

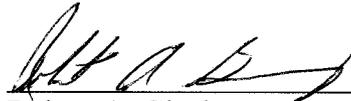
MEMORANDUM

Agenda Item No. 4(G)

TO: Honorable Chairperson Barbara Carey-Shuler, Ed.D. and Members, Board of County Commissioners **DATE:** February 3, 2004

FROM: Robert A. Ginsburg
County Attorney **SUBJECT:** Resolution authorizing Capital Trust Agency to operate within jurisdictional boundaries of Miami-Dade County for certain limited purposes

The accompanying resolution was prepared and placed on the agenda at the request of Commissioner Rebeca Sosa.



Robert A. Ginsburg
County Attorney

RAG/bw



MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: February 3, 2004

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 4(G)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(G)
2-3-04

RESOLUTION NO. _____

RESOLUTION AUTHORIZING CAPITAL TRUST AGENCY TO OPERATE WITHIN JURISDICTIONAL BOUNDARIES OF MIAMI-DADE COUNTY FOR CERTAIN LIMITED PURPOSES; APPROVING EXECUTION AND DELIVERY OF INTERLOCAL AGREEMENT WITH CAPITAL TRUST AGENCY REGARDING ITS ISSUANCE OF BONDS ON BEHALF OF AERO MIAMI FX, LLC; APPROVING ISSUANCE BY CAPITAL AGENCY TRUST OF ITS REVENUE BONDS IN AMOUNT NOT TO EXCEED \$35,000,000 AS REQUIRED BY SECTION 147(F) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; AND PROVIDING FOR OTHER RELATED MATTERS

WHEREAS, Miami-Dade County, Florida (the "County") is a political subdivision of the State of Florida and a public body corporate and politic, lawfully organized and existing under the Laws of the State of Florida (the "State"), and the Capital Trust Agency (the "Issuer") is a public body corporate and politic, lawfully organized and existing under the laws of the State, and each is a "public agency" as defined in Section 163.01, Florida Statutes, as amended, which is titled the "Florida Interlocal Cooperation Act of 1969" (the "Act") and as such "public agencies" are authorized to enter into interlocal agreements pursuant to the Act, for the joint exercise of powers which they share in common and which each might exercise separately; and

WHEREAS, Aero Miami FX, LLC, a Delaware limited liability company (the "Interlocal Borrower"), has requested that the Issuer issue its revenue bonds in an amount not to exceed \$35,000,000 on its behalf (the "Bonds") so they may benefit from a capital financing program of the Issuer and loan all or a portion of the proceeds to them for the purposes of, among other things, to (i) pay or reimburse the Interlocal Borrower for the payment of the costs of acquiring, constructing, renovating and equipping certain facilities located at Miami International Airport on land to be leased from Miami-Dade County, all as described on Exhibit

A, (the "Project") (ii) fund a debt service reserve fund for the benefit of the Bonds, if deemed necessary or desirable by the Interlocal Borrower, (iii) fund interest accruing on the Bonds and (iv) pay certain expenses incurred in connection with the issuance of the Bonds; and

WHEREAS, in order to assist in the development and maintenance of the public health, to accomplish economies of scale and other cost savings as a result of the Issuer's capital financing program, the Issuer desires to assist the Interlocal Borrower by issuing its revenue bonds to be secured solely by revenues generated by the Project as well as any other collateral of the Interlocal Borrower; and

WHEREAS, in order to accomplish the purposes of the Act, the County has been requested to enter into an Interlocal Agreement (the "Interlocal Agreement") with the Issuer to allow the Issuer to operate within its jurisdictional boundaries by issuing Bonds for the benefit of the Interlocal Borrower; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), provides that the elected legislative body of the governmental unit which has jurisdiction over the area in which the facility financed with the proceeds of tax exempt bonds is located is to approve the issuance of such bonds after a public hearing; and

WHEREAS, the Project is located in Miami-Dade County, Florida and the Board of County Commissioners of Miami-Dade County, Florida (the "Board"), is the elected legislative body of the County; and

WHEREAS, the Interlocal Borrower caused notice of a public hearing to consider the requested approval of the Bonds and the location and nature of the Project to be financed with bond proceeds was published in the Miami Herald, a newspaper of general circulation in the

County more than 14 days prior to the this meeting, a copy of said notice is attached as Exhibit A (the "Notice"); and

WHEREAS, the Board has held a public hearing on this date in accordance with such Notice as required by the Code and has reviewed and considered all public comments whether oral or written which have been received; and

WHEREAS, for the reasons set forth above, it appears to the County that entering into the Interlocal Agreement with the Issuer to provide for the issuance of the Bonds is in the best interests of the County and the Interlocal Borrower,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The Interlocal Agreement between the County and the Issuer in the form attached as "Exhibit B" is approved, with such changes as shall be approved by the County Manager or his designee after consultation with the County Attorney's Office, and the County Manager or his designee is authorized to execute it on behalf of the County. Execution and delivery by the County Manager or his designee of the Interlocal Agreement shall constitute conclusive evidence of its final approval by such officer and the County.

