

Memo

DT: June 13, 2006

TO: Honorable Mayor and Members of the Village Council

FR: Jacqueline R. Menendez, Village Manager

RE: Resolution Approving Agreement Between the Village and Miami-Dade County Providing Funding Assistance for Sanitary Sewer Improvements Pursuant to Building Better Communities Bond Program

RECOMMENDATION

It is recommended that the Village Council approve the enclosed Resolution which will enable the Village to enter into an Agreement with Miami-Dade County for the provision of funding assistance for the sanitary sewer component of the Village's pending sanitary sewer and water line improvement project ("Project") through the general obligation bond issued by Miami-Dade County under the "Building Better Communities" 2004 Bond Program. The amount of funds to be provided by the County pursuant to the Agreement is 5.1 Million Dollars.

BACKGROUND

Pursuant to the Building Better Communities 2004 Bond Program of Miami-Dade County, as approved by the electors of the County, 5.1 Million Dollars in financial assistance is available to the Village for use on the sanitary sewer component of the Project.

The Resolution authorizes any necessary revisions to be made to the Agreement so as to fully reference and describe the sanitary sewer component.

Please call me or the Village Attorney if there are any questions.

cc: Village Attorney, Stephen J. Helfman
Village Attorney, David M. Wolpin
Lourdes Abadin, Financial Advisor

RESOLUTION NO. 2006-

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AGREEMENT BETWEEN THE VILLAGE OF KEY BISCAYNE AND MIAMI-DADE COUNTY, FLORIDA PROVIDING FUNDING ASSISTANCE TO THE VILLAGE FOR THE SANITARY SEWER COMPONENT OF THE VILLAGE'S SANITARY SEWER AND WATER LINE IMPROVEMENT PROJECT PURSUANT TO THE 2004 BOND PROGRAM "BUILDING BETTER COMMUNITIES" OF MIAMI-DADE COUNTY; PROVIDING FOR EXECUTION OF AGREEMENT; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, substantial funding assistance for the sanitary sewer component of the Village's pending sanitary sewer and water line improvement project (the "Project") is available through the general obligation bond issued by Miami-Dade County pursuant to the "Building Better Communities" 2004 bond program in the amount of \$5.1 Million; and

WHEREAS, the Village Council finds that acceptance of said assistance pursuant to the attached Agreement is in the best interest of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the above stated recitals are hereby adopted and confirmed.

Section 2. Agreement Approved. That the Agreement between the Village of Key Biscayne, Florida and Miami-Dade County, Florida, in substantially the form attached hereto, is hereby approved, and the Village Manager is hereby authorized to execute the Agreement, along with the insertion of pertinent provisions which describe the sanitary sewer component of the Project, once approved by the Village Attorney as to form and legal sufficiency.

Section 3. Implementation. That the Village Manager is hereby authorized to take any and all action which is necessary to implement the Agreement and this resolution.

Section 4. Effective Date. That this resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this ____ day of _____, 2006.

MAYOR ROBERT OLDAKOWSKI

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

**AGREEMENT
BETWEEN
THE MUNICIPALITY OF _____, FLORIDA
AND
MIAMI-DADE COUNTY**

THIS AGREEMENT, [the "Agreement"] by and between Miami-Dade County, a public body corporate and politic, through its governing body, the Board of County Commissioners of Miami-Dade County, Florida [hereinafter sometimes referred to as the "County",] and the Municipality of _____, Florida, a public body corporate and politic, through its governing body, the Board of Commissioners of _____, Florida [hereinafter sometimes referred to as the "Municipality",] is entered into this _____ day of _____, 200X.

WITNESSETH

WHEREAS, on July 20, 2004, the Board enacted Resolution Numbers Nos. R-912-04, R-913-04, R-914-04, R-915-04, R-916-04, R-917-04, R-918-04, and R-919-04 authorizing the issuance of \$2.926 billion in general obligation bonds for capital projects and on November 2, 2004, a majority of those voting approved the bond program; and

WHEREAS, the aforementioned Resolutions include specific countywide projects as well as neighborhood projects for the Unincorporated Municipal Service Area (UMSA) and the municipalities and associated allocations for activities such as but not limited to development, improvement, rehabilitation, restoration or acquisition of real property including a combined total of \$_____ for the projects listed in Attachment 1 within the Municipality.

