Memorandum

MIAMI-DADE COUNTY

Date: January 22, 2009

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

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

From: George M. Burgess
County Manager

Subject: Resolution Approving a First Amendment to the Joint Participation Agreement (JPA) between the City of Miami and Miami-Dade County to Provide an Additional Funding Contribution Not to Exceed $350,000 for the People's Transportation Plan (PTP) Project Entitled Roadway Improvements Along South Miami Avenue from SE 25 Road to SE 15 Road

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Recommendation

It is recommended that Board of County Commissioners (BCC) approve the attached resolution authorizing the execution of the first amendment to the Joint Participation Agreement (JPA) between the City of Miami (City) and Miami-Dade County (County) to provide an additional funding contribution not to exceed $350,000 for roadway improvements constructed along South Miami Avenue from SE 25 Road to SE 15 Road. The funding source for the County's portion will derive from the People's Transportation Plan (PTP); therefore, approval by the Citizen's Independent Transportation Trust (CITT) is required.

Scope

This project is located within Commission District 7.

Fiscal Impact/Funding Source

The proposed amendment is for the County to provide an additional funding contribution not to exceed $350,000 increasing the County's total contribution for this project from $840,000 to $1,190,000. The total cost of this project has increased from $3,580,500 to $4,420,500, with the City increasing its contribution from $2,740,500 to $3,230,500. The funding for this project is derived from the PTP transit surtax funds. This project is identified in the original PTP Ordinance as a Board Requested Major Highway and Neighborhood Improvement Projects. The additional funding for this project has been included in the pro forma budget.

Track Record/Monitor

This project has been managed by the City, which has also used its own contracting process in completing this project. Although the City was to use its own contracting process for construction, the original agreement stipulated that the City must utilize the County's Small Business Development (SBD) oversight and compliance program, and that goals for the Community Small Business Enterprise (CSBE) and the Community Workforce Program (CWP) were to be honored by the City and the construction contractor. On September 24, 2008, SBD, having completed its review of the project, determined that the contractor was in compliance with the applicable participation provisions.

Background

The resurfacing and installation of traffic operational improvements along South Miami Avenue from SE 25 Road to SE 15 Road is identified as a Board Requested Major Roadway and Neighborhood Improvement Project within the People's Transportation Plan (PTP). This project

was to be carried out by the County's Public Works Department (PWD). However, in September of 2004, the City approached PWD with a desire to have a greater involvement in this County project which falls within the City of Miami. A JPA was entered into whereby the City would fund the design and construction of the project, and the County would contribute $840,000 towards the construction of the project. Additionally, the City requested to manage the project for design and construction and implement additional features not considered in the original scope of work. As approved under the initial JPA, executed November 15, 2005, the roadway improvements along South Miami Avenue are being managed by the City. The original project scope was divided into two (2) phases. Phase I of the project, was the intersection at South Miami Avenue and SE 15 Road that converted the existing four legged intersection into a large roundabout. The reconstruction also included associated improvements such as signage, striping, roadway and pedestrian lighting, along with the replacement of broken sidewalks and the addition of curb ramps for ADA compliance. Phase II of the project along South Miami Avenue was from South of SE 25 Road to South of SE 15 Road. This work consisted of milling, resurfacing, signage, striping, replacement of curb and gutter, replacement of broken sidewalks and addition of curb ramps for ADA compliance, replacement of broken inlet tops, and roadway and pedestrian lighting. Both phases of this project have been completed.

