Memorandum

MIAMI-DADE COUNTY

Date: February 2, 2010

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

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

From: George M. Burgess
County Manager

Subject: Joint Participation Agreement Between Miami-Dade County and the City of Coral Gables to Provide Funding in the Amount of $1,490,000 for the Construction of Roadway Improvements Along Ponce de Leon Boulevard from Alcazar Avenue to Salamanca Avenue

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This item was amended at the January 13, 2010 Transportation, Infrastructure and Roads Committee meeting to correct a scrivener's error within the "Scope" section. The corrected language should read "Commission District 6".

RECOMMENDATION

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing execution of a Joint Participation Agreement (JPA) between Miami-Dade County (County) and the City of Coral Gables (City) to reimburse the City for the construction of roadway improvements along Ponce de Leon Boulevard from Alcazar Avenue to Salamanca Avenue. The Agreement provides for $1,490,000 in funds from Road Impact Fee (RIF) District 7.

SCOPE

The improvements will be constructed within the City of Coral Gables, in Commission District 6.

FISCAL IMPACT/FUNDING SOURCE

The total construction cost of the project is $2,907,700. The County's contribution to the project, is $1,490,000, and will be provided by RIF District 7. The balance of construction costs, $1,417,700, will be provided by the City from Federal Stimulus funds ($1,036,796), and City Storm Sewer Improvement funds ($380,904).

TRACK RECORD/MONITOR

The County will utilize the resources of the City to contract and construct 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. The project will be assigned to Mr. Bassam Moubayed, CFM, Chief, Construction Division, Miami-Dade County Public Works Department (PWD), who will oversee inspections conducted by PWD staff before release of funds is recommended.

The work covered under this JPA has been reviewed by the County's Review Committee (RC). As previously noted, this project involves the expenditure of federal funds, thereby requiring the City to abide by federal regulations, and County measures are not applicable by the RC. Therefore, as part of this JPA, the City agrees to comply with applicable federal regulations, including but not limited to the Disadvantaged Business Enterprise (DBE) Program and the Davis-Bacon Act. The City will be responsible for establishing a DBE goal for this project as per federal regulations.

BACKGROUND

On July 13, 2004, the BCC approved a JPA under Resolution No. R-890-04 which included the design of roadway improvements along Ponce de Leon Boulevard from Alcazar Avenue to

SW 8 Street. Subsequently, the City has requested that the County provide funds for the construction of a roadway improvement project along Ponce de Leon Boulevard from Alcazar Avenue to Salamanca Avenue. The project will improve roadway capacity in the area, promote vehicular and pedestrian safety, enhance aesthetics and the environment with new landscaping, and improve efficiency and safety of the Coral Gables Trolley with the construction of curb bulb-outs at trolley stops.

On October 27, 2009, the Coral Gables City Commission adopted Resolution No. 2009-303 approving this JPA.

The City will implement a Public Involvement Plan (PIP) to provide information to all affected property owners, tenants, and area residents for major work to be performed in the area. The project is tentatively scheduled to begin construction in March 2010, and is anticipated to be completed in March 2011.

Assistant County Manager

MEMORANDUM
(Revised)

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

DATE: February 2, 2010

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

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

Please note any items checked.

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

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

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

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

_____ **Budget required**

_____ **Statement of fiscal impact required**

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

_____ **No committee review**

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

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(P)(1)(B)
2-2-10

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF CORAL GABLES TO PROVIDE FUNDING IN THE AMOUNT OF $1,490,000 FOR THE CONSTRUCTION OF ROADWAY IMPROVEMENTS ALONG PONCE DE LEON BOULEVARD FROM ALCAZAR AVENUE TO SALAMANCA AVENUE; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S 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 Coral Gables and Miami-Dade County wish to facilitate the construction of roadway improvements to be constructed along Ponce de Leon Boulevard from Alcazar Avenue to Salamanca Avenue,

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 Coral Gables, providing up to $1,490,000 to the City for eligible expenses incurred in the construction of these improvements, in substantially the form attached hereto and made a part hereof; and authorizing the County Mayor or 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 2nd day of February, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Bruce Libhaber

JOINT PARTICIPATION AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND THE CITY OF CORAL GABLES
PONCE DE LEON BOULEVARD
FROM ALCAZAR AVENUE TO SALAMANCA AVENUE

This AGREEMENT, made and entered into this _____ day of _____, 2010, by and between the CITY OF CORAL GABLES, 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:

The construction of a roadway improvement project along Ponce de Leon Boulevard from Alcazar Avenue to Salamanca Avenue, which includes a raised landscaped median with addition of left turn bays along the entire corridor, and conversion of angle parking to parallel parking; and

WHEREAS, the County wishes to utilize the resources of the City to contract and construct the Project, subject to the terms and conditions of this Agreement;

6

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

1. **RESPONSIBILITIES OF CITY**:

1.1. **Design**: The City shall complete the construction plans, technical specifications, special provisions, pay items and cost estimates for the Project in accordance with standard Florida Department of Transportation, County, and/or City, as applicable, design criteria, to the satisfaction of the County's Public Works Director or their designee. 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.

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 Notice to Proceed 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 request and cost of the County. 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) 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 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 Federal contract compliance and oversight measures

relating to the expenditure of Federal funds, in accordance with Section 6 of this Agreement. Prior to the advertisement to solicit a licensed contractor to construct the Project, the City will contact the County's Public Works Contracts and Specifications Section to ensure this compliance.

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.

