

Date: March 4, 2008

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

From: George M. Burgess
County Manager

Subject: Resolution Approving Agreement Between Miami-Dade County and the Florida Turnpike Enterprise ("FTE") of the Florida Department of Transportation, an executive agency of the State of Florida, to incorporate SunPass technology into the public parking facilities at Miami International Airport

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

Resolution No. R-210-08

RECOMMENDATION

It is recommended that the Board approve the attached Agreement between Miami-Dade County, and the Florida Turnpike Enterprise of the Florida Department of Transportation, to incorporate SunPass technology into the public parking facilities at Miami International Airport ("MIA") for customer convenience.

SCOPE

Miami International Airport is located within District Six. However, the impact of this item is countywide in nature as MIA is a regional asset.

FISCAL IMPACT/FUNDING SOURCE

The cost to procure the related hardware and software is estimated to be approximately \$700,000. In addition, there will be recurring costs that include hardware, maintenance, and processing fees estimated at approximately \$325,333 annually. The Miami-Dade Aviation Department (MDAD) recommends proceeding with the installation of SunPass as a customer service even though the investment and annual operating cost not will be recouped.

TRACK RECORD/MONITOR

No negative information has been found regarding FTE and/or SunPass. This Agreement will be monitored by MDAD Commercial Operations Division Director Patricia Ryan.

BACKGROUND

Resolution R-1174-07, sponsored by Commissioner Jose "Pepe" Diaz, directed the County Manager to prepare a report on the use of SunPass as a payment method at MIA's public parking garage facility. The report was issued December 4, 2007, and resulted in instructions to MDAD to move forward with negotiations of an agreement with the FTE.

The primary purpose of SunPass is to enhance the customer experience at MIA's public parking facilities by enhancing the convenience of paying parking charges with the customer's SunPass. The SunPass technology permits operators of motor vehicles who have SunPass transponders to pay for various turnpike and roadway fees by using the transponder rather than paying in cash. It has become

quite successful in Florida, and is supervised by the Florida Turnpike Enterprise, an operating division of the Florida Department of Transportation.

Discussions were also held with MDX on the opportunity for providing services related to SunPass at a reduced cost. The result was that the agreement between MDAD and SunPass could not be enhanced by MDX's participation.

A survey conducted over seven consecutive days -- at various times of the day at MIA's public parking garages -- to determine the potential for SunPass produced a sample size of 2,122 patrons. Of those surveyed, 1,239 or 58.3 percent of the responders indicated that they either own or would use SunPass if it were available.

Under the agreement, a passenger operating a motor vehicle will be able to pay the parking fee by using the SunPass transponder. The amount of the parking charges will promptly be deducted from the deposit account of the passenger, and all the parking charges using the SunPass system will be forwarded to MDAD not less than every week. The only deduction from such amounts will be a processing fee that FTE needs to recoup, and the agreement provides that, for each transaction, FTE is entitled to keep .0065% of the transaction amount. For a typical daily parking charge of \$14, the processing fee will be 9 cents (\$.09).

The agreement calls for the County to purchase, install, operate and maintain revenue collection equipment which electronically transfers files containing SunPass transponder transactions to FTE for processing. The agreement is for a five (5) year term, with automatic renewals for a one-year term unless otherwise terminated.

The initial capital cost for the hardware and software is estimated to be approximately \$700,000.00. Funds in this amount are available in Aviation's revenue fund. Annual operating costs thereafter are estimated to be approximately \$325,333 annually, and funds in that amount will be budgeted annually in MDAD's operating budget for such purpose. Such initial costs and the subsequent operating costs will not have a material impact on the level of landing fees payable by the airlines during the period of the agreement.



Assistant County Manager



MEMORANDUM

(Revised)

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

DATE: March 4, 2008

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

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

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)(D)
03-04-08

RESOLUTION NO. **R-210-08**

RESOLUTION RELATING TO MIAMI INTERNATIONAL AIRPORT; APPROVING AGREEMENT BETWEEN THE FLORIDA TURNPIKE ENTERPRISE (“FTE”) OF THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE INCORPORATION OF SUNPASS TECHNOLOGY INTO THE PUBLIC PARKING FACILITIES AT MIAMI INTERNATIONAL AIRPORT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and documents, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the attached agreement between Miami-Dade County and the Florida Turnpike Enterprise (“FTE”), an operating division of the Florida Department of Transportation, for the incorporation of SunPass technology into the public parking facilities of Miami International Airport; authorizing the Mayor or designee to execute such agreement and to exercise the termination provisions thereof.

The foregoing resolution was offered by Commissioner **Jose “Pepe” Diaz**, who moved its adoption. The motion was seconded by Commissioner **Carlos A. Gimenez** and upon being put to a vote, the vote was as follows:

Resolution R-210-08

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

Page No. 2

	Bruno A. Barreiro, Chairman	aye	
	Barbara J. Jordan, Vice-Chairwoman	aye	
Jose "Pepe" Diaz	aye	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	absent	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of March, 2008. 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.

TPA

Thomas P. Abbott

JOINT PARTICIPATION AGREEMENT

MIAMI INTERNATIONAL AIRPORT

SUNPASS PARKING PROGRAM

This JOINT PARTICIPATION AGREEMENT ("JPA") is entered into this _____ day of _____, _____, by and between Miami-Dade County, a political subdivision of the state of Florida (hereinafter, "COUNTY"), with principal place of business located at P.O. Box 025504 Miami, Florida 33102, and the FLORIDA DEPARTMENT OF TRANSPORTATION, Florida's Turnpike Enterprise (hereinafter, "FTE"), an executive agency of the State of Florida, with principal place of business located at Turnpike Headquarters, Post Office Box 613069, Ocoee, Florida 34761.

