



**MEMORANDUM**

Agenda Item No. 8(J)(1)

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

**DATE:** November 8, 2012

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

**SUBJECT:** Resolution approving and authorizing execution of Memorandum of Agreement between Miami-Dade County and the United States Department of the Army for Dredging certain PortMiami Berthing areas as part of the Army's Phase III Miami Harbor Dredging Project

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

A handwritten signature in black ink, appearing to read "RAC", is written over a horizontal line.

R. A. Cuevas, Jr.  
County Attorney

RAC/cp

# Memorandum



**Date:** November 8, 2012

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

**From:** Carlos A. Gimenez  
Mayor 

**Subject:** Resolution Approving and Authorizing Execution of Memorandum of Agreement between Miami-Dade County and the United States Department of the Army for the Construction of certain PortMiami's Berthing Areas within the Miami Harbor Federal Navigation Project Phase III

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## RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the accompanying resolution approving and authorizing the execution of the Memorandum of Agreement between Miami-Dade County (County) and the United States Department of the Army (Army) for the dredging of certain PortMiami berthing areas to minus 50 feet below mean lower low water as part of the Miami Harbor Federal Navigation Project Phase III (Project).

## SCOPE

PortMiami is located within District 5 – Commissioner Bruno A. Barreiro. However, the impact of this agenda item is countywide as PortMiami is a regional asset and generates employment for residents throughout the County.

## FISCAL IMPACT/FUNDING SOURCE

The cost to deepen the berthing areas at PortMiami is estimated to be approximately \$7,000,000. These berthing area costs were included in the overall Project construction cost estimate of \$180,000,000 previously approved by the Board on July 17, 2012 via Resolution No. R-650-12. While the recommended Memorandum of Agreement will formally memorialize the Army's prior agreement to perform the needed berthing area work, at the County's cost, such work is not anticipated to increase the previously reported \$180,000,000 Project cost estimate, which already included the berthing area dredging costs.

## TRACK RECORD/MONITOR

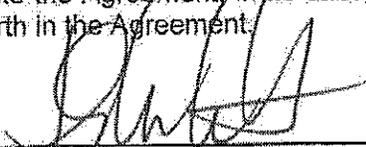
The Seaport Department staff members responsible for monitoring the Agreement are Patrick Shortal, Chief, Engineering Design Services, Capital Development Division, and Becky Hope, Environmental Manager, Capital Development Division.

## BACKGROUND

In November 2007, Congress approved the Water Resources Development Act of 2007, which, among other things, authorized the Port's deep dredge Project, which will deepen the Port's outer and south channel to a controlling depth of minus 50 feet. On July 17, 2012, the Board of County Commissioners approved, under Resolution No. R-650-12, the Project Partnership Agreement between the County and the Army, under which the Army agreed to construct the Phase III dredging Project utilizing funds advanced by the County. Article II.I of the previously approved Project Partnership Agreement permits the Army to perform the necessary berthing area work on the County's behalf, and at the County's cost, if requested to do so by the County. While the County previously requested the Army to perform the berthing area work and the Army has agreed to do so, the Army requires that such agreement be formalized with the attached recommended Memorandum of Agreement. The berthing area deepening work is located along portions of the Port's southern bulkhead line, to a depth of minus 50 feet below mean lower low water, plus one foot allowable overdepth, with a width ranging from 160 to 100 feet.

## 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, in its substantial form, and to exercise the cancellation, renewal, and funding provisions set forth in the Agreement.