WHEREAS, the County is willing to participate in such funding for the Project because of the benefit to it's citizens and the positive economic impact the Project would have to the business community throughout the County; and

WHEREAS, the County and the Municipality agree to a funding plan which provides for (name of this project) that is designed to (improve, build, or purchase something), thereby (providing what benefit); and

WHEREAS, the Commissioners of both the County and the Municipality have authorized, by resolution, their respective managers to enter into an agreement describing their respective roles in the funding for the Project costs;

NOW THEREFORE, pursuant to the County Commission action on _____, 2004, Ordinance No. _____, which specifically authorizes the County Manager to execute such agreements, sub-agreements and other required contracts and documents, to expend Building Better Communities bond funds received for the purpose described in the funding request, and in consideration of the mutual promises and covenants contained herein and the mutual benefits to be derived from this Agreement, the parties hereto agree as follows:

herein and the mutual benefits to be derived from this Agreement, the parties hereto agree as follows:

Section 1. Purpose: The purpose of this Agreement is to clarify the parties' roles and obligations regarding the funding being provided with respect to the Project.

Section 2. Funding Responsibilities:

- a. **Project Funding Plan:** The Project funding plan identifies the costs covered by the County and the costs to be funded by the Municipality through a local funding plan or written project funding commitments from third parties.
- b. **Local Sponsor:** The Municipality has agreed to act as the local sponsor for this Project and as such shall delineate local funding responsibilities in accordance with a local funding plan.
- c. **Local Funding Plan:** The local funding plan delineates the following: Miami-Dade County to contribute \$_____ and the Municipality of _____ to contribute all project costs in excess of the County contribution. These costs include, but are not limited to, costs associated with land rights-of-way, relocations, easements, and similar project requirements.
- d. **Responsibilities of the Municipality:** The Municipality, as sponsor for the Project, agrees to provide, and warrants and represents that it has, in combination with the County contributions, the amount of funding necessary for the completion of the Project.
- e. **Responsibilities of the County:** The County agrees to provide \$_____ of the funds necessary to complete the project. This sum shall be provided in accordance with the reimbursement procedures contained herein and upon full disbursement of all other funds dedicated to the project. In the event that Project Milestones are not met on schedule, the dollars to be funded for said milestones will be delayed for one calendar year.
- f. **Reimbursement Procedures:** Project costs shall be reported to the County and summarized on the reimbursement request along with supporting documentation. The Municipality shall identify and demonstrate the disbursement of funds through receipts, canceled checks or other documentary evidence. Upon receipt of a reimbursement request from the Municipality, the County shall review the reimbursement request and note any errors, omissions or inconsistencies within twenty (20) days of receipt and report these to the Municipality, in writing. The County agrees to reimburse the Municipality, up to the limits of the County contribution, for the funds disbursed within thirty (30) days of the receipt of the reimbursement request, less any disputed charges.
- g. **Non-Compliance:** The County shall have the right to reimbursement, either in whole or in part as it may determine, of funds provided by the County hereunder for noncompliance by the Municipality with any of the terms of this Agreement.

Section 3. Effective Date and Term: This Agreement shall take effect upon execution and shall terminate upon the completion of the Project, including the completion of all final closeout documentation.

Section 4. Compliance with Codes and Laws: Each party agrees to abide by all applicable laws, orders, rules and regulations, with the Municipality being responsible for monitoring and /or obtaining and abiding by all federal, state and local laws and regulations necessary for the development and completion of the Project.

Section 5. Access and Audits: The Municipality shall maintain adequate records to justify all charges, expenses, and costs incurred which represent the funded portion of the Project for at least three (3) years after completion of the Project. The County shall have access to all books, records, and documents as required in this section for the purpose of inspection or auditing during normal business hours.

Section 6. Independent Contractor: The parties agree that the Municipality is an independent contractor and not an agent or servant of the County. No person employed by any party to this Agreement, shall in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, workers' compensation benefit, unemployment compensation, civil service or other employee rights or privileges granted by operation of law or otherwise, except through and against the entity by whom they are employed.

Section 7. Liability: The parties to this Agreement shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party. Nothing contained herein shall be construed as a waiver, by either party, of the liability limits established in section 768.28 of the Florida Statutes. The Municipality acknowledges that the County, its employees, commissioners and agents are solely providing funding assistance for the Project and are not involved in the design, construction, operation or maintenance of the Project.

Section 8. Breach and Opportunity to Cure: The parties expressly covenant and agree that in the event either party is in default of its obligations under this Agreement, the party not in default shall provide to the defaulting party thirty (30) days written notice before exercising any of its rights.