WITNESSETH

WHEREAS, the COUNTY and FTE desire to incorporate SunPass® technology into the public parking facilities at the Miami International Airport ("MIA") in order to allow airport customers to pay public parking fees using their SunPass® and SunPass®-compatible transponders (hereinafter, "Project"); and

WHEREAS, the purpose of this JPA is to provide a description of the roles, responsibilities, business rules, specifications and other terms and provisions as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

1. **Recitations.** The above recitals are true and correct and are incorporated herein by this reference.

2. **Effective Date; Go-Live Date.** The "Effective Date" is the date of upon which the last of the parties to execute and deliver this JPA to the other occurs. On the "Effective Date" this JPA shall become binding and effective upon the parties. The "Go-Live Date" is the date mutually agreed by Miami-Dade County Aviation Department ("MDAD") and Florida's Turnpike Enterprise that processing of SunPass parking transactions shall begin at MIA.

3. **Roles and Responsibilities of Florida's Turnpike Enterprise.**
 - (a) FTE will provide a SunPass® transponder base of customers that are eligible for parking at MIA.
 - (b) FTE will provide for the internal processing of MIA parking revenue transactions using SunPass® transponders.
 - (c) FTE will wire transfer funds to MDAD for SunPass® parking transactions at MIA on a weekly basis. However, if during the term of this Agreement, FTE changes its Accounting processes to transfer funds at a greater frequency, FTE shall then wire transfer funds to MDAD accordingly. An "initial credit card fee" of 2% of the credit transactions will be deducted from the wire transfers to MDAD. A reconciliation of the initial credit card fee will be calculated against the actual credit card fee during the following month. This reconciliation will be calculated based on the actual SunPass® related credit card fees incurred by FTE during the month multiplied by the "MIA Factor" (as hereinafter defined). The resulting amount shall have subtracted from any credit card fees already deducted from MIA's distributions during the month. The resulting "true up" amount will then be added/deleted on the next wire transfers from FTE to MDAD. The "MIA Factor" is a fraction, the numerator of which shall be the total MIA parking revenue using SunPass® transponders for the month, and the denominator of which shall be the total SunPass® revenue collected for the month.

- (d) On a weekly basis, FTE will deduct 0.65% (the "FTE Fee") from the gross revenue to be sent via wire transfer to MDAD. For example, if MDAD's weekly gross SunPass revenue was \$810,000, the FTE fee would be \$5,265 ($\$810,000 \times 0.0065$). The transaction fee shall be calculated before the credit card fees are taken from the gross revenue. The FTE Fee is to cover the costs of FTE providing this service to MDAD. The FTE Fee will be waived during the first 24 months of operation following the Go-Live Date and will not be charged to the COUNTY during such 24-month period. For purposes of this JPA, a parking transaction shall be any transaction in which a MIA airport customer utilizes a SunPass transponder to pay the MIA airport parking fees.
- (e) FTE will also deduct from the gross revenue sent to MDAD, if and when these charges occur, duplicate transactions, credit card charge backs, parking fee write-offs and wire transfer fees.
- (f) FTE and COUNTY will jointly promote SunPass® Plus parking at MIA in accordance with a marketing plan that will be developed and agreed to by the parties.
- (g) No interest shall be paid by FTE on collected MDAD parking funds while awaiting the weekly wire transfer of parking funds.
- (h) All SunPass®-compatible transponders, regardless of issuing toll agency, will be handled through SunPass® in the same manner as any SunPass® transponder issued by FTE.
- (i) Possible Future Airport Parking Participants. At some future date when SunPass®' interoperable partners have the ability to operate in a "real time" environment, they may become participants in SunPass® Plus parking.

4. **WIRE TRANSFER OF FUNDS**

FTE will transfer funds on a weekly basis from the SunPass® prepaid account to the COUNTY MIA's parking revenue account as stated in

Airport Parking Functional and Non-functional requirements, Mobile Commerce Initiative Version 1.10. A reconciliation of credit card fees shall be performed monthly.

5. **SunPass Customer Statements and Receipts, Issues and Inquiries.**

- (a) Each SunPass® customer statement provided by FTE to its customers will include MIA parking facility transactions. SunPass® customers who have elected to receive their statements by mail will have access to their MIA parking facility transactions through this media. SunPass® customers who view their statements online will also have internet access to their MIA parking facility transaction records and can obtain printed receipts from the SunPass® website. SunPass® customers can also obtain a written receipt through the SunPass® Customer Service Center.
- (b) FTE will act as the primary point of contact for all SunPass® related customer service issues and inquiries. FTE will provide toll free phone number for customer service issues and inquiries.
- (c) Pursuant to the provisions of Section 338.155 (6), Florida Statutes, the personal identifying information of SunPass® customers in the possession of the COUNTY and FTE for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facility charges is exempt from Section 119.07 (1), Florida Statutes, and Article I, Section 24 (a) of the Florida Constitution. Accordingly neither the COUNTY nor FTE will disclose SunPass® customer account personal identifying information to any other person or entity for any purpose other than the collection of MIA parking fees, the enforcement of MIA parking fees, or otherwise as required by law. The parties hereto will preserve and protect the aforesaid exemption and not waive the same.

