


Memorandum



Date: November 8, 2012

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

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Authorizing the Approval of a Memorandum of Understanding Between Miami-Dade County and The West Perrine Community Redevelopment Agency for Fitness Zone Improvements to West Perrine Park

Agenda Item No. 8(H)(1)

Recommendation

It is recommended that the Board of County Commissioners adopt the attached resolution approving a Memorandum of Understanding (MOU), (Attachment A) between Miami-Dade County and the West Perrine Community Redevelopment Agency (WPCRA), and authorize its execution by the Mayor or the Mayor's designee.

Scope

West Perrine Park is located at 17121 S.W. 104 Avenue, Miami, in Commission District 9.

Fiscal Impact/Funding Source

The WPCRA will provide the Miami-Dade Parks, Recreation and Open Spaces Department (PROS) a total of \$37,500 of fiscal year 2011-12 funds for Fitness Zone outdoor exercise equipment in West Perrine Park. The Trust for Public Lands contribution of \$35,000 and PROS Park Impact Fees funding of \$55,000 gives a total project cost of \$127,500. The additional fiscal impact to the operation, maintenance, and repair of the Fitness Zone improvements is estimated to be approximately \$2,400 per year, from PROS index code PREWEP458533.

Tracking/Monitor


PROS Capital Programs staff and the Office of Management and Budget staff will monitor the MOU.

Background

The WPCRA Board is the Miami-Dade County Board of County Commissioners. The WPCRA Board approved the MOU under resolution CRA-1-12 at its July 3, 2012 meeting (Attachment B). The MOU provides for the funding of Fitness Zone improvements to West Perrine Park. The improvements have been completed, and section 2.2 of the MOU allows for work in advancement of the effective date of this MOU.

This equipment complements the existing facilities in the park. The Fitness Zone consists of the following equipment: one four-person leg press, one two-person chest press, one two-person lat pull down, one two-person vertical press, one single cross country ski, one four-person pendulum/abs machine, one two-level horizontal bar, one two-person sit up bench, and one single elliptical trainer and announcement board. The Fitness Zone provides area residents with the opportunity to exercise using this equipment when they visit the park.

Approval of the MOU allows the WPCRA to provide relief to the presence of unsanitary, unsafe conditions identified in the Finding of Necessity of the Area. Additionally, these improvements will greatly benefit the surrounding area and provide a safe, clean place where the community can gather for recreational and fitness activities.

Attachments 

Lisa M. Martinez, Senior Advisor
Office of the Mayor



MEMORANDUM

(Revised)

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

DATE: November 8, 2012

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

SUBJECT: Agenda Item No. 8(H)(1)

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

Agenda Item No. 8(H)(1)

Veto _____

11-8-12

Override _____

RESOLUTION NO. _____

RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN MIAMI-DADE COUNTY AND WEST PERRINE COMMUNITY REDEVELOPMENT AGENCY FOR IMPROVEMENTS TO WEST PERRINE PARK IN THE AMOUNT OF \$37,500; AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE ANY AND ALL RIGHTS CONFERRED THEREIN

WHEREAS, the West Perrine Community Redevelopment Agency approved the Memorandum of Understanding under Resolution CRA-1-12 at its July 3, 2012 meeting; and

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 finds it is in the best interest of Miami-Dade County to approve the execution of a Memorandum of Understanding between Miami-Dade County and the West Perrine Community Redevelopment Agency in substantially the form attached hereto as Attachment A, whereby the West Perrine Community Redevelopment Agency grants to the County \$37,500 for improvements to West Perrine Park; and authorizing the County Mayor or the County Mayor's designee to execute same and exercise any and all rights conferred 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:

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	

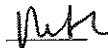
The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of November, 2012. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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.



Monica Rizo

ATTACHMENT A

MEMORANDUM OF UNDERSTANDING BETWEEN MIAMI-DADE COUNTY AND WEST PERRINE COMMUNITY REDEVELOPMENT AGENCY

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this _____ day of _____ 2012, by and between the MIAMI-DADE COUNTY, a political subdivision of the State of Florida (the "County") and the WEST PERRINE COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic ("WPCRA").

