MEMORANDUM Agenda Item No. 11(A)(19)

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

DATE: July 7, 2011

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

SUBJECT: Resolution approving the execution of amendment no. 1 to the design agreement between Miami-Dade County and the U.S. Department of the Army to fund Miami's Phase III Harbor Deepening Project

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa.

R. A. Cuevas, Jr.
County Attorney

RAC/up

Memorandum

MIAMI-DADE COUNTY

Date: July 7, 2011

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

From: Alina T. Hudak
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

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, including the design of both federal and non-federal elements is anticipated to be $3,890,000. The Port is responsible for $1,220,000 (31.36%) and the DOA is 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"). In case federal funding is not realized or the design costs escalates due to unforeseen circumstances, this amendment will require the Port to provide additional funds (up to an additional $1,067,075.00) to the DOA to complete the design of the Phase III Dredging Project. 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

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 68.64% of the design and engineering costs of the Project and the County, as the Project's "Local Sponsor", would agree to pay the remaining 31.36%. On April 11, 2009, the DOA and County executed the Design Agreement. Since that time, design and engineering work has been carried out by the DOA utilizing the County's already-provided 31.36% design cost share, with the remainder of the design costs coming from federal funds already appropriated by Congress.

On February 1, 2011, the Board passed Resolution R-80-11, approving Amendment Number One to the Design Agreement. This amendment authorized the County to advance the DOA additional design funds, beyond the County's already provided 31.36% share, to minimize the likelihood that design work on the

critical Project will cease once the DOA's appropriated federal funds are exhausted. Resolution R-80-11 was based on Amendment Number One approved and received from the DOA's Jacksonville office only. Once the BCC approved Amendment One was transmitted to the DOA's Jacksonville District office, the Amendment was forwarded up their chain of command to the DOA's South Atlantic Division and to Headquarters in Washington, D.C. for final approval and execution. During this DOA final approval process, numerous changes to the amendment were incorporated. Two substantial changes were made in Article II.B.2, as follows, which require new BCC approval.

1) The definition in the original Design Agreement states the Port's local share is 25% of the total design costs (plus local service facilities) and the federal share is 75%. The revised Amendment now states that the County (the Port) shall be responsible for all total design costs that are in excess of the federal government's financial contribution. This contribution is defined as either the federal funds made available for design of the Project or 75% of total design costs, whichever is less.
2) The revised Amendment now includes, an advanced funds cap of $817,075, plus an additional $250,000 advancement that must be approved in writing by the Seaport Director prior to use, which brings the total advanced cap to $1,067,075. These amounts, in conjunction with the County funds given to date as part of the local share, bring the totals to $1,916,000 and $2,166,000, respectfully.

On Tuesday, May 17, 2011 that the FY 2011 DOA Civil Works Work Plan was released, and includes $1,000,000 of Federal funds for the completion of the Design Agreement, and therefore is now likely that we will not need to advance the funds. However, the DOA has asked that this revised Amendment go forward to ensure adequate funding will be available to complete the design on schedule. The Seaport Department will continue to receive quarterly financial updates to track this project.

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: July 7, 2011

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

SUBJECT: Agenda Item No. 11(A)(19)

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. 11(A)(19)
7-7-11

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE DESIGN AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE US 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 SIXTY-SEVEN THOUSAND AND SEVENTY-FIVE 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 his designee to pay up to one million sixty-seven thousand and seventy-five dollars ($ 1,067,075.00) (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 Prime Sponsor of the foregoing resolution is Commissioner Rebeca Sosa. It 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

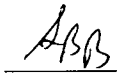
Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of July, 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. 

Steven B. 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 the "Government"), represented by the U.S. Army Engineer, Jacksonville District (hereinafter the "District Engineer"), 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") on April 11, 2009, providing for the design of the Miami Harbor Federal Navigation Project (Phase III) 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 Non-Federal Sponsor wants to provide, during the *period of design*, more than 25 percent of the *financial obligations for design* of the *Project*;

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. The 5th Whereas clause is amended by striking the current clause and replacing it with the following:

"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*;

2. The following Whereas Clauses are inserted after the 5th Whereas clause:

"WHEREAS, the Non-Federal Sponsor wants to provide, during the *period of design*, more than 25 percent of the *financial obligations for design* of the *Project*;

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*;"

3. ARTICLE I – DEFINITIONS

A. Article I.B., and Article I.C. are amended by striking "Project Cooperation Agreement" with replacing it with "Project Partnership Agreement".

