Memorandum

MIAMI-DADE COUNTY

Date: July 10, 2007

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

To: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution Authorizing Negotiation of and Delegating Authority to Execute an Agreement Between Miami-Dade County and the U.S. Department of the Army Relating to the Miami River Dredging Project

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Recommendation

It is recommended that the Board approve the attached Resolution authorizing the negotiation of and delegation of authority to execute an agreement between Miami-Dade County (County) and the U.S. Department of the Army (Army Corps of Engineers, ACOE) relating to the Miami River Dredging Project (Project). As transmitted to the Board on May 8, 2007, the April 2007 "Status Report on the Miami River Dredging Project" (Attachment 1), stated that dredging of the Miami River continues to be at a critical juncture. An agreement for "Contributed Funds" has been proffered to the County by the ACOE that would allow the County and its non-Federal funding partners (City of Miami, State of Florida, and Florida Inland Navigational District – FIND) to contribute additional funds that would be substituted for missing Federal funding. Currently the State of Florida has appropriated $5 million that would be utilized to supplant missing Federal funding. This agreement would authorize the County to transmit the State funds to the ACOE.

Approval of this Resolution would authorize the County to negotiate and make changes to this agreement and to existing agreements with non-Federal funding partners; to accept additional funding that may be contributed for this project as a substitute for Federal funding; to execute same on behalf of the County subject to approval by the County Attorney's Office and ratification by the Board; and authorizing the County Mayor or his designee to exercise any and all provisions contained in said agreements.

Background

In the April 2007 Status Report, several points were stressed relating to the Project. Specifically, dredging has been at a standstill since November 2005 due to inadequate Federal appropriations to keep the Project moving. The key limiting factor in bringing this project to completion is the lack of Federal funding. Furthermore, DERM was recently advised that all work orders under the ACOE dredging contract must be issued on or before September 2008, prior to the April 2009 contract expiration. However, meeting this contract requirement imposes an additional funding constraint, as the federal fiscal year 2008-09 budgeting and funding cycle will not be available for the ACOE to award all remaining sections before the contract assignment deadline. The ACOE has indicated its intent to negotiate with the contractor to extend the deadline to coincide with the contract expiration date or possibly a later date.

Forty (40) percent of the Project is currently completed (Sections 1-6, see Attachment 2). It is anticipated that the dredging contractor will re-start dredging around July 2007, with awards to complete Acceptance Sections 7 and 8. This award will leave Acceptance Sections 9 through 15 still pending. The proposed contributed funds option would use additional non-Federal funding, coupled

with existing Federal and other non-Federal dollars, to expedite as many of the remaining sections of the Project as possible.

The "Contributed Funds" agreement will provide several benefits:

- The State of Florida Legislature approved contributed funds in the amount of $5 million in FY 07-08, which would reduce the shortfall in Federal appropriations required for the Project to $16.5 million.
- This agreement allows the transmittal of funds to the ACOE to supplant for missing federal funding. However, this agreement does not commit the County to future federal funding substitution; it just allows the transmittal of funds to the ACOE if they become available as in the case of the current $5 million state appropriation.
- Reduce the number of de-mobilizations and re-mobilizations by the dredging contractor. De-mobilizations or re-mobilizations cost over $196,000 each.
- Completion of additional sections may also improve the cost/benefit ratio of the project used by the ACOE to determine future year funding.

The ACOE has stated that it could take approximately six months for the proposed "Contributed Funds" agreement to be executed in Washington, D.C. Additionally, it will take time to work with our non-Federal funding partners to ensure that existing agreements are amended to allow for a funding contribution. Therefore, the authority to negotiate and execute such an agreement is time-sensitive and a critical component of this strategy. Any agreement will be subject to approval by the County Attorney's Office and ratification by the Board.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: July 10, 2007

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

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

Please note any items checked.