  
\_\_\_\_\_  
Jack Osterholt, Deputy 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(J)(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  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 8(J)(1)  
11-8-12

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF MEMORANDUM OF AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE UNITED STATES DEPARTMENT OF THE ARMY FOR DREDGING CERTAIN PORTMIAMI BERTHING AREAS AS PART OF THE ARMY'S PHASE III MIAMI HARBOR DREDGING PROJECT; AUTHORIZING COUNTY TO PAY ARMY IN ADVANCE FOR SUCH WORK, ESTIMATED TO BE APPROXIMATELY \$7,000,000; AND AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE

**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 the Memorandum of Agreement between Miami-Dade County and the United States Department of the Army ("Agreement") in substantially the form attached hereto and made a part hereof; and

Section 2. Authorizes the County to pay the Army in advance for the costs associated with PortMiami's needed berthing area dredging work, estimated to cost approximately \$7,000,000; and

Section 3. Authorizes the Mayor or the Mayor's designee to execute the Agreement, after review and approval by the County Attorney's Office, and to exercise any cancellation, termination, and/or funding 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:

- |                                     |                      |
|-------------------------------------|----------------------|
| 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 8<sup>th</sup> 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.     JBB    

Steven B. Bass

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
MIAMI-DADE COUNTY, FLORIDA  
FOR DREDGING OF CERTAIN BERTHING AREAS AT  
THE MIAMI HARBOR NAVIGATION PROJECT

This MEMORANDUM OF AGREEMENT (hereinafter the "MOA") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, 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, a political subdivision of the STATE OF FLORIDA (hereinafter the "Non-Federal Sponsor"), represented by its Mayor or other authorized representative.

WITNESSETH, THAT:

WHEREAS, the Miami Harbor Navigation Project (hereinafter the "Project") was authorized by Section 1001(17) of the Water Resources Development Act of 2007, Public Law 110-114;

WHEREAS, the Government and Miami-Dade County entered into a Project Partnership Agreement on August 22, 2012 (the "PPA") setting forth the Government's and the Non-Federal Sponsor's respective rights and responsibilities with respect to the funding and construction of the Project; and

WHEREAS, among other things, the PPA requires that the Non-Federal Sponsor provide and maintain, as necessary, the *local service facilities* (as defined in the PPA) without cost to the United States; and

WHEREAS, the Non-Federal Sponsor has previously provided the Government with a written request to construct certain improvements to the *local service facilities* relating to the deepening of certain berthing areas along the South side of Lummus Island, described with greater particularity in Exhibit A hereto (hereafter; the "Additional Work"); and

WHEREAS, the Government is authorized pursuant to 33 U.S.C. 701h to carry out the Additional Work in connection with construction of the Project; and

WHEREAS, Article II.I of the PPA provides that should the Government elect to perform the requested Additional Work, as here, the Government shall notify the Non-Federal Sponsor of its election in a writing that sets forth any applicable terms and conditions, which terms and conditions must be consistent with the terms of the PPA; and

WHEREAS, the Government has elected to perform the Additional Work in conjunction with construction of the Project.

NOW, THEREFORE, in fulfillment of the requirements of Article II.I of the previously executed PPA, the Government and the Non-Federal Sponsor agree as follows:

1. The Non-Federal Sponsor shall provide to the Government funds for all costs associated with the Additional Work, including the incremental additional costs, if any, of environmental compliance arising from construction of the Additional Work. While the Government will endeavor to limit costs associated with the Additional Work to the current estimate of \$7,000,000, the Non-Federal Sponsor understands that the actual cost may exceed the amount of the estimate due to claims or other unforeseen circumstances.

2. As soon as practicable, the Government shall notify the Non-Federal Sponsor in writing of the scheduled date for award of the construction contract and the funds that the Government determines to be required from the Non-Federal Sponsor for costs associated with the Additional Work. Following such notification and not less than ten (10) business days prior to exercise of any contract option involving the Additional Work, the Non-Federal Sponsor shall provide to the Government the full amount of costs associated with such option using any of the payment mechanisms authorized in this MOA. If at any time the Government determines that additional funds are needed to construct the Additional Work, the Government shall notify the Non-Federal Sponsor in writing of the amount, and no later than thirty (30) calendar days from receipt of such notice, the Non-Federal Sponsor shall provide to the Government the full amount of the additional funds below.

3. The Non-Federal Sponsor shall provide funds for the Additional Work to the Government by delivering a check payable to "FAO, USAED, Jacksonville" to the District Engineer, or verifying to the satisfaction of the Government that such funds have been deposited in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or presenting the Government with an irrevocable letter of credit acceptable to the Government for such funds, or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government and in accordance with the payment schedule set forth in paragraph 2 above.

