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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: October 5, 2010

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Agenda Item No. 9(A)(4)

Resolution No. R-1008-10

Subject: Ratification of the Memorandum of Agreement between Miami-Dade County and the Florida Department of Transportation for the Integration of a Public Art Work at the Miami Intermodal Center/Central Station-Vestibule

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Recommendation

It is recommended that the Board of County Commissioners ratify the Memorandum of Agreement between Miami-Dade County and the Florida Department of Transportation for the integration of a public art work at the Miami Intermodal Center/Central Station-Vestibule.

Scope

The impact of this agenda item is specific only to this public art project at the Miami Intermodal Center/Central Station-Vestibule.

Fiscal Impact/Funding Source

Sec. 2-11.15 of the Miami-Dade County Code requires the allocation of not less than one and one-half percent (1½%) of the construction cost of new governmental buildings for works of art. As such, Miami-Dade Transit has contributed $1,203,406 for the commissioning of a work of art that is generated by the Earlington Heights Miami Intermodal Center Connector Station project. The project's Art in Public Places allocation includes sufficient funding to cover the design, fabrication and installation of the art work, maintenance of the art work, and project administration and contingency.

Track Record/Monitor

The Miami-Dade Art in Public Places (APP) program, administered by the Department of Cultural Affairs, and Miami-Dade Transit (MDT) have partnered over the years on a number of successful public art projects commissioned in conjunction with the Metrorail system and the Metromover stations. In addition, APP has a close working relationship with the Florida Department of Transportation's (FDOT) District Office for our region through collaboration with the State's Art in State Buildings' program. APP has worked closely with MDT and FDOT over the past three years to determine the best use of the County's APP funding dedicated for a work of art within the new Miami Intermodal Center.

Background

Since the beginning of 2006, the APP program has collaborated with MDT for the commissioning of a large-scale work of art to be located within the new Miami Intermodal Center. A series of coordination meetings between MDT and APP staff led to identifying a number of potential public art opportunities for this major project. Given the variety of art opportunities, APP conducted a comprehensive Call to Artists review process which resulted in selection of renowned artist Michele Oka Doner for the design, fabrication, and installation of an art work for the project.

APP, MDT and the selected artist collaborated to identify a location within the complex that offered the greatest public exposure to and benefit from the art work: the Miami Intermodal Concourse Level Vestibule. This location provided a central and prominent area that would showcase the art work to the greatest number of people to the new MIC facility based on studies of the projected usage of the facility and pedestrian flow patterns. The vestibule, at the heart of the MIC complex, serves as a connector to all modes of available ground transportation at the MIC: the new MDT Transit Station connecting to the countywide Metrorail system, the new MIA Mover station connecting to Miami International Airport, MDT's countywide bus system, Tri-County Rail, and the new Rental Car Center.

The vestibule of the MIC facility was to remain property of the FDOT upon completion of the construction project, thereby requiring an agreement with FDOT for a County-owned artwork to be located in this state-owned area. The Department of Cultural Affairs, MDT, FDOT, the artist and capital project team members concurred on the benefits of utilizing the vestibule for the public art work and worked cooperatively to develop the Memorandum of Agreement (MOA) between the Miami-Dade County and FDOT that guarantees long-term protection of the County's significant investment in commissioning this artwork and assigned clear and reasonable responsibilities for issues related to the cost, coordination of design and installation and maintenance of the art work.

At the meeting of the Miami-Dade Art in Public Places Trust, held on December 15 2009, the Trust unanimously approved the proposed location of the artwork in the MIC Central Station Vestibule, the design concept by artist Michele Oka Doner, and the terms and conditions for drafting the MOA for execution by both governmental entities. In April of 2010, the Trust unanimously approved Trust Resolution APPT 10-09 authorizing a Professional Artist Services Agreement with Doner Studio, LLC (artist Michele Oka Doner) for the MIC Concourse Level Artwork Project.