B. Article I.E. is amended by striking "Article II.B.1." and replacing it with "Article II.B.3.".

4. ARTICLE II – OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. Article II.A.7. is amended by striking "As of the effective date of this Agreement, $1,314,500 of Federal funds" and replacing it with "As of the effective date of Amendment No. 1 to this Agreement, $1,974,000 of Federal funds".

B. Article II.B., Article II.B.1., and Article II.B.2. are amended by striking the current paragraphs and replacing them with the following paragraphs:

"B. The Government's and the Non-Federal Sponsor's amount of financial participation in *total design costs* shall be determined in accordance with the provisions of this paragraph.

1. The Government's maximum amount of financial participation in *total design costs* shall not exceed the lesser of the following amounts as determined by the Government: the Federal funds the Government makes available for design of the *Project*; or 75 percent of *total design costs*.

2. The Non-Federal Sponsor shall be responsible for all *total design costs* that are in excess of the Government's financial participation determined in accordance with paragraph B.1. of this Article, provided that the Non-Federal Sponsor's responsibility for such costs may not exceed $1,916,000 unless such additional design cost responsibility is approved in writing by the Non-Federal Sponsor through its Port Director, and provided further that the Non-Federal Sponsor's share of responsibility for *total design costs* may not exceed $2,166,000 without the prior written approval of both the Port Director and the Board of County Commissioners of Miami-Dade County via a duly adopted and effective resolution of such Board.

3. 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 the Non-Federal Sponsor's share of *total design costs* determined in accordance with paragraph B.2. of this Article, the Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share by subtracting from the Non-Federal Sponsor's share of *total design costs* determined in accordance with paragraph B.2. of this Article the collective value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement. The Non-Federal Sponsor shall provide such funds in accordance with Article IV.B. of this Agreement."

C. Article II.F. and Article II.G., are amended by striking "Project Cooperation Agreement" with replacing it with "Project Partnership Agreement".

D. Article II.F.1. and Article II.F.2. are each amended by:

1. striking "Project Cooperation Agreement" with replacing it with "Project Partnership Agreement"; and

2. striking ", including any excess amount determined in accordance with Article IV.C.2. or Article IV.D.3.b. of this Agreement that was not refunded or reimbursed by the Government" and replacing it with "including any excess amount determined in accordance with Article IV.C.2. or any excess amount determined in accordance with Article IV.D.3.b. of this Agreement that was not refunded or reimbursed by the Government".

E. Article II.F.3. is amended by striking the current paragraph and replacing it with the following paragraph:

"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*."

F. Article II.F.4. is amended by striking the current paragraph.

5. ARTICLE IV – METHOD OF PAYMENT

A. Article IV.A.1. is amended by striking the current paragraph and replacing it with the following paragraph:

"1. As of the effective date of Amendment No. 1 to this Agreement, *total design costs* are projected to be $3,890,000; the Non-Federal Sponsor's contribution of funds required by Article II.B.3. of this Agreement is projected to be $1,916,000; the *non-Federal proportionate share* is projected to be 49.25 percent; and the Government's total financial obligations to be incurred for additional work in the design of the *Project* and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.E. of this Agreement are projected to be $126,425. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor."

B. Article IV.A.2. is amended by striking "Article II.B.1." and replacing it with "Article II.B.3.".

C. Article IV.B. is amended by striking "Article II.B.1." and replacing it with "Article II.B.3.".

D. Article IV.C.2. is amended by striking the current paragraph and replacing it with the following paragraph:

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsor for *total design costs* exceed the Non-Federal Sponsor's total required share thereof determined in accordance with Article II.B.2. of this Agreement, the Government shall afford credit for the excess amount toward the Non-Federal Sponsor's share of total cost of construction of the general navigation features under the Project Partnership Agreement for construction of the *Project*. The Government, subject to the availability of funds, shall refund to the Non-Federal Sponsor any funds contributed by the Non-Federal Sponsor that have not been obligated by the Government for design of the *Project*, within 90 calendar days of the date of completion of such accounting."

E. Article IV.D.3.b. is amended by striking "Project Cooperation Agreement" with replacing it with "Project Partnership Agreement".

6. 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 District Engineer.

DEPARTMENT OF THE ARMY

_____
Alfred A. Pantano, Jr.
Colonel, U.S. Army
District Commander

DATE: _____

MIAMI-DADE COUNTY,
FLORIDA

_____
Alina T. Hudak
County Manager

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. 1on 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.

_____.
Alina T. Hudak
County Manager
Miami-Dade County,
Florida

DATE: _____