Section 2. After conducting a public hearing in accordance with Section 147(f) of the Code, this Board approves the issuance of the Bonds by the Issuer for the purposes described in the Notice. The Bonds shall be issued in the aggregate principal amount, bear interest at such rates, mature in such amounts and be subject to optional and mandatory redemptions as are approved by the Issuer without the further approval of the County. Any action regarding the issuance of the Bonds by this Board does not constitute an endorsement to a prospective purchaser of the Bonds of the credit worthiness of the Interlocal Borrowers or the Project.

— 5

The Bonds shall not constitute a debt, liability or obligation of the County or the State of Florida or any political subdivision of each, but shall be payable solely from the revenues provided for such Bonds, and neither the faith and credit nor any taxing power of the County, the State of Florida or any political subdivision of each is pledged to the payment of the principal of, premium, if any, and interest on the Bonds. The County shall have no obligation with respect to the Bonds other than its obligation to enter into the Interlocal Agreement.

Section 3. The County Manager and such other members, officials, officers and employees of the County are authorized and directed to execute all necessary documents on behalf of the County to comply with the requirements of the Interlocal Agreement.

Section 4. All of the acts and doings of the members, officials, officers, and employees of the County which are in conformity with the intent and purposes of this Resolution, whether previously or subsequently taken or done, shall be and are ratified, confirmed and approved.

Section 5. If any section, paragraph, clause or provision of this Resolution shall be held to be invalid or ineffective for any reason, the remainder of this Resolution shall continue in full force and effect, it being expressly found and declared that the remainder of this Resolution would have been adopted despite the invalidity or ineffectiveness of such section, paragraph, clause or provision.

The foregoing resolution was sponsored by Commissioner Rebecca Sosa and offered by
Commissioner _____, who moved its adoption. The motion was seconded
by Commissioner _____ and upon being put to a vote, the vote
was as follows:

Dr. Barbara Carey-Shuler, Chairperson	
Katy Sorenson, Vice-Chairperson	
Bruno A. Barreiro	Jose "Pepe" Diaz
Betty T. Ferguson	Sally A. Heyman
Joe A. Martinez	Jimmy L. Morales
Dennis C. Moss	Dorrian D. Rolle
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this
3rd day of February, 2004. 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: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Gerald T. Heffernan

EXHIBIT A

NOTICE OF PUBLIC HEARING

For the purpose of Section 147(f) of the Internal Revenue Code of 1986, as amended, notice is hereby given that the Board of County Commissioners of Miami-Dade County, Florida, will hold a public hearing at its regular meeting on _____, _____, 200_ beginning at _____ .m., in the Commission Chambers located at the Stephen P. Clark Center, 111 NW 1st Street 2nd Floor, Miami, Florida, to consider a plan of finance for the costs of acquisition, rehabilitation, construction and equipping of a capital project consisting of a warehousing sorting facility and related buildings and associated aircraft and vehicular parking facilities and ground service facilities on approximately 25 acres of land (the "Project") leased at the Miami International Airport, located at N.W. 20th Street and Le Jeune Road, in Miami, Florida, for Aero Miami FX, LLC, a Delaware limited liability company qualified to do business in the State of Florida, whose principal place of business is 50 North Water Street, South Norwalk, Connecticut 06854 (the "Company"). The plan of finance includes a proposal by the Capital Trust Agency, a public agency of the state of Florida (the "Agency"), on behalf of itself and other public agencies of the State of Florida and other states, to issue in respect of such Project not exceeding \$35,000,000 of its revenue bonds (the "Bonds"), in one or more installments or series to provide funds for such purposes. The plan of finance will be funded through the issuance from time to time of tax exempt bonds by the Agency on behalf of itself and other public agencies of the State of Florida to pay all or a portion of the costs of the Project. The Project will be owned and operated by the Company, on land leased to the Company, and managed by its affiliate, AeroTerm U.S., Inc., a Delaware corporation.