The Department of Cultural Affairs collaborated closely with the project team (MDT, FDOT, and architects or record) and both the County and FDOT's attorneys offices to draft a MOA that addresses all key elements of concern for both governmental entities: Purpose, Representations by the County, Funding and Implementation Responsibilities, Ownership of Artwork and Termination of Display, Maintenance and Repairs, Insurance, Notices, and Assignability. After reaching consensus on business and legal issues and based on the time-sensitive nature of the schedule for design and construction of the MIC, the FDOT District 6 Secretary and by the County Manager signed on the MOA pursuant to Sections 2-9 and 2-10 of the County Code providing for the execution such intergovernmental contracts subject to ratification by the Board within a year from execution.

The Department of Cultural Affairs recommends the ratification by this MOA between Miami-Dade County and the FDOT authorizing the integration of a public artwork within the State-owned MIC Central Station – Vestibule in light of the benefits that it provides for enhancing the MIC and serving the public with an outstanding public art work in the most prominent location in this complex.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: October 5, 2010

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

SUBJECT: Agenda Item No. 9(A)(4)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

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

_____ **No committee review**

✓ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 9(A)(4)
10-5-10

RESOLUTION NO. R-1008-10

RESOLUTION AUTHORIZING RATIFICATION OF THE MEMORANDUM OF AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE INTEGRATION OF A PUBLIC ART WORK AT THE MIAMI INTERMODAL CENTER/CENTRAL STATION-VESTIBULE

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 approves ratification of the Memorandum of Agreement between Miami-Dade County and the Florida Department of Transportation for the integration of a County-owned public artwork within the State-owned Miami Intermodal Center/Central Station-Vestibule.

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

Dennis C. Moss, Chairman aye
Jose "Pepe" Diaz, Vice-Chairman absent

Bruno A. Barreiro	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Barbara J. Jordan	aye	Joe A. Martinez	aye
Dorrin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of October, 2010. 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: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

DBM

Deborah Bovarnick Mastin

MEMORANDUM OF AGREEMENT BETWEEN
MIAMI-DADE COUNTY
AND
FLORIDA DEPARTMENT OF TRANSPORTATION

This Memorandum of Agreement is made and entered into by and between Miami-Dade County, a political subdivision of the State of Florida (the "County"), through its governing body, the Board of County Commissioners of Miami-Dade County, Florida and the Florida Department of Transportation ("FDOT") on this 19th day of JANUARY, 2010.

WITNESSETH

WHEREAS, FDOT has designed and is currently constructing and developing the Miami Intermodal Center ("MIC"), a major transportation hub located east of Miami International Airport connecting all forms of transportation modes, including buses, taxis, trains, vehicles and pedestrians. The MIC includes the Rental Car Facility, the Miami Central Station, the MIA Mover, and the MIC Metrorail Station; and

WHEREAS, Miami-Dade Transit ("MDT") is undertaking a heavy-rail capital improvement project to construct the MIC-Earlington Heights Metrorail Corridor, which includes the construction of the MIC Metrorail station within FDOT's MIC program scope; and

WHEREAS, the MIC Central Station Vestibule is an enclosed area within the MIC development that will provide a connection between the MIC Metrorail Station, the Rental Car Facility, the MIA Mover, and the busway; and

WHEREAS, the parties entered into Joint Participation Agreement ("JPA") Number AP762 on June 26, 2008, pursuant to which the MIC Central Station-Vestibule, that was designed by FDOT, is being constructed by the County as part of the MDT capital improvement project for the MIC-Earlington Heights Metrorail Corridor (the MIC Central Station Vestibule project component will hereafter be referred to as "the Vestibule Project"); and

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

Section 1- Purpose

The purpose of this MOA is to memorialize the parties' understandings related to a County-commissioned public artwork to be installed and integrated within the State-owned MIC Central Station – Vestibule. This public artwork installation is hereafter referred to as the "Public Art Project". The parties

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contemplate that the Public Art Project will be located in the area depicted on Exhibit "A" attached hereto.

