



Miami-Dade County Board of County Commissioners

Office of the Commission Auditor

Board of County Commissioners Meeting
8F2 and Supp. Research Notes
HEAT Agreements

June 3, 2014
9:30 A.M.
Commission Chamber

Research Division

Charles Anderson, CPA
Commission Auditor
111 NW First Street, Suite 1030
Miami, Florida 33128
305-375-4354

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8F2 141141	RESOLUTION APPROVING AMENDED AND RESTATED AGREEMENTS EFFECTIVE RETROACTIVE TO JULY 1, 2013 FOR THE DEVELOPMENT, IMPROVEMENT, OPERATION AND MANAGEMENT OF THE AMERICAN AIRLINES ARENA, THE MIAMI HEAT'S GUARANTY OF THE ARENA DEVELOPER'S AND MANAGER'S OBLIGATIONS, AND THE MIAMI HEAT'S ASSURANCES REGARDING NON-RELOCATION; WAIVING COMPETITIVE BIDDING FOR SELECTION OF DEVELOPER FOR ARENA IMPROVEMENTS AND MANAGER OF ARENA; DELEGATING TO COUNTY MAYOR OR MAYOR'S DESIGNEE THE AUTHORITY TO PERFORM CERTAIN ACTS AND EXERCISE CERTAIN CANCELLATION AND TERMINATION PROVISIONS, SUBJECT TO THE PARAMETERS SET FORTH IN THIS RESOLUTION AND THE ARENA AGREEMENTS; APPROVING, PURSUANT TO FLA. STAT. §125.35, HEAT OFFICE LEASE AND ARENA STORE LEASE; DELEGATING TO THE ARENA MANAGER THE AUTHORITY TO MANAGE AND AMEND THE ARENA STORE LEASE AND MANAGE THE HEAT OFFICE LEASE, SUBJECT TO THE PARAMETERS SET FORTH IN THE ARENA AGREEMENTS; AND AUTHORIZING COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE ALL SUCH AGREEMENTS UPON FULFILLMENT OF CERTAIN CONDITIONS
SUPP. 141231	SUPPLEMENTAL INFORMATION TO RESOLUTION APPROVING AMENDED AND RESTATED AGREEMENTS REGARDING MIAMI HEAT AND AMERICAN AIRLINES ARENA
Notes	<p>The proposed resolution provides for the following:</p> <ul style="list-style-type: none"> • Approves the terms and authorizes execution of the amended and restated agreements all dated and effective retroactive to July 1, 2013 (collectively, the Proposed Arena Agreements) among Miami-Dade County (County) and Miami Heat Limited Partnership, a Florida limited partnership (Team) and Basketball Properties, Ltd. (Arena Manager), a Florida limited partnership and affiliate of the Team, for the development, improvement, operation and management of a professional sports franchise facility, which is known as the American Airlines Arena (Arena). • Authorizes the waiver of competitive bidding, as was required for the original agreements (Current Arena Agreements), pursuant to Section 5.03(D) of the Home Rule Charter and Section 2-8-1(b) of the Miami-Dade County Code of Ordinances (Code) and Implementing Order 3-38 by a two-thirds vote of the members present to select the Arena Manager as the developer and operator of the Arena and the site. • Approves the Office Lease Agreement (Heat Office Lease) and Retail Lease Agreement (Arena Store Lease), and authorizes the Arena Manager to exercise such delegated authority to manage the Arena Store Lease and the Heat Office Lease on behalf of the County and to amend the Arena Store Lease only as specifically permitted in the Proposed Arena Agreements and subject to the prior fulfillment of the Conditions Precedent. <ul style="list-style-type: none"> ○ <i>The Proposed Arena Agreements include, the following: Amended and Restated Management Agreement; Amended and Restated Miami Heat License Agreement; Amended and Restated Assurance Agreement; Amended and Restated Management and Assurance Agreement Guaranty; Amended and Restated Development Agreement; Amended and Restated Development Agreement and Guaranty; and Heat Office Lease and Arena Store Lease.</i> <p>The County Mayor or his designee will have the following authority:</p> <ol style="list-style-type: none"> (a) to execute such other documents and to take such action as may be necessary to execute and give effect to the intent of this resolution; (b) to exercise such delegated authority as is specifically identified in the Arena Agreements and the Leases; and (c) to determine the value and sufficiency of the alternative form of security in lieu of payment and performance bonds for each contract for construction, improvement or repair of the Arena, provided that, in determining the sufficiency and value of the alternative security the Mayor will consider the nature, history and financial capabilities of the Arena Manager, the contractual obligations secured by the alternative security, and the contractual safeguards in place to protect payments to persons performing the work and require that, prior to commencement of the work or purchase of supplies, any and all contractors hired by the Arena Manager to perform work for the construction, improvement or repair of the Arena has executed, delivered, and recorded in the public records a statutory payment and performance bond in the full amount of the contract naming the County as an obligee, all as required by Section 255.05, Florida Statutes. <p>In addition, the County Mayor or his designee will be required to seek Board approval for any approvals, consents, actions, events or undertakings that would violate, alter, or ignore the substantive provisions of the Arena Agreements or the Leases, or that would create a financial obligation, cost or expense to the County that is greater than the delegated procurement authority of the County Mayor, as set forth in the County Charter, County Code, and any administrative or implementing orders.</p> <p>Funding Source The funding sources for payments made by the County to the Arena Manager are County Available Arena Funds, which are generally comprised of, in any fiscal year, the sum of: (1) excess Convention Development Tax (CDT); (2) County Rental Revenues; (3) Naming Rights receipts, if any, (4) monies paid to the County at Community Events held at the Arena. The Arena Manager will also make annual guaranteed payments to the County, retroactive to July 1, 2013, throughout the term of the Proposed Arena Agreements.</p> <p>County's Annual Payment The Current Arena Agreements, which expire in 2030, originally required the County to provide the Arena Manager with an annual payment of \$8.5 million through fiscal year 2029 and \$3.5 million in fiscal year 2030 to be used for both operational expenses and Naming Rights related to the Arena. The 2029 annual payment is \$3.5 million because the Arena Manager was provided \$5 million at the time the Arena opened in 2000.</p> <p>A subsequent amendment (Composite Amendment One) transferred the Naming Rights responsibilities from the County to the Arena Manager and the Arena Manager's sale of the Naming Rights to American Airlines resulted in a \$2.1 million reduction to the County's annual</p>