6. **Roles and Responsibility of the COUNTY.**

- (a) It is the responsibility of COUNTY to separately contract to purchase, install, operate and maintain the revenue collection equipment at MIA. COUNTY will provide the land for all SunPass® toll lanes at MIA and will be responsible for the purchase, installation, on-going maintenance, and ownership of the SunPass® revenue collection equipment at MIA.
- (b) COUNTY will be responsible for costs associated with software changes to its revenue control system that are required to implement and maintain the Project. COUNTY will indemnify and hold FTE harmless from the economic consequences of MDAD system calibration problems, loss to transactional data integrity, and internal transponder data corruption that is beyond the control of FTE.
- (c) COUNTY will be responsible for any costs associated with modifying MIA parking system signage for the Project.
- (d) COUNTY will be responsible for all credit card processing fees, FTE fees, and other charges related to MIA parking transactions as described in Paragraph 3 above.
- (e) COUNTY will send each MIA SunPass® parking transaction electronically as specified in the data requirements established in **Exhibit A (Airport Parking Functional and Non-functional requirements, Mobile Commerce Initiative, Version 1.10)**. FTE is responsible only for collecting parking fees from SunPass® customers and remitting same to COUNTY in accordance with Paragraph 3 above and as further described in **Exhibit A**. COUNTY is responsible for collecting all parking fees for the MIA parking facilities that are not paid by customers using SunPass® transponders.

7. **Transcore Equipment and SunPass® Software Changes.**

- (a) It shall be the responsibility of the COUNTY to make necessary changes to the revenue collection system (equipment or software) at MIA to accommodate any changes to Transcore Equipment or end-of-life equipment issues with Transcore Equipment.
- (b) FTE shall make best efforts not to implement policies that result in major changes to hardware and software requirements.
- (c) It shall be the responsibility of FTE to provide the COUNTY with a minimum of 120 calendar days notice prior to making any changes to their software or processing environment that will require changes to revenue collection system (equipment or software or processing) at MIA. FTE will provide the COUNTY with an opportunity for input as to any potential impact of such change at MIA.

8. **Assignment.**

This JPA or any interest herein shall not be assigned, transferred or otherwise encumbered by the COUNTY or FTE under any circumstances without the prior written consent of the other party. However, this JPA shall run to FTE and COUNTY and their successors and permitted assigns. In the event of any such assignment the assignee shall expressly assume, perform, and be bound by the duties, covenants, and obligations of the assignor contained in this JPA.

9. **Term.**

The initial term of this JPA shall commence upon the Effective Date and shall continue for five (5) years ("Initial Term"). Thereafter, this JPA shall be renewed automatically for additional one (1) year terms (each such successive term being called a "Renewal Term"), unless terminated in accordance with the terms and conditions of this JPA. The Initial Term and any Renewal Terms are collectively referred to as the "Term."

10. **Termination.**

- (a) After the initial term, either party may terminate this JPA for any reason by providing at least ninety (90) calendar days' prior written notice to the other Party.
- (b) This JPA may be terminated for cause by action of Miami-Dade Board of Commissioners ("Board") or by FTE if the party in breach has not corrected the breach within ten (10) calendar days' written notice from the aggrieved party identifying the breach. This JPA may also be terminated by the Miami-Dade Administrator or FTE upon such notice as the Administrator or FTE deems appropriate under the circumstances in the event Administrator or FTE determines that termination is necessary to protect the public health, safety, or welfare.
- (c) Termination of this JPA for cause shall include, but not be limited to, negligent, intentional, or repeated submission of false or incorrect transaction, data, bills or invoices, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this JPA, or multiple breach of this JPA which has a material adverse effect on the efficient administration of the Project, notwithstanding whether any such breach was previously waived or cured.
- (d) Notice of termination shall be provided in accordance with the NOTICES section of this JPA except that notice of termination by Contract Administrator which County Administrator deems necessary to protect the public health, safety, or welfare shall be promptly confirmed in writing in accordance with the NOTICES section of this JPA.
- (e) In the event this JPA is terminated for convenience, FTE shall be paid for any services properly performed to the date the JPA is

terminated. Compensation shall be withheld until all documents specified in subparagraph (f), below are provided to the COUNTY. Upon being notified of COUNTY's election to terminate, FTE should refrain from performing further services or incurring additional expenses under the terms of this JPA. Under no circumstances shall COUNTY be required to make payment for services, which have not been performed.

- (f) In the event of any termination, FTE shall deliver all monies payable to the COUNTY and all documents and records, including without limitation, all data, studies, models, and reports prepared or provided by FTE in connection with this JPA (in whatever state they may be in at the date of termination) to the COUNTY within seven (7) calendar days following receipt of the written notice of termination. Any compensation due FTE shall be withheld until all monies owed to the COUNTY and all documents and records are received by COUNTY as provided herein.

11. **Notices.**

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, postage prepaid, return receipt requested, or by overnight courier with delivery confirmation, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

FOR COUNTY:

Director of Aviation
Miami-Dade Aviation Department
P.O. Box 025504
Miami, FL 33102

FOR FLORIDA'S TURNPIKE ENTERPRISE:

Turnpike Headquarters
Turkey Lake Service Plaza
Mile Post 263, Building 5315
Post Office Box 613069
Ocoee, Florida 34761.