RECITALS

1. The WPCRA is charged with rehabilitation, conservation, and redevelopment within the geographic area generally described as being bounded on the North by SW 168th Street, bounded on the East and Southeast by State Road 5 (US-1), and bounded on the West and Southwest by State Road 821 (The Homestead Extension of Florida's Turnpike).

2. West Perrine Park, located at 17121 SW 104th Avenue, is a County property managed as an active park, providing recreational programming to the local community. To enhance the level of service within the WPCRA and improve the community's quality of life and image, the WPCRA has requested the County, working cooperatively with the Trust for Public Lands (TPL), a Non-Profit Corporation, undertake the installation of a Fitness Zone at West Perrine Park to enhance the health and well being of the community.

3. The County has agreed to implement the requested installation pursuant to and in accordance with the terms and provisions of this MOU which represents the mutual understanding of the parties. This installation will be partially funded by the WPCRA and conducted by the County.

NOW, THEREFORE, in respect of the mutual promises contained herein, the County and the WPCRA agree as follows:

1. PURPOSE

This MOU provides for installation of a Fitness Zone (as defined in Section 2 below) at the West Perrine Park, located at 17121 SW 104th Avenue, Miami, Florida. The design, procurement and construction of these improvements will be the responsibility of the County. Funding for said installation will be partially provided by the WPCRA in the amount of \$37,500.

2. FITNESS ZONE INSTALLATION

The County shall, in cooperation with the Trust for Public Lands, complete the installation of a Fitness Zone with funding available under this MOU. The Fitness Zone will consist of the following equipment: four (4) person leg press, two (2) person chest press, two (2) person lat pull down, two (2) person vertical press, single cross country ski, four (4) person pendulum/abs, two (2) level horizontal bar, two (2) person sit up benches, single elliptical trainer and announcement board. Additionally, during the installation of the Fitness Zone, the County will include the logo of the CRA on any documentation or any signs placed during or after the construction of the Fitness Zone indication the West Perrine Community Redevelopment Agency as a contribution party.

2.1 Plans, Specifications and Contract Documents: The County will administer the project from procurement to contract completion and be responsible for technical specifications. The County will review all installations, design documents, and construction contract documents related to this project to ensure the equitability and acceptance of the project as it relates to guidelines and for compliance of time requirements. All construction permits for the improvements and/or renovations will be obtained on behalf of the County by the contracted installer. Any construction sign erected at the project site shall include Miami-Dade County Parks, Recreation and Open Spaces Department's project number, information, and funding sources. The County will provide a construction manager and/or inspector to oversee installation, and ensure that the Fitness Zone is performed in accordance with the County specifications and standards. It is understood that the entire project will be managed with the County's best interest in mind at all times. The County will take responsibility for all neighborhood concerns regarding the site during its use of the property for construction.

2.2. Schedule of Installation: The installation of the Fitness Zone shall be completed within six (6) months of the execution of this MOU. Work in advancement of this project may commence prior to the effective date of this MOU.

2.3. Soft Cost and Administrative Cost Limitation: The County shall not expend more than 17% of the funding provided by the WPCRA for in-house design services, administration, project management (not related to construction supervision), indirect costs (accounting/purchasing/personnel, etc.), imposed fees (e.g. permit processing fees) and those costs not related to construction material, labor, equipment or construction sub-contractors (collective known as soft costs).

2.4. Force Majeure: In the event of an unanticipated or uncontrollable act of nature, such as floods, hurricanes, fires, etc., or of people, such as riots, strikes, and wars, the Service provided by the County for the WPCRA may not be performed. In such an event, the County will make a good faith attempt to complete the park improvements as soon as practicable.

3. FUNDING

3.1. West Perrine Community Redevelopment Agency: The WPCRA will reimburse the County for the direct cost of the installation, including all personnel costs associated

with design, procurement and construction management, not to exceed the amount in the WPCRA budget allocated for the particular project. Specifically, for Fiscal Year 2011/12, WPCRA has budgeted \$37,500 for projects, and those funds shall be reserved for the reimbursement of expenses incurred by the County in installation of the Fitness Zone, including all expenses that pre-date the effective date of this MOU.