The Bonds, when issued, will be special, limited obligations payable solely out of the revenues derived from financing agreements with the Company. The Bonds and interest thereon shall never constitute the debt or indebtedness of the Agency or of Miami-Dade County, Florida, the State of Florida or any political subdivision or municipality thereof within the meaning of any provision or limitation of the statutes or Constitution of the State of Florida.

At the time and place fixed for said public hearing all who appear will be given an opportunity to express their views for or against the proposal to approve said bonds and the plan of finance, including the project described above. Prior to said public hearing, written comments may be delivered to the County Manager's Office located at the Stephen P. Clark Center, 111 NW 1st Street, Suite 2910, Miami, Florida 33128. All persons are advised that, if they decide to appeal any decision made at this meeting, they will need a record of the proceedings, and for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. All interested persons are invited to present their comments at the time and place set forth above.

In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in the proceeding should contact the County Manger's Office no later than seven (7) days prior to the proceeding located at the above noted address; Telephone: (305) 375-5311.

Legal No. _____
_____, 2003

EXHIBIT B

INTERLOCAL AGREEMENT

THIS IS AN INTERLOCAL AGREEMENT, dated as of _____, 2004 (the "Agreement"), by and between the Capital Trust Agency (the "Issuer"), public body corporate and politic duly created and existing under the laws and Constitution of the State of Florida and Miami-Dade County, (the "Interlocal Participant"), a political subdivision of the State of Florida.

RECITALS

Pursuant to the Florida Interlocal Cooperation Act of 1969, Section 163.01, Part I, Chapter 163, Florida Statutes, as amended (the "Interlocal Cooperation Act"), "public agencies," as defined in the Interlocal Cooperation Act, are authorized to enter into agreements with one another in order to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.

The Interlocal Cooperation Act provides that a public agency may, pursuant to contract, exercise jointly with any other public agency any power, privilege or authority which such public agencies share in common which each might exercise separately.

Pursuant to the Florida Industrial Development Financing Act, Part II, Chapter 159, Florida Statutes, as amended (the "Financing Act"), the Issuer and the Interlocal Participant are authorized to issue revenue bonds and loan the bond proceeds to qualified borrowers to, among other things, pay all or any part of the "costs of any project" (as defined in the Financing Act).

The Issuer and the Interlocal Participant are public agencies and desire and are permitted to enter into this Agreement to authorize the Issuer to issue revenue bonds in an amount not to exceed \$35,000,000 (the "Bonds") on behalf of the Interlocal Participant and loan a portion of the bond proceeds to Aero Miami FX, LLC, a Delaware limited liability company (the "Interlocal Borrower"), for the purposes of providing funds to, among other things, (i) pay or reimburse the Interlocal Borrower for the payment of the costs of acquiring, constructing, renovating and equipping certain facilities located at Miami International Airport on land to be leased from Miami-Dade County, all as described on Exhibit A (the "Project"), (ii) fund a debt service reserve fund for the benefit of the Bonds, if deemed necessary or desirable by the Interlocal Borrower, (iii) [fund interest accruing on the Bonds and (iv) pay certain expenses incurred in connection with the issuance of the Bonds (the "Loan"). None of the foregoing actions is prohibited by or conflicts with any agreement, ordinance or resolution of the Issuer or Interlocal Participant or any judgment order or decree affecting the Issuer or the Interlocal Participant.

In consideration of the mutual agreements contained in this Agreement and upon the further consideration of the recitals set forth above, the Interlocal Participant and Issuer agree as follows:

Section 1. Definitions. Unless the context otherwise requires, the following terms for all purposes of this Agreement shall have the meanings ascribed to them:

"*Acts*" means the Financing Act and the Interlocal Cooperation Act.

"*Administrator*" means the administrator appointed pursuant to Section 4(c).

"*Bond Indenture*" means the Bond Trust Indenture between the Issuer and the Bond Trustee pursuant to which the Bonds are to be issued, and all its amendments and supplements.

"*Bond Trustee*" means the bond trustee selected by the Interlocal Borrower and approved by the Issuer, or any successor trustee under the Bond Indenture.

"*Loan Agreement*" means the Loan Agreement between the Issuer and, among others, the Interlocal Borrower, setting forth the terms of the Loan.

"*Resolution*" means a resolution of the governing body of a party adopted for the purpose of approving and authorizing the execution of this Agreement or any of its amendments, or approving any action taken pursuant to this Agreement when such approval is required by this Agreement.

