Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 8(D)(1)(G)
06-05-07

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

RESOLUTION NO. R-660-07

RESOLUTION AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF MIAMI AND MIAMI-DADE COUNTY, FLORIDA FOR FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FUNDED STORMWATER DRAINAGE PROJECTS; AND AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXERCISE THE RENEWAL PROVISIONS AND TERMINATION PROVISIONS CONTAINED THEREIN

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 hereby approves the interlocal agreement between Miami-Dade County and the City of Miami for Federal Emergency Management Agency (FEMA) funded stormwater drainage projects responsibilities and the use of applicable funds for stormwater management work by the City of Miami and Miami-Dade County in shared stormwater drainage systems near or within the boundaries of the City of Miami, effective upon execution, in substantially the form attached hereto, and made a part hereof; and authorizes the County Mayor or his designee to execute same for and on behalf of Miami-Dade County; and to exercise the renewal provisions and termination provisions contained therein.

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

Bruno A. Barreiro, Chairman	aye		
Barbara J. Jordan, Vice-Chairwoman	aye		
Jose "Pepe" Diaz	absent	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Joe A. Martinez	aye	Dennis C. Moss	aye
Dorrin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	absent		

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of June, 2007. 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

COUNTY COMMISSIONERS DADE COUNTY FLORIDA

KAY SULLIVAN
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Peter S. Tell

Memorandum

MIAMI-DADE COUNTY

Date: June 5, 2007

To: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

Agenda Item No. 8(D)(1)(G)

From: George M. Burgess
County Manager

Subject: Resolution Authorizing Execution of an Interlocal Agreement Between the City of Miami and Miami-Dade County for Federal Emergency Management Agency (FEMA) Funded Stormwater Drainage Projects

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Recommendation

It is recommended that the Board approve the attached Resolution authorizing execution of an interlocal agreement with the City of Miami (City) for Federal Emergency Management Agency (FEMA) Funded Stormwater Drainage Projects.

Scope

The agreement allows the City to reimburse Miami-Dade County (County) for the repair and restoration of stormwater drainage systems shared by the City and the County. Portions of the Comfort Canal, which roughly parallels SR 836, were dredged and stabilized between NW 27th Avenue and NW 47th Avenue. Work was located within Commission District Nos. 5, 6 and 7. All field work has been completed.

Fiscal Impact/Funding Source

These projects will be funded 75% by FEMA, 12.5% by the Florida Department of Community Affairs in the form of grants, and 12.5% by local matching funds (local share) for eligible administration, design and construction costs. The estimated cost of the project is $3,754,280 of which the local share (12.5%) is $469,285. The City shall reimburse the County 92% of the local share determined by drainage basin studies ($431,742) plus a 2% management fee ($69,079) for a total of $500,821 without interest. The County's share is $37,543.

Track Record/Monitor

The Director of the Department of Environmental Resources Management monitors this agreement.

Background

In 1991, the Board of County Commissioners adopted Ordinance 91-66, creating Article V of Chapter 24 of the Code of Miami-Dade County and establishing the Miami-Dade County Stormwater Utility as a countywide utility, creating a uniform approach to stormwater management in Miami-Dade County. The municipalities were given the option to become part of the Miami-Dade County Stormwater Utility or to create their own dedicated source of stormwater funding in accordance with Section 403, Florida Statutes.

On March 10, 1988, the City of Miami Commission adopted Ordinance No. 10395, creating its own stormwater utility as a funding source. In 1991, the City adopted Resolution R-91-490, becoming exempt from the countywide utility. The proposed interlocal agreement establishes relationships and responsibilities for the repair and restoration of stormwater drainage systems shared by the City and the County. This agreement is effective upon execution by the County for a period of two (2) years and may be renewed for one (1) additional period of one (1) year.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: June 5, 2007

FROM: Murray A. Greenberg County Attorney

SUBJECT: Agenda Item No. 8(D)(1)(G)

Please note any items checked.

_____ **"4-Day Rule" ("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**

_____ **Bid waiver requiring County Manager's written recommendation**

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

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

MIAMI-DADE COUNTY, FLORIDA

MIAMI-DADE COUNTY

INTERLOCAL AGREEMENT

CITY OF MIAMI
AND
MIAMI-DADE COUNTY

FOR
FEMA FUNDED
STORMWATER DRAINAGE PROJECTS

KRM/RJJ #07566

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INTERLOCAL AGREEMENT
BETWEEN
CITY OF MIAMI
AND MIAMI-DADE COUNTY
FOR FEMA-FUNDED
STORMWATER DRAINAGE PROJECTS

THIS INTERLOCAL AGREEMENT, [the "Agreement"] by and between Miami-Dade County, a political subdivision of the State of Florida, [hereinafter sometimes referred to as ["MDC"], and the City of Miami Stormwater Utility, a public body corporate and politic, through its governing body, the Miami City Commission of the City of Miami, Florida [hereinafter sometimes referred to as "CITY",] is entered into this _____ day of _____, 2007.