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	<p>payment from \$8.5 million to \$6.4 million through December 31, 2019 when the current Naming Rights deal expires.</p> <p>Under the Current and Proposed Arena Agreements the Arena Manager may extend the American Airlines Naming Rights Agreement through the full term of the Original Management Agreement (January 1, 2020 through June 30, 2030), subject to the Board's approval of such extension in the Board's sole and absolute discretion. If the American Airlines Naming Rights Agreement is extended for such term the Naming Rights Receipts received by the Arena Manager exceeding \$2 million will be shared equally by the Arena Manager and the County.</p> <p>If the American Airlines Naming Rights Agreement is not extended, the County at that time could elect to sell the Naming Rights, subject to exercising the option to sell no later than December 31, 2018. If the County does not exercise this option by such date, the Arena Manager has the right to sell the Naming Rights to the Arena for the term commencing January 1, 2020 and ending on June 30, 2030, subject to certain restrictions set forth in the Management Agreement. The Board would need to approve the new deal.</p> <p>Furthermore, the County would no longer be required to pay the annual \$2 million Naming Rights Payment and would receive an equitable share of the Net Naming Rights Receipts. This amount would be agreed upon by the Arena Manager and the County at that time. If the parties cannot come to an agreement, they will bring in a mediator and if still at impasse, the matter would be referred to arbitration for consideration by an industry expert. The arbitrator's ruling on the equitable share for the Arena Manager and the County would be binding.</p> <p>From July 1, 2030 to June 30, 2040, the County has the right to sell the Naming Rights or transfer them to the Arena Manager. If the Naming Rights are transferred to the Arena Manager, the County would not be obligated to make the \$2 million Naming Rights Payment and the County would be entitled to receive an equitable share of the Net Naming Rights Receipts. The County's equitable share would be determined using the same negotiation/mediation/arbitration process set forth in above.</p> <p>From July 1, 2030 to June 30, 2035, the County's annual payment toward operational and maintenance expenses increases to \$8.5 million. Additionally, in the Current Arena Agreements, the County is required to maintain a CDT reserve account equal to that year's payment amount in case of a shortfall in collections. The Proposed Arena Agreements continue to require the reserve account to correspond with the County's annual payment, which as referenced above, will be \$8,500,000 from 2031 to 2035. The reserve account will remain in place through 2035 since CDT funds are the only funds pledged to meet the annual payment.</p> <p>The County continues to be obligated to make its annual Naming Rights Payment of \$2 million bringing the annual total payment to \$10.5 million, assuming that the Naming Rights are not sold or transferred to the Arena Manager. With the exception of the \$2 million Naming Rights Payment if the County elects to sell Naming Rights, there are no payments due from the County to the Arena Manager in the last five years of the term of the Proposed Arena Agreements.</p> <p>Arena Manager's Contribution In the 13 years these agreements have been in place, 2013 was the first year the formula resulted in a payment to the County (\$257,134).</p> <p>The Proposed Arena Agreements provide for a fixed annual revenue stream to the County in the form of a donation for use by the County's Parks, Recreation and Open Spaces Department for County-owned parks, recreation and youth programs. The first payment of revenue to the County will be \$1 million retroactive to July 1, 2013 and subsequent annual payments of \$1 million will be made through 2030. The annual amount from 2031 to 2035 increases \$1.25 million. There are no donations due from the Arena Manager in the last five years of the term of the Proposed Arena Agreements.</p> <p>The Arena Manager currently pays the County rent for permanent retail that is located outside of the Arena. The formula in the Current Arena Agreements calls for the Arena Manager to pay the County annually the greater of (1) \$75,000; (2) \$5 per square foot; or (3) 25 percent of the net rental fee. The Proposed Arena Agreements increase the \$75,000 to \$125,000, increase the \$5 per square foot amount by 3.75 percent annually beginning in 2031 and deletes the 25 percent net rental option. Currently, the amount of square footage built outside of the Ticket Secure Zone is a 17,134 square foot structure that is currently leased to Bongos Cuban Café and represents annual revenue to the County in the amount of \$85,670. This amount would increase to \$125,000 under the Proposed Arena Agreements and could increase if the Arena Manager adds on permanent retail space as would be permitted under the Proposed Arena Agreements.</p> <p>Proposed Arena Agreements Amended and Restated Management Agreement Significant changes from the current agreement are listed below:</p> <ul style="list-style-type: none"> • The expiration date is extended from June 30, 2030 to June 30, 2040. Beginning in 2025, BPL and/or the County can request to renegotiate in good faith the financial terms of the deal for years July 1, 2035 through June 30, 2040 and if either party elects, they may terminate the Proposed Arena Agreements beginning in July 1, 2035. • The County and the Arena Manager will jointly select an independent Consulting Engineer to inspect the Arena and determine if it is in good condition and consistent with the Arena Manager maintaining the Arena as a first class sports and entertainment facility comparable with similar arenas housing NBA teams constructed with similar amenities between December 31, 1996 and December 31, 1999. If not in good condition and working order, the agreement provides specific language to remedy the matter. In the proposed agreement, both parties can challenge the findings of the Consulting Engineer, in excess of \$250,000, and at that point a Reviewing Engineer will make a binding determination. • Increases the maximum square footage on the Heat Store from 6,000 square feet to 12,000 square feet and authorizes the Arena Manager to exceed the current maximum square footage of 5,000 square feet of permanent retail permitted on Arena patios and terraces within the Ticket Secure Zone. But any increases in square footage over the current maximum allowed footage for the