_____ **"4-Day Rule" ("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**

_____ **Bid waiver requiring County Manager's written recommendation**

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

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor

Veto _____

Override _____

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

07-10-07

RESOLUTION NO. _____

RESOLUTION AUTHORIZING NEGOTIATION OF AND DELEGATING AUTHORITY TO EXECUTE AN AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE U.S. DEPARTMENT OF THE ARMY RELATING TO THE MIAMI RIVER DREDGING PROJECT; AND AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXERCISE ANY AND ALL PROVISIONS CONTAINED THEREIN

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the negotiation of and delegation of authority to execute an Agreement between Miami-Dade County and the Department of the Army relating to contributed funds subject to approval by the County Attorney's Office and ratification by the Board of County Commissioners, in substantially the form attached hereto and made a part hereof; authorizes execution of amendments to said agreement and to existing agreements with the non-Federal funding partners to further the purposes described in the accompanying memorandum; authorizes acceptance of additional funding that may be contributed for this Project; authorizes execution of same on behalf of Miami-Dade County, Florida; and authorizes the County Mayor or his designee to exercise any and all provisions contained therein.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 10th day of July, 2007. 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:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. PST

Peter S. Tell

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ATTACHMENT 1

Memorandum

MIAMI-DADE COUNTY

Date: May 8, 2007

Agenda Item No. 12(B)3

To: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: **Status Report on the Miami River Dredging Project – April 2007**

The attached report provides an update on the status of the Miami River Dredging Project since the Board authorized the County Manager to negotiate an Agreement for Advanced Funding with the Army Corps of Engineers (ACOE) on January 25, 2007, via Resolution No. R-31-07. This report also addresses the status of critical appropriation requests being considered during the current State Legislative Session and the FY 2008 Federal funding cycle.

To date, the contractor for the project remains demobilized. However, the ACOE has informed the County that the process to remobilize the contractor is expected to begin in April, with the contractor likely to recommence dredging in early July 2007. As previously reported, the project remains forty percent (40%) complete, with Sections 1 through 6 completed and funding available to complete at least Sections 7 and 8 once the contractor is remobilized.

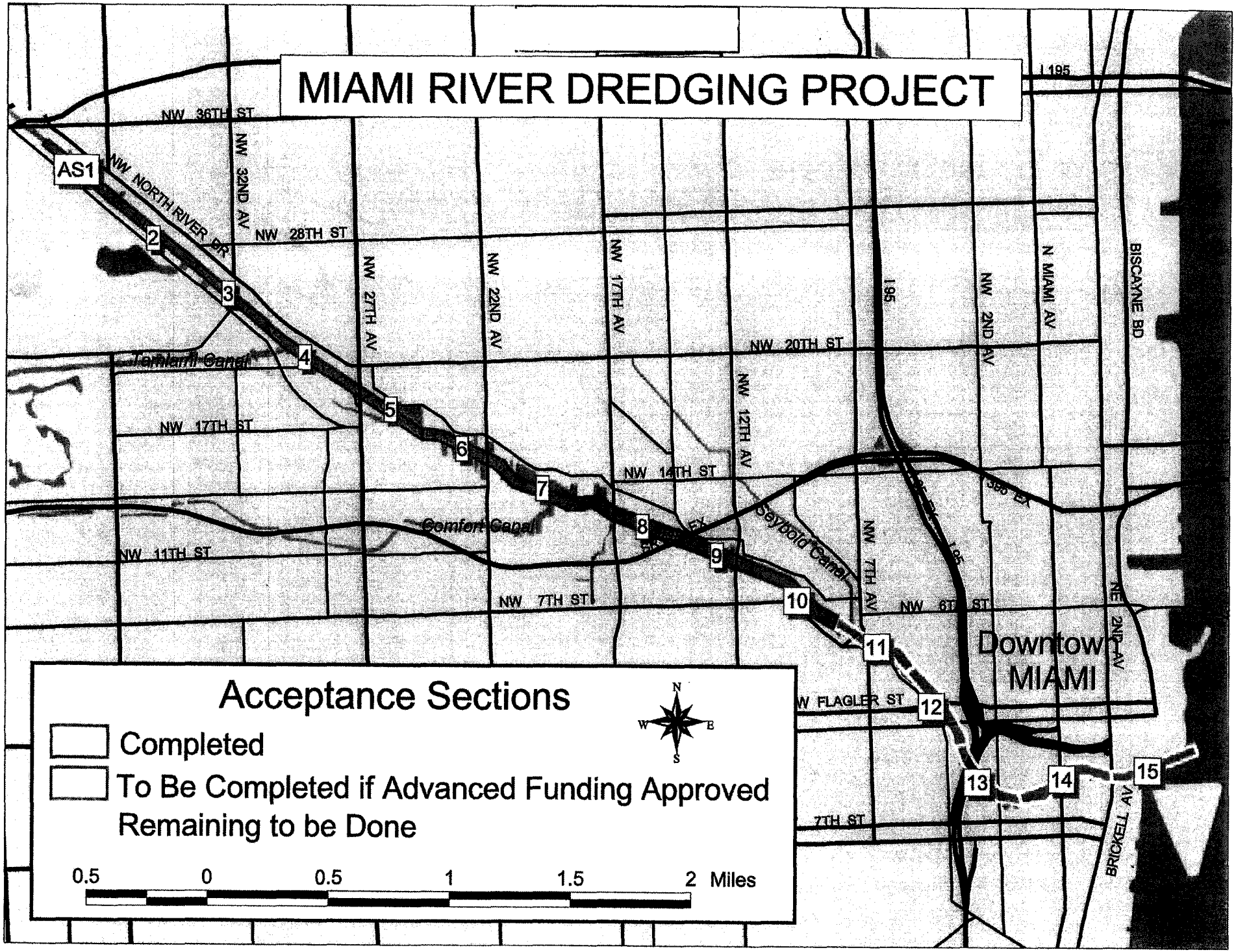
As referenced above, staff has been working closely with our County Attorney's Office and legal counsel from the ACOE on legal sufficiency for the Advanced Funding Agreement. To date, the County Attorney's Office and the ACOE – Jacksonville District have agreed on the form of the agreement and it has been forwarded to the Atlantic Division in Atlanta , to be followed by approval of the Assistant Secretary of the Army in Washington, D.C. DERM staff has been working closely with our ACOE Project Manager and the Office of Intergovernmental Affairs to expedite this agreement through the ACOE approval process. Approval of this agreement, and subsequent advancement of existing funding from local sponsors, will allow for at least one additional dredging section (Section 9) to be completed in conjunction with Sections 7 and 8, rather than requiring an earlier demobilization of the contractor due to the lack of Federal funding.