The above-referenced JPA governing the Vestibule Project is incorporated herein by reference. The JPA includes, among other things, provisions for FDOT's funding of the Vestibule project. This MOA is intended to specifically address the funding of the Public Art Project, and to allocate the parties' responsibilities related to the Public Art Project. This MOA also memorializes the parties' agreement that the County will retain title to artwork to be installed pursuant to such Public Art Project.

Section 2 – Representations by County

The County represents that:

Section 2-11.15. of the Miami-Dade County Code sets forth the requirements for allocating certain funds for the acquisition of and related costs of acquiring works of art in public places and provides the authority to the Miami-Dade County Art in Public Places Trust (the "APP Trust") for approving the selection of artists, and overseeing the work and payments for the design, execution, and installation of works of art; and

The Miami-Dade Department of Cultural Affairs (the "Department") provides staff support to the APP Trust for its Art in Public Places Program, including the planning, development, implementation and care of public works of art; and

County funds for the public art for the MIC Metrorail Station have been allocated in accordance Section 2-11.15 of the Miami-Dade County Code which requires the contribution of 1.5% of the capital costs of the MIC Metrorail Station to the APP Trust., and said funds are being contributed by Miami-Dade Transit from Miami-Dade Transit Art Funds.; and

The County, through the APP Trust, has selected and procured an artist ("the Artist") for the Public Art Project; and

The Department will dedicate a percentage of the County funding for the Public Art Project for future repair and restoration needs of the artwork that are above and beyond the regular maintenance provided by the user agency and/or facility manager of the MIC Central Station Vestibule; and

The County, in pursuing and funding this Public Art Project, and in performing its duties and obligations under this MOA, is acting in compliance with all local, state and federal laws.

Section 3 – Funding and Implementation Responsibilities

While the JPA provides a scheme for FDOT to fund the Vestibule Project, the County will be responsible for funding the Public Art Project, and for all costs arising from said project. FDOT is not responsible for any funding or costs of the Public Art Project.

The construction plans and specifications for the Public Art Project are in the development stages. The County shall be responsible for all aspects of the Public Art Project, including, but not limited to, administration and coordination of the Artist services, design, construction, installation, repair and/or restoration.

The parties intend for the Public Art Project to be integrated by the County into the existing design and construction of the Vestibule Project. Throughout the implementation of the Public Art Project, the County shall be responsible for administering the incorporation of the Public Art Project into the Vestibule Project. It is understood that the County will require the Artist to engage the services of the design professional engaged by FDOT to design the Vestibule, and will, through the Artist's contract, pay the designer for the cost of coordinating design documents between the Vestibule Project and the Public Art Project. The County shall obtain and pay for any governmental and regulatory approvals and permits associated with the Public Art Project.

The parties acknowledge the importance of the Public Art Project and will work cooperatively to ensure close collaboration among FDOT, FDOT's project's design team, consultants and program managers, and the County, its design team, consultants and program managers so as to ensure that the Public Art Project is integrated into the existing architectural design of the MIC Central Station Vestibule and coordinated, as necessary, with architectural, engineering, construction and scheduling plans for said project.

FDOT shall have the right to review and approve the proposed and final construction documents for the Public Art Project, and the Public Art Project is contingent upon and subject to FDOT approval of the construction documents, which shall be in writing and will not be unreasonably withheld.

In the event this contract is for services in excess of $25,000.00 and a term for a period of more than 1 year, the provisions of Section 339.135(6)(a), F.S., are hereby incorporated:

"The DEPARTMENT, 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. The DEPARTMENT shall require a statement from the Comptroller of the DEPARTMENT 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 1 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 the DEPARTMENT 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 1 year."

