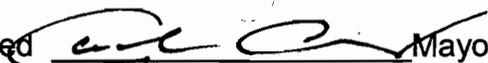


Approved  Mayor

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

Veto \_\_\_\_\_

11-06-07

Override \_\_\_\_\_

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

RESOLUTION NO. R-1184-07

RESOLUTION RATIFYING THE EXECUTION OF THE PROJECT COOPERATION AGREEMENT AMENDMENT NUMBER 1 BETWEEN THE DEPARTMENT OF THE ARMY AND MIAMI-DADE COUNTY, FLORIDA, FOR CONSTRUCTION AND OPERATION OF A DREDGED MATERIAL MANAGEMENT FACILITY AT THE MIAMI RIVER, FLORIDA FEDERAL NAVIGATION PROJECT

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

**WHEREAS**, at the County Commission meeting of July 26, 2007 this Board authorized the County Mayor to administer County business during the period of July 24, 2007 through August 24, 2007 [Agenda Item No. 12(A)(3)]; such action(s) taken to be in accordance with the policies and procedures established by the Board of County Commissioners and be submitted to the Board for approval,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY**

**COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA,** that this Board

hereby ratifies the execution by the County Mayor of the Project Cooperation Agreement Amendment Number 1 between the Department of the Army and Miami-Dade County, Florida, for Construction and Operation of a Dredged Material Management Facility at the Miami River, Florida Federal Navigation.

The foregoing resolution was offered by Commissioner Jose "Pepe" Diaz , who moved its adoption. The motion was seconded by Commissioner Rebeca Sosa and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	aye		
Barbara J. Jordan, Vice-Chairwoman	absent		
Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Joe A. Martinez	aye	Dennis C. Moss	aye
Dorrian 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 6<sup>th</sup> day of November, 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

By: KAY SULLIVAN  
Deputy Clerk

Approved by County Attorney as to form and legal sufficiency. *RST*

Peter S. Tell

# Memorandum



**Date:** November 6, 2007

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

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

**From:** George M. Burgess  
County Manager

**Subject:** Resolution Ratifying the Execution of the Project Cooperation Agreement Amendment Number 1 between the Department of the Army and Miami-Dade County, Florida, for Construction and Operation of a Dredged Material Management Facility at the Miami River, Florida Federal Navigation Project

## **Recommendation**

It is recommended that the Board ratify the attached resolution authorizing the County Mayor's action in executing Amendment Number 1 to the Project Cooperation Agreement (PCA) between the Department of the Army and Miami-Dade County, Florida, for construction and operation of a dredged material management facility at the Miami River, Florida Federal Navigation Project.

## **Scope**

Dredging of the Miami River encompasses parts of Commission Districts 2, 3, 5, and 7. However, the benefits of dredging the Miami River will have a countywide impact.

## **Fiscal Impact/Funding Source**

This PCA amendment allows for the acceleration of funds already committed by the Non-Federal Sponsors. This will not change the County's overall cost-share contribution to the project. However, the State of Florida did appropriate an additional \$5 million to supplant federal funding during the 2007 State Legislative Session.

## **Track Record/Monitor**

The Director of the Department of Environmental Resources Management will monitor this contract.

## **Background**

Currently, when Federal funds are available to dredge a particular section of the Miami River, the Army Corps submits a demand letter to the County requesting the specific cost-share due by the non-Federal funding partners. The existing agreement does not allow for the advancement of non-Federal funding ahead of the Army Corps dredging schedule. This amendment to the PCA provides a mechanism for the County and non-Federal funding partners to accelerate the non-Federal funding contribution for this project. There is existing non-Federal funding available from the County, City, State, and FIND to allow for additional dredging while we await further Federal funding appropriations. In addition, this amendment allows for the transfer of \$5 million appropriated by the 2007 State Legislature session which will supplant missing federal funding. The County is in no way increasing its cost-share to this project.

  
Assistant County Manager



**MEMORANDUM**  
(Revised)

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

**DATE:** November 6, 2007

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

**SUBJECT:** Agenda Item No. 8(D)(1)(E)

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

PROJECT COOPERATION AGREEMENT  
AMENDMENT NO. 1  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
MIAMI-DADE COUNTY, FLORIDA  
FOR CONSTRUCTION AND OPERATION OF A DREDGED MATERIAL MANAGEMENT  
FACILITY  
AT  
THE MIAMI RIVER, FLORIDA FEDERAL NAVIGATION PROJECT

THIS AMENDMENT NO.1 is entered into this 14<sup>th</sup> day of August, 2007, by and between the Department of the Army (hereinafter the "Government"), represented by the United States Army Engineer, Jacksonville, and Miami-Dade County, Florida (hereinafter the "Non-Federal Sponsor") represented by the County Mayor as authorized by its Board of Commissioners.