Subsequent to the evaluation of bids or proposals by the City and the City's determination of the most advantageous bid or proposal, the City shall provide said evaluation to the County Public Works Director for review and approval. Final commitment of County funds for the Project shall occur upon approval of the contract award recommendation by the County Public Works Director. The County agrees that the selection, retention and discharge of such contractor shall be the responsibility of the City.

1.7. **Claims and Change Orders**: The City shall notify the County Public Works Director 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. The County shall review and make a determination or approval of all change orders or supplemental agreements, permits, modifications of plans, or other requests for approvals submitted by 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. In the case of a disagreement over the interpretation of the plans, the County Public Works Director, or their representative, shall have final authority subsequent to an independent final inspection by the County. 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 final acceptance of the Project by the County Public Works Director or designee.

1.9. **Maintenance**: The City shall be solely responsible for maintenance upon construction completion of the Project.

2. **RESPONSIBILITIES OF COUNTY**:

2.1. **Funding Amount, Reimbursement of Project Costs**: The project is currently estimated to cost $2,907,700 (this amount includes 10% contingency). The County agrees to provide funds up to a maximum amount of $1,490,000 for eligible costs, as defined herein, incurred by the City for the construction 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.

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

Funding Amount	Funding Source	County Fiscal Year of Commitment
$ 1,090,000	Road Impact Fee District 7	2008-2009
$ 200,000	Road Impact Fee District 7	2009-2010
$ 200,000	Road Impact Fee District 7	2010-2011

2.3. **Project Cost Adjustments**: The amount contributed by the County is based on the current estimated costs of the Project. The parties recognize that adjustments to the above-referenced cost may be required in the future and that at the option of the parties, amendments may be entered into to revise the funds available for the Project. Provided that there is no increase in the amount of County funds required as stated in Section 2.1, amendments may

be executed by the City Manager and the County Mayor or County Mayor's designee without the need for approval by the City Council and County Commission. Otherwise, further funding commitments shall be subject to the approvals of the parties' respective governing boards.

3. **ELIGIBLE COSTS**: The parties agree that only the below identified 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 further defined as those pertaining to the construction of Project elements that are the standard items normally provided for by the County in County roadway construction 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, construction or maintenance 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 execution, 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 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 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 with all applicable laws 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 Federal funds are used, the City agrees to comply with applicable Federal regulations including but not limited to the Disadvantaged Business Enterprise (DBE) Program and Davis-Bacon Act wage rates. The City agrees to abide by the applicable regulations and requirements established by Title 49 Code of Federal Regulations Part 26 (49 CFR 26) for DBE participation of specified business entities and for applicable requirements, as administered by the City. The City is responsible for compliance oversight and enforcement in accordance with 49 CFR 26.

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: Alberto Delgado, P.E.
Director, Public Works Department
City of Coral Gables
2800 SW 72 Avenue
Miami, Florida 33155
(305) 460-5001

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

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

BY: _____
County Mayor or County Mayor's Designee

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

ATTEST:

BY: Walter J. Foeman 12/1/09
Walter J. Foeman
City Clerk

(Affix City Seal)

City of Coral Gables, a Municipal
Corporation of the State of Florida

BY: Patrick Salerno
Patrick Salerno
City Manager

Approved by City Attorney
as to form and legal sufficiency _____
Elizabeth M. Hernandez
City Attorney

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2009-303

A RESOLUTION AUTHORIZING THE EXECUTION OF A JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF CORAL GABLES FOR DISBURSEMENT OF ROAD IMPACT FEE FUNDS IN THE AMOUNT OF $1,490,000.00 TO THE CITY FOR THE CONSTRUCTION OF ROADWAY CAPACITY IMPROVEMENTS AND A RAISED LANDSCAPE MEDIAN ON PONCE DE LEON BOULEVARD FROM ALCAZAR AVENUE TO SALAMANCA AVENUE.

WHEREAS, a Joint Participation Agreement has been prepared by Miami-Dade County to disburse Road Impact Fee funds in the amount of $1,490,000.00 to the City of Coral Gables for the construction of roadway capacity improvements and a raised landscape median on Ponce de Leon Boulevard between Alcazar Avenue and Salamanca Avenue, in the City of Coral Gables, Florida; and

WHEREAS, said Road Impact Fee Funds will be used to supplement additional funds from the American Reinvestment and Recovery Act of 2009 for the project; and

WHEREAS, in 2007 a raised landscape median for a seven block segment was completed under the Ponce de Leon Boulevard Phase I Improvement Project; and

WHEREAS, Road Impact Fee funds of $1,490,000.00 will be coupled with Federal Stimulus funds from the ARRA of $1,036,796.00, along with funding from the Storm Sewer Improvements fund of $380,904.00 for a total construction budget of $2,907,700.00 needed to move forward with the Phase II segment of the Ponce de Leon Boulevard Median Improvement Project;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. That the City Commission does hereby direct the City Manager to authorize the execution of a Joint Participation Agreement between the City of Coral Gables and Miami-Dade County is hereby authorized for the disbursement of Road Impact Fee Funds in the amount of $1,490,000.00 to the City for the construction of roadway capacity improvements and a raised landscape median on Ponce de Leon Boulevard between Alcazar Avenue and Salamanca Avenue in the City of Coral Gables, Florida.

SECTION 3. That this Resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-SEVENTH DAY OF OCTOBER, A. D., 2009.

(Moved: Cabrera / Seconded: Anderson)
(Yeas: Cabrera, Kerdyk, Withers, Anderson, Slesnick)
(Unanimous: 5-0 Vote)
(Agenda Item: C-10)

APPROVED:

DONALD D. SLESNICK II
MAYOR

ATTEST:

WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

ELIZABETH M. HERNANDEZ
CITY ATTORNEY