Terms defined in this Section in the singular shall include the plural and vice versa.

Section 2. Purposes. In order to assist in the development and maintenance of the public health, and to accomplish economies of scale and other cost savings, and to afford flexibility to the Interlocal Participant to structure the credit for the Bonds as it may deem most economic for the financing of the Project, this Agreement is entered into pursuant to the authority granted in the Acts for the purposes of providing for the issuance of the Bonds by the Issuer on behalf of the Interlocal Participant for the benefit of the Interlocal Borrower in order to make the Loan to, among other things, (i) pay or reimburse the Interlocal Borrower for the payment of the costs of acquiring, constructing, renovating and equipping the Project, (ii) fund a debt service reserve fund for the benefit of the Bonds, if deemed necessary or desirable by the Interlocal Borrower, (iii) fund interest accruing on the Bonds and (iv) pay certain expenses incurred in connection with the issuance of the Bonds. This Agreement shall be interpreted so as to permit the realization of such purposes to the full extent authorized by the Acts.

Section 3. Effective Date; Closing Conditions; Duration. This Agreement shall become effective and shall enter into force, within the meaning of the Interlocal Cooperation Act, upon receipt by the Administrator of (i) the Resolutions duly adopted by the governing body of the Issuer and of the Interlocal Participant, respectively, approving and authorizing the execution and delivery of this Agreement, (ii) a counterpart of this Agreement, duly executed by authorized officers of the Issuer and the Interlocal Participant; and (iii) evidence satisfactory to the Administrator of the filing of a duly executed counterpart of this Agreement with the Clerk of the Circuit Court of Miami-Dade County, Florida. The issuance of the Bonds shall be subject to

the receipt by the Administrator of the documents listed in clauses (i) through (ii) above, the recording of this Agreement as required in clause (iii) above and such other documents, opinions and showings as may be necessary to effectuate the issuance of the Bonds and the making of the Loan. The term of this Agreement shall end upon the discharge of the Bond Indenture in accordance with its provisions. Upon the expiration of this Agreement, any property or moneys not required to be used to pay principal, premium, if any, or interest on the Bonds and not otherwise required to be applied as required by the Bond Indenture shall, to the extent permitted by law, be distributed as provided in the Indenture.

Section 4. The Interlocal Financing. The Issuer shall issue the Bonds subject to the following conditions:

(a) The Bonds.

(i) The Issuer shall authorize the issuance and delivery of the Bonds pursuant to and subject to the terms and conditions of the Bond Indenture, the portion of which that shall be attributable to the Loan being in an aggregate principal amount not to exceed \$35,000,000. The Bonds shall be dated and shall bear interest, be subject to repurchase and redemption, be designated and be in the form, and have such other terms as are provided in the Bond Indenture, as finally executed and delivered by the Issuer without further approval of the Interlocal Participant, but subject in all respects to the provisions set forth in the Issuer Resolution.

(ii) The Bonds, together with interest thereon, shall not constitute a debt, liability or obligation of Miami-Dade County, Florida, the State of Florida or any political subdivision or agency of each, but shall be special and limited obligations of the Issuer payable solely from, and shall be secured by the Loan Agreement and the amounts in the funds and accounts created by the Bond Indenture. The Interlocal Participant and its members, officers, agents and employees shall not be liable for the payment of the principal of, premium, if any, or interest on the Bonds, nor shall the Interlocal Participant or its members, officers, agents and employees, be liable for any other indebtedness or liability which may arise in connection with the issuance of the Bonds or the making of the Loan.

(iii) The proceeds of the sale of the Bonds shall be applied in accordance with the provisions of the Bond Indenture for the purposes specified in the Bond Indenture and in Section 2 of this Agreement.

(iv) The Bonds may be issued in one or more series and, if issued in more than one series, references herein to the Bond Indenture and the Loan Agreement shall be deemed to include, if necessary, any supplemental Bond Indentures or Loan executed and delivered in connection with the issuance of the Bonds.

(v) The Interlocal Borrower shall agree to pay any amounts owing on the Bonds pursuant to the provisions of Section 148(f) of the Internal Revenue Code of 1986, as amended.

(vi) The Interlocal Borrower shall agree in the Loan Agreement to protect, indemnify and save the Issuer and the Interlocal Participant, their members, officers, agents and employees against and from any and all liabilities, suits, actions, claims, demands, damages, losses, expenses and costs of every kind and nature incurred by or asserted or imposed against the Issuer or the Interlocal Participant, their members, officers, agents and employees which may arise in connection with the issuance of the Bonds or the making of the Loan or this Agreement.