The proposed amendment to provide additional funding is to cover the addition of bicycle lanes and drainage improvements along South Miami Avenue. The recommendation for the proposed bike lanes was made by PWD upon review of the Phase II design. Simultaneously, PWD had completed the cleaning of the existing drainage systems, and found that tree roots were clogging structures at numerous locations within this project location. The City's consultant was to conduct a comprehensive drainage report, and define the scope of drainage improvements required. The estimates provided for the recommended changes, including, but not limited to, the bike lanes, the upgrading of 37 drainage structures and installation of 850 linear feet of drainage pipe resulted in the proposed amendment to the JPA.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: January 22, 2009

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

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

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)(C)
1-22-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF THE FIRST AMENDMENT TO THE JOINT PARTICIPATION AGREEMENT (JPA) BETWEEN THE CITY OF MIAMI AND MIAMI-DADE COUNTY TO PROVIDE AN ADDITIONAL FUNDING CONTRIBUTION NOT TO EXCEED $350,000 FOR THE PEOPLE'S TRANSPORTATION PLAN (PTP) PROJECT ENTITLED ROADWAY IMPROVEMENTS ALONG SOUTH MIAMI AVENUE FROM SE 25 ROAD TO SE 15 ROAD

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 and Miami-Dade County wish to facilitate the construction of South Miami Avenue from SE 25 Road to SE 15 Road,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves this amendment to the Joint Participation Agreement between Miami-Dade County and the City of Miami, providing an additional funding contribution not to exceed $350,000.00 for this construction, in substantially the form attached hereto and made a part hereof; and authorizing the County Mayor or the County Mayor's 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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of January, 2009. This resolution shall become effective as follows: (1) 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, and (2) either i) the Citizens' Independent Transportation Trust (CITT) has approved same, or ii) in response to the CITT's disapproval, the County Commission re-affirms its award by two-thirds (2/3) vote of the commission's membership and such reaffirmation becomes final.

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.

Bruce Libhaber

AMENDMENT NO. 1 TO JOINT PARTICIPATION AGREEMENT – SOUTH MIAMI AVENUE FROM SE 25TH ROAD TO SE 15TH ROAD - PROJECT B-60479

This Amendment No. 1 to the Agreement dated November 15th 2005 (the "Agreement") between the City of Miami, a municipal corporation of the State of Florida ("CITY"), and Miami-Dade County, a political subdivision of the State of Florida, (COUNTY) for the Project entitled "South Miami Avenue", Project No. B-60479, ("PROJECT"), pursuant to Article 4 of the Agreement, is entered into this _____ day of _____, 2007.

RECITALS

WHEREAS, the Agreement was entered into pursuant to the approval of the City Commission by Ordinance No. 12696 dated June 9, 2005 in the total amounts of $840,000 (COUNTY funding) and $2,740,500 (CITY funding) for the Scope of Work included in the original Agreement for the PROJECT; and

WHEREAS, additions to the scope, consisting of (1) a continuous designated bicycle path to be designed and constructed within the project limits and (2) modifications to the 15th Road Roundabout have been added; and

WHEREAS, the CITY and the COUNTY have agreed to the scope and associated anticipated costs for the additional scope; and

WHEREAS, the City Commission has adopted Ordinance No. 12883 on February 8th 2007 to approve the Additional Scope and associated costs;

NOW THEREFORE, in consideration of the foregoing, the parties hereby amend the Agreement as follows:

1. Recitals: The recitals are true and correct and incorporated into this agreement.

2. Page 1; Project Description is modified as follows:

   Add the following sentence at the end of "Phase 1" paragraph: "The work will also consist of the addition of bicycle lanes."

   Add the following sentence at the end of "Phase 2" paragraph: "The work will also consist of the addition of bicycle lanes."

3. Page 2; Sub-article 2.1, Financial Contribution: Delete "$2,740,500.00" in first and second sentences and replace this dollar amount with "$3,230,500".

4. Page 5; Sub-article 3.1, Funding Amount, Reimbursement of Project Costs: Delete "$840,000.00" in first sentence and replace this dollar amount with "1,190,000.00".

5. Page 6; Sub-article 3.2, Funding Source: Delete "$840,000.00" in first sentence and replace this dollar amount with "1,190,000.00".