The key limiting factor in bringing this project to completion is the lack of Federal funding, with the expected shortfall of $26 million. The President's FY08 proposed budget only includes $4.5 million for the Miami River Dredging Project. If the President's proposal remains at that level, an estimated $21.5 million shortfall will still exist as of January 2008, leaving only one additional Federal funding cycle prior to the 2009 expiration of the existing agreement between the ACOE and the contractor.

As the Board is aware, the Miami River Dredging Project appropriation requests to the Federal and State governments are high among the County's priorities. However, the Federal government has only appropriated, on average, approximately $4 million annually for this project, and, the budget limitations being discussed at the State level do not bode well for the additional requests. Nevertheless, staff will be vigilant and a clearer picture of the status of the State request will be available when the State budget is released in April. We will continue to keep you updated.

Assistant County Manager

MIAMI RIVER DREDGING PROJECT



MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
MIAMI-DADE COUNTY, FLORIDA

FOR ACCEPTANCE AND RETURN OF CONTRIBUTED FUNDS
FOR THE
MAINTENANCE OF THE
MIAMI RIVER, FLORIDA FEDERAL NAVIGATION PROJECT

This MEMORANDUM OF AGREEMENT (hereinafter referred to as the "MOA"), entered into this _____ day of _____, 2007, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), represented by the District Engineer, U.S. Army Engineer for the Jacksonville District (hereinafter the "District Engineer"), and Miami-Dade County, Florida (hereinafter the "Contributor"), represented by the County Mayor.

WITNESSETH THAT:

WHEREAS, the authorized Miami River Federal Navigation Project (hereinafter referred to as the "Project") was authorized by an Act of Congress dated 3 July 1930; by Section 2 of the Rivers and Harbors Act of 1945; and by Section 101 of the Rivers and Harbors Act of 1960, and other modifications to the Miami Harbor Project to which the Miami River Project was consolidated; and

WHEREAS, the above authorizations provide the cost sharing for the project together with Section 201 of the Water Resources Development Act of 1996, Public Law 104-303, regarding cost sharing for dredged material disposal areas; and

WHEREAS, the Government and the Contributor entered into a Project Cooperation Agreement for Construction and Operation of a Dredged Material Management Facility at the Miami River, Florida, Federal Navigation Project on July 30, 2003 (hereinafter "Project Cooperation Agreement); and

WHEREAS, the Contributor considers it to be in its own interest to expedite the maintenance of the Project by voluntarily contributing funds (hereinafter referred to as "Contributed funds") to be used by the Government for that purpose; and

WHEREAS, the Government is authorized pursuant to 33 U.S.C. 560, to accept Contributed funds, to be expended in connection with Federally appropriated funds, for any authorized work of public improvement of rivers and harbors whenever such work and expenditures may be considered by the Chief of Engineers to be advantageous to the interests of navigation;

NOW, THEREFORE, the Government and Contributor agree as follows:

1. Subject to any necessary appropriation, the Contributor shall contribute to the Government the following sums, in cash:

2. The contributions specified in paragraph 1 shall be made as follows:

   provide to the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Jacksonville" to the District Engineer.

