Memorandum

MIAMI-DADE COUNTY

Date:	December 2, 2008
To:	Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners
From:	George M. Burgess County Manager
Subject:	Joint Participation Agreement (JPA) between Miami-Dade County and the City of Miami Beach in the Amount of $700,000 to Fund the Design and Construction of the Rehabilitation of the Washington Avenue Bridge over the Collins Canal

Agenda Item No. 8(P)(1)(A)

RECOMMENDATION

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing the execution of a Joint Participation Agreement (JPA) between Miami-Dade County (County) and the City of Miami Beach (City) for the rehabilitation of the Washington Avenue Bridge over the Collins Canal.

SCOPE

This Agreement will provide funding for the rehabilitation of the Washington Avenue Bridge over the Collins Canal located within the City of Miami Beach, in Commission Districts 4 and 5.

FISCAL IMPACT/FUNDING SOURCE

The total estimated cost of the project, including contingencies, is $700,000; $80,000 for design and $620,000 for construction. The full amount will be funded with Road Impact Fee District 8 funds.

DELEGATION OF AUTHORITY

No additional authority is being requested within the body of this contract.

TRACK RECORD/MONITOR

The County utilized the resources of the City to design, contract, construct and inspect the project on a reimbursable basis. Disbursement of County funds to the City shall be based upon City invoices with certified copies of paid contractor invoices.

As part of this Agreement, the City agreed to comply with applicable County regulations including but not limited to the Community Small Business Enterprise (CSBE) Program, Community Business Enterprise (CBE) Program, the Community Workforce Program, and the Responsible Wages and Benefits Ordinance (Ordinance No. 90-143). The County's Review Committee evaluated the subject project and returned a recommendation of no measure.

BACKGROUND

On January 14, 2008, the City was issued a Notice of Bridge Closure letter by the Florida Department of Transportation (FDOT) recommending the immediate closure of the Washington Avenue Bridge to all traffic "until the City can perform emergency repairs to the superstructure". Following receipt of the Notice of Bridge Closure, the City immediately closed the bridge. Built in 1938, the bridge suffered a

rapid decrease in sufficiency ratings attributable to increased traffic volumes of large construction vehicles with heavy loads generated by nearby construction sites.

Subsequently, the City commissioned a structural evaluation to determine if the conditions of the bridge warranted full reconstruction or rehabilitation repairs. This study concluded that the rehabilitation of the bridge was the most feasible and economical solution as well as the most effective way to restore the structural integrity of the bridge.

The City issued a resolution certifying the bridge closure a valid public emergency on May 14, 2008. It was critical that the rehabilitation project proceed as quickly as possible, as leaving the bridge closed presented a risk to the health, safety, and welfare of area residents by contributing to delayed emergency response times. This Agreement will provide funding for the City's expedited rehabilitation project to re-open the bridge as soon as possible for efficient and safe traffic operations. The City will be provided a maximum reimbursement of $700,000, from Road Impact Fee District 8 funding for the design and construction of the project.

A Public Involvement Plan (PIP) was implemented by the City to provide information to property owners, tenants, and area residents. The Washington Avenue Bridge repairs began on May 20, 2008 and have now been completed.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: December 2, 2008

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

SUBJECT: Agenda Item No. 8(P)(1)(A)

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(P)(1)(A)
12-2-08

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A JOINT PARTICIPATION AGREEMENT IN THE AMOUNT OF $700,000 BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI BEACH TO FUND THE REHABILITATION OF THE WASHINGTON AVENUE BRIDGE OVER THE COLLINS CANAL; AND AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXERCISE THE PROVISIONS THEREIN

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

WHEREAS, both the City of Miami Beach and Miami-Dade County wish to facilitate the rehabilitation of the Washington Avenue Bridge over the Collins Canal,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves this Joint Participation Agreement between Miami-Dade County and the City of Miami Beach, providing up to $700,000 to the City for eligible expenses incurred in the design and construction of this rehabilitation, in substantially the form attached hereto and made a part hereof; and authorizing the County Mayor or his designee to execute same for and on behalf of Miami-Dade County and to exercise the 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 2nd day of December, 2008. 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.