Section 4 - Ownership of the artwork; Termination of Display

The County will own the artwork. The parties acknowledge that removal of the artwork from FDOT's property is not anticipated. Nevertheless, FDOT reserves the right to require removal of the artwork, if such removal is necessary in order for FDOT to fulfill any of its obligations under local, state and federal law, In such event, the County agrees to remove the artwork upon receipt of 180 days' written notice from FDOT explaining the basis for FDOT's request that the artwork be uninstalled. In such event, the County shall uninstall the artwork in coordination with FDOT. The costs of uninstalling the artwork and restoring the MIC Central Station Vestibule are undetermined, however, the County agrees that it will be responsible for such costs, if reasonable, in the event that FDOT should justifiably require removal of the artwork.

Section 5 – Maintenance and Repairs

The parties acknowledge that specifications for the protection, care and maintenance for the artwork have not been developed at this time. Once such information is available, if feasible, the cleaning of the artwork will be included in the periodic cleaning and care that is a part of the overall schedule of custodial attention necessary to maintain MIC Central Station Vestibule for public use. FDOT shall not be responsible for any additional specified protection, care and maintenance for the artwork.

FDOT agrees to use reasonable care in connection with the display of the artwork. FDOT does not warrant the integrity or durability of the artwork, nor does FDOT assume liability for damages thereto caused by Acts of God or by third parties.

The County shall conduct and pay for all repairs and restoration needs of the artwork, and all cleaning that is not within the scope of the overall schedule of custodial attention necessary to maintain MIC Central Station Vestibule for public use. FDOT agrees to not to alter the Public Art Project and/or artwork in any way, except as provided in this MOU. FDOT is not required to conduct inspections of the artwork, however, should FDOT determine that repair work is necessary on or around the artwork for the public safety or to restore the artwork

to its original condition, FDOT will notify the County. At all times, the County will promptly take all reasonable steps necessary to repair and/or restore the artwork as needed and/or to address any public safety hazards caused by the artwork.

The County's repair obligation is subject to appropriation of funds. The parties agree, however, that the Public Art Project is intended to enhance the aesthetic value of the MIC Central Station Vestibule. Therefore, in the event that the County should fail to repair or restore the artwork as needed, FDOT reserves the right to require removal of the artwork.

FDOT makes no representations that the MIC Central Station Vestibule as designed is suitable for the contemplated use.

Section 6 – Insurance

It is understood that the County is self-insured against any and all claims against FDOT for injury and damage to persons and property, and for the loss of life or property occurring in, on, or about the Public Art Project to the extent caused by the negligence of the County and its employees. The County will require the Artist to provide public liability insurance during the installation of the Public Art Project in the minimum amount of $500,000 for bodily injury or death, and not less than $500,000 for property damage, for a combined coverage of not less than $1,000,000. Both the County and FDOT shall be additional named insured for this coverage. At the acceptance of the Public Art Project, no further insurance shall be purchased. The County's liability is limited to the provisions of Section 768.28 Florida Statutes.

Section 7 - Notices

Any notices, reports, and/or written communication shall be addressed to the following authorized representatives for each party until a change by a written noticed is received and acknowledge by both parties:

If to the County:

Miami-Dade County
Department of Cultural Affairs
Art in Public Places Program
111 NW 1 Street, 6th Floor
Miami, FL 33128
Tel: 305.375.4634
Fax: 305.375.3068
E-mail:Romeu@miamidade.gov

If to the State:

MIC Project Manager, District 6
Florida Department of Transportation
1000 NW 111 Avenue, Room 6234
Miami, FL 33172

Tel: 305.470.5145
FAX: 305.470.5610
E-mail: gary.donn@dot.state.fl.us

(THIS SPACE LEFT BLANK INTENTIONALLY)

Section 8 – Entirety of Agreement – Construction of Agreement

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of the MOA shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the Board of County Commissioners. This MOA, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida. The parties agree that this agreement was drafted collaboratively by both parties and as such, it shall not be construed in favor of one or the other party in the event of a dispute over its interpretation.

Section 9 – Assignability

FDOT's duties and obligations under Sections 4, 5 and 7 of this MOA are assignable and fully transferable to a third party, regardless of whether FDOT retains ownership of the real property in which the Public Art Project is displayed. In the event of an assignment of this MOA, FDOT shall promptly notify the County of such assignment.