4. The Government shall not commence the Additional Work until all applicable environmental laws and regulations have been complied with, including, but not limited to the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

5. The Government shall provide the Non-Federal Sponsor with quarterly accountings of the obligations of funds for the Additional Work. The first such accounting shall be provided within thirty (30) calendar days after the final day of the first complete Government fiscal year quarter following receipt of funds from the Non-Federal Sponsor, and subsequent accountings shall be provided within thirty (30) calendar days after the final day of each succeeding quarter until the Government concludes the Additional Work. Upon conclusion of the Additional Work, and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of such work and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such final accounting shall in no way limit the Non-Federal

Sponsor's responsibility to pay for all costs associated with the Additional Work, including contract claims or any other liability that may become known after the final accounting.

6. Should the final accounting show that the costs of the Additional Work exceed the amount provided by the Non-Federal Sponsor, the Non-Federal Sponsor shall provide the additional required funds within sixty (60) calendar days of written notice of the final accounting. Should the final accounting show that the costs of the Additional Work is less than the amount provided by the Non-Federal Sponsor, the Government shall refund the excess to the Non-Federal Sponsor within sixty (60) calendar days of the written notice of the final accounting

7. Before any party to this MOA may bring suit in any court concerning an issue relating to this MOA, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

8. The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the Additional Work, except for damages due to the fault or negligence of the Government or its contractors.

9. Nothing in this MOA shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Non-Federal Sponsor, where creating such obligation would be inconsistent with Chapter 129, Florida Statutes.

10. In the exercise of their respective rights and obligations under this MOA, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

11. In the exercise of their respective rights and obligations under this MOA, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

12. Notices.

a. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and either delivered personally or mailed by first-class, registered, or certified mail, as follows:

If to the Non Federal Sponsor:

Port Director  
Port of Miami  
Miami-Dade County, Florida  
1015 North American Way, Second Floor  
Miami, Florida 33132

With a copy to

Office of the County Attorney  
Attention: Steven B. Bass  
Assistant County Attorney  
Stephen P. Clark Center  
111 N.W. 1<sup>st</sup> Street, Suite 2810  
Miami, Florida 33128

If to the Government:

District Engineer  
U.S. Army Corps of Engineers  
P.O. Box 4970  
Jacksonville, Florida 32232

b. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

c. Any notice, request, demand, or other communication made pursuant to this paragraph shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven (7) calendar days after it is mailed.

13. To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

14. Conflicts. In the event of any conflict between this MOA and the previously executed PPA, the terms of the PPA shall control.

15. This MOA may be modified or amended only by written, mutual agreement of the parties.

IN WITNESS WHEREOF, the parties have executed this MOA as of the day, month, and year first above written.

THE DEPARTMENT OF THE ARMY

MIAMI-DADE COUNTY, FLORIDA

BY: \_\_\_\_\_

Alan M. Dodd  
Colonel, U.S. Army  
District Commander

BY: \_\_\_\_\_

County Mayor or Designee

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 the Agreement between the Department of the Army and the Miami-Dade County in connection with the Miami Harbor Federal Navigation Project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of Miami-Dade County have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_.

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

## EXHIBIT A

Berthing area generally 160 feet wide and 50 feet deep MLLW, plus 1 foot allowable overdepth, north of the federal channel to the bulkhead line, from Station 8+00 of Fisherman's Channel to Station 53+85 of Fisherman's Channel.

Then transitions from 160 foot wide to 100 foot wide and 50 foot deep MLLW, plus 1 foot allowable overdepth, north of the federal channel to the bulkhead line, from Station 53+85 Fisherman's Channel to Station 00+73 Lummus Island Turning Basin.

Berthing area generally 100 feet wide and 50 feet deep MLLW, plus 1 foot allowable overdepth, north of the federal channel to the bulkhead line, from Station 00+73 of Lummus Island Turning Basin to Station 12+57 of Lummus Island Turning Basin.