Thomas Goldstein

WASHINGTON AVENUE BRIDGE OVER THE COLLINS CANAL
JOINT PARTICIPATION AGREEMENT

This AGREEMENT, made and entered into this _____ day of _____, 2008, by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the STATE OF FLORIDA, hereinafter referred to as the "City", and MIAMI-DADE COUNTY, a political subdivision of the STATE OF FLORIDA, hereinafter referred to as the "County".

WITNESSETH

WHEREAS, both parties herein wish to facilitate a bridge rehabilitation project in MIAMI-DADE COUNTY, hereinafter referred to as the "Project" described as follows:

The rehabilitation of the Washington Avenue bridge over the Collins Canal; and

WHEREAS, the County wishes to utilize the resources of the City to design, contract, construct, and administer 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. **RESPONSIBILITIES OF CITY**:

1.1. **Design**: The City will secure engineering design and consulting services from qualified firms to develop the construction plans, technical specifications, special provisions, pay items and cost estimates for the Project in accordance

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with applicable Florida Department of Transportation, County, and/or City design criteria. The City's design consultant shall be made available to the County to review shop drawings and perform required post-design services, limited to project design. The County agrees that the selection, retention and discharge of the design consultant shall be the sole responsibility of the City in accordance with applicable laws and City procedures. Notwithstanding any provision to the contrary, the City shall comply with all applicable County contract compliance and oversight measures relating to the expenditure of County funds, set forth in Section 6 of this Agreement. The City shall provide a copy of the executed agreement with the design consultant, approved requisition, and purchase order to the County's Public Works Contracts and Specifications Section prior to the City's issuance of the Notice to Proceed (NTP) for design.

1.2. **Permits and Approvals**: During the course of the design, the City shall obtain all necessary permits, and utility adjustments; and coordinate the review of construction documents by utilities and permitting agencies. The City shall make all necessary adjustments as required for approval and/or permitting by those agencies. The City shall obtain all necessary permits, and utility adjustments for the Project in accordance with applicable State, Federal and local laws and ordinances. The City shall not pay for any permits required by the Miami-Dade County Public Works Department.

1.3. **Right-of-Way**: The City shall acquire, at its sole expense, any right-of-way that is required to complete the construction of the Project.

1.4. **Public Information and Involvement**: The City will implement a Public Involvement Plan (PIP) during the design and construction of the Project to provide information to property owners, tenants, and area residents, including but not limited to: public meetings, project documentation and flyers, business signs, directional parking signs, and schedules for major work to be performed in the area. Appropriate investigation of the Project stakeholders will be used to develop the goals and objectives to implement the PIP. The City shall submit a copy of the PIP to the County Public Works Director for review and concurrence prior to the City's issuance of the NTP for construction.

1.5. **Accounting**: The City shall at all times maintain separate accounting for the costs of the Project so those costs may be independently verified and audited by the County, at the sole cost of the County. The City agrees to permit the County auditors to inspect the books, records and accounts of the Project for three (3) years after completion of the Project. These records shall be made available to the County for inspection within five (5) business days upon written receipt of a written request from the County.

1.6. **Construction**: The City shall procure the services of a licensed contractor, holding an engineering contractor's license, to construct the Project. The City may award the construction contract through any available lawful means which, in the City's discretion, affords the most competitive price for construction of the Project and which may include, but is not limited to: bid solicitation, request for proposals, the award of a change order on existing

City contract(s), or the extension of unit-prices provided in connection with prior competitive bid awards. Notwithstanding any provision to the contrary, the City shall comply with all applicable County contract compliance and oversight measures relating to the expenditure of County funds, set forth in Section 6 of this Agreement. The City shall provide a copy of the executed construction agreement, cost proposal detailing scope of work, and purchase order to the County's Public Works Contract and Specifications Section prior to issuance of the NTP for construction.

