



MEMORANDUM

Supplement to
Agenda Item No. 7(K)1C

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

DATE: April 27, 2004

FROM: George M. Burgess
County Manager

SUBJECT: Supplemental Information for Agenda Item 7(K) 1 C

This supplemental information is for agenda item 7K 1C, which includes an updated Interlocal Agreement (ILA) between Miami-Dade County, the City of Miami, and Midtown Miami Community Development District (CDD), and the agenda item that will be placed on the City of Miami Board of Commissioners April 29, 2004 agenda for approval.

The changes in the ILA includes a new schedule of payments (Schedule I) which changes the Phase I and Phase II components of the Economic Incentive Payments (EIP) or Tax Increment Funds (TIF) for debt service on the CDD bonds. The changes includes the retail (600,000 sqft), parking garage and plaza, and condo tower number 1 (374,500 sqft) in phase I and hotel/spa (235,000), apartments (292,000 sqft), office building (150,000 sqft) and condo tower number 2 (395,500 sqft) in phase II.

The ILA now includes conditions for payments that triggers when the EIP or TIF can be released to the CDD for the sole purpose of paying the debt service on the CDD bonds. The conditions for phase I states that 90% of the aggregate components needs to be completed and a Certificate of Occupancy issued no later than December 31, 2006, in order to receive funds for debt service payment. The conditions for phase II states that 90% of the aggregate components, which includes 100% completion of the office building, needs to be completed and a Certificate of Occupancy issued no later than December 31, 2007, in order to receive funds for debt service payment.

These additions in the ILA are to further strengthen the County and City capacity to cover the debt service on the CDD bonds. Added benefits include having both the retail shops and office building completed and the creation of approximately 1,500 much needed jobs for this community.


for Tony E. Crapp, Sr.
Assistant County Manager

INTERLOCAL AGREEMENT

AMONG

THE CITY OF MIAMI, FLORIDA

AND

MIAMI-DADE COUNTY, FLORIDA

AND

MIDTOWN MIAMI COMMUNITY DEVELOPMENT DISTRICT

DATED _____, 2004

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (the "Agreement") is made and executed this ___ day of April, 2004 among The City of Miami, Florida, a municipal corporation (the "City"), Miami-Dade County, Florida, a political subdivision of the State of Florida (the "County"), and the Midtown Miami Community Development District (the "District"), a local unit of special purpose government established pursuant to Section 1.01(A)(21) of the County's Home Rule Charter (the "Charter") and Chapter 190, Florida Statutes, as amended, known as the Uniform Community Development District Act of 1980 (the "Act").

WITNESSETH:

WHEREAS, it is the purpose and intent of this Agreement to permit and authorize the City, the County and the District to make the most efficient use of their respective powers, resources, authority and capabilities by enabling them to cooperate on the basis of mutual advantage and to achieve the results provided for in this Agreement pursuant to Section 163.01, Florida Statutes, known as the Florida Interlocal Cooperation Act of 1969 (the "Cooperation Act"); and

WHEREAS, it is the purpose of the Cooperation Act to provide a means by which the City, the County and the District may exercise their respective powers, privileges, and authority which they may have separately, but which pursuant to this Agreement and the Cooperation Act they may exercise collectively; and

WHEREAS, Section 163.01(5)(f) of the Cooperation Act provides that an interlocal agreement may contain a method or formula for equitably providing for and allocating and financing capital and operating costs for capital projects and for the payment of debt service, including establishment of reserves on bonds, on the basis of the amount of benefits received or conferred by each participating government; and

WHEREAS, all of the lands contained within the boundaries of the District are located entirely within the boundaries of the City; and

WHEREAS, the Miami City Commission adopted Resolution No. R-03-135 on November 13, 2003, which supported the petition submitted to the County by Biscayne Development Partners LLC for the creation of the District; and