WITNESSETH

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED HEREIN AND THE MUTUAL BENEFITS TO BE DERIVED FROM THIS AGREEMENT, THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE I
PURPOSES

MDC and the CITY enter into this Agreement to further the following purposes:

(1) To repair and restore shared stormwater drainage systems located within the limits of the drainage service areas in accordance with the approved plans. These activities include dredging canals, culvert and headwall repair or replacement, embankment restoration, and any required maintenance of flow control structures and stormwater pump stations and their mechanical and electrical components, and enhancing shared stormwater drainage systems as determined by conditions of the system and the level of service established;

(2) To provide a mechanism for MDC and the CITY to share and allocate the cost of restoring and repairing shared stormwater drainage systems as stated in (1), above and to reimburse MDC for expenditures benefiting the CITY for FEMA-approved projects on shared stormwater drainage systems;

(3) Seek to protect and promote the public health, safety, and general welfare through the management of stormwater run-off;

(4) Seek to maintain and improve water quality and preserve and enhance the environmental quality of the receiving waters;

(5) Seek to control flooding that results from rainfall events;

(6) Seek to prevent unmanaged rainwater from eroding sandy soils and causing sedimentation;

(7) Seek to prevent the disruption of the habitat of aquatic plants and animals;

(8) Seek to promote intergovernmental cooperation in effectively and efficiently managing stormwater run-off.

ARTICLE II
DEFINITIONS

Agreement shall mean this document, including any written amendments, attachments, and other written documents, which are expressly incorporated by reference.

Annual Charges shall mean the principal derived via amortization table, plus interest charges and administrative fees, over a mutually agreed upon period.

Shared Stormwater Drainage System shall mean that portion of the drainage system owned by MDC to which both the CITY and MDC may contribute stormwater runoff and which is identified in Attachment "A" a copy of which is attached hereto and incorporated herein by reference.

Costs allocable to the CITY shall mean those portions of the actual outlays budgeted by MDC in MDC's budget process, which are allocated to the CITY based on the FEMA-approved projects associated with shared drainage systems.

Costs allocable to MDC shall mean those portions of the actual outlays budgeted by the CITY in the CITY's budget process, which are allocated to MDC based on the FEMA-approved projects associated with shared drainage systems.

FEMA-Funded Projects shall mean canal dredging, culvert and headwall repair and replacement, embankment restoration, roadway drainage repair and replacement, and road resurfacing.

Interest Charges shall mean the interest rate equivalent to the annual average (based on monthly totals set by the Miami-Dade County Finance Department) that MDC earned on its pooled investments during that particular prior fiscal year, applied to the balance of the amortized amount.

Fiscal Year shall mean the period beginning on October 1 and ending on September 30 of the following year.

Force Majeure shall mean an act of God, epidemic, lightning, earthquake, fire, explosion, hurricane, flood or similar occurrence, strike, an act of a public enemy, or blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance

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or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights or obligations under this Agreement, and which, by the exercise of due diligence, such parties shall not have been able to avoid. Such acts or events DO NOT INCLUDE inclement weather (except as noted above) or the acts or omissions of subcontractors, third-party contractors, material men, suppliers, or their subcontractors, unless such acts or omissions are otherwise encompassed by the definition set forth above.

ARTICLE III
STATEMENT OF WORK

MDC shall fully and timely perform all work tasks described in this Statement of Work:

MDC shall repair and restore shared stormwater management systems located within the limits of the stormwater drainage system service areas as set forth in Attachment "A" a copy ofwhich is attached hereto and incorporated herein by reference.

The CITY's relative stormwater runoff contribution to MDC's shared stormwater drainage system and MDC's relative stormwater runoff contribution to the shared stormwater drainage system are set forth in Attachment "A" a copy of which is attached hereto and incorporated herein by reference.

Final construction costs and soft costs shall be determined based upon actual final itemized costs approved by MDC. Soft costs are costs including but not limited to: planning and design, geotechnical sampling and analysis, surveying, consultant management services, and other related costs that are not directly attributable to construction.

ARTICLE IV
TERM OF THE AGREEMENT

Initial Term

The initial term of this Agreement shall be for a period of two (2) years beginning on the date of execution by MDC.