12. **Records.**

Records of airport parking charges and payments incurred under the terms of this JPA shall be maintained and made available upon request by either party to the other at all times during the period of this JPA and for five (5) years after completion of the Project. Copies of these documents and records shall be furnished to either party upon request. Records of costs incurred include general accounting records and the Project records, together with supporting documents and records of the contractor and all subcontractors performing work on the Project, and all other records of the contractor and subcontractors considered necessary by the either party for a proper audit of costs.

13. **Section 339.135 (6) (a), Florida Statutes.**

Florida's Turnpike Enterprise during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. Florida's Turnpike Enterprise shall require a statement from the Comptroller of the Florida Department of Transportation that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of Florida's Turnpike Enterprise which are for an amount in excess of TWENTY FIVE

THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than one year.

14. **Chapter 129, Florida Statutes.**

If the term of this JPA extends beyond a single fiscal year of COUNTY, the continuation of this JPA beyond the end of any fiscal year shall be subject to the availability of funds from COUNTY in accordance with Chapter 129, Florida Statutes, as it may be amended.

15. **Amendment.**

No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in a written document prepared with the same or similar formality as this JPA and executed by the parties hereto.

16. **Governing Law**

The laws of the State of Florida shall govern the validity of this JPA and any of its terms and provisions, as well as the rights and duties of the parties to this JPA.

17. **Non-Solicitation**

The COUNTY warrants that it has not employed or obtained any company or person, other than bona fide employees of the to solicit or secure this JPA and it has not paid or agreed to pay any company, corporation, individual or firm, other than a bona fide employee employed by the FTE warrants that it has not employed or obtained any company or person, other than bona fide employees of the Florida's Turnpike Enterprise to solicit or secure this JPA and it has not paid or agreed to pay any company, corporation, individual or firm, other than a bona fide employee employed by FTE.

18. **Convicted Vendor List**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

19. **ADA**

Both parties agree to comply with Titles I and II of the Americans with Disabilities Act of 1990, as well as state and federal civil rights laws, and each party agrees to comply with its own rules and ordinances for implementation thereof.

20. **Tort Liability**

FTE is an executive state agency and is a political subdivision of the State of Florida as defined in Chapter 768.28, Florida Statutes. Accordingly, each party agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this JPA or any other contract.

21. **No Third Party Beneficiaries**

Neither FTE nor COUNTY intends to directly or substantially benefit a third party by this JPA. Therefore, the parties agree that there are no third party beneficiaries to this JPA and that no third party shall be entitled to assert a claim against either of them based upon this JPA.

22. **Severance**

In the event this JPA or a portion of this JPA is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

23. **Controlling Document**

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this JPA by reference and a term, statement, requirement, or provision of this JPA, the term, statement, requirement, or provision contained in Paragraphs 1 through 27 of this JPA shall prevail and be given effect.

24. **Recitals**

The truth and accuracy of each whereas clause set forth above is acknowledged by the parties.

25. **Authority**

The individuals executing this JPA on behalf of each party have full authority to execute this JPA on behalf of the party for whom they are acting herein.

26. **Integration**

This document incorporates and includes all prior negotiations, correspondence, agreements, or understandings applicable to the matters

contained herein and the parties agree that there are no commitments, agreements or understanding concerning the subject matter of this JPA that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed by the parties hereto.

27. **Multiple Originals**

Multiple copies of this JPA may be fully executed by all parties, each of which shall be deemed to be an original.

28. **Exhibit**

The following exhibits are hereby incorporated into and made a part of this JPA:

Exhibit A:

Airport Parking Functional

and Non-functional requirements Mobile Commerce Initiative Version 1.10.

IN WITNESS WHEREOF, the parties hereto have made and executed this Joint Participation Agreement on the respective dates under each signature: MIAMI-DADE COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Designee, authorized to execute same by Board action on the ____ day of _____, 2008, and FLORIDA DEPARTMENT OF TRANSPORTATION, FLORIDA'S TURNPIKE ENTERPRISE, signing by and through its Deputy Executive Director and Chief Operating Officer duly authorized to execute same.

Approved for Form and Execution:

Board of County Commissioners
MIAMI-DADE COUNTY,
FLORIDA

Office of the County Attorney

By: _____
Chairman of the Board of County
Commissioners

Date Signed:
The ____ day of _____. 2008

Florida Department of Transportation
Florida's Turnpike Enterprise

ATTEST:

By: _____
Christopher L. Warren, P.E.
Deputy Executive Director and
Chief Operating Officer

Secretary

Date Signed:
The ____ day of _____ 2008.

Approved as to Form and Execution by:

By: _____
Office of the Turnpike General Counsel

Memorandum



Date: March 4, 2008

Supplement to
Agenda Item No. 8(A)1(C)

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

From: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "G. Burgess", written over the printed name of George M. Burgess.

Subject: Supplemental Report to the First Amended and Restated Project Specific Services Agreement to the A-B Infill Shell and Interior Finish-Out with Leo A. Daly Company Contract No. MIA-747

The original agenda item considered by the Airport and Tourism Committee on February 14, 2008, included contract provisions that provided that Service Orders for work-related and work-site services would be issued and that compensation for the work orders could be via a multiple of direct salaries or lump sum basis. Since the Airport and Tourism Committee meeting, MDAD staff has negotiated a lump sum agreement for these services in order to prevent potential cost increases for these services.