The WPCRA participation in this MOU is contingent upon receiving adequate funding and WPCRA budget approval by the Board of County Commissioners. The WPCRA understands that the process of reviewing and approving the budget will entail mutual cooperation from the County and WPCRA and that any delay in the review process may be delayed when the Board of County Commissioners considers the WPCRA budget. Therefore, the parties agree that if the Board of County Commissioners does not approve the WPCRA budget as a matter of their sovereign power and legislative authority, the failure to approve such budget should not be deemed a breach of this MOU or any other agreement between the parties, and the County shall not be liable to the WPCRA for such failure to approve the WPCRA budget.

Further, should funding be inadequate for the installation of the Fitness Zone, the WPCRA may terminate this MOU upon thirty (30) days notice, or may reduce the scope of the installation outlined herein. In that event, the County may likewise terminate this MOU or provide reduced services. In the event this MOU is terminated as set forth in the preceding two sentences, the WPCRA will be responsible for unpaid services provided by the County up to the date of termination.

3.2. Miami-Dade County: The County shall secure the participation of the Trust for Public Lands in the installation through the negotiation of discounts or in the direct provision of funding, as agreed to by the Trust. Should that participation not be secured, the WPCRA may terminate this MOU upon thirty (30) days notice, or may reduce the scope of the installation outlined herein. In that event, the County may likewise terminate this MOU or provide reduced services. In the event this MOU is terminated as set forth in the preceding two sentences, the WPCRA will be responsible for unpaid services provided by the County up to the date of termination

4. LIABILITY

The County does hereby agree to indemnify and hold harmless the WPCRA to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgments or portions thereof which, when totaled with all other occurrence, exceed the sum of \$300,000, from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of the County. However, nothing herein shall be deemed to indemnify WPCRA from any liability or claim arising out of the negligent performance or failure of performance of the entity or any unrelated third party.

WPCRA does hereby agree to indemnify and hold harmless the County to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute

whereby WPCRA shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgments or portions thereof which, when totaled with all other occurrence, exceed the sum of \$300,000, from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of WPCRA. However, nothing herein shall be deemed to indemnify the County from any liability or claim arising out of the negligent performance or failure of performance of the County or any unrelated third party.

5. EFFECTIVE AND TERMINATION DATE

This MOU becomes effective upon the signature by both parties, and will remain in force until September 30, 2013, unless the term is terminated as provided herein. The MOU may be terminated by either party, with or without cause, by providing written notice to the other party in accordance with Section 6.7 below. In case of termination, the WPCRA agrees to reimburse the County only for unpaid Services performed prior to the date of termination.

6. MISCELLANEOUS

6.1. Headings; Recitals. The headings of the sections of this MOU are for convenience only and do not affect meanings of any provisions hereof. The recitals set forth above are true and correct and incorporated herein by this reference.

6.2. Amendment. The terms, covenants, conditions and provisions of this MOU cannot be altered, changed, modified or added to, except in writing signed by the County and the WPCRA and approved by the WPCRA Board.

6.3. Third Party Beneficiaries. Neither of the parties intends to directly nor substantially benefit any third party by this MOU. Therefore, the parties agree that there are no third party beneficiaries to this MOU and that no third party shall be entitled to assert a claim against either of them based upon this MOU.

6.4. Waiver. No express or implied consent or waiver by a party to or of any breach or default by the other party in the performance by such other party of its obligations under this MOU will be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such other party hereunder. Failure by a party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues will not constitute a waiver by such party of its rights hereunder. The giving of consent by a party in any one instance will not limit or waive the necessity to obtain such party's consent in any future instance.

6.5. Independent Contractor. In performing its obligations hereunder, the County shall be deemed an independent contractor and not an agent or employee of the WPCRA.

6.6. Assignment. Neither this MOU, nor any interest herein, shall be assigned, transferred by the County without the prior written consent of the WPCRA.

6.7. Notice. Whenever any party desires or is required by this MOU to give notice to the other party, it must be in writing and given by hand, sent by certified mail, with return receipt requested, or sent by a recognized overnight courier (e.g., Federal Express) addressed to the party for whom it is intended, at the address specified for notice by the parties from time to time. Notice may also be given by electronic means (e.g., facsimile or email) provided such is followed up with a hard copy by one of the methods in the previous sentence.

6.8. Inspector General. Both the WPCRA and the County understand that the Inspector General provision of Section 2-1076 of the Code of Miami-Dade County shall apply to matters arising out of this MOU.