WITNESSETH, THAT:

WHEREAS, the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement on July 30, 2003 (hereinafter referred to as the "Agreement") for cost sharing of a dredged material management facility or an equivalent disposal plan (hereinafter the "general navigation features" as defined in Article I.D. of the Agreement) for continued operation and maintenance of the Miami River, Florida Federal Navigation Project at Miami, Florida;

WHEREAS, the Non-Federal Sponsor may propose to accelerate its provision of funds to the Government in an amount not to exceed the current estimate of the Non-Federal Sponsor's required cash contribution for construction of the general navigation features, less any funds previously contributed, for the immediate use by the Government for construction of the general navigation features (hereinafter the "accelerated funds");

WHEREAS, the Secretary of the Army is authorized, pursuant to 33 U.S.C. 560, to accept contributed funds to be expended in connection with Federally appropriated funds for any authorized work of public improvement of rivers and harbors whenever such work and expenditure may be considered by the Chief of Engineers as advantageous to the interests of navigation;

WHEREAS, the Non-Federal Sponsor may offer to contribute funds to the Government in an amount that exceeds the current estimate of the Non-Federal Sponsor's required cash contribution for construction of the general navigation features, for the immediate use by the Government for construction of the general navigation features, and the Non-Federal Sponsor may offer to contribute funds to the Government for the immediate use by the Government for operation and maintenance of the existing general navigation features (hereinafter collectively referred to as "non-required contributed funds"); and

WHEREAS, the parties agree that acceptance of accelerated funds or non-required

contributed funds 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 to match the accelerated funds the Non-Federal Sponsor elects to provide, and that the accelerated funds will be credited against the Non-Federal Sponsor's future cost share only if additional Federal funds are appropriated.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree that the Agreement is hereby amended in the following particulars but in no others:

1. ARTICLE II – OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSORS

Article II is amended by adding the following paragraphs at the end thereof:

"M. The Non-Federal Sponsor may offer in writing to accelerate a portion or all of its required cash contribution pursuant to Article II.F. and Article II.H. of this Agreement during the period of construction for immediate use by the Government. This offer shall be limited to an amount that does not exceed the most current estimate of the total of the Non-Federal Sponsor's required cash contribution pursuant to Article II.F. and Article II.H. of this Agreement, as determined by the Government in coordination with the Non-Federal Sponsor, less any funds previously contributed by the Non-Federal Sponsor. Upon receipt of such offer or offers, the Government, subject to receiving such approvals and concurrences as customarily are required to accept such funds, may accept the funds, or such portion thereof as the Government determines to be necessary to meet the costs of construction of the general navigation features. If the Government elects to accept such funds, it shall notify the Non-Federal Sponsor of such acceptance in a writing that sets forth any applicable terms and conditions. In the event of a conflict between this Agreement and any such writing, this Agreement shall control. Such funds shall be used by the Government for construction of the general navigation features.

N. As Federal appropriations are made available to pay the Federal share of construction of the general navigation features, the Government shall afford credit for funds provided during the period of construction in accordance with Article II.M. of this Agreement. The Government shall credit this amount, provided during the period of construction, first, toward the Non-Federal Sponsor's cash contribution required by Article II.F. of this Agreement, and then toward the Non-Federal Sponsor's cash contribution required by Article II.H. of this Agreement. If after the final accounting at the end of the period of construction, it is determined that the Non-Federal Sponsor has provided funds in excess of its required cash contribution pursuant to Article II.F. and Article II.H. of this Agreement, the Government shall proceed in accordance with Article VI.D.1.b. of this Agreement to determine whether a refund is applicable. However, if in the event of a final accounting due to termination pursuant to Article XIV.C. of this Agreement prior to the end of the period of construction, it is determined that the Non-Federal Sponsor has provided funds in excess of its required cash contribution pursuant to Article II.F. and Article II.H. of this Agreement, the Government shall not reimburse the Non-Federal Sponsor for any such excess funds, except that any such excess funds which have not been obligated by the Government on the general navigation features shall be refunded to the Non-Federal Sponsor, subject to the availability of funds."

O. The Non-Federal Sponsor may offer in writing to contribute cash in excess of its required cash contribution for construction of the general navigation features for immediate use by the Government to construct the general navigation features. Further, the Non-Federal Sponsor may offer in writing to contribute cash for immediate use by the Government to operate and maintain the existing general navigation features. Upon receipt of such offer or offers, the Government, subject to receiving such approvals and concurrences as are customary to accept such non-required contributed funds, may accept the funds, or such portion thereof as the Government determines to be necessary to meet the costs of construction of the general navigation features or the costs of operation and maintenance of the existing general navigation features. If the Government elects to accept such funds, it shall notify the Non-Federal Sponsor of such acceptance in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of a conflict between this Agreement and any such writing, this Agreement shall control.

