

Memorandum



Date: February 1, 2011
To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

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

From: George M. Burgess
County Manager

Subject: Resolution Authorizing Execution of Amendment Number One to the Design Agreement between Miami-Dade County and the U.S. Department of the Army for Design of Miami Harbor Federal Navigation Project Phase III

This substitute differs from the original in that the attached Amendment further clarifies that the Department of the Army ("DOA") has no obligation to reimburse the County these advance funds unless the construction phase of this project is funded by Congress and the subsequent Project Partnership Agreement (PPA) for construction is executed with terms that allow these funds to be credited back towards the County's share of construction costs. While these provisions were already clearly stated in the initial Manager's memorandum, the attached Amendment includes updated language to this effect requested by the DOA.

RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the execution of Amendment Number One to the Design Agreement between Miami-Dade County ("County") and the U.S. Department of the Army ("DOA") for design of the minus 50 feet Miami Harbor Federal Navigation Project Phase III ("Project").

SCOPE

The Port of Miami is located within District 5 – Commissioner Bruno A. Barreiro. The impact of this agenda item is countywide as the Port of Miami ("Port") is a regional asset and generates employment for residents throughout Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

The total design cost for the Project is anticipated to be \$3,890,000, of which the Port was responsible for \$1,220,000 (31.36%) and the DOA was responsible for \$2,670,000 (68.64%). Out of the Port's \$1,220,000, 50% (\$610,000) of this amount will be reimbursed to the Seaport via an existing Joint Participation Agreement (JPA) with the Florida Department of Transportation ("FDOT"). This amendment will allow the Port to advance funds (approximately \$1,000,000.00) to the DOA to complete the design of the Phase III Dredging Project since the DOA is lacking full federal funding for the design agreement. These funds may be credited back to the County during construction of the project, provided appropriation of federal funds for construction of this project is authorized by Congress and the Department of the Army later approves such credit in a future Project Partnership Agreement with the County. This Design Agreement and Amendment is a budgeted capital project funded by the issuance of the 2010 Recovery Zone Economic Development bonds. Additionally, the entire Project is budgeted to be paid from bond proceeds and State grants. Any future maintenance costs of the channel are cost-shared 50/50 with the DOA and occur approximately every ten years. This cost is estimated at \$500,000 every ten (10) years and will be funded through the operating budget.

TRACK RECORD/MONITOR

The Seaport Department staff members responsible for monitoring the Agreement are Dorian K. Valdes, Assistant Port Director, Capital Development and Becky Hope, Environmental Manager, Capital Development.

BACKGROUND

In November 2007, Congress approved the Water Resource Development Act of 2007 ("WRDA"), which, among other things, authorized the deepening Project, which will deepen the Port's outer and south channel to a depth of minus 50 feet. This additional depth is critical for the Port since it will enable it to accommodate deeper draft cargo vessels and help the Port remain competitive with both competing U.S. ports as well as nearby foreign ports. Worldwide, the major shipping lines are increasingly procuring and deploying larger cargo vessels requiring deeper channel depths. At the proposed minus 50 foot depth, the Port will be able to remain a strategic hub for international commerce in both the north/south and east/west trade routes, as well as remain a dominant player with Latin America and the Caribbean. Additionally, as the closest U.S. East Coast port to the Panama Canal, the Port is uniquely positioned to take advantage of the expanded international trade and cargo traffic opportunities anticipated to be produced by the Panama Canal's soon-to-be-completed expansion.

On March 3, 2009, the Board passed Resolution R-203-09, approving a Design Agreement between the DOA and the County, under which the DOA agreed to pay 75% of the design and engineering costs of the Project and the County, as the Project's "Local Sponsor", would agree to pay the remaining 25%. On April 11, 2009, the DOA and County executed the Design Agreement. Since that time, design and engineering work has proceeded on the Project utilizing the County's already-provided 25% design cost share, with the remainder of the design costs coming from federal funds either already appropriated, or to be appropriated, by Congress.

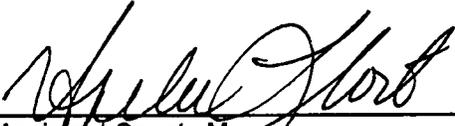
However, as Congress has not yet fully funded the DOA's share of the Project's design costs, the DOA plans on halting its design work once the currently appropriated federal design funds are exhausted, unless the Local Sponsor (the County) agrees to advance additional funds to keep this critical project on schedule. It is currently estimated that an additional \$1,000,000.00 is needed to fund the Project's remaining design and engineering requirements.

Under the terms of the attached recommended Amendment Number One to the previously executed Design Agreement, the County may elect to advance the DOA additional design funds, beyond the County's already provided 25% share, to minimize the likelihood that design work on the critical Project will cease once the DOA's appropriated federal funds are exhausted. Under the proposed Amendment, the DOA agrees that any portion of these advanced County funds--that are not otherwise reimbursed by the DOA to the County--will be credited toward the County's anticipated share of the future Project's construction costs, subject to future execution of a Project Partnership Agreement (PPA) between the DOA and the County, and following adequate funding of the Project being appropriated by Congress.