Option to Renew

Upon mutual written consent of the parties, this Agreement may be renewed for one additional period of one (1) year.

ARTICLE V
CITY AND MDC RESPONSIBILITIES

A. Upon the request of either the CITY or MDC, each party shall share information concerning operations, design and construction costs and cost allocation determinations of the FEMA-approved projects associated with shared stormwater drainage systems.

B. The CITY and MDC shall provide notice to each other designating their respective Project Manager. Each party shall promptly notify each other of any change in the Project Manager designation by written notice as set forth in this Agreement.

C. The costs allocable to the CITY and the costs allocable to MDC based on the relative stormwater runoff contribution to each others shared portion of the stormwater drainage systems are included in this Agreement and presented as described in Attachment "B", a copy of which is attached hereto and incorporated herein by reference.

D. Costs allocable to the CITY represent principal and interest costs for the prior fiscal year, and shall be provided to the CITY not later than December 1st of each year for the prior fiscal year and may vary due to interest added each year.

E. Payments by the CITY to MDC shall be made not later than thirty (30) days from the date of receipt of the invoice from MDC. In the event of a dispute concerning the invoiced amount, the CITY may notify MDC of the nature of the dispute and MDC shall make arrangements for the pertinent records to be made available for inspection by the CITY. MDC shall reimburse the CITY for any amounts determined to have been overpaid by the CITY within thirty (30) days after verification by MDC of the overpayment.

F. The CITY and MDC shall maintain financial records for the full term of this Agreement and shall make the records available within a reasonable time after requesting them for inspection and copying by either the CITY or MDC at the place where the records are maintained.

G. The CITY and MDC shall comply with all applicable regulations, ordinances and laws.

H. MDC shall manage the financial administration of the Project sites, prepare FEMA documentation, advance funds for design and construction, and provide design and construction management for an agreed management flat fee of 2% of the design and construction costs for restoration and repair of shared stormwater drainage systems that may be included with the first annual payment or financed. The CITY is aware that FEMA may not reimburse this management fee, however, the management fee is consistent with similar costs for this type of work.

I. MDC shall recover the entire cost expended by MDC for the program implemented at or within the CITY's geographic boundaries, including those

costs incurred by MDC prior to the execution of this Agreement pursuant to expediting the repair and restoration of the shared stormwater drainage systems.

J. The CITY agrees that any cost incurred by MDC pursuant to this Agreement which is not reimbursed by DCA or FEMA shall be borne by the CITY and reimbursed to MDC by the CITY.

K. MDC shall identify all necessary permits, utility adjustments, and rights-of-way for the Project in accordance with applicable federal, state, and local laws and ordinances.

ARTICLE VI
COMPENSATION/CONSIDERATION

It is the intent and understanding of the parties that this Agreement is solely for the benefit of the CITY and MDC. No person or entity other than the CITY or MDC shall have any rights or privileges under this Agreement in any capacity whatsoever, either as a third-party beneficiary or otherwise.

ARTICLE VII
DEFAULT

CITY Event of Default

Without limitation, the failure by the CITY to substantially fulfill any of its material obligations in accordance with this Agreement, unless such failures are justified by Force Majeure, shall constitute a "CITY event of default".

If a CITY event of default should occur, MDC shall have all of the following cumulative and independent rights and remedies:

1. The right to declare that this Agreement is terminated, effective upon such date as is designated by MDC.

2. Any and all rights provided under federal laws and the laws of the State of Florida, and Miami-Dade County.

MDC Event of Default

Without limitation, the failure by MDC to substantially fulfill any of its material obligations in accordance with this Agreement, unless such failures are justified by Force Majeure, shall constitute a "MDC event of default".

If a MDC event of default should occur, the CITY shall have all of the following cumulative and independent rights and remedies:

1. The right to declare that this Agreement is terminated, effective upon such date as is designated by the CITY.

2. Any and all rights provided under federal laws and the laws of the State of Florida and Miami-Dade County.

ARTICLE VIII
GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any court action between the parties for any controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court for the Southern District of Florida, in Miami-Dade County, Florida.

ARTICLE IX
ENTIRETY OF AGREEMENT

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

ARTICLE X
HEADINGS

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

ARTICLE XI
REPRESENTATION OF CITY

The CITY represents that this Agreement has been duly authorized, executed and delivered by the City of Miami Commission, as the governing body of the CITY and it has the required power and authority to execute this Agreement.

ARTICLE XII
REPRESENTATION OF MDC

MDC represents that this Agreement has been duly approved, executed and delivered by the Board of County Commissioners, as the governing body of MDC, and it has granted the Miami-Dade County Manager the required power and authority to execute this Agreement.