The construction contract shall also contain a requirement that the contractor(s) provide a payment and performance bond at least in the amount and form required by State law, naming the County and City as joint obligees or joint contracting public entities. The construction contract shall contain a contingency amount to address unforeseen conditions and owner required changes which shall not exceed ten percent (10%) of the base amount of the contract, unless otherwise approved by designated representatives of the County and City. The commitment for the expenditures of any contingency funds shall not be made by the City without the prior written approval of the County Public Works Director. The County shall respond, in writing, within thirty (30) business days of receiving written requests from the City to approve the commitment of contingency funds. In the event the County does not respond to the City within the time period provided herein, it shall be deemed to have accepted a contingency fund expenditure.

Final commitment of County funds for the Project shall occur upon the County Public Works Director's certifying that the City has provided the County with the executed construction agreement, cost proposal for the scope of work, and purchase order; and, further, that the City has complied with all applicable County contract compliance and oversight measures, as set forth in Section 6 of this Agreement. The County shall commit County funds required for the Project no later than the issuance by the City of the NTP for the construction contract. The County agrees that the selection, retention and discharge of such contractor shall be the sole responsibility of the City.

1.7. **Claims and Change Orders**: The City shall review and make a determination on all claims and change orders. The County shall not be financially responsible for any claims or change orders that would increase the amount of County funds required, as stated in Section 2.1. Any costs in excess of said funding amount shall be solely the responsibility of the City.

1.8. **Construction Administration and Inspection**: The City shall exercise all responsibilities of the owner under the construction contract, including construction administration and inspections. The City may delegate this function to an authorized agent or construction engineering inspection consultant. The County's inspector shall have an oversight role in the routine daily inspections. The City's designated representative and the County's designated representative shall jointly perform the inspection of the Project which immediately precedes substantial completion. The City shall certify,

upon completion, that the Project has been constructed pursuant to the design plans, specifications, and approved change orders. Final payment to the City and obligation of maintenance responsibility to the parties shall be subject to the City's written notification to the County Public Works Director of the final acceptance of the Project by the City Public Works Director or his designee.

2. **RESPONSIBILITIES OF COUNTY**:

2.1. **Funding Amount, Reimbursement of Project Costs**: The County agrees to provide funds up to $700,000.00 (this amount includes 10% contingency) for eligible expenses, as defined herein, incurred by the City for the design and construction of the Project. The County shall disburse the funds for the Project to the City in the manner set forth in this Section 2. Any costs in excess of said funding amount shall be solely the responsibility of the City.

2.2. **County Payments of Project Costs**: The County funds provided for eligible expenses, as defined herein, incurred for the design and construction of the Project are specified below:

Funding Amount	Funding Source	County Fiscal Year of Commitment
$ 80,000.00	Road Impact Fee District 8 (Design)	2007-2008
$ 620,000.00	Road Impact Fee District 8 (Construction)	2007-2008

2.3. **County Approvals**: Whenever County approval is required through its Department of Public Works and/or said Department Director, it will not unreasonably withhold or delay its approval. Failure of the County to respond, in writing, to the City's request for evaluation within thirty (30)

business days shall be automatically deemed an approval by County, without the necessity of future action by the County and/or City.

3. **ELIGIBLE COSTS**: The parties agree that only the below identified eligible costs that may be incurred by the City that are directly related to the Project are eligible for reimbursement, provided adequate documentation accompanies the reimbursement request in the form of approved invoices, verified payment requests, documented journal entries, and/or check vouchers. For purposes of this Agreement, "eligible costs" are defined as those pertaining to the construction of Project elements that are the standard items normally provided for by the County in County bridge rehabilitation projects, and not the enhancement of standard items, or the incorporation of items which are in addition to those standard items. The County shall not be assumed to be liable to provide reimbursement for the design and/or construction of such items that do not conform to this section of the Agreement. If enhancements to standard items are constructed in this Project, the City may request County reimbursement only to a maximum amount corresponding to that which would be expended in providing the normal standard version of that item for a project of the same scope. The parties further agree that eligible costs will not include fees for construction management, construction inspections, and Project management.