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	<p>Arena Store Lease and the permanent retail on Arena patios and terraces requires the Arena Manager to pay rent to the County.</p> <ul style="list-style-type: none"> • Establishes the Arena Manager's annual donation to the County's Parks, Recreation and Open Spaces Department. • Increases the required amount the Arena Manager makes to the Arena Capital Replacement Reserve Fund (Fund), which will total \$81,146,335 between July 1, 2013 and June 30, 2040. This includes an amount of \$10,247,544 in 2014 and an amount of \$1,600,000 for 2015 with subsequent years increasing the 2015 figure by four percent per year. These amounts are compared to the Current Arena Agreements, which calls for \$1,115,168 in 2014 and an amount of \$1,148,623 for 2015 with subsequent years increasing by the Consumer Price Index (CPI). In the Proposed Arena Agreements the amount required to be deposited into the Fund does not have to be spent in any given year, although the amount spent on the Arena at the end of the term of the Proposed Arena Agreements must not be less than \$81,146,335. That said, the Arena Manager is responsible for maintaining the Arena as a first class sports and entertainment facility as discussed above and may be required to spend significantly more than the minimum requirement. • The original agreement references a Minority Business Enterprise program. The proposed agreement modifies the language to a Small Business Enterprise program, which is consistent with current County Code. This provision in the agreement requires the Arena Manager to award 25 percent to 35 percent of new third-party contracts related to the operations of the Arena to Small Business Enterprise eligible firms. • Deleted all references related to the County's right to share in the Arena Distributable Net Cash Flow, including references to the capital and operating budgets for the Arena. • Pursuant to the Supplement: Section 15.1.7 provides for a "No Interference Clause" that prohibits the County from hosting or permitting any event within one-half mile of the Arena that would fail to preserve at least one point of access to and from the Arena for vehicles and pedestrians during Arena events. • Pursuant to the Supplement: Section 15.1.8 contains a noncompetition clause. The clause directs that "the County shall not monetarily support, directly or indirectly, the ongoing operating or capital costs of any public assembly facility having a capacity for total attendance of more than 3,500 but less than 45,000 located in Miami-Dade County" that could compete for Arena suitable events without the Arena Lender's approval. This section contains exceptions to the noncompetition clause, including the Adrienne Arsht Center and "a professional baseball stadium," which allowed for County funding of these facilities without implicating the Heat's noncompetition clause. <ul style="list-style-type: none"> ○ <i>As currently discussed, the Beckham soccer stadium will be located almost immediately adjacent to the Arena and with approximately 20,000 to 25,000 seats. The proposed Management Agreement does not contain the contemplated soccer stadium as an exception to the noncompetition clause. Additionally the City of Miami is not bound to any non-compete clause with the Heat should it develop a soccer stadium on its property.</i> <p>Amended and Restated Heat License Agreement</p> <p>This agreement states that the Team is the owner of a NBA professional basketball franchise known as the Miami Heat. The Team agrees to play its Home Games at the Arena during the term of the agreements. The expiration date is extended from June 30, 2030 to June 30, 2040. Beginning in 2025, BPL and/or the County can request to renegotiate in good faith on the financial terms of the deal for years July 1, 2035 through June 30, 2040 and if either party elects, they may opt out of the Proposed Arena Agreements beginning in July 1, 2035.</p> <p>Amended and Restated Assurance Agreement</p> <p>This agreement states that the Arena Manager is an affiliate of the Team and that the Team is a member of the NBA. The Team will continue to utilize the Arena under the management of the Arena Manager and will continue to remain located in the County through the extended term. Significant changes from the current agreement are listed below:</p> <ul style="list-style-type: none"> • The expiration date is extended from June 30, 2030 to June 30, 2040. Beginning in 2025, BPL and/or the County can request to renegotiate in good faith the financial terms of the deal for years July 1, 2035 through June 30, 2040 and if either party elects, they may terminate the Proposed Arena Agreements beginning in July 1, 2035. • The language related to the County's CDT reserve account increases from the current \$6.4 million to \$8.5 million (PV of \$5.1 million) in FY 2031 to match the annual County contribution increase. • The parties recognize that the conditions subsequent were satisfied so all of those were deleted. <p>Amended and Restated Management and Assurance Guaranty</p> <p>This agreement states that the County required as a condition precedent to entering into the Original Management Agreement and the Original Assurance Agreement, that Guarantor execute and deliver a Management and Assurance Guaranty of all of the Arena Manager's obligations (whether of payment and/or performance) under and in accordance with both the Original Management Agreement and the Original Assurance Agreement, which Guaranty is absolute, unconditional and irrevocable except as specifically set forth the Guaranty. The Guarantor has a financial interest in the Arena Manager and an interest in the operation of the Arena pursuant to both the Management Agreement and the Assurance Agreement, and has agreed to execute and deliver this Guaranty. The term of the guaranty is extended to cover the term of June 30, 2030 to June 30, 2040.</p> <p>Amended and Restated Development Agreement</p> <p>This agreement states that the Arena Manager will continue to undertake improvements and enhancements to the Arena and it will continue to be maintained as previously described. Significant changes from the current agreement are listed below:</p> <ul style="list-style-type: none"> • The expiration date is extended from June 30, 2030 to June 30, 2040. The term of the Development Agreement is coterminous with the Management Agreement. • The agreement refers to the Amended and Restated Management Agreement in order to address remedies in the event the limit of 30,000 square feet of permanent retail space is challenged in relation to the deed restrictions on the site.

