject to FEC's reasonable approval, which approval shall not be unreasonably withheld, conditioned or delayed, and any entry by the County for purposes of installing, maintaining, repairing, and utilizing the underground conveyor shall be coordinated in advance with FEC and shall be subject to such reasonable security, operational, and other requirements as may be imposed by FEC. County, by its officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right, at its own cost and expense, for its own benefit or for the benefit of others at Port Everglades, to maintain existing and future utility, mechanical, electrical and other systems (including but not limited to the underground conveyor proposed in the Port Everglades Master/Vision Plan) and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations thereto as may, in the opinion of County, be deemed necessary or advisable and from time to time to construct or install over, in or under the Premises such systems or parts thereof and in connection with such maintenance to use the Premises for access to other parts of Port Everglades otherwise not conveniently accessible; provided, however, that in the exercise of such rights of access, repair, alteration or new construction, County shall not unreasonably interfere with the actual use and operation of the ICTF by FEC. Any such entry by the County shall be coordinated in advance with FEC and shall be subject to such reasonable security, operational, and other requirements as may be imposed by FEC. County shall be responsible for all claims arising out of the actions of its officers, employees, agents, representatives, or contractors in exercising its rights pursuant to the terms of this Section 4.5(b). FEC shall, following written notification from the Port Everglades Chief Executive, install and construct subsurface piping and related drainage infrastructure ("drainage infrastructure work") under the Premises for the benefit of all Southport users at Port Everglades. FEC shall provide County's Port Everglades Department with written receipts evidencing FEC's payment of all costs and expenses related to said drainage infrastructure work. Such written receipts shall accompany each FEC invoice(s) to County. County's Port Everglades Department shall reimburse FEC within thirty (30) calendar days of the date it receives an FEC invoice(s). In no event shall the amount reimbursed to FEC exceed Three Hundred Seventy-five Thousand Five Hundred and Ten Dollars (\$375,510.00). County may elect to inspect the books and records of FEC related to FEC payments for said drainage infrastructure work and County's reimbursement obligations herein. The Port Everglades Chief Executive shall provide FEC with no less than ten (10) calendar days prior written notice of County's intent to inspect FEC's books and records related to said payments.

...

5. Except as modified herein, all remaining terms and conditions of the Agreement shall remain in full force and effect.
6. This First Amendment may be executed in up to five (5) counterparts, each of which shall be deemed to be an original.

[THIS SPACE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this First Amendment: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action and FEC, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
Ex-Officio Clerk of the Broward County
Board of County Commissioners of
Broward County, Florida

By _____
Mayor

____ day of _____, 2013.

Insurance requirements
Approved by Broward County
Risk Management Division

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Port Everglades Department
1850 Eller Drive, Suite 502
Fort Lauderdale, Florida 33316
Telephone: (954) 523-3404
Telecopier: (954) 468-3690

By _____
Signature (Date)

Print Name and Title above

By _____
Russell J. Morrison (/ /13)
Senior Assistant County Attorney

By _____
Noel M. Pfeffer (/ /13)
Deputy County Attorney

RJM/dh/cr
10/24/13
FirstAmd ICTF FINAL.doc
#12-3018.02

**FIRST AMENDMENT TO PORT EVERGLADES INTERMODAL CONTAINER
TRANSFER FACILITY LEASE AND OPERATING AGREEMENT**

FEC

ATTEST:

FLORIDA EAST COAST RAILWAY, LLC, a
Florida limited liability company,

Secretary

By _____
President/Vice President

(Please Type Name of Secretary)

(Please Type Name of President/Vice President)

(SEAL)

____ day of _____, 2013.

WITNESSES:

(Signature)

(Print/Type Name)

(Signature)

(Print/Type Name)

Exhibit "B"

DESCRIPTION:

A PORTION OF PARCEL A, PORT EVERGLADES INDUSTRIAL PARK SECTION ONE, RECORDED IN PLAT BOOK 112, PAGE 43, TOGETHER WITH A PORTION OF PARCEL A, PORT EVERGLADES INDUSTRIAL PARK SECTION THREE, RECORDED IN PLAT BOOK 148, PAGE 2, BOTH OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID PARCEL A, PORT EVERGLADES INDUSTRIAL PARK SECTION ONE; THENCE NORTH 88°06'09" EAST, ALONG THE NORTH LINE OF SAID PARCEL A, A DISTANCE OF 310.66 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 88°06'09" EAST, ALONG THE LAST DESCRIBED COURSE A DISTANCE OF 63.64 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT WHOSE RADIUS POINT BEARS SOUTH 44°05'23" WEST; THENCE SOUTHEASTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 597.71 FEET, A CENTRAL ANGLE OF 44°01'48" FOR A DISTANCE OF 459.32 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 01°52'48" EAST, A DISTANCE OF 1464.32 FEET; THENCE SOUTH 05°48'03" EAST, A DISTANCE OF 301.57 FEET; THENCE NORTH 88°07'12" EAST, A DISTANCE OF 230.07 FEET; THENCE SOUTH 01°49'55" EAST, A DISTANCE OF 3226.36 FEET; THENCE NORTH 88°10'05" EAST, A DISTANCE OF 172.03 FEET; THENCE SOUTH 01°49'09" EAST, A DISTANCE OF 208.54 FEET; THENCE SOUTH 88°10'53" WEST, A DISTANCE OF 35.32 FEET; THENCE SOUTH 01°49'55" EAST, A DISTANCE OF 64.11 FEET; THENCE SOUTH 87°23'14" WEST, A DISTANCE OF 362.35 FEET; THENCE SOUTH 01°49'55" EAST, A DISTANCE OF 734.61 FEET; THENCE SOUTH 69°19'30" WEST, A DISTANCE OF 89.62 FEET; THENCE SOUTH 88°04'26" WEST, A DISTANCE OF 40.00 FEET; THENCE NORTH 01°49'55" WEST, A DISTANCE OF 418.38 FEET; THENCE NORTH 10°09'00" WEST, A DISTANCE OF 359.13 FEET; THENCE SOUTH 88°07'12" WEST, A DISTANCE OF 71.34 FEET; THENCE NORTH 01°49'32" WEST, A DISTANCE OF 3230.00 FEET; THENCE NORTH 88°07'12" EAST, A DISTANCE OF 69.52 FEET; THENCE NORTH 09°05'31" EAST, A DISTANCE OF 574.86 FEET; THENCE NORTH 01°52'48" WEST, A DISTANCE OF 1464.32 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE NORTHERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 553.71 FEET, A CENTRAL ANGLE OF 48°36'38" FOR A DISTANCE OF 469.77 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE LYING AND BEING IN THE CITY OF HOLLYWOOD, BROWARD COUNTY, FLORIDA AND CONTAINING 43.404 ACRES OR 1,890,675 SQUARE FEET MORE OR LESS.