(b) The Loan.

(i) Pursuant to and subject to the terms and conditions of the Bond Indenture, the Issuer is authorized to make available to the Interlocal Borrower proceeds of the Bonds to be used by the Interlocal Borrower for the purposes set forth in Section 2 without further approval of the Interlocal Participant.

(ii) The Loan Agreement shall provide for payments sufficient to pay expenses incident to the issuance of the Bonds and any fees, costs and expenses of the Interlocal Participant and its counsel.

(c) Administrator.

Pursuant to Section 163.01(6) of the Interlocal Act, the Issuer is designated the Administrator. The Administrator shall have and is delegated full power and authority to do all things necessary or convenient to carry out the purposes of this Agreement, including, without limitation, the appointment of such agents or entities as are necessary or desirable to effectuate the issuance of the Bonds and the making of the Loan.

Section 5. Indemnity. To the full extent permitted by law, the Issuer agrees (i) to hold the Interlocal Participant harmless from any and all liability, including the payment of all applicable costs and reasonable attorneys fees, which may arise as a result of its involvement with the financing, its execution of this Agreement and/or operation of the Project, including but not limited to, the repayment the Bonds; and (ii) to hold the members and officials of the Interlocal Participant harmless from any and all liability, including payment of all applicable costs and reasonable attorneys fees, in connection with the approval rendered pursuant to applicable federal and Florida laws and all matters relating to this Agreement or the Bonds.

Section 6. Amendments. This Agreement may not be amended, changed, modified or altered except by an instrument in writing which shall be (i) approved by a Resolution of the governing body of the Issuer and of the Interlocal Participant, (ii) executed by duly authorized officers of the Issuer and the Interlocal Participant, and (iii) filed with the Clerk of the Circuit Court of Miami-Dade County, Florida.

Section 7. Severability. If any term or provision of this Agreement or the application of each shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected, and shall be enforced to the extent permitted by law. To the extent permitted by applicable law, the parties waive any provision of law, which would render any of the terms of this Agreement unenforceable.

Section 8. Governing Law. All questions with respect to the construction of this Agreement, and the rights and liabilities of its parties, shall be governed by the laws of the State of Florida.

Section 9. Notices. Any notice or other communication shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer:

Attention: Executive Director
Telephone: (850) 934-4046
Telecopy: (850) 934-5114

If to the Interlocal Participant:

Board of County Commissioners
of Miami-Dade County, Florida
111 N.W. First Street
Miami, Florida 33128
Telephone: 305-375-5311
Telecopy: 305-375-4658

The Issuer and the Interlocal Participant may, by written notice, designate any further or different addresses to which subsequent notices or communications shall be sent.

Section 10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

Section 11. No Delegation of Authority. This Interlocal Agreement shall in no way be interpreted to authorize the unlawful delegation of the constitutional or statutory duties of the Issuer, the Interlocal Participant or any of their officers, members, representatives or employees.

Section 12. Limited Approval. The approval given in this Agreement shall not be construed as an approval of any necessary zoning or rezoning applications nor for any planning or regulatory permits and the approval of this Interlocal Agreement shall not be construed to be a waiver by either the Issuer or the Interlocal Participant of, and neither the Issuer nor the Interlocal Participant shall be estopped from asserting, any regulatory rights or responsibilities it may have with respect the Project and this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and attested in their respective corporate names by their duly authorized officers all as of the date first above written.

CAPITAL TRUST AGENCY

By _____

Title:

Printed Name: _____

[SEAL]

Attest:

Title:

Printed Name: _____

MIAMI-DADE COUNTY, FLORIDA

By _____

Title: County Manager

Printed Name:

[SEAL]

Attest:

Title: Deputy Clerk

Printed Name:

Approved by County Attorney as to form and legal sufficiency



Exhibit A

Description of the Project

The Project at Miami International Airport is located at N.W. 20th Street and Lejune Road, in Miami, Florida, and consists of a warehousing sorting facility and related buildings and associated aircraft and vehicular parking facilities. The total square footage of the facilities is approximately 126,400 sq. ft., including 240,000 square feet of aircraft parking ramp and 10,800 square feet of ground service equipment storage space on the parking ramp, all to be located upon approximately 25 acres of land to be leased from Dade County or its duly authorized agent.