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	<ul style="list-style-type: none"> • The County will be responsible for the planning, design, construction and operations if Phase II of roadways is constructed. • Discusses Arena Additions and requires the Arena Manager to seek approval from the County for any projects with costs in excess of \$500,000 or which will affect the exterior of the Arena. • Restricts the County from constructing any Arena Additions, which are prohibited by the Team License, any Heat Office Lease, or any Arena Store Lease without the prior written consent of the Arena Manager. • Requires the Arena Manager to provide payment and performances bonds prior to entering into any contracts, purchasing or ordering any supplies, materials, or equipment and/or any construction. • Outlines the requirements if the Arena Manager desires to build out some or all of the remaining square footage of permanent retail space. • Prevents the Arena Manager from changing the configuration or number of Suites or Premium Seating without providing a copy of the plans and specifications for the change to the County Representative for its approval. • As it relates to Small Business programs, the County must provide goals within 10 business days of receipt of a submitted package from the Arena Manager. <p>Amended and Restated Development Agreement Guaranty This agreement provides for the improvement and repair of the Arena by the Arena Manager on behalf of the County. The term of the guaranty is extended to cover the period from June 30, 2030 to June 30, 2040.</p> <p>Supplement Information As part of the discussion with the Beckham group, the County is exploring an exchange of the City-owned land needed for the soccer stadium for Parcel B - the County-owned land immediately east and behind the Arena. Parcel B was originally sold and deeded to the County by the City. The following provisions in the proposed Arena Agreements may be implicated if a potential soccer deal is reached:</p> <ul style="list-style-type: none"> • With respect to Parcel B, the County has the right to develop up to 70,000 square feet of specialty entertainment and retail thereon. Other than the improvements permitted by the deed from the City to the County, the Arena Agreements preclude the County from constructing any improvements on Parcel B which would deprive the Arena Manager from fully developing the Arena site as the Manager is permitted to do so under the Arena Agreements and the deed. • Per the Arena Agreements, the County presently has a right to construct an Off-Site Garage on Parcel B with up to 1,500 spaces and the revenue from such garage (if ever built) will accrue solely to the County. In the event the County elects to develop on Parcel B, the Development Agreement requires that the County also undertake certain infrastructure work on the baywalk, seawall, and roads. In addition, any construction of an Off-Site parking garage on Parcel B cannot materially interfere with the operations of the Arena and its on-site garage. Finally, the County is required to grant the Manager any utility, access or similar easements on Parcel B necessary for the Arena. These obligations would need to be transferred to any subsequent owners of Parcel B. • A storm water drainage system was constructed on Parcel B as part of the construction of the Arena. The system drains through penetrations in the Seawall. The County is obligated to the Arena Manager to maintain the seawall behind Parcel B, with the exception of elements related to the Arena's storm water drainage system. The Manager is permitted to make repairs to the system and the Seawall during the term of the agreements. The rights and obligations regarding the storm water system and the Seawall would need to be transferred to any subsequent owner of Parcel B. • The Arena Agreements contemplate that the County prepared a Master Plan, which may be amended by the Board from time to time, for the development of the Arena and Parcel B sites as an integrated development. Although the Arena Manager had the right to review and comment on the Master Plan, it did not have any approval rights with respect to the Master Plan. The County and the Arena Manager will mutually cooperate with each other to coordinate the development of the Master Plan with the development of the Arena, but ultimately the Board has final approval of the Master Plan. • It should be additionally noted that nothing prohibits the County or, if Parcel B is conveyed to the City, the City, from developing Parcel B into open public green space.