6. Page 11; Article 14, Notices: Delete "Aristides Rivera, P.E., P.L.S." and replace this name with "Ester Calas, P.E.".

7. All other terms and conditions of the contract are in effect and remain unchanged and in full force and effect.

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

MIAMI-DADE COUNTY, FLORIDA

ATTEST:

HARVEY RUVIN,
CLERK OF THE BOARD

BY: _____
Deputy Clerk

(Affix County Seal)

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

BY: _____
County Manager

Approved by County Attorney
As to form and legal sufficiency

_____

THE CITY OF MIAMI, FLORIDA

ATTEST:

BY: Pamela Burns 2-28-07
for Priscilla Thompson,
City Clerk

(Affix City Seal)

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

BY: _____
Pedro G. Hernandez,
City Manager
MHL

Approved by City Attorney
as to Legal form and correctness:

BY _____
Jorge L. Fernandez,
City Attorney

Approved to Insurance
Requirements:

BY: _____
LeeAnn Brehm, Administrator
Risk Management

City of Miami

Text File Report

City Hall
3500 Pan American Drive
Miami, FL 33133
www.miamigov.com

File ID:	06-02160	**Type:**	Resolution	**Status:**	Mayor's Office for Signature
Enactment #:	R-07-0030			**Enactment Date:**	1/11/07
Version:	1	**Introduced:**	11/21/06	**Controlling Body:**	City Commission

A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 1, IN SUBSTANTIALLY THE ATTACHED FORM, TO THE EXISTING JOINT PARTICIPATION AGREEMENT WITH MIAMI-DADE COUNTY ("COUNTY"), FOR THE ROADWAY PROJECT ON SOUTH MIAMI AVENUE, FROM SOUTHEAST 25TH ROAD TO SOUTHEAST 15TH ROAD, MIAMI, FLORIDA, "PROJECT B-60479," IN ORDER TO ACCEPT AN ADDITIONAL FUNDING CONTRIBUTION OF AN AMOUNT NOT TO EXCEED $350,000, FROM THE COUNTY, FOR SAID PROJECT; FURTHER AUTHORIZING THE USE OF A PORTION OF CITY FUNDING PREVIOUSLY ALLOCATED FOR THE PROJECT, AS PART OF THE CAPITAL PLAN, AS THE REQUIRED MATCH TO THE COUNTY'S CONTRIBUTION.

WHEREAS, the City Manager executed a Joint Participation Agreement ("JPA"), with Miami-Dade County ("County"), for South Miami Avenue roadwork, from Southeast 25th Road to Southeast 15th Road, Miami, Florida, Project B-60479; and

WHEREAS, said Agreement provided County funds in the amount of $840,000, for use by the City of Miami ("City") to construct a roundabout at the intersection of South Miami Avenue and Southeast 15th Road, Miami, Florida, as well as signage, striping, roadway and pedestrian lighting, the addition of curb ramps, milling, resurfacing and the replacement of broken sidewalks, curb and gutters and inlet tops ("Project"); and

WHEREAS, the scope of work is being expanded to include the addition of bicycle lanes and drainage improvements and, therefore, the County has increased its contribution of funds by $350,000 from $840,000 to a total contribution of $1,190,000; and

WHEREAS, the grant award requires matching funds from the City; and

WHEREAS, Homeland Defense/Neighborhood Improvement Bond funding in the amount of $4,420,500 was allocated for the Project as part of the Capital Plan pursuant to Resolution No. 06-0335, adopted May 25, 2006; and

WHEREAS, $490,000 of said funds will be utilized as the required match to the County's additional grant contribution; and

WHEREAS, the City's total matching contribution has increased from $2,740,500 to a total contribution of $3,230,500; and

SOUTH MIAMI AVENUE

FROM SE 25th ROAD TO SE 15th ROAD

JOINT PARTICIPATION AGREEMENT

This AGREEMENT, made and entered into this 15th day of Nov, 2005, by and between the CITY OF MIAMI, 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 the construction of a road improvement project in MIAMI-DADE COUNTY, hereinafter referred to as the "Project" described as follows:

Phase I – Intersection of South Miami Avenue and SE 15th Road: the work will consist of the addition of a roundabout at the intersection, and associated improvements such as signage, striping, roadway and pedestrian lighting, along with replacement of broken sidewalks and addition of curb ramps for ADA compliance.