6.9. Entire Agreement. No statements, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this MOU, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this MOU contains the entire understanding and agreement of the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the subscribing officials are authorized to acknowledge and execute this MOU.

Witnesses:

WEST PERRINE COMMUNITY
REDEVELOPMENT AGENCY

By: _____
Signature

By: _____
JOE A. MARTINEZ,
CHAIRMAN

Type or Print Name

Witnesses:

By: _____
Signature

By: _____
Signature

Type or Print Name

Type or Print Name

ATTEST:

MIAMI-DADE COUNTY, FLORIDA

HARVEY RUVIN, CLERK

By: _____
DEPUTY CLERK

By: _____
CARLOS A. GIMENEZ
MAYOR

Approved as to form and legal sufficiency:

By: _____
Terrance A. Smith
Assistant County Attorney

Memorandum

Date: July 3, 2012

To: Honorable Chairman Joe A. Martinez
and Members, West Perrine Community
Redevelopment Agency

Special Item No. 1

From: Carlos A. Gimenez
Mayor

Subject: Resolution Authorizing the Approval of Memorandum of Understanding Between the
County and The West Perrine Community Redevelopment Agency for Improvements to
West Perrine Park

Resolution No. CRA-1-12 West Perrine

Recommendation

It is recommended that the West Perrine Board of Community Redevelopment Agency Board (Board) adopt the attached Resolution approving a Memorandum of Understanding (Agreement) between Miami-Dade County (County) and the West Perrine Community Redevelopment Agency (Agency) and authorizing its execution by the Chairman or the Chairman's designee.

Scope of Agenda Item

This resolution provides for funding of a Fitness Zone in West Perrine Park located at 17121 SW 104th Avenue Miami, Florida. The park lies within County Commission District 9.

Fiscal Impact/Funding Source

This program is funded in the Agency's FY 2011-12 budget which was approved by the Miami-Dade County Board of County Commissioners on April 3, 2012.

The park is owned and operated by the County and is currently managed as an active park, providing recreational programming to the local community. The Agency will provide the County's Parks, Recreation and Open Spaces Department a total of \$37,500 in FY 2011-12, in addition to funding from the Trust for Public Lands (\$35,000) and Park Impact Fees (\$25,000) for a total project cost of \$97,500 to fund park equipment in West Perrine Park.

The Agency's major revenue source is Tax Increment Financing, which is generated through the incremental growth of countywide and unincorporated municipal service area ad valorem tax revenues beyond the established base year, as defined in Section 163.387 of Florida State Statutes.

Track Record/Monitor

This resolution approves the Agreement with the County. The Office of Management and Budget will monitor the Agreement.

Background

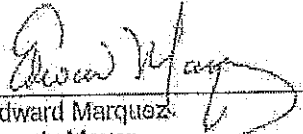
On June 5, 2007, the Miami-Dade County Board of County Commissioners approved the establishment of the Agency when it approved the Agency's Community Redevelopment Plan (Plan) pursuant to Resolution R-744-07, the funding of the Plan when it enacted Ordinance 07-79 which created the Agency's Trust Fund, and appointed itself as the Agency's Board pursuant to Resolution R-745-07.

This equipment will complement the existing facilities in the park. The Fitness Zone will consist of the following equipment: one four-person leg press, one two-person chest press, one two-person lat pull down, one two-person vertical press, one single cross country ski, one four-person pendulum/abs

Honorable Chairman Joe A. Martínez
and Members, West Perrine Community Redevelopment Agency
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machine, one two-level horizontal bar, one two-person sit up bench, and one single elliptical trainer and announcement board. It is recommended that the Agency approve and authorize the execution of the Agreement (Exhibit 1) which provides for the funding of the Fitness Zone in West Perrine Park. The Fitness Zone will complement the existing facilities at the park and provide area residents with the opportunity to exercise using this equipment when they visit the park.

Approval of the MOU allows the CRA to provide immediate relief to the presence of unsanitary, unsafe conditions identified in the Finding of Necessity of the Area; conditions which create a negative image for the community and make it difficult to attract investment. Additionally these improvements will greatly benefit the surrounding area providing a safe, clean place where the community can congregate.