The attached supplemental agreement is for the same amount of the original agenda item. Where it differs is that it creates a lump sum agreement for the work and includes the following language. Changes are reflected in Articles 5 and 8 of the Agreement.

The paragraph in 8.1 was modified to convert it to a lump sum making the A/E at risk:

"The remaining Basic Services, Work-Site Services, and Work-Related Services shall be the Fixed Lump Sum amount of Fifteen Million, Three Hundred, Thirty-seven Thousand, Four Hundred and Fifty-two Dollars and No Cents (\$15,337,452). The Architect/Engineer shall provide all necessary manpower, equipment, and materials, except for items which are reimbursable under this agreement or items which are additional work, at a cost not to exceed the preceding amount, and the Architect/Engineer shall be solely responsible for costs to provide these services in excess of that amount.

The Architect/Engineer agrees that it can provide the listed services for the amount specified. The Owner does not warrant that the listed services can be provided for the amount specified, and does not make any representation as to the expected volume of work, including but not limited to, the number of submittals to be reviewed, the duration of work site or work related activities, the number of potential change orders, the need for plans or specifications revisions, the need for negotiations with the contractor, or the provision of supplemental information or analysis. The amount due the Architect/Engineer for Basic, Work-Site, and Work-Related services shall not exceed the listed amount irrespective of the actual volume of work."

A summary of the changes is as follows:

Article 5

Deletes articles 5.2.6 and 5.2.16
Moves article 5.3 to Article 8 (8.2.4)

Article 8

- 8.1 Modification that is in the supplemental report is included in this article.
- 8.2 Changes payment schedule to reflect payments made a part of the \$15,337,452 (see article 8.1)
- 8.2.4 Where the worksite services article went to from article 5
- 8.3 Changed article 8.3 removing provision that work-related and work-site services could be paid as a multiple of direct salaries.
- 8.4
- and 8.10 Modified provision that A/E was at risk for reimbursable expenses that exceeded \$30,000

It is recommended that the Board approve the attached First Amended and Restated Project Specific Services Agreement between Leo A. Daly Company and Miami-Dade County. This First Amended and Restated Project Specific Services Agreement increases the agreement by \$4,782,881 for an adjusted contract amount of \$16,829,421 and changes the terms and conditions of the agreement as provided in this supplemental item.



Assistant County Manager

ARTICLE 5

ADDITIONAL SERVICES

- 5.1 AUTHORIZATION: Any Services beyond the requirements for Basic Services, Work Related, and Work Site services shall be performed by the Architect/Engineer upon receipt of a Service Order issued by the Owner. The Owner reserves the right to have any or all of the Services listed below performed by consultants other than the Architect/Engineer. The Architect/Engineer shall have no claim to any of these Services except as authorized by the Owner with a Service Order.
- 5.2 ADDITIONAL SERVICES: Additional Services listed below are beyond the requirements for Basic Services under this Agreement and shall be performed upon receipt of a Service Order.
- 5.2.1 Special analyses of the needs of the Owner related to financial feasibility, or other special studies not otherwise necessary for the satisfactory performance of the Basic Services.
- 5.2.2 Incorporation of any User recommendations, as approved by the Owner, into drawings subsequent to Phase 2.
- 5.2.3 Any Services requested in writing by the Owner performed after acceptance of Phase 2 documents by the Owner relative to future facilities, systems and equipment but not intended to be included in the Contract Documents.
- 5.2.4 Services with respect to verification of Owner supplied information that cannot be made visually or by careful review of the available information, but which requires extraordinary investigation, such as excavation, demolition or removal, as well as investigations and the development of additional information, as agreed to by the Owner, required as a result of deficiencies in the as-built conditions, utility information, survey information and/or soils investigation which are deemed necessary to provide a satisfactory basis on which to perform the Basic Services.
- If any independent engineering, testing laboratory or surveyor is employed by the Architect/Engineer to perform any or all of the requested additional services, the Architect/Engineer shall obtain the Owner's approval of the use of and the fees for such independent engineering, testing laboratory or surveyor prior to commencing such work. Verification of the work performed by such Sub-consultant(s) and the cost associated therewith shall be the sole responsibility of the Architect/Engineer and not compensable by the Owner.
- 5.2.5 Extra work required, as directed by the Owner, to break the Project into more bidding packages than specified herein, including making studies and advising


2.25.08

the Owner of the number and type of construction contracts, taking into consideration phasing and coordination of work with the Contractors, cost impact, and the requirements and needs of the Owner and Users (if applicable)

- 5.2.6 Meetings with federal and/or state grant providing agencies required to assist the Owner in obtaining grant funding for the Project
- 5.2.7 Extended assistance requested in writing by the Owner for the preparation of operating and maintenance manuals, other than those provided by the Contractor, subcontractors, or manufacturer, in accordance with the Contract Documents.
- 5.2.8 Consultation concerning replacement of any work damaged by fire or other disaster during construction, and professional services in connection with replacement of such work
- 5.2.9 Preparing to serve or serving as an expert witness at the request and on behalf of the Owner, in connection with the Project or any Project Element or component thereof, except in situations where such service is a result of the Architect/Engineer's errors, omissions or ambiguities
- 5.2.10 Professional services required after acceptance of the Work by the Owner except as otherwise required under Basic Services
- 5.2.11 Professional services made necessary by the default of the Contractor or by major defects in work performed under the construction Contract that have not resulted from errors, omissions or ambiguities of the Architect/Engineer
- 5.2.12 Environmental services beyond that which is required to verify Owner supplied information or that is beyond the scope of the Basic Services herein.
- 5.2.13 Environmental Remediation engineering services These services will be negotiated, authorized and paid as Additional Services; however, the incorporation of standard details and/or technical specifications provided by the Owner into the Contract Documents does not constitute Additional Services
- 5.2.14 Services required to participate in or otherwise assist the Owner during bid protests or negotiations with the bidder(s) after bid opening but before the award of the Contract with the Contractor