Phase II – South Miami Avenue from south of SE 25th Road to south of SE 15th Road: the work will consist of milling, resurfacing, signage, striping, replacement of curb and gutter, replacement of broken sidewalks and addition of curb ramps for ADA ~~compliance, replacement of broken inlet tops, and roadway and pedestrian lighting.~~

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; and

WHEREAS, the parties further wish to designate the maintenance responsibilities to be assumed upon the completion of the Project;

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

1 **EFFECTIVE DATE AND TERM**. This Agreement shall take effect upon its execution and shall terminate upon completion and close-out of the Project. The duration of the Project construction is anticipated to be twelve (12) months for Phase I and nine (9) months for Phase II.

2 **RESPONSIBILITIES of CITY**

The City is responsible for the management and administration of the Project.

2.1 **Financial Contribution**: The City will contribute funds for both the design and construction of the Project, in a total amount not to exceed $2,740,500.00. The City shall not be liable for any cost, expense or fee in excess of $2,740,500.00 except as provided in Section 4 of this Agreement.

2.2 **Design**: The CITY will secure engineering design and consulting services pursuant to existing Professional Services Agreements between CITY and qualified firms to develop complete construction documents, to provide contract administration, and to manage and ~~facilitate technical reviews of all work associated with the development and preparation~~ of the construction documents for the Project. The COUNTY agrees that the selection, retention and discharge of such firms shall be the responsibility of the CITY in accordance with applicable laws and City procedures.

At successive design phases, the CITY shall submit documents for review and approval by COUNTY's Department of Public Works. CITY will ensure that comments and/or revisions requested by the COUNTY are incorporated in to the design documents. The CITY shall complete the construction plans, technical specifications, special provisions, pay items and cost estimates in accordance with standards acceptable to City and County Departments charged with responsibility for the project.

2.3 **Permits And Approvals**. During the course of design, the CITY, through its Departments of Capital Improvements and Transportation and Public Works, shall identify all necessary permits and shall coordinate the review of construction documents by utilities and permitting agencies such as the Miami-Dade County Water and Sewer Department and the Department of Environmental Resources Management. The CITY shall make all necessary adjustments as required for approval and/or permitting by those agencies. The CITY, through its Department of Capital Improvements and the selected Contractor, shall obtain all necessary permits, and utility adjustments for the Project in accordance with applicable State, Federal and Local Laws and ordinances.

2.4 **Construction**. The CITY shall procure the services of a properly licensed contractor to construct the Project. The CITY may award the contract through any available lawful means which, in the CITY's discretion, is determined to provide 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. For this Project, the CITY intends to secure a contractor pursuant to existing Job Order Contracting Agreements between CITY and qualified contractors to provide

11

construction services. Notwithstanding such procurement matters, the CITY shall comply with the Community Small Business Enterprise (CSBE), Community Business Enterprise (CBE), and Community Workforce Programs (CWP) in accordance with Section 12 of this Joint Participation Agreement, where COUNTY funds are utilized.

The construction contract shall provide that the Project be completed not later than 12 months for Phase I and 9 months for Phase II after the issuance of a Notice to Proceed. The construction contract shall also contain a requirement that the contractor(s) provide a payment and performance bond, in a form acceptable to CITY's Risk Management Administrator, 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 CITY and COUNTY.

Subsequent to the evaluation of bids or proposals by the CITY and prior to the CITY's acceptance of a bid or proposal, the CITY shall provide said evaluation to the COUNTY's Director of Public Works for review and comment. Final commitment of COUNTY funds for the Project shall occur upon review of the contract award recommendation by the County Public Works Director in accordance with Section 3.3 of this Agreement. The COUNTY agrees that the selection, retention and discharge of such contractor shall be the responsibility of the CITY.