3. In the event that the Contributor contributes more or less than the amount listed in paragraph 1 above, or makes its contributions earlier or later than the dates listed in paragraph 1 above, this MOA shall apply to whatever funds are contributed by the Contributor to the Government pursuant to this MOA; however, the Government shall not obligate any Contributed funds before they are received and available.

4. The Government shall use all Contributed funds for the maintenance of the Project, except with regard to excess Contributed funds, which are addressed in paragraph 7 of this MOA. The Contributor shall bear all additional costs of the work for which funds are accepted including any additional environmental compliance costs.

5. The Government shall provide the Contributor with quarterly accountings of its expenditures of Contributed funds for maintenance. The first accounting shall be provided within 30 days after the final day of the first complete Government fiscal year quarter following receipt of Contributed funds, and subsequent accountings shall be provided within 30 days after the final day of each succeeding quarter until the Contributed funds are completely expended or the Government concludes maintenance on the Project.

6. Unless directed in law, the Government shall not reimburse the Contributor for Contributed funds expended by the Government.

7. The Government shall not credit the Contributor for the Contributed funds so as to reduce the cash contribution that otherwise would be required of the Contributor pursuant to the Project Cooperation Agreement entered into by the Government and Contributor (or a legal entity empowered to act on behalf of the Contributor) governing the construction of all or part of the Project.

8. The Government, subject to the availability of funds and subject to the approval by the Secretary of the Army, shall return to the Contributor funds not expended by the Government.

9. Nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the United States.

10. Nothing herein shall constitute, or be deemed to constitute, an assurance or promise of the Government to take any action whatsoever with respect to the project, including but not limited to the following actions: entering into a Project Cooperation Agreement with the Contributor, constructing the Project; including the Project in the Government's budget; or completing the maintenance of the Project.

11. Before any party to this MOA may bring suit in any court concerning an issue relating to this MOA, such party must seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

12. The Contributor shall hold and save the Government free from all damages arising from the design, construction, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project related betterments, except for damages due to the fault or negligence of the Government or its contractors.

13. Federal and State Laws. In the exercise of their respective rights and obligations under this MOA, the Contributor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the

Department of the Army".

14. Relationship of Parties. In the exercise of their respective rights and obligations under this MOA, the Government and the Contributor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

15. Officials Not to Benefit. No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this MOA, or to any benefit that may arise there from.

16. Notices.

a. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and with delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Contributor:

Carlos Espinosa, P.E., Director
Miami-Dade County, DERM
701 NW 1 Court, Suite 400
Miami, Florida 33136-3902

If to the Government:

District Engineer Jacksonville District
U.S. Army Corps of Engineers
P.O. Box 4970 Jacksonville, Florida 32232-0019

b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

c. Any notice, request, demand, or other communication made pursuant to this paragraph shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven days after it is mailed.

IN WITNESS WHEREOF, the parties have executed this MOA as of the day, month, and year first above written.

DEPARTMENT OF THE ARMY	MIAMI-DADE COUNTY, FLORIDA
_____	_____
Paul L. Grosskruger Colonel, U.S. Army District Engineer	Carlos Alvarez County Mayor
DATE:_____	DATE: _____

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

DATE:_____

_____
Carlos Alvarez
County Mayor
Miami-Dade County, Florida

CERTIFICATE OF AUTHORITY

I,_____, do hereby certify that I am the principal legal officer of Miami-Dade County, Florida; that Miami-Dade County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and Miami-Dade County, Florida and that the person who has executed this Agreement on behalf of Miami-Dade County, Florida has acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20___.

_____

County Attorney
Miami-Dade County, Florida

CERTIFICATION OF LEGAL REVIEW

The draft Memorandum of Agreement for acceptance of Contributed funds for the Miami River Project has been fully reviewed by the Office of Counsel, USAED, Jacksonville, and is legally sufficient.

_____

Assistant District Counsel