Edward Marquez
Deputy Mayor

Attachments

Mayor00412

RESOLUTION NO. CRA-1-12 West Perrine

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE WEST PERRINE COMMUNITY REDEVELOPMENT AGENCY APPROVING THE MEMORANDUM OF UNDERSTANDING BY AND BETWEEN MIAMI-DADE COUNTY AND THE WEST PERRINE COMMUNITY REDEVELOPMENT AGENCY IN THE AMOUNT OF \$37,500 FOR IMPROVEMENTS TO WEST PERRINE PARK; AND AUTHORIZING THE WEST PERRINE COMMUNITY REDEVELOPMENT AGENCY'S CHAIRMAN TO EXECUTE AN AGREEMENT FOR AND ON BEHALF OF AGENCY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN

WHEREAS, the Board of Commissioners of the West Perrine Community Redevelopment Agency (the "Agency") desires to approve a Memorandum of Understanding (the "Agreement") by and among Miami-Dade County and the Agency to fund certain improvements in West Perrine Park in the form attached hereto as Attachment I and incorporated herein by reference; and

WHEREAS, the Agency desires to transmit the Agreement to the Board of County Commissioners of Miami-Dade County, Florida (the "Board") for approval; and

WHEREAS, this Agency desires to accomplish the purpose outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE WEST PERRINE COMMUNITY REDEVELOPMENT AGENCY, that:

Section 1. The matters contained in the foregoing recitals are incorporated in this Resolution by reference.

Section 2. The Agency approves the Agreement in the amount of \$37,500 by and between the Agency and Miami-Dade County, in substantially the form attached hereto and incorporated by reference, for the improvements in West Perrine Park.

Section 3. The Agency authorizes the Agency's Chairman to execute the Agreement for and on behalf of the Agency and to exercise any cancellation and renewal provisions and all other rights contained therein.

The foregoing resolution was offered by Commissioner **Dennis C. Moss**, who moved its adoption. The motion was seconded by Commissioner **Audrey Edmonson** and upon being put to a vote, the vote was as follows:

	Joe A. Martinez, Chairman	aye	
	Audrey M. Edmonson, Vice Chairwoman	aye	
Bruno A. Barreiro	aye	Lynda Bell	aye
Esteban L. Bovo, Jr.	aye	Jose "Pepe" Diaz	absent
Sally A. Heyman	aye	Barbara J. Jordan	absent
Jean Monestime	aye	Dennis C. Moss	aye
Rebeca Sosa	absent	Sen. Javier D. Souto	absent
Xavier L. Suarez	aye		

Special Item No. 1

Page No. 3

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of July, 2012.

WEST PERRINE COMMUNITY
REDEVELOPMENT AGENCY BY ITS
BOARD OF COMMISSIONERS



HARVEY RUVIN, CLERK

By: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Terrence A. Smith

MEMORANDUM OF UNDERSTANDING
BETWEEN
MIAMI-DADE COUNTY
AND
WEST PERRINE COMMUNITY REDEVELOPMENT AGENCY

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this _____ day of _____, 2012, by and between the MIAMI-DADE COUNTY, a political subdivision of the State of Florida (the "County") and the WEST PERRINE COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic ("WPCRA").

RECITALS

1. The WPCRA is charged with rehabilitation, conservation, and redevelopment within the geographic area generally described as being bounded on the North by SW 168th Street, bounded on the East and Southeast by State Road 5 (US-1), and bounded on the West and Southwest by State Road 82E (The Homestead Extension of Florida's Turnpike).

2. West Perrine Park, located at 17121 SW 104th Avenue, is a County property managed as an active park, providing recreational programming to the local community. To enhance the level of service within the WPCRA and improve the community's quality of life and image, the WPCRA has requested the County, working cooperatively with the Trust for Public Lands (TPL), a Non-Profit Corporation, undertake the installation of a Fitness Zone at West Perrine Park to enhance the health and well being of the community.

3. The County has agreed to implement the requested installation pursuant to and in accordance with the terms and provisions of this MOU which represents the mutual understanding of the parties. This installation will be partially funded by the WPCRA and conducted by the County.