Legislative Timeline and Research Notes

<p>June 18, 1996¹ R-683A-96 R-683B-96</p>	<p>R-683A-96 -BCC approved management agreement for operations of a professional sports franchise facility and delegated limited naming rights for the Arena. -County was to lease the land (FEC/Bicentennial Park Site) from the City of Miami.</p> <p>R-683B-96 -BCC approved the license, development, and assurance agreements with Basketball Properties, Ltd. (BPL) and Miami Heat Limited Partnership for the development and operations of a professional sports franchise facility; -Approved the management and development agreement guarantees; and -Approved the financing plan for the Arena (at the time financing was to be secured by the County)</p>
<p>Sept. 10, 1996 R-988-96</p>	<p>BCC approved special election to be held in conjunction with the general election on Tuesday, November 5, 1996, for the purpose of submitting to the electors the following question:</p> <p>INITIATIVE PETITION: NEW ARENA & CERTAIN STRUCTURES IN BICENTENNIAL PARK AND FEC TRACT</p> <p>SHALL DADE COUNTY USE COUNTY TAXES, LEASED LANDS, MONEYS OR BONDS TO CONSTRUCT A NEW ARENA AND RELATED FACILITIES IN BICENTENNIAL PARK OR THE FEC TRACT, OR BUILD WITHOUT VOTER APPROVAL, ANY PERMANENT STRUCTURES WHICH OBSTRUCT OR IMPAIR THE VIEW OF BISCAYNE BAY OR WHICH ARE LEASED OR USED BY FOR-PROFIT BUSINESS ENTITIES IN BICENTENNIAL PARK OR THE FEC TRACT?</p> <p>YES _ NO _</p> <p><i>Notes:</i> <i>Members of the Board expressed concern that if Dade County was prohibited from constructing a new arena and related facilities in Bicentennial Park which obstructed or impaired the view of Biscayne Bay, the Port expansion project could also be impacted. The County Attorney advised that a separate question pertaining to the expansion of the Port onto Bicentennial Park and the FEC Tract could be placed on the ballot by the BCC. He noted once a citizen's initiative passed, the restrictions remained in place for one year, whereupon the enacted initiative petition ordinance could be amended or repealed by the BCC.</i></p>
<p>Sept. 17, 1996 R-1043-96</p>	<p>BCC reconsidered and withdrew R-988-96, approving an alternative version of the ballot question for the special election to be held in conjunction with the general election on Tuesday, November 5, 1996, for the purpose of submitting to the electors the following question:</p> <p>INITIATIVE PETITION: NEW ARENA & CONSTRUCTION IN BICENTENNIAL PARK AND THE FEC TRACT</p> <p>SHALL DADE COUNTY BE PROHIBITED FROM USING COUNTY TAXES, LEASED LANDS, MONEYS OR BONDS TO CONSTRUCT A NEW ARENA AND RELATED FACILITIES IN BICENTENNIAL PARK OR THE FEC TRACT, AND ALSO BE PROHIBITED, UNLESS APPROVED BY THE VOTERS, FROM ANY CONSTRUCTION IN BICENTENNIAL PARK OR THE FEC TRACT WHICH OBSTRUCTS OR IMPAIRS THE VIEW OF BISCAYNE BAY OR WHICH IS LEASED OR USED BY FOR PROFIT BUSINESS ENTITIES?</p> <p>YES _ NO _</p> <p><i>Notes:</i> <i>A Sun-Sentinel article dated September 20, 1996 titled, Heat Owner Sees Rebound for Dade Arena - Fans of Troubled Project Prepare to Battle Referendum², questioned whether the ballot language would be confusing to the electorate: "Last week, the Metro-Dade Commission voted 8-0 on wording to place on the ballot... the ballot should be worded so people who oppose the arena can vote no. But on Tuesday, the Commission, voted 6-3, to flop the wording. Now voters will be asked whether Dade should be "prohibited" from building the arena at the bayfront site. With the change, Dade citizens will have to vote yes to say no to the arena; people who support the arena will vote no."</i></p>
<p>November 5, 1996 Vote</p>	<p>On November 5, 1996, the following ballot question appeared and was denied by the electorate (results provided below the ballot question):</p> <p>Shall Dade County be prohibited from using County taxes, leased lands, moneys or bonds to construct a new arena and related facilities in Bicentennial Park or the FEC Tract, and also be prohibited, unless approved by the voters, from any construction in Bicentennial Park or the FEC Tract which obstructs or impairs the view of Biscayne Bay or which is leased or used by for profit business entities?</p>

¹ Audit of Agreements between Miami-Dade County and Basketball Properties, Ltd. Et. Al., to Operate the American Airlines Arena, OIG Schedule A, IGII-34.

² Website: http://articles.sun-sentinel.com/1996-09-20/news/9609190543_1_million-arena-dade-county-voters