4. **SCHEDULE AND MANNER OF REIMBURSEMENTS**: Upon approval and execution of this Agreement by the parties hereby, the City shall furnish the County with a copy of the estimated budget for the Project, and will similarly furnish the County with any and all revisions thereto. At the time of award of the construction

contract for this Project, the City shall submit the Estimated Quarterly Construction Payout Schedule for the Project to the County Public Works Director. Quarterly disbursement of County funds to the City shall be based upon City invoices with certified copies of paid contractor estimates attached and shall not include any other charges. The quarterly submittal for invoice shall also include a certified copy of payment to sub-contracted firms.

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 relating to the Project. The parties shall not unlawfully discriminate in the performance of their respective duties under this Agreement.

6. **BUSINESS PROGRAM COMPLIANCE AND OVERSIGHT**: Whenever County funds are used, the City agrees to comply with applicable County regulations including, but not limited to: the Community Small Business Enterprise (CSBE) Program, Community Business Enterprise (CBE) Program, the Community Workforce Program (CWP), and the Responsible Wages and Benefits Ordinance (Ordinance No. 90-143). Specifically, the City agrees to abide by the applicable contract measure recommendation(s) established by the Department of Business Development Project Worksheet for the participation of specified business entities and/or trades, and for CWP requirements, as administered by the County's Department of Small Business Development (SBD). SBD shall have the right to oversee and ensure compliance monitoring including but not limited to, the right to audit and to require reports and documentation related to the Code.

7. **INDEMNIFICATION**: To the extent authorized by Florida law, the City hereby agrees to indemnify, defend, save and hold harmless the County to the extent of all the limitations included with 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 breach of this Agreement by the City, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the County for its sole negligence or breach of contract.

To the extent authorized by Florida law, the County hereby agrees to indemnify, defend, save and hold harmless the City 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 breach of this Agreement by the County, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the City for its sole negligence or breach of contract.

In the event of breach or non-performance by the persons selected by the City to perform the work, the City shall, upon written request by the County, assign to the County any and all of its 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 the City pursues such claims, actions or causes of action through arbitration, administrative proceeding or lawsuit. The City agrees to cooperate fully with the County in the prosecution of any such claim or action. Any damage recovered by the County which is attributable to an expenditure by the

City shall be returned to the City by the County, within sixty (60) business days of receipt.

8. **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.

9. **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 hereof shall be predicated upon any prior representations 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.

10. **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.

11. **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 City 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.

12. **NOTICES**: Any and all notices required to be given under this Agreement shall be sent by first class mail, addressed as follows:

To the County:

Attention: Esther L. Calas, P.E.
Director, Public Works Department
Miami-Dade County
111 NW First Street, Suite 1640
Miami, Florida 33128
(305) 375-2960

To the City:

Attention: Jorge M. Gonzalez
City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
(305) 673-7010

Attention: Fred H. Beckmann, P.E.
Director, Public Works Department
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
(305) 673-7080

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

ATTEST:

HARVEY RUVIN
CLERK OF THE BOARD

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

BY: _____
Deputy Clerk

BY: _____
County Mayor or His Designee

Approved by County Attorney
as to form and legal sufficiency _____
County Attorney

ATTEST:

CITY OF MIAMI BEACH, a municipal
corporation of the State of Florida

BY: Robert Parcher
Robert Parcher
City Clerk

BY: Matti H. Bower
Matti Herrera Bower
Mayor

(Affix City Seal)

Approved by City Attorney
as to form and legal sufficiency _____
City Attorney

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 8/6/08 Date