NOW, THEREFORE, in respect of the mutual promises contained herein, the County and the WPCRA agree as follows:

1. PURPOSE

This MOU provides for installation of a Fitness Zone (as defined in Section 2 below) at the West Perrine Park, located at 17121 SW 104th Avenue, Miami, Florida. The design, procurement and construction of these improvements will be the responsibility of the County. Funding for said installation will be partially provided by the WPCRA in the amount of \$37,500.

2. FITNESS ZONE INSTALLATION

The County shall, in cooperation with the Trust for Public Lands, complete the installation of a Fitness Zone with funding available under this MOU. The Fitness Zone will consist of the following equipment: four (4) person leg press, two (2) person chest press, two (2) person lat pull down, two (2) person vertical press, single cross country ski, four (4) person pendulum/abs, two (2) level horizontal bar, two (2) person sit up benches, single elliptical trainer and announcement board. Additionally, during the installation of the Fitness Zone, the County will include the logo of the CRA on any documentation or any signs placed during or after the construction of the Fitness Zone indicating the West Perrine Community Redevelopment Agency as a contributing party.

2.1. Plans, Specifications and Contract Documents: The County will administer the project from procurement to contract completion and be responsible for technical specifications. The County will review all installations, design documents, and construction contract documents related to this project to ensure the equitability and acceptance of the project as it relates to guidelines and for compliance of time requirements. All construction permits for the improvements and/or renovations will be obtained on behalf of the County by the contracted installer. Any construction sign erected at the project site shall include Miami-Dade County Parks, Recreation and Open Spaces Department's project number, information, and funding sources. The County will provide a construction manager and/or inspector to oversee installation, and ensure that the Fitness Zone is performed in accordance with the County specifications and standards. It is understood that the entire project will be managed with the County's best interest in mind at all times. The County will take responsibility for all neighborhood concerns regarding the site during its use of the property for construction.

2.2. Schedule of Installation: The installation of the Fitness Zone shall be completed within six (6) months of the execution of this MOU. Work in advancement of this project may commence prior to the effective date of this MOU.

2.3. Soft Cost and Administrative Cost Limitation: The County shall not expend more than 17% of the funding provided by the WPCRA for in-house design services, administration, project management (not related to construction supervision), indirect costs (accounting/purchasing/personnel, etc.), imposed fees (e.g. permit processing fees) and those costs not related to construction material, labor, equipment or construction sub-contractors (collective known as soft costs).

2.4. Force Majeure: In the event of an unanticipated or uncontrollable act of nature, such as floods, hurricanes, fires, etc., or of people, such as riots, strikes, and wars, the Service provided by the County for the WPCRA may not be performed. In such an event, the County will make a good faith attempt to complete the park improvements as soon as practicable.

3. FUNDING

3.1. West Perrine Community Redevelopment Agency: The WPCRA will reimburse the County for the direct cost of the installation, including all personnel costs associated

with design, procurement and construction management, not to exceed the amount in the WPCRA budget allocated for the particular project. Specifically, for Fiscal Year 2011/12, WPCRA has budgeted \$37,500 for projects, and those funds shall be reserved for the reimbursement of expenses incurred by the County in installation of the Fitness Zone, including all expenses that pre-date the effective date of this MOU.

The WPCRA participation in this MOU is contingent upon receiving adequate funding and WPCRA budget approval by the Board of County Commissioners. The WPCRA understands that the process of reviewing and approving the budget will entail mutual cooperation from the County and WPCRA and that any delay in the review process may be delayed when the Board of County Commissioners considers the WPCRA budget. Therefore, the parties agree that if the Board of County Commissioners does not approve the WPCRA budget as a matter of their sovereign power and legislative authority, the failure to approve such budget should not be deemed a breach of this MOU or any other agreement between the parties, and the County shall not be liable to the WPCRA for such failure to approve the WPCRA budget.

Further, should funding be inadequate for the installation of the Fitness Zone, the WPCRA may terminate this MOU upon thirty (30) days notice, or may reduce the scope of the installation outlined herein. In that event, the County may likewise terminate this MOU or provide reduced services. In the event this MOU is terminated as set forth in the preceding two sentences, the WPCRA will be responsible for unpaid services provided by the County up to the date of termination.