	<ul style="list-style-type: none"> • Yes – 201,761 (41.06%) • No – 289,659 (58.94%)
<p>April 10, 1997 R-371-97</p> <p>#971201 Supp. to R-371-97</p>	<p>BCC approved the execution of the Management, License, Development, and Assurance Agreements with the Miami Heat, Ltd. and BPL development, construction and operation of a professional sports franchise facility within maritime park project, subject to fulfillment of certain conditions; Approved the Development Agreement and Management and Assurance Agreement Guarantees; Authorized competitive selection of arena general contractor; and Waived formal bid procedures.</p> <p>This item was the Supplemental to R-371-97 (<i>which was a substitute item on the agenda</i>), Summary of principal changes to proposed Arena Agreements, see below for the discussion at the 4/10/97 BCC meeting addressing the BCC's concerns:</p> <p><i>-BCC expressed concern regarding "creative accounting" and questioned the feasibility of allowing the bookkeeping to be maintained by the Miami Heat, with no involvement by County staff. County Manager noted the County had extensive audit rights to ensure that the books were kept properly. He noted staff was recommending that the formula providing for a net revenue share on a 60-40 basis be approved because it was fair to both parties.</i></p> <p><i>-In response to Commissioners request that members of the public be permitted to speak on this item, that ample public participation and input would be provided during workshops and public hearings which would be held by Maritime & Trade Committee.</i></p> <p><i>-Commissioners expressed concern regarding the use of public financing to construct a world-class private, for-profit enterprise, the agreement would not benefit the taxpayers of this community. County Manager noted the County would receive 40% over and above the \$14 million net revenue gain by the Miami Heat around 2015. With regard to the naming rights, County Manager noted those rights were worth approximately \$2 million and explained that an increase in the naming rights was not included in the projections.</i></p> <p><i>-Commissioners noted the County was still responsible for the debt services on the old arena even after the new arena was constructed and did not support the concept of using CDT funds for this project.</i></p> <p><i>-Assistant County Attorney responded to Commissioners questions regarding the naming rights, noting the naming rights had not been negotiated in terms of profits to the County.</i></p> <p><i>-The Mayor advised that the County could negotiate any agreement they wished on naming rights for the first 20 years, at which time, they would have the option to either keep the naming rights or continue negotiating with prospective buyers. He also noted that should the County determine that the arena was no longer a modern, state-of-art facility and the naming rights were not marketable, they could return them to the Miami Heat and would no longer be obligated.</i></p> <p><i>-A representative from the Miami Heat responded to a request that the \$500,000 commitment previously made by the Miami Heat to fund public parks and economic development in Overtown be appropriated, as promised. He stated, for the record, that the \$500,000 contribution was contained within the agreement. He reassured members of the Board that the Miami Heat Foundation was very committed and would continue to support economic development in Overtown.</i></p> <p><i>-The Heat representative responded to Commissioners concerns regarding the potential for this agreement to restrict the County's ability to construct an open air facility in the future. He advised that any existing, planned facility with under 3,500 seating capacity; already approved by this Commission would be exempted. However, the terms of this agreement would be applicable to any open air facility not yet contemplated and in excess of 3,500 seats, at any location in Dade County.</i></p>
<p>October 21, 1997 R-1259-97</p>	<p>BCC authorized the County Manager to execute Interlocal Cooperation Agreement with the City of Miami for the sale and purchase of the FEC property in the amount of \$37,606,234.</p>
<p>November 18, 1997 R-1398-97</p>	<p>BCC approved Composite Amendment One to the Arena Agreements and Guarantees; Authorized BPL to sell certain of the Arenas naming rights to American Airlines Arena (AAA) reducing the County's obligation to BPL by \$2.1 million annually; Enlarged Manager's duties with respect to the Pedestrian Bridge; Any amendments necessary to facilitate the County's financing of the purchase of the FEC Property and the Manager's financing of the Arena.</p>
<p>November 18, 1997 R-1393-97 & Ord.97-210</p>	<p>BCC authorized issuance of Subordinate Special Obligation Refunding Bonds, Series 1997A, Subordinate Special Obligation Bonds, Series 1997B, and Subordinate Special Obligation Bonds, Series 1997C in an aggregate principal amount not to exceed \$300,000,000 for purposes of refunding certain outstanding County obligations, funding portion of costs of Performing Arts Center facilities in Miami, Northern Dade County and Southern Dade County, Funding Acquisition of land for new sports arena in Miami and construction of related pedestrian bridge;</p> <p><i>Discussion at the 11/18/97 BCC meeting: Commissioners spoke against the use of public funds for a new sports arena and urged the Board decline support for a new sports arena.</i></p>
<p>May 11, 1999 R-541-99</p>	<p>BCC approved Composite Amendment Two to the Arena Agreements; Authorized selection of BPL as the developer, manager, and operator of Parcel B portion of the FEC Property; Authorized selection of BPL as the developer of Phase I of the Roadway Improvements; Waived competitive bidding process and allow BPL to finance, design and construct the Parcel B retail/entertainment space as a part of the overall development of the arena site; Required BPL to pay</p>