Section 9. Litigation costs/Venue: In the event that the Municipality or the County institutes any action or suit to enforce the provisions of this Agreement, the prevailing party in such litigation shall be entitled to reasonable costs and attorney's fees at the trial, appellate and post-judgment levels. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The County and the Municipality agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade

County, Florida, or in the United States District Court for the Southern District of Florida, in Miami-Dade County, Florida.

Section 10. Naming Rights and Advertisements: In the event that any naming rights or advertisement space is offered on a facility constructed or improved with Bond Program funds, then Miami-Dade County's name, logo, and slogan shall appear on the facility not less than once and equal to half the number of times the most frequent sponsor or advertiser is named, whichever is greater. Lettering used for Miami-Dade County will be no less than 75% of the size of the largest lettering used for any sponsor or advertiser.

Section 11. Notice: All notices required to be given under this Agreement shall be in writing, and deemed sufficient to each party when sent by United States Mail, postage prepaid, to the following:

The County:
(Contact Name & Address)

The Municipality:
(Contact Name & Address)

Section 12. Modification and Amendment: Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.

Section 13. Joint Preparation: The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

Section 14. Headings: Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

Section 15. Waiver: There shall be no waiver of any right related to this Agreement unless in writing and signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement.

Section 16. Representation of the Municipality: The Municipality represents that this Agreement has been duly authorized, executed and delivered by Board of Commissioners, as the governing body of the Municipality of _____, Florida and it has granted the _____ Municipality Manager the required power and authority to execute this Agreement. The Municipality agrees to a) maintain the property in perpetuity, b) agrees to govern itself, in regards to the subject property, in accordance with Article 6 of the County Charter, c) keep the property open to all Miami-Dade County residents, and d) allow all Miami-Dade County residents equal access and use of the property and not discriminate in program registration, pricing and other policies. The Municipality also agrees to accept and comply with the Administrative Rules as stated in Attachment _____.

Section 17. Representation of the County: The County represents that this Agreement has been duly approved, executed and delivered by the Board of County Commissioners, as the governing body of the County, and it has granted the Miami-Dade County Manager the required power and authority to execute this Agreement. The County agrees to provide a total amount not to exceed \$ ____ to the Municipality for the purpose of developing and improving the projects located in ____, Florida as listed in Attachment __, and in accordance with each of the attached Application Forms, incorporated herein as Attachment __. Miami-Dade County shall only be obligated to reimburse the Municipality provided a) the Municipality is not in breach of this agreement, b) The Municipality has demonstrated that it has adequate funds to complete the project, c) The County shall administer, in accordance with the appropriate regulations, the funds available from the Building Better Communities bond issue as authorized by Board Resolutions. Any and all reimbursement obligations of the County shall be fully subject to and contingent upon the availability of funding from the County for the specific purpose contained herein. The Municipality shall be solely responsible for submitting all documentation, as required by the specific Administrative Rules incorporated herein as Attachment __, to the County Manager or his designee for this purpose.

Section 18. Invalidity of Provisions, Severability: Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

Section 19. Indemnity: To the extent permitted by law, the Municipality shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from, the performance of this Agreement by the Municipality or its employees, agents, servants, partners, principals, subconsultants or subcontractors. The Municipality shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28 Florida Statutes, subject to the provisions of that statute, whereby the Municipality shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$100,000, or any claim or judgment or portions thereof, which when totaled with all other claims or judgment paid by the Municipality arising out of the same incident or occurrence, exceed the sum of \$200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the Municipality.

The County shall indemnify and hold harmless the Municipality and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Municipality or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Agreement by the County or its employees, agents, servants, partners, principals, subconsultants or subcontractors. The County shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Municipality, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28 Florida Statutes, subject to the provisions of that statute, whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$100,000, or any claim or judgment or portions thereof, which when totaled with all other claims or judgment paid by the County arising out of the same incident or occurrence, exceed the sum of \$200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the County.

Section 20. Entirety of Agreement: This Agreement, and the attachments thereto, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

IN WITNESS THEREOF, the parties through their duly authorized representatives hereby execute this AGREEMENT with an effective date of _____, 200X.

Municipality of _____, Florida

By: _____
Municipality Manager Date

For the Board of Commissioners,
Municipality of _____, Florida

_____, CLERK

Attest:

By: _____
Clerk Date

MIAMI-DADE COUNTY, FLORIDA

By: _____
County Manager

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

Stephen P. Clark Center
111 NW 1 Street
Miami, Florida 33128

HARVEY RUVIN, CLERK

Attest:

By: _____
Deputy Clerk Date

Approved by County Attorney as
to form and legal sufficiency. ____