ARTICLE 8

COMPENSATION FOR SERVICES

The Owner agrees to pay to the Architect/Engineer and the Architect/Engineer agrees to accept for all Services rendered pursuant to this Agreement, the amounts determined in accordance with this Article. No payment will be made to the Architect/Engineer for work performed without a Service Order.

8.1 COMPENSATION FOR BASIC SERVICES:

The remaining Basic Services, Work-Site Services, and Work-Related Services shall be the Fixed Lump Sum amount of Fifteen Million, Three Hundred, Thirty-seven Thousand, Four Hundred and Fifty-two Dollars and No Cents (\$15,337,452.00). The Architect/Engineer shall provide all necessary manpower, equipment, and materials, except for items which are reimbursable under this agreement or items which are additional work, at a cost not to exceed the preceding amount, and the Architect/Engineer shall be solely responsible for costs to provide these services in excess of that amount.

The Architect/Engineer agrees that it can provide the listed services for the amount specified. The Owner does not warrant that the listed services can be provided for the amount specified, and does not make any representation as to the expected volume of work, including but not limited to, the number of submittals to be reviewed, the duration of work site or work related activities, the number of potential change orders, the need for plans or specifications revisions, the need for negotiations with the contractor, or the provision of supplemental information or analysis. The amount due the Architect/Engineer for Basic, Work-Site, and Work-Related services shall not exceed the listed amount irrespective of the actual volume of work.

8.2 PAYMENT FOR BASIC, WORK-SITE, AND WORK-RELATED SERVICES UNDER THIS METHOD: Payments for each Phase shall not exceed the amounts listed for Basic, Work-Site, and Work-related Services compensation as shown on the following Schedule of Payments for Basic Services.

SCHEDULE OF PAYMENTS FOR BASIC SERVICES COMPENSATION DUE THE ARCHITECT/ENGINEER UPON COMPLETION OF EACH OF THE PHASES OF THE BASIC SERVICES

PHASE NO	SCHEDULE OF PAYMENTS FOR BASIC SERVICES
1A Program Verification	Not Applicable

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2.25.08

5

PHASE NO	SCHEDULE OF PAYMENTS FOR BASIC SERVICES
1B Preparation of Schematic Design Documents	Not Applicable
2 Design Development	Not Applicable
3A 30% Complete Contract Documents	The compensation for Phases 3A, 3B, 3C, 3D, and 4 is \$9,281,251 Completed under terms of the Original Agreement
3B 75% Complete Contract Documents	Completed under terms of the Original Agreement
3C 100% Complete Contract Documents	Completed under terms of the Original Agreement
3D Bid Contract Documents	Completed under terms of the Original Agreement
4 Bidding & Award of Contract	Completed under terms of the Original Agreement
5 and 6 Work Related Services and Work Site Services Through Final Acceptance of the Project, Completion of All Work Related Services including Warranty Inspection, Work Site Services	\$6,056,201

- 8.2.1 The Architect/Engineer shall not be entitled to compensation for Phases 2 through 4 (Design Development through Bidding) for alternates required because of the failure of the Architect/Engineer to design the Project so that it may be constructed within the total established construction budget
- 8.2.2 No further progress payment will be made should the Probable Construction Cost of any phase exceed the budget until an alternate design is provided in accordance with the requirements of this Agreement

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2.25.08

8.2.3 Payment of Work Site Services and Work Related Services shall be at a stipulated monthly rate, as agreed by the Owner and the Architect/Engineer in the Service Order.

8.2.4 WORK SITE SERVICES

At the sole option of the Owner and after receipt of a Service Order specifically authorizing such Services, the A/E shall provide Work Site Services as set forth herein. In discharging such Services, the Architect/Engineer shall provide an on-site resident Field Representative(s) approved by the Owner who shall act as the agent of the Architect/Engineer. The Work Site Services shall be defined by Service Order, performed in accordance with Construction Inspection Services Manual, and agreed to by the Architect/Engineer and the Owner.

The Architect/Engineer shall fulfill all other requirements and duties, not a part of the Basic Services, imposed on the Architect/Engineer by the Contract Documents or through Service Order by direction of the Owner.

Should the Architect/Engineer fail to perform these Work Site Services in a timely manner and cause a delay in the progress of the Work, the Architect/Engineer shall be responsible for any resulting damages to the Owner.

8.3 PAYMENT FOR ADDITIONAL SERVICES OR DEDICATED SERVICES: The fee for Additional Services and Dedicated Services will be computed by one of the following methods as mutually agreed to by the Owner and the Architect/Engineer:

Fixed Lump Sum

Multiple of Direct Salaries

8.3.1 Fixed Lump Sum: Under this compensation basis, the Architect/Engineer agrees to perform specifically described services for an agreed fixed dollar amount of compensation.