IN WITNESS WHEREOF the parties hereto have executed these presents this 19th day of JANUARY, 2009 2010

ATTEST:

HARVEY RUVIN, CLERK

BY: _____

DEPUTY CLERK 4/8/10

MIAMI DADE COUNTY, FLORIDA
BY BOARD OF COUNTY COMMISSIONERS

BY: _____

CARLOS ALVAREZ
MAYOR

FLORIDA DEPARTMENT OF TRANSPORTATION

BY: _____

GUS PEGO
DISTRICT 6 SECRETARY

Approved as to form and legal sufficiency on behalf of STATE: _____

Approved as to form and legal sufficiency on behalf of COUNTY: DBM
20 Jan 2010

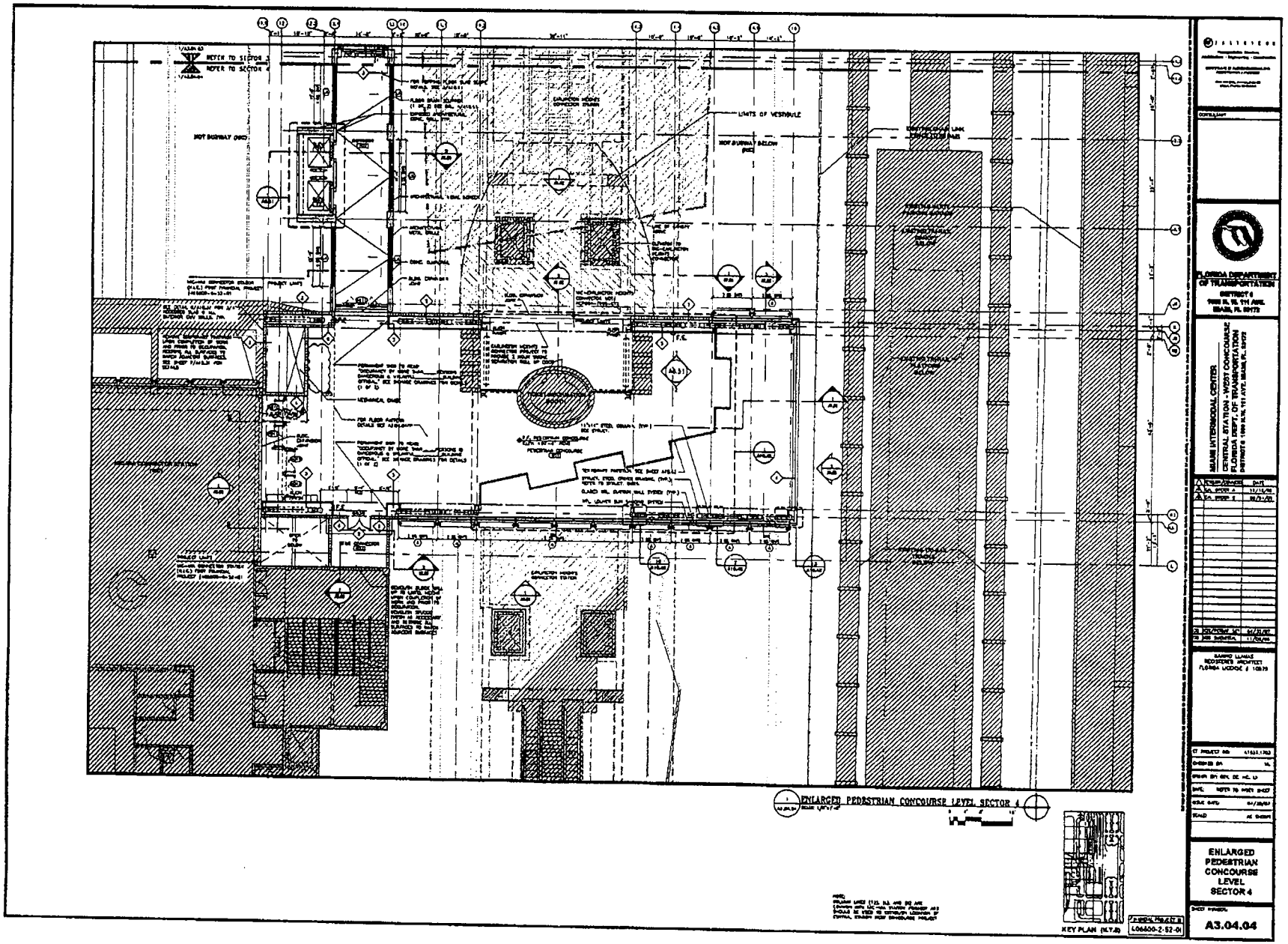
ENLARGED PEDESTRIAN CONCOURSE LEVEL SECTOR 4
KEY PLAN
FLORIDA DEPARTMENT OF TRANSPORTATION
MIAMI INTERMODAL CENTER
CENTRAL STATION - WEST CONCOURSE
FLORIDA DEPT. OF TRANSPORTATION
ENLARGED PEDESTRIAN CONCOURSE LEVEL SECTOR 4
A3.04.04