P. No reimbursement or credit shall be afforded the Non-Federal Sponsor for funds contributed in excess of its required cash contribution for construction of the general navigation features or for funds contributed for operation and maintenance of the existing general navigation features. However, if after the final accounting at the end of the period of construction or due to termination pursuant to Article XIV.C. of this Agreement it is determined that the Non-Federal Sponsor has contributed funds in excess of its required cash contribution for construction of the general navigation features or contributed funds for operation and maintenance of the existing general navigation features, which have not been obligated by the Government, the Government shall refund such funds to the Non-Federal Sponsor, subject to the availability of funds."

## 2. ARTICLE VI – METHOD OF PAYMENT

a. The second sentence of Article VI.A. is amended by inserting the phrase: "of the credit to be afforded pursuant to Article II.N. of this Agreement," after "of the non-Federal proportionate share," and before "of the funds required from the Non-Federal Sponsor for the upcoming fiscal year,".

b. The first sentence of Article VI.B.2. is amended by inserting the phrase: ", after consideration of any credit afforded pursuant to Article II.N. of this Agreement," after "to be required from the Non-Federal Sponsor" and before "to meet".

c. Article VI.B.3. is amended by adding at the end thereof: "; and (c) to the extent of funds accepted in accordance with Article II.M. of this Agreement, any other financial obligations for construction of the general navigation features in excess of the non-Federal proportionate share as they are incurred during the period of construction."

d. Article VI.B.4. is amended by inserting the phrase: ", after consideration of any credit afforded pursuant to Article II.N. of this Agreement," after "the Government determines" and before "that additional funds will be needed from the Non-Federal Sponsor".

e. Article VI.D.1.b. should be deleted and replaced with the following:

"b. In the event the final accounting shows that the total contribution provided by the

Non-Federal Sponsor exceeds its required share of the total cost of construction of the general navigation features plus costs due to additional work under Article II.B. or Article II.D. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete, except that, if the final accounting results from termination pursuant to Article XIV.C. of this Agreement, the amount of accelerated funds that was provided in accordance with Article II.M. of this Agreement and for which credit was not afforded pursuant to Article II.N. of this Agreement shall not be reimbursed. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund (not including the non-reimbursable amounts referenced in the first sentence of this paragraph).”

f. Article VI.E.4. should be deleted and replaced with the following:

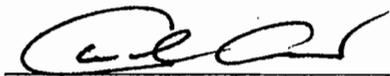
“4. After the Government furnishes the Non-Federal Sponsor with the results of the final accounting, the Government shall afford credit against the principal amount for the value, as determined in accordance with Article IV of this Agreement, of lands, easements, rights-of-way, relocations or deep draft utility relocations provided after the period of construction and the value of the credits afforded pursuant to Article II.N. of this Agreement and not otherwise applied against other required contributions; provided, however, that the amount of credit afforded pursuant to this paragraph shall not exceed the principal amount. Credit shall be afforded against the portion of the principal amount that is outstanding at the time the credit is afforded. If the credit exceeds the portion of the principal amount outstanding at the time credit is afforded, the Government shall afford the excess credit against the portion of the principal amount that the Non-Federal Sponsor has paid at the time the credit is afforded, by refunding such portion to the Non-Federal Sponsor, subject to the availability of funds, except that, if the final accounting results from termination pursuant to Article XIV.C. of this Agreement, the amount of accelerated funds that was provided in accordance with Article II.M. of this Agreement and for which credit was not afforded pursuant to Article II.N. of this Agreement shall not be reimbursed. In the event existing funds are not available to refund such portion to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund (not including the non-reimbursable amounts referenced in the penultimate sentence of this paragraph).”

IN WITNESS WHEREOF, the parties hereto have executed this amendment to the Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

MIAMI-DADE COUNTY, FLORIDA

BY:   
Paul L. Grosskruger  
Colonel, U.S. Army  
District Engineer

BY:   
Carlos Alvarez  
Mayor

DATE: 8 14 07

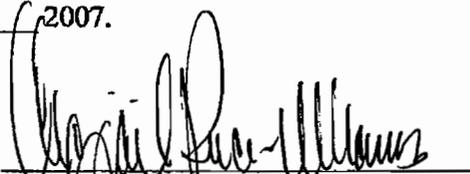
DATE: 8-8-07

CERTIFICATE OF AUTHORITY

I, Abigail Price-Williams, 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 Amendment No. 1 to the Agreement between the Department of the Army and Miami-Dade County, Florida in connection with the dredged material management facility for the Miami River, Florida 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 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of Miami-Dade County, Florida have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

9<sup>th</sup> day of Aug. 2007.



Abigail Price-Williams  
Acting 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, and 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.



Carlos Alvarez  
Mayor  
Miami-Dade County, Florida

Date: 8-8-07