WHEREAS, the District was created by the County pursuant to Ordinance No. 03-271 adopted by the Board of County Commissioners of the County on December 16, 2003 and effective on December 26, 2003, for the purpose of delivering certain community development services and facilities within and outside the boundaries of the District; and

WHEREAS, the District has decided to undertake the design, acquisition and construction of certain roadways (within and outside the boundaries of the District), water and sewer facilities, a stormwater management system, streetscape and landscape, and parking

garages pursuant to the Act as more fully described in Exhibit A – Part 1 attached to this Agreement (the "Project"); and

WHEREAS, in connection with the design, acquisition and construction of the Project, Biscayne Development Partners LLC, a Florida limited liability company and current owner of all the lands within the boundaries of the District, or one or more of its affiliates, expects to develop a portion of a mixed-use development within the boundaries of the District to be known as Midtown Miami (the "Development") and expects to sell a portion of the lands within the District to Developers Diversified Realty Corporation, an Ohio corporation, or one or more of its affiliates, which is expected to develop the remaining portion of the Development (Biscayne Development Partners LLC and Developers Diversified Realty Corporation and any applicable affiliate being collectively referred to as the "Developer"); and

WHEREAS, without construction of the Project the Development cannot be built; and

WHEREAS, upon completion, the Development is expected to contain a retail shopping center, residential condominium units with retail areas, an office tower with retail areas, rental apartments, a hotel, an entertainment facility which will include retail areas and a spa, and parking facilities; and

WHEREAS, the Development is expected to stimulate economic development and growth within the City and the County benefiting their citizens and to generate significant revenues for the City and the County, including without limitation, increased ad valorem tax revenue, sales tax revenue, gas tax revenue, tourist or convention development tax revenue and other fees and charges related to the Development; and

WHEREAS, in light of these significant material benefits to be received and enjoyed by the County and the City and their respective residents and the fiscal benefit anticipated to be received by the County and the City as a result of the development of the Development, and in consideration for the performance by the District of its obligations described in this Agreement, the County and the City have agreed to participate in the development of the Project by making annual Economic Incentive Payments (defined herein) to the District to help defray a portion of the costs of the Project and as an additional source of security for the Bonds (defined herein), all in accordance with the terms of this Agreement; and

WHEREAS, pursuant to Chapter 163, Part III, Florida Statutes, as amended (the "Redevelopment Act"), the City and the County desire to cause the Community Redevelopment Agency (defined herein) to establish the Community Redevelopment District (defined herein) to develop and carry out a community redevelopment plan to remove slum and blight and provide affordable housing within the boundaries of the Community Redevelopment District; and

WHEREAS, the Redevelopment Act transfers redevelopment powers to counties with home rule charters such as the County, which is authorized to delegate certain of those powers to a municipality such as the City; and

WHEREAS, in the event that the Community Redevelopment District is established, the County and the City shall cause the Community Redevelopment Agency to contribute Tax Increment Revenues (defined herein) to the District, and the County and the City shall reduce the amount of Economic Incentive Payments to be paid to the District in proportion to the amount of Tax Increment Revenues paid to the District and shall, under certain circumstances, terminate their obligations to pay Economic Incentive Payments entirely, all in accordance with Article III of this Agreement; and

WHEREAS, the District intends to finance a portion of the costs of the Project as set forth in more detail in Exhibit A – Part 2 (the “Parking Garage Project”), from the proceeds of one or more series of Bonds, and a portion of the costs of the Project as set forth in more detail in Exhibit A – Part 3 (the “General Infrastructure Project”), from the proceeds of the County Loan (defined herein); and

WHEREAS, in the event that the County Loan is not provided to the District, the District intends to finance the General Infrastructure Project from the proceeds of General Infrastructure Project Bonds (defined herein); and

WHEREAS, the District intends to secure payment of the County Loan through the levy of non-ad valorem special assessments (the “Special Assessments”) and to secure payment of the Bonds through Special Assessments, Economic Incentive Payments and Tax Increment Revenues received under this