	<p>the County an annual air rights payment no later than December 1, 2001.</p> <p><i>Discussion at the 5/11/99 BCC meeting:</i> <i>-The County Manager noted he would be serving as arbitrator in connection with the quasi judicial review of the findings of the Department of Business Development relating to minority participation in the architectural design of the arena, and BPL had agreed to abide by his findings. The county attorney indicated that the county would have legal standing to enforce the developer's indication that there would be 50 percent minority participation in connection with Parcel B, if this provision was included in the arbitration findings of the County Manager.</i></p>
November 20, 2001 R-1334-01	<p>BCC approved Composite Amendment Three to the Arena Agreements; Authorized a six-month extension to the December 1, 2001 deadline in order to finalize the plans for the Parcel B development; BPL agreed to pay County \$25,000 for the extension to June 1, 2002 and an additional \$150,000 by June 1, 2002 subject to the project moving forward.</p> <p><i>Notes:</i> <i>Commissioner requested a written report on when the bridge from Bayside to the Arena would be built.</i></p>
May 21, 2002 R-556-02	<p>BCC approved Composite Amendment Four to the Arena Agreements; Authorized additional extension to November 30, 2002; BPL agreed to pay the County additional monies for this extension by November 30, 2002, subject to the project moving forward.</p>
July 10, 2003 R-808-03	<p>BCC retroactively approved Composite Amendment Five to the Arena Agreements; Extended deadlines of Composite Amendment Two for the purpose of allowing the County and the Manager to negotiate further amendment to the Arena Agreements regarding the relinquishment of the Manager's Parcel B development rights; This Amendment is the Manager's agreement to forbear from exercising its rights with respect to the development of Parcel B until such negotiations are concluded or October 1, 2003 whichever occurs first.</p> <p><i>Discussion at the 7/10/03 BCC meeting:</i> <i>-County Manager explained that it would be in the County's best interest to grant additional time, which would allow all parties involved to get together and preserve green space on the waterfront, address the concerns raised by the City of Miami regarding Bayside and Miami Dade County and a number of public/private concerns that existed regarding this issue. Regarding concerns raised by Commissioners pertaining to \$175,000, County Manager noted this should be directed to the County Attorney, but it was his understanding that the proposal before the Board today would simply extend the time permitted to reach an agreement.</i></p> <p><i>Mr. Richard Weiss, representing Basketball Properties (BP), Limited, spoke in support of the additional time to finalize an agreement. He noted the representatives from the Mayor's Office and the City of Miami officials asked his client to delay the developmental plans for a period of 90 days, and to submit a proposal for approval that would leave the subject area as open space. Mr. Weiss indicated if the Board did not adopt the foregoing resolution, his client was in the position to develop the subject property. He noted the July 1st deadline under the existing contract, which required his client to notify the County of any intent to exercise his development rights.</i></p>
September 23, 2003 R-1018-03	<p>BCC approved Composite Amendment Six to the Arena Agreements; Extended deadlines of Composite Amendment Two; BPL agreed to forbear from exercising its rights with respect to development of Parcel B until October 7, 2003.</p> <p><i>Discussion at the 9/23/03 meeting:</i> <i>-Assistant County Manager responded to Commissioners' inquiry regarding the release of the pedestrian bridge obligation in the proposed Second Amendment to the Tri-Party Agreement by and among Miami-Dade County, the City of Miami and Bayside Center Limited. He noted pursuant to the original agreements approved by the Board in April 1997, the first \$1.5 million was County funds, and the Miami Heat, Ltd and BPL was obligated for the balance. There would be a substantial balance to complete construction of the bridge and there was a commitment on the part of City of Miami officials, Miami-Dade County officials, Rouse-Miami, Inc. and Miami Heat BPL that in lieu of the pedestrian bridge, there be an at-grade continuation of a baywalk that would continue into Parcel B—the County-owned property. He stated the baywalk would go under the Port of Miami Bridge.</i></p> <p><i>-Commissioners had concerns regarding the pedestrian bridge; and the safety of constructing a baywalk under the Port of Miami Bridge.</i></p> <p><i>- Mr. Richard Weiss, attorney representing the Miami Heat, appeared before the Board. He noted the Heat was willing to relinquish its developmental rights on Parcel B, however, he suggested that the Board allow six months for the appropriate parties to prepare a conceptual plan.</i></p> <p><i>- Assistant County Manager stated if the proposed resolution was approved today, BPL would not be included in the transaction involving the County's development obligation on Parcel B. He noted pursuant to the City of Miami's development laws; construction of a baywalk was required as a permitting condition. ACM stated the City of Miami</i></p>

	<p><i>would be responsible for connecting the baywalk to the North and to the South. He noted it would be staff's recommendation to the Board at a subsequent date, that the City and the County work in a collegial manner on the development of Parcel B—possibly a charette—to include involvement of interested parties; and that the \$1.5 million earmarked for the pedestrian bridge, be incorporated into Parcel B.</i></p>
<p>October 7, 2003 R-1118-03</p>	<p>BCC approved the Second Amendment to Tri-Party Agreement between County, City of Miami and Bayside Center Limited Partnership and Composite Amendment Seven to the Arena Agreements; The conditions of the Second Amendment to the Tri-Party Agreement contain the necessary provisions to facilitate BPL's voluntarily relinquishing their rights to develop Parcel B so that it may become a public open space; Composite Amendment Seven to Arena Agreements extends the time period for the approval, valid execution and delivery by the parties to the County of the Second Amendment to the Tri-Party Agreement so that BPL can make an informed decision regarding surrendering their Parcel B development rights on or before December 15, 2003.</p> <p>Furthermore, upon approval of the Second Amendment to the Tri-Party Agreement, Composite Amendment Seven will terminate BPL's rights and obligations under the Arena Agreements to the Parcel B Retail Complex in order for the County to utilize Parcel B for the preservation of public open space.</p> <p>Pursuant to the terms of Composite Amendment Six as amended, adopted by the Board on September 23, 2003, the date for BPL to execute their development rights was retroactively extended to October 7, 2003 to provide an opportunity to structure an agreement eliminating Parcel B to be utilized as public open space. This resolution recommended that upon the acceptance of the City and Bayside, the Second Amendment to the Tri-Party Agreement be executed no later than December 15, 2003. This Amendment released all parties of any liability or responsibility for the planning, design, construction and operation of and the funding for the Pedestrian Bridge.</p> <p>The County Manager was to present a plan to develop Parcel B as an open public space in support of the vision that the voters endorsed when the American Airlines Arena project was initiated.</p>
<p>December 16, 2003 R-1446-03</p>	<p>BCC approved Composite Amendment Eight to the Arena Agreements; Extended the time period for the approval, valid execution and delivery by the parties to the County of the Second Amendment to the Tri-Party Agreement so that BPL could make an informed decision regarding surrendering their Parcel B development rights on or before December 29, 2003 and to allow the City Commission to approve the Second Amendment to the Tri-Party Agreement at its December 18, 2003 meeting. Furthermore, upon approval of the Second Amendment to the Tri-Party Agreement, Composite Amendment Eight will terminate BPL's rights and obligations under the Arena Agreements to the Parcel B Retail Complex in order for the County to utilize Parcel B for public open space purposes.</p>
<p>May 31, 2012 OIG Final Report- Audit of the Agreements between Miami-Dade County and Basketball Properties, Ltd. et al to Operate the American Airlines Arena, IG11-34</p>	<p>The Office of the Inspector General (OIG) issued its final audit report on the Agreements between Miami-Dade County and Basketball Properties, Ltd. (BPL) on May 31, 2012. The audit encompassed an examination of the evolution of the agreements, the County's contract administration activities through the years, and BPL's accounting records and financial reporting. The OIG requested that the County administration provide a status report within 90 days on the issues identified in the report and on the implementations of the OIG's recommendations.</p> <p>The OIG provided 23 recommendations in the audit. The following are highlights from the OIG Final report:</p> <ul style="list-style-type: none"> • The OIG audit found that the County has been poorly performing its contract administration functions. • The OIG focused on three key issues: BPL's Schedules of Management Agreement Computations, BPL's Operating and Capital Budgets, and BPL Financial Report Comparisons. First, the Schedules of Management Agreement Computations is the key document produced by BPL showing whether the County will receive a share of "Arena Distributable Net Cash Flow" (Net Cash Flow). Based on our interviews of County and BPL personnel, we determined that the County has never seriously studied this document's content nor approached BPL to discuss how it prepares this document. As a result, the County has little idea about the underlying conditions and financial issues that, to date, have resulted in the Arena's failure to generate sufficient reportable Net Cash Flow that would have allowed the County to share in the distribution of Arena excess cash flow. • The Annual Operating Budget was consistently submitted late with no repercussion by the County and the County's review process of the Annual Operating Budget was inadequate. • The Annual Capital Budget (which is required to be submitted by the contract), County staff didn't even realize—until the OIG pointed it out—that the County wasn't receiving one. The failure to submit an Annual Capital Budget is a concern to OIG auditors. • The OIG recommends that the County claim these unapproved amounts via an adjustment to a future Schedules of Management Agreement Computations. • The County has not exercised its contractual rights to request that BPL provide it with an updated personal property and equipment inventory listing. As of June 30, 2010, there was about \$5.1 million of property and equipment. • The County has not requested that an independent qualified engineer be engaged to inspect the Arena, which cost over \$200 million to construct, and provide a written report of its inspection to the County and BPL. • The County should require that BPL adhere to its contractual requirement to provide written notifications to