The Port of Miami is one of only three deep draft Federal dredging projects on the U.S. East Coast to have been authorized by Congress; the others being New York/New Jersey and Norfolk, Virginia. However, several Florida ports including most notably Port Everglades, Tampa, and Jacksonville are currently seeking passage of congressional legislation enabling them to dredge to the desired depth of 50 feet. Consequently, the Port presently has an advantage in this regard as the Miami Harbor Project has already been authorized. By advancing these design funds to the DOA, critical design work can continue while the County pursues Federal funding needed to allow this already-authorized deepening Project to commence, and keep the Port's advantage intact. As the Panama Canal's current expansion is anticipated to be completed in 2014, and as such expansion is anticipated to not only increase the Port's future cargo traffic, but also create new opportunities to service newer and larger cargo vessels requiring deeper draft channels, it is vital for the County to keep this critical deepening Project moving forward and on schedule. Without the requested Amendment Number One, and requested approval of the County's advancing needed design funds in furtherance of the Project, completion of the Project in time to coincide with the anticipated completion of the on-going Panama Canal improvements in 2014 will be jeopardized.

DELEGATED AUTHORITY

In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond those specified in the resolution which include the Mayor or designee to execute the Agreement, and to exercise the cancellation and renewal provisions.



Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: February 1, 2011

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

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

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(Q)(1)(A)
2-1-11

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE DESIGN AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE U.S. DEPARTMENT OF THE ARMY; AUTHORIZING THE MAYOR OR MAYOR'S DESIGNEE TO EXECUTE THE AMENDMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY; AND AUTHORIZING DISBURSEMENT OF UP TO ONE MILLION DOLLARS TO THE U.S. DEPARTMENT OF THE ARMY TO FUND THE CORPS OF ENGINEERS' DESIGN OF PORT OF MIAMI'S PHASE III HARBOR DEEPENING PROJECT

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:

Section 1. Approves Amendment No. 1 to the Design Agreement between Miami-Dade County and the U.S. Department of the Army in substantially the form attached hereto and made a part hereof.

Section 2. Authorizes the Mayor or Mayor's designee to execute this Amendment after review and approval by the County Attorney's Office.

Section 3. Following execution of Amendment No. 1 to the Design Agreement, this Board further authorizes the Mayor or Mayor's designee to pay up to one million dollars (\$1,000,000.00) (from 2010 Recovery Zone Economic Development bond proceeds) to the U.S. Department of the Army (Corps of Engineers) to be used in accordance with the purposes and terms set forth in the above-referenced Design Agreement as amended by Amendment No. 1 thereto.

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:

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Jose "Pepe" Diaz	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of February, 2011. 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.

SB

Steve Bass

AMENDMENT NO. 1
TO THE
DESIGN AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
MIAMI-DADE COUNTY, FLORIDA
FOR DESIGN FOR THE
MIAMI HARBOR FEDERAL NAVIGATION PROJECT (Phase III)

This Amendment No. 1 is entered into this ____ day of _____, 2011, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and Miami-Dade County, Florida (hereinafter the "Non-Federal Sponsor"), represented by its County Manager.

WITNESSETH THAT:

WHEREAS, the Government and the Non-Federal Sponsor entered into a Design Agreement (hereinafter the "Agreement") providing for the design of the Miami Harbor Federal Navigation Project (Phase III) on April 11, 2009 based on project features as set forth in the "Miami Harbor, Miami-Dade County, Florida Navigation Study Final General Reevaluation Report and Environmental Impact Statement," dated February 2004 and approved by the Chief of Engineers on April 25, 2005;

WHEREAS, the Miami Harbor Federal Navigation Project (hereinafter referred to as the "Project") was authorized by Section 1001 of the Water Resources Development Act of 2007, Public Law 110-114;

WHEREAS, the Non-Federal Sponsor has expressed its intent to eventually serve as the non-Federal sponsor that will share in the construction costs of the Project;

WHEREAS, the Government and the Non-Federal Sponsor agreed that during the *period of design*, the Non-Federal Sponsor shall contribute 25 percent of *total design costs* and that if a Project Partnership Agreement for construction of the *Project* is executed between the Government and a non-Federal interest, such non-Federal interest shall contribute any remaining portion of the costs of design in accordance with the provisions of such Project Partnership Agreement;

WHEREAS, the Non-Federal Sponsor considers it to be in its own interest to expedite the design of the Project by voluntarily providing funds in excess of its *non-Federal proportionate share* to be used by the Government for that purpose; and

WHEREAS, the parties agree that funds provided by the Non-Federal Sponsor shall not represent or give rise to an obligation of the United States, including any obligation to provide

reimbursement of the funds the Non-Federal Sponsor elects to provide or any obligation to request future funds for the Project, and that such funds provided will be credited against the Non-Federal Sponsor's future cost share if and only if a Project Partnership Agreement is executed to construct the Project; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the Project in accordance with the terms of this Amendment No. 1 to the Design Agreement Between the Department of the Army and Miami-Dade County, Florida (hereinafter "Amendment No. 1").