2.5 **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 request and cost of the COUNTY.

2.6 **Public Involvement:** The CITY will implement a Public Involvement Plan (PIP) during the design and construction of the project, including but not limited to: public meetings, project documentation and flyers, business signs, etc... Appropriate investigation of the project stakeholders will be used to develop the goals and objectives to implement this plan. The CITY shall submit a copy of the PIP to the COUNTY Public Works Director for review and concurrence prior to the NTP for construction.

2.7 **Claims & Change Orders:** The CITY shall notify the COUNTY's Director of Public Works in writing when claims or change orders arise. The CITY shall also invite the COUNTY to participate in negotiations of these claims and change orders.

3 RESPONSIBILITIES OF COUNTY

3.1 **Funding Amount, Reimbursement of Project Costs**. The COUNTY agrees to provide funds up to $840,000.00 for eligible expenses, as defined herein, incurred by CITY for the construction and administration of the Project. The COUNTY shall disburse to the CITY funds for the Project in the manner set forth in this Section. The COUNTY shall incur no liability for any costs in excess of said funding amount unless there has been a duly authorized increase approved by the Board of County Commissioners.

3.2 **Funding Source**: The COUNTY funds available for this Project are:

Funding Amount	Funding Source	COUNTY Fiscal Year of Commitment
$840,000	Transit Surtax Funds	2005-06

3.3 **COUNTY Approvals**: Wherever COUNTY approval is required through its Department of Public Works and/or said Department Director, the COUNTY will not unreasonably withhold or delay its approval. Failure of the COUNTY to respond, in writing, to the CITY's request for approval within thirty (30) days shall be automatically deemed an approval by COUNTY, without the necessity of future action by the COUNTY.

4 **PROJECT COST ADJUSTMENTS**: The amounts committed by the City and the County are based on the current estimated costs of the Project. The parties recognize that adjustments to the above-referenced costs may be required in the future and that at the option of the parties, amendments may be entered into to revise the funds committed for the Project. Provided that prior legislative authorization for funding is in place, additional amendments may be executed by the County and City Managers. Otherwise, future funding commitments shall be subject to the approval of the parties' respective governing boards.

5 **SCHEDULE & MANNER OF REIMBURSEMENTS**: Upon execution, CITY shall furnish COUNTY a copy of the estimated budget for the Project, and will similarly furnish COUNTY with any and all revisions thereto. At the time of contract award 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-approved invoices with certified copies of payment requests attached.

6 **ELIGIBLE EXPENSES**: The parties agree that only the below identified expenses incurred by CITY that are directly related to the Project, including both hard and soft costs, 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, Project-related hard costs that may be reimbursed shall be defined to mean and include fees for labor, materials, supplies, equipment, supervisory personnel, required insurance and bonding, and/or the provision or installation of furnishings, fixtures and equipment. Project-related soft costs that may be reimbursed shall be defined to mean and include fees for construction management, construction inspections, project management, and professional engineers providing post-design services, permitting and associated costs, and geotechnical testing. Project construction-related costs incurred by the CITY no earlier than six (6) months prior to the effective date of this Agreement shall also be reimbursed provided they are also Eligible Expenses as defined herein.

7 **CONSTRUCTION ADMINISTRATION AND INSPECTION**. The CITY shall exercise all responsibilities of the "owner" under the construction contract, including oversight of construction administration and inspections. The CITY may delegate this function to an authorized agent or Construction Engineering Inspector or Observer (CEI/CEO consultant). The COUNTY may assign an inspector who shall have an advisory role in the routine daily inspections. In the case of a disagreement over the

interpretation of the plans, the City's Director of Capital Improvements, or his/her representative, shall have final authority. The CITY's representative and the COUNTY's designated representative shall jointly perform the inspection of the Project which immediately precedes substantial completion. Final payment to the CITY and obligation of maintenance responsibility to the parties shall be subject to the final acceptance of the Project by the COUNTY Public Works Director or designee. The CITY shall certify upon completion that the Project has been constructed pursuant to the design plans, specifications and approved change orders.