	<p>the County of legal actions and advise the County of the progress of those proceedings.</p> <ul style="list-style-type: none"> • The County does not have an adequate understanding of Arena operations in the context of what comprises Arena Revenues. • OIG determined that BPL's recorded expense allocations have been inconsistent through the years and are not always supported by authoritative accounting records.
<p>August 29, 2012</p> <p>October 26, 2012 Internal Services Dept. (ISD) Status Report</p>	<p>Subsequently, on August 29, 2012 and October 26, 2012, the ISD submitted a 90-day status report and an additional response to the OIG, respectively.</p> <p>According to the OIG memorandum dated October 31, 2012, regarding the <i>OIG Audit of the Agreements Between Miami-Dade County and Basketball Properties, Ltd., et.al., to Operate the American Airlines Arena; Audit Close-out, Ref. IG11-34</i>, the OIG considers this audit closed but unresolved, with regards to audit recommendations nos. 11 and 23.</p> <ul style="list-style-type: none"> • Recommendation No. 11 proposed that the County seek to recoup, via an adjustment to BPL's annual reported revenues, BPL capital expenditures totaling \$3.3 million (fiscal years 2005 – 2010), that were in excess of its purported capital budget amounts for those years. ISD's position is that these expenditures were "customary in accordance with industry standards" and will not seek to recoup them. The OIG reaffirms its position that included in these expenditures were those made primarily for the benefit of the team, not the facility. • Recommendation No. 23 proposed that the County seek to recoup \$668,100 of questioned expenses (\$614,000 paid to lobbyists, \$12,300 for political contributions, \$17,500 for charitable contributions, and \$24,000 for non-arena related memberships and dues) for fiscal years 2005 – 2010, as well as additional monies paid out as executive compensation, bonuses, incentives, and commissions that OIG contend are unallowable pursuant to the Agreements (sums for executive compensation, bonuses, incentives and commissioners are not disclosed based on BPL's assertion that this information is a "trade secret"). ISD states that it will allow BPL to continue to include the salary of a BPL vice president, as an operating cost, notwithstanding the fact that executive compensation is an unallowable Arena operating expense, pursuant to the Agreements. The OIG reaffirms its position that the subject expenses are not appropriate given the nature and terms of the County's business with BPL. <p>The OIG audit was partially predicated on the fact that Arena net operating revenues have never exceeded the threshold triggering profit sharing between BPL and the County. In other words, since its inception, the County has yet to receive any portion of profits from the Arena. The audit-identified questioned expenditures directly added to the operating deficits. OIG recommendations for the County to negotiate credit adjustments to the <i>Schedules of Management Agreement Computations</i> would bring the County closer to eliminating the deficit gap sooner, and would bring the County nearer to realizing profit sharing.</p>
<p>January 22, 2014 R-79-14</p>	<p>BCC directed County Mayor or his designee to negotiate with Miami Heat Limited Partnership, BPL and its affiliates, for an extension of the term of the Arena Agreements, subject to subsequent BCC consideration and approval.</p> <p>Additionally, the BCC authorized the Mayor to retain all necessary consultants in an amount up to \$50,000 to provide professional services regarding arena management, operations, and facility attributes.</p>