8.3.2 Multiple Of Direct Salaries: Under this compensation basis, the Architect/Engineer is compensated for the time of personnel engaged directly in performing Services under this Agreement. The compensation to be paid shall consist of the Direct Salaries of such personnel, as reported to the Director of the United States Internal Revenue Services, times a multiple of such Direct Salaries. All payments on the Multiple of Direct Salaries basis shall be in accordance with the payment for Additional or Dedicated Services Allowance Account section of this Article. A not-to-exceed cap for the total fee for assignments given under this compensation basis shall be established prior to the issuance of the initial Services Order.


2.25.09

8.3.3 The Fee to the Architect/Engineer for Additional or Dedicated Services based on a Multiple of Direct Salaries shall be determined as follows:

8.3.3.1 Compensation for Principal(s) shall be at the flat rate without application of any multiplier of \$150.00 per hour

Principal(s) to be paid this rate is/are those listed by name in Appendix 2- "Principals of the Architect/Engineer", attached to this Agreement.

Upon mutual agreement between the Owner and the Architect/Engineer, the Principals identified in Appendix 2- "Principals of the Architect/Engineer", may be substituted, provided the total number of Principals does not exceed the number of Principals originally listed

8.3.3.2 Compensation for all other personnel shall be a multiple of 2.85 times Direct Salaries for the Office of Leo A Daly, 2.75 times Direct Salaries for the Office of Perez & Perez Architects Planners, and 2.50 times Direct Salaries for all other subconsultants. The maximum rate of compensation for personnel including the multiple of direct salary shall not exceed \$150.00 per hour

The Owner may, by authorized Service Order only, adjust the maximum rates of compensation for personnel as listed above, (excluding the multiple) by the lower of either the percentage increase in the Consumer Price Index (CPI) for the Miami urban area or the cost of living adjustment for the County non-union bargaining unit; provided, however, the cumulative increase for the term of the Agreement including extensions shall not exceed an aggregate total of ten percent (10%)

8.3.3.3 Compensation for authorized overtime services must be approved in writing by the Owner prior to incurring overtime charges. For Employees that are salaried and are not required to be paid time and one half for work over 40 hours: Forty (40) hours multiplied by the base pay rate (\$) multiplied by the appropriate multiple (M) based on whether the Services are Additional or Work Site; plus Hours Worked Beyond Forty (40) Hours During Week (Hrs) multiplied by the pay rate (\$) multiplied by 1.5. Using conventions contained in Microsoft Excel, the equation for this would be:

$$(40 * \$ * M) + (Hrs * \$ * 1.5)$$

For Employees that are on an hourly basis and are required to be paid at a time and one half overtime rate: Hours Worked Beyond Forty (40) Hours During Week (Hrs) multiplied by the premium pay rate ($\$ * 1.5$)


2-25-08

and then multiplied by 1.1 Using conventions contained in Microsoft Excel, the equation for this would be:

$$(40 * \$ * M) + (Hrs * \$ * 1.5 * 1.1)$$

EXAMPLE

Hours worked during week = 50

Pay rate = \$30/hr

Multiplier = 2.65

$$(40 * 30 * 2.65) + (10 * 30 * 1.1) = 3180 + 330 = \$3510 \text{ or}$$

EXAMPLE

Hours worked during week = 50

Pay rate = \$30/hr

Multiplier = 2.65

$$(40 * 30 * 2.65) + (10 * 30 * 1.5 * 1.1) = 3180 + 495 = \$3675$$

8.3.3.4 Architect/Engineer shall not invoice Owner for charges for office, rent or overhead expenses of any kind, including but not limited to, insurance, telephone (except long distance calls authorized by the Owner), and utility charges, office/drafting supplies, depreciation of equipment, professional dues, subscriptions, reproduction of drawings and/or specifications for internal use, mailing, stenographic, clerical, nor shall it invoice for other employee time or travel and subsistence not directly related to the Project. The multiple factor set forth above shall cover all such costs pertinent to the Project.

8.3.3.5 When Additional Services, and Dedicated Services are authorized as a Multiple of Direct Salaries, the Architect/Engineer shall submit the names, classification, salary rate per hour, applicable multiple, hours worked, and total charge for all personnel directly engaged on the project.

8.4 PAYMENT FOR REIMBURSABLE EXPENSES: Reimbursable Expenses as described in the article "Reimbursable Expenses" of this Agreement will be reimbursed by the Owner as verified by appropriate bills, invoices or statements. Total payments for reimbursable expenses under this agreement shall not exceed \$30,000.00, and the Architect/Engineer shall supply any additional reimbursable items or services at its own cost. The Architect/Engineer shall provide all reimbursable items or services necessary to perform the work of the agreement regardless of actual cost to the Architect/Engineer.


2.25.08

- 8 5 INVOICES AND METHODS OF PAYMENT: The Architect/Engineer shall submit monthly to the Project Manager, two (2) copies of a duly certified invoice for payments due on account of the portion(s) of the Services performed and eligible for payment as determined by the Project Manager. A copy of the applicable Service Order shall accompany the original copy of the invoice. The format, content and submittal date of the invoice shall be as specified by the Project Manager. The Architect/Engineer will meet monthly with the Project Manager to verify that the Architect/Engineer's reported progress and earned value is in accordance with this Agreement. Monthly progress payments will be based on the monthly meeting with the Project Manager.