Exhibit "A"

MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

Legislative Notes

Agenda Item:	9(A)4
File Number:	102121
Committee(s) of Reference:	Board of County Commissioners
Date of Analysis:	September 10, 2010
Type of Item:	Resolution Authorizing Ratification of a Memorandum of Agreement

Summary

This resolution ratifies a Memorandum of Agreement (MOA) between Miami-Dade County and the Florida Department of Transportation for the integration of a public art work at the Miami Intermodal Center/Central Station-Vestibule.

Background and Relevant Legislation

The Miami Intermodal Center-Earlington Heights (MIC-EH) Connector Project is included among the Rapid Transit Improvements listed in Exhibit 1 of the People's Transportation Plan (PTP). The MIC-EH is funded through a combination of funding from the Florida Department of Transportation (FDOT) and proceeds from the PTP Surtax. According to the FY2009-10 Miami-Dade County Resource Allocation and multi-Year Plan, the MIC-EH project is budgeted at $526 million; funded by FDOT for $100 million and PTP Bond Proceeds at $426 million.

Article 1, Section 2-11.15 of the Miami-Dade County Code, requires the allocation of not less than one and one half percent (1 ½ %) of the construction cost of new government buildings for works of art. Miami-Dade Transit has contributed $1,203,406 for the commissioning of a work of art that is generated from the MIC-EH project.

According to the Cultural Affairs Department, the art work is expected to be finished in January 2011.

Fiscal Impact

According to the Department of Cultural Affairs (Administering Department for the Miami-Dade Art in Public Places Program), the total project allocation from the MIC-EH Station is $1,203,406. Miami-Dade Transit (MDT) will cover the cost of the project which will include the design, fabrication and installation of the artwork. FDOT will agree (through the MOA) for the County-owned artwork to be located in the state-owned area.

The overall and artwork budget breakdown is as follows:

Overall APP budget Breakdown:

Maintenance	15%	$180,511
Administration	20%	$240,681
APP Contingency	5%	$60,170
Artwork	60%	$722,000
Total		**$1,203,362**

Artwork Budget Breakdown:

Artist's Fee (Design, Consulting Fees, Travel)	$216,600
Specialty Glass Fabrication & Installation	$228,800
Artwork application	$216,600
Total	**$722,000**

According to the Cultural Affairs Department, this project will be funded from MDT budget in FY2009-10 and FY2010-11.

Comments

On June 2, 2009, the Board of County Commissioners approved resolution R-726-09 which authorized a retroactive waiver of the art in public places requirement for the Overtown Transit Village Buildings I and II for approximately $1,353,000. This waiver allowed $1,353,000 to be available for use by MDT for other costs.

Prepared by: Mia B. Marin