8 **PEOPLE'S TRANSPORTATION PLAN PROJECT SIGNAGE**. The COUNTY shall furnish and install a Project sign in each direction of traffic indicating that this Project is being funded by the People's Transportation Plan, in coordination with the City, in proximity to the start/end of the Project limits. Should MOT signage be required as part of the work, the Project sign shall be placed an appropriate distance before the MOT signage range. The Project signs shall remain in place for the duration of the work or as directed by the Project engineer.

9 **AUDIT**. The CITY agrees to permit the COUNTY auditors to inspect the books, records and accounts of the Project for three years after completion of the Project. These records shall be made available to the COUNTY for inspection within five (5) working days upon written receipt of a written request from the COUNTY. Audits shall be conducted at the COUNTY's cost and expense.

10 **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 limitations included in §768.28, Florida Statues 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 §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. 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) days of receipt.

11 **MAINTENANCE RESPONSIBILITIES**. Upon completion of the Project, the parties will assume maintenance responsibilities as set forth below:

Maintenance Responsibility by Miami-Dade COUNTY	Maintenance Responsibility by the CITY of Miami
Asphalt Pavement Pavement Markings Concrete Curb and Gutters Sidewalks Drainage Lighting Signalization Signage Standard Tree Planting and Sod	Other Features not listed as "COUNTY Responsibility" unless otherwise approved by COUNTY Public Works Director

12 **BUSINESS PROGRAM COMPLIANCE AND OVERSIGHT.** Whenever COUNTY funds are used, the CITY agrees to comply with applicable COUNTY regulations pertaining to the Community Small Business Enterprise (CSBE) Program, Community Business Enterprise (CBE) Program, and the Community Workforce Program for construction. Specifically, CITY agrees to abide by the goals for the participation of specified business entities and/or trades, and for Community Workforce employment, as approved by the Business Development Review Committee and administered by the COUNTY's Department of Business Regulation ("DBD"). The DBD shall have the right to oversee and ensure compliance with the goals established, including but not limited to, the right to audit and to require reports and documentation related to the Program goals.

13 **CITIZENS' INDEPENDENT TRANSPORTATION TRUST APPROVAL**. Unless waived by action of the COUNTY, this agreement shall only become effective upon approval by the Board of County Commissioners and the Citizens' Independent

Transportation Trust (CITT) or, if not approved by the CITT, by the Board of County Commissioners reaffirmance of the award by 2/3 vote of its membership, all pursuant to the applicable ordinance. In the event the agreement is not approved, the agreement shall be null and void and be of no force or effect.

14 **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: Aristides Rivera, P.E., P.L.S.
Director, Public Works Department
Miami-Dade COUNTY
111 N. W. 1st Street, Suite 1640
Miami, Florida 33128
(305) 375-2960

To the CITY:

Attention: Mary H. Conway, P.E.
Director, Department of Capital Improvements and Transportation
City of Miami
444 S.W. 2nd Avenue, 10th Floor
Miami, Florida 33130
(305) 416-1027

15 **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.

16 **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.

17 **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.

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

19 **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) days after the finding by the court becomes final.

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

BY: _____
Deputy Clerk

Approved by County Attorney
as to form and legal sufficiency

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

BY: _____ 11/14/05
for Ford County Manager
Carlos F. Bonzon, Ph.D., P.E.
Assistant County Manager

ATTEST:

BY: _____
Priscilla Thompson
City Clerk

(Affix City Seal)

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

BY: _____
Joe Arriola
City Manager

Approved by City Attorney
as to Legal form and correctness:
Requirements:

Jorge L. Fernandez
City Attorney

RSR

Approved to Insurance

Dania F. Carrillo 6/16/05

Dania Carrillo, Administrator
Risk Management