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to the following modifications to the Agreement:

1. In the fifth Whereas clause, Article I.B., Article I.C., Article II.F., Article II.F.1., Article II.F.2., Article II.G., Article IV.D.3.b., replace "Project Cooperation Agreement" with "Project Partnership Agreement".

2. The following replaces Article II.B.:

B. The Non-Federal Sponsor shall contribute toward *total design costs* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide funds in accordance with Article IV.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's share of 25 percent of *total design costs* if the Government projects at any time that the collective value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement will be less than such share.

2. The Non-Federal Sponsor may provide funds in addition to Non-Federal Sponsor's share of 25 percent of *total design costs* any time during the *period of design*. Such additional funds that are not reimbursed pursuant to Article II.B.3. will be credited toward the Non-Federal share of project costs upon execution of a Project Partnership Agreement for the Project, if such an agreement is executed, and upon appropriation of Federal funds for construction of the Project.

3. Upon written request of the Non-Federal Sponsor, the Government, subject to the availability of funds, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of *total design costs* if the Government determines at any time that the collective value of the following contributions has exceeded *total design costs* : (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article; (b) the value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement; (c) the value of the Non-Federal Sponsor's contribution pursuant to Article II.B.2; and (d) funds provided by the Government for design of the Project.

4. Upon written request of the Non-Federal Sponsor, the Government, subject to the availability of funds, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 25 percent of *total design costs* if the Government determines at any time that the collective value of the following contributions has exceeded 25 percent of *total design costs* : (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article; (b) the value

of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement; and (c) the value of the Non-Federal Sponsor's contribution pursuant to Article II.B.2.

3. The following replaces Article II.F.3:

3. If the Government and a non-Federal interest do not enter into a Project Partnership Agreement for construction of the *Project* or a separable element thereof, the Government shall not be obligated to refund or reimburse the Non-Federal Sponsor, in whole or in part, for the Non-Federal Sponsor's contribution to *total design costs*, *except as otherwise provided in the Design Agreement*. Further, refund or reimbursement by the Government for any excess amount determined in accordance with Article IV.D.2. or Article IV.E.3.b. of this Agreement is subject to the availability of funds.

4. The following is inserted before Article IV.C, and Article IV.C and D are changed to Article IV.D and IV.E respectively:

C. In the event the Non-Federal Sponsor elects to provide funds beyond its *non-Federal proportionate share*, pursuant to Article II.B.2, the Non-Federal Sponsor shall provide such funds in the manner specified in this paragraph. The Non-Federal Sponsor shall provide the Government with such funds by delivering a check payable to "FAO, USAED, JACKSONVILLE" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

5. The following replaces what is Article IV.C.2. in the Design Agreement, which is renumbered Article IV.D.2 in this Amendment:

2. Should the *non-federal sponsor* provide funds in excess of its *non-Federal proportionate share* pursuant to Article II.B.2. and should the interim or final accounting, as applicable, show that the funds provided by the Non-Federal Sponsor along with Government funds exceed *total design costs*, the Government, subject to the availability of funds, shall refund or reimburse the excess amount, not to exceed contributions pursuant to Article II.B.2., to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement. If such appropriations are not received or, if the Non-Federal Sponsor requests that the Government not refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall apply the excess amount toward the share of total cost of construction of the general navigation features for the *Project* that is required of the non-Federal interest executing a Project Partnership Agreement or agreements for the *Project* or separable element thereof in accordance with Article II.F. of this Agreement.

6. In Article X.B., the second sentence, after "Upon the exhaustion of Federal funds made available by the Government to the project," the following language is added: "and any funds provided by the *non-Federal Sponsor*".

7. All other provisions of the Agreement remain in full force and effect.

In Witness Whereof, the parties hereto have executed this Amendment No. 1 which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

DEPARTMENT OF THE ARMY

MIAMI-DADE COUNTY,
FLORIDA

Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)

George M. Burgess
County Manager

DATE: _____

DATE: _____.

CERTIFICATE OF AUTHORITY

I, R.A. Cuevas, Jr., 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 this Amendment No. 1 to the Design Agreement Between the Department of the Army and Miami-Dade County for Design of the Miami Harbor Federal Navigation Project (Phase III) and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment No. 1 and that the person who has executed this Amendment No. 1 on behalf of Miami-Dade County has acted within his statutory capacity.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of 2011.

R.A. Cuevas, Jr.
County Attorney
Miami-Dade County, Florida

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.

George M. Burgess
County Manager
Miami-Dade County,
Florida

DATE: _____

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CERTIFICATION OF LEGAL REVIEW

The draft Amendment No.1 to the Design Agreement Between the Department of the Army and Miami-Dade County, Florida for Design of the Miami Harbor Federal Navigation Project (Phase III) has been fully reviewed by Office of Counsel, USAED, Jacksonville, and is legally sufficient.

Assistant District Counsel