Subsequent to the monthly meeting, the Architect/Engineer shall submit its invoice for those services to the Project Manager. The Owner shall make payment in accordance with the provisions of Chapter 218 of the Florida Statutes. However, the Owner may reject the invoice in whole or in part. If rejected, the Owner shall notify the Architect/Engineer in writing specifying the deficiencies and corrective action required. If the Owner rejects only a part of the invoice, the Owner shall pay the undisputed portion of the invoice on a timely basis. Rejected or partially rejected invoices shall be corrected by the Architect/Engineer and resubmitted to the Project Manager for payment. Resubmitted partially rejected invoices shall separately indicate the previously undisputed amount of the invoice.

- 8 6 PAYMENT TO SUB-CONSULTANTS: All payments to Sub-consultant(s) employed hereunder shall be the sole responsibility of the Architect/Engineer unless otherwise provided for herein or within a Service Order. The Architect/Engineer shall, upon receipt of progress and/or final billing(s) from such Sub-consultant(s) for Services satisfactorily performed incorporate such billing(s) in the manner and to the extent appropriate to the applicable payment basis (es), in the next following invoice submitted by the Architect/Engineer to the Owner. The Architect/Engineer shall not submit invoices that include charges for Services by Sub-consultant(s) unless such Services have been performed satisfactorily and the charges are, in the opinion of the Architect/Engineer, payable to such Sub-consultant(s). The Architect/Engineer shall make all payments to such Sub-consultant(s) promptly following receipt by Architect/Engineer of corresponding payment from the Owner. Prior to any payments to Sub-consultant(s), the Architect/Engineer shall, if requested by the Project Manager, furnish to the Owner a copy of the agreement(s) providing for such payments.
- 8.7 CONSEQUENCE FOR NON-PERFORMANCE: Should the Architect/Engineer fail to perform its services within the time frames outlined and such failure causes a delay in the progress of the Work, the Architect/Engineer shall be liable for any damages to the Owner resulting from such delay.
- 8 8 PAYMENT FOR ABANDONED, TERMINATED OR SUSPENDED SERVICES: In the event of termination or suspension of the services or abandonment of a Project


2-25-08

Element(s) (including the failure of the Owner to advertise the Contract Documents for bids, or the Owner's failure to award a Contract for the Work on the basis of any such bids received, within the time limits set forth in this agreement) the Architect/Engineer shall be compensated as follows:

- 8.8.1 Payment for Services completed and approved prior to receipt by the Architect/Engineer of notice of abandonment of a Project Element, termination or suspension, for which payment has not yet been made to the Architect/Engineer by the Owner, shall be made in the same manner as would have been required had such abandonment of a Project Element, termination or suspension not occurred
- 8.8.2 For Services partially completed and satisfactorily performed prior to receipt by the Architect/Engineer of notice of abandonment of a Project Element, termination or suspension, the Architect/Engineer shall be compensated on the basis of payment in same manner as would have been required had such abandonment of a Project Element, termination or suspension not occurred, adjusted to the level of completion portion of the service. A claim by the Architect/Engineer for compensation shall be supported by such data as the Owner may reasonably require. In no case shall fees for partially completed Services exceed the fees that would have been paid for such Services had they not been abandoned, terminated or suspended
- 8.8.3 Upon payment to the Architect/Engineer for Service associated with abandoned, terminated or suspended Project Elements in accordance with this Article, the Architect/Engineer shall have no further claim for Services related to the abandoned, terminated or suspended Project Elements
- 8.8.4 No payment shall be made by the Owner to the Architect/Engineer for loss of anticipated profit(s) from any abandoned, terminated or suspended Project Elements

8.9 MAXIMUM PAYABLE FEE FOR ADDITIONAL SERVICES

The aggregate sum of all payments to the Architect/Engineer for Additional Services payable on this Project shall not exceed One Million, Four Hundred and Twenty Thousand Dollars and No Cents (\$1,420,000.00). Any portion of this sum for which payment is not authorized in writing by the Project Manager shall remain the property of Owner

- 8.10 MAXIMUM PAYABLE FEE FOR REIMBURSABLE EXPENSES: The aggregate sum of all payments to the Architect/Engineer for Reimbursable Expenses payable on this Project shall not exceed Thirty Thousand Dollars and No Cents (\$30,000.00). Any portion of this sum for which payment is not authorized in writing by the Project Manager shall remain the property of Owner


2.25.08

- 8.11 DEDICATED ALLOWANCE ACCOUNTS: (Not Used)
- 8.12 INSPECTOR GENERAL AUDIT ACCOUNT: One audit account is hereby established to pay for mandatory random audits by the County's Inspector General pursuant to County Code Section 2-1076. The amount for the Inspector General Audit Account is hereby set at Forty-One Thousand, Nine Hundred and Sixty-nine Dollars and No Cents (\$41,969.00). The Consultant shall have no entitlement to any of these funds. The Owner retains all rights to these funds, may expend these funds at its sole discretion, and any funds not expended from these audit accounts remain the property of the County.
- 8.13 TOTAL AUTHORIZED AMOUNT FOR THIS AGREEMENT: The Total Authorized Amount for this Agreement is Sixteen Million, Eight Hundred and Twenty-nine Million, Four Hundred and Twenty-one Dollars and No Cents (\$16,829,421.00). The Owner retains all rights to these funds, may expend these funds at its sole discretion, and any funds not expended from this authorized agreement amount remain the property of the Owner.

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2.25.08

62