ARTICLE XIII
WAIVER

There shall be no waiver of any right related to this Agreement unless in writing and signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement.

ARTICLE XV
INVALIDITY OF PROVISIONS, SEVERABILITY

Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

ARTICLE XVI
INDEPENDENT CONTRACTOR

CITY shall perform all work and services described as an independent contractor and not as an officer, agent, servant, or employee of MDC. CITY shall have control of the work performed in accordance with the terms of this Agreement and of all persons performing the same, and CITY shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any.

MDC shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the CITY. MDC shall have control of the work performed in accordance with the terms of this Agreement and of all persons performing the same, and MDC shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any.

Nothing in this agreement shall be construed as creating a partnership or joint venture between MDC and the CITY. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of MDC, nor shall any such person be entitled to any benefits available or granted to employees of MDC.

ARTICLE XVII
INDEMNIFICATION

CITY does hereby agree to indemnify and hold harmless MDC to the extent and within the limitations of Section 768.28, Fla. Stat., subject to the provisions of that Statute whereby CITY 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 $100,000, or any claim or judgments of portions thereof, which, when totaled with all other occurrences, exceeds the sum of $200,000, 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 CITY. However, nothing herein shall be deemed to indemnify MDC from any liability or claim arising out of the negligent performance or failure of performance of MDC or any unrelated third party.

MDC does hereby agree to indemnify and hold harmless CITY to the extent and within the limitations of Section 768.28, Fla. Stat., subject to the provisions of that Statute whereby MDC 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 $100,000, or any claim or judgments of portions thereof, which, when totaled with all other occurrences, exceeds the sum of $200,000, 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 MDC. However, nothing herein shall be deemed to indemnify CITY from any liability or claim arising out of the negligent performance or failure of performance of CITY or any unrelated third party.

ARTICLE XVIII
NOTICES AND APPROVAL

Notices and approvals required or contemplated by this Agreement shall be written and personally served or mailed, registered or certified United States mail, with return receipt requested, addressed to the parties as follows:

To COUNTY:

Miami-Dade County, Department of
Environmental Resources Management
33 S.W. 2 Ave, Suite 1200 Miami,
Florida 33130
Attn: Department Director (305) 372-6789

To CITY:

City of Miami

Public Works Department

444 SW 2 Avenue, Miami, FL 33130

Attn: Stephanie N. Grindell

Phone: (305) 416-1200

IN WITNESS THEREOF, the parties through their duly authorized representatives hereby execute this AGREEMENT with an effective date of _____, 2007.

Attest:

CITY Clerk Date 4/23/07

for Priscilla A. Thompson

CITY OF MIAMI, FLORIDA

Authorized signature on behalf of the CITY of Miami, Florida.

By: _____ Date 4/18/07

APPROVED AS TO INSURANCE REQUIREMENTS:

By: _____

LeeAnn Brehm, Administrator
Risk Management

APPROVED AS TO FORM AND CORRECTNESS:

By: _____

Jorge L. Fernandez KAM
City Attorney

MIAMI-DADE COUNTY, FLORIDA

BY: _____ _____
County Manager Date

For the Board of County Commissioners, Miami-Dade County, Florida

Stephen P. Clark Center
111 N.W. 1st. Street
Miami, Florida 33128

HARVEY RUVIN, CLERK
Attest:

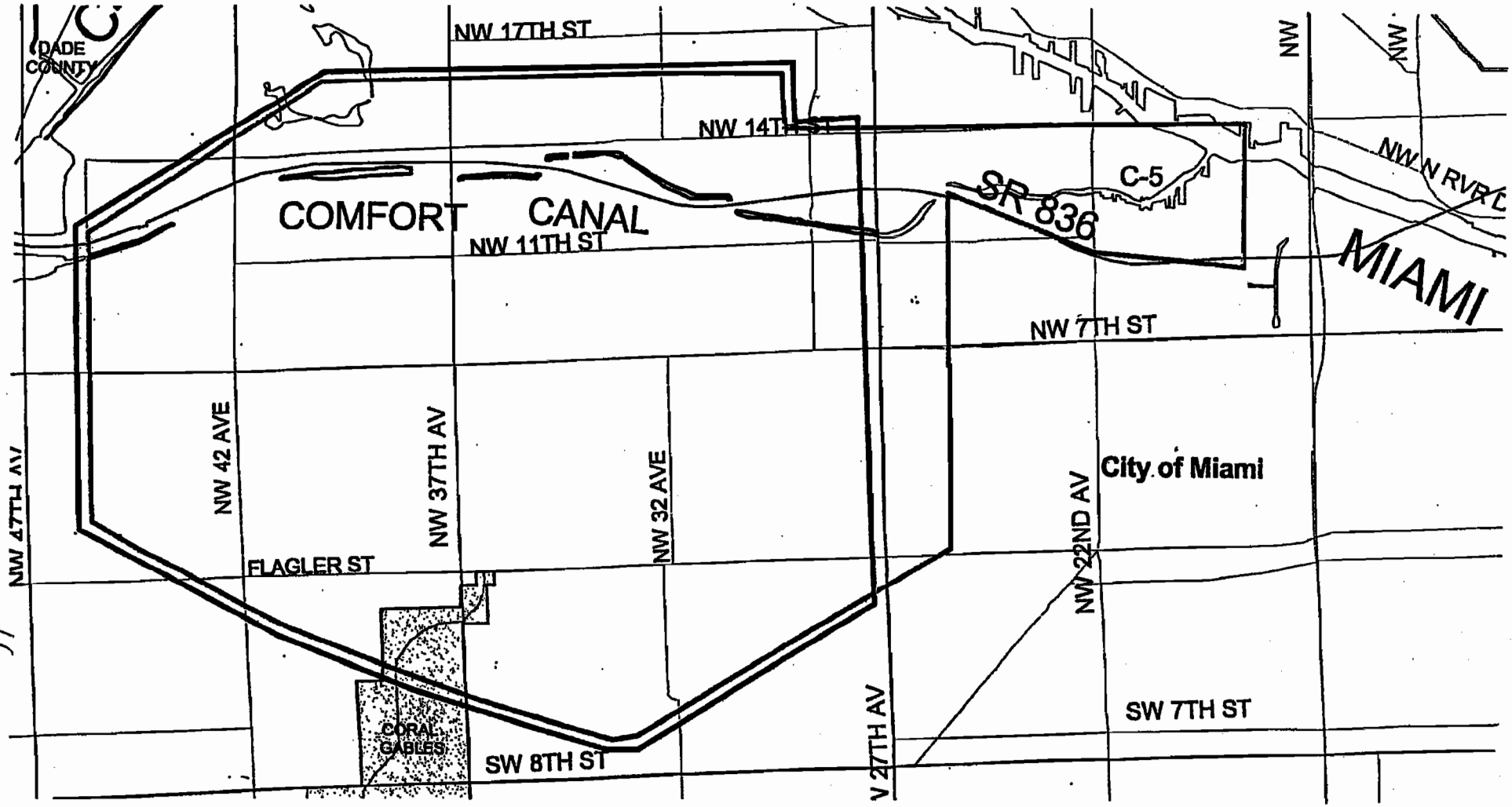
By: _____ _____
Deputy Clerk Date

ATTACHMENT "A"

Basin Study and Cost Share Table

CITY OF MIAMI CANAL AND DRAINAGE AREA

DERM



Drainage Area Comfort Canal
Basin C-5

900 0 900 1800 2700 Feet

Created by Ariadna Bermudez, Stormwater Utility Section.06/01/04.

ATTACHMENT "A"

CITY OF MIAMI
CANAL DRAINAGE AREAS % SHARE

CANAL	% SHARE
COMFORT CANAL	
1. City of Coral Gables	8%
2. City of Miami	92%

ATTACHMENT "B"

FEMA Funded Project
Cost Table

ATTACHMENT "B"

Department of Environmental Resources Management
Basin Study Summary Report
FEMA- Secondary Canal Dredging Project
CITY OF MIAMI
December 12, 2005

No.	Canal Name	Estimated Length (ft) FEMA	FEMA Estimated Cost ($) (1)	Current Estimated Cost ($) (1)	Local Share 12.50%	% Share (2)	Estimated Final Cost Share for Miami (3)	Status
1	Comfort Canal	7,600	$ 1,633,741	$ 3,754,280	$ 469,285	92.0	$431,742	Dredging complete
	2% Management Fee = Current Estimated Cost x % Share x 2%						$69,079	
	Total						**$500,821**	
	Annual Principal only (2 yrs.), excludes Interest						**$250,410**	
(1)	FEMA Estimated Cost and Current Estimated Cost include Repair, Mitigation, and 14% Soft Costs.							
(2)	% Share is based on the basin study performed by DERM and attached herewith.							
(3)	Estimated Final Cost Share based on Current Estimated Cost and % Share.							
	Note: Costs provided by the Division of Recovery and Mitigation							

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