3.2. Miami-Dade County: The County shall secure the participation of the Trust for Public Lands in the installation through the negotiation of discounts or in the direct provision of funding, as agreed to by the Trust. Should that participation not be secured, the WPCRA may terminate this MOU upon thirty (30) days notice, or may reduce the scope of the installation outlined herein. In that event, the County may likewise terminate this MOU or provide reduced services. In the event this MOU is terminated as set forth in the preceding two sentences, the WPCRA will be responsible for unpaid services provided by the County up to the date of termination.

4. LIABILITY

The County does hereby agree to indemnify and hold harmless the WPCRA to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgments or portions thereof which, when totaled with all other occurrence, exceed the sum of \$300,000, from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of the County. However, nothing herein shall be deemed to indemnify WPCRA from any liability or claim arising out of the negligent performance or failure of performance of the entity or any unrelated third party.

WPCRA does hereby agree to indemnify and hold harmless the County to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute

whereby WPCRA shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgments or portions thereof which, when totaled with all other occurrence, exceed the sum of \$300,000, from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of WPCRA. However, nothing herein shall be deemed to indemnify the County from any liability or claim arising out of the negligent performance or failure of performance of the County or any unrelated third party.

5. EFFECTIVE AND TERMINATION DATE

This MOU becomes effective upon the signature by both parties, and will remain in force until September 30, 2013, unless the term is terminated as provided herein. The MOU may be terminated by either party, with or without cause, by providing written notice to the other party in accordance with Section 6.7 below. In case of termination, the WPCRA agrees to reimburse the County only for unpaid Services performed prior to the date of termination.

6. MISCELLANEOUS

6.1. **Headings; Recitals.** The headings of the sections of this MOU are for convenience only and do not affect meanings of any provisions hereof. The recitals set forth above are true and correct and incorporated herein by this reference.

6.2. **Amendment.** The terms, covenants, conditions and provisions of this MOU cannot be altered, changed, modified or added to, except in writing signed by the County and the WPCRA and approved by the WPCRA Board.

6.3. **Third Party Beneficiaries.** Neither of the parties intends to directly nor substantially benefit any third party by this MOU. Therefore, the parties agree that there are no third party beneficiaries to this MOU and that no third party shall be entitled to assert a claim against either of them based upon this MOU.

6.4. **Waiver.** No express or implied consent or waiver by a party to or of any breach or default by the other party in the performance by such other party of its obligations under this MOU will be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such other party hereunder. Failure by a party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues will not constitute a waiver by such party of its rights hereunder. The giving of consent by a party in any one instance will not limit or waive the necessity to obtain such party's consent in any future instance.

6.5. **Independent Contractor.** In performing its obligations hereunder, the County shall be deemed an independent contractor and not an agent or employee of the WPCRA.

6.6. **Assignment.** Neither this MOU, nor any interest herein, shall be assigned, transferred by the County without the prior written consent of the WPCRA.

6.7. **Notice.** Whenever any party desires or is required by this MOU to give notice to the other party, it must be in writing and given by hand, sent by certified mail, with return receipt requested, or sent by a recognized overnight courier (e.g., Federal Express) addressed to the party for whom it is intended, at the address specified for notice by the parties from time to time. Notice may also be given by electronic means (e.g., facsimile or email) provided such is followed up with a hard copy by one of the methods in the previous sentence.

6.8. **Inspector General.** Both the WPCRA and the County understand that the Inspector General provision of Section 2-1076 of the Code of Miami-Dade County shall apply to matters arising out of this MOU.

6.9. **Entire Agreement.** No statements, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this MOU, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this MOU contains the entire understanding and agreement of the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the subscribing officials are authorized to acknowledge and execute this MOU.

Witness:

WEST PERRINE COMMUNITY
REDEVELOPMENT AGENCY

By: _____
Signature

By: _____
JOE A. MARTINEZ,
CHAIRMAN

Type or Print Name

Witness:

By: _____
Signature

By: _____
Signature

Type or Print Name

Type or Print Name

ATTEST:

MIAMI-DADE COUNTY, FLORIDA

HARVEY RUVIN, CLERK

By: _____
DEPUTY CLERK

By: _____
CARLOS A. GIMENEZ
MAYOR

Approved as to form and legal sufficiency:

By: _____
Terrence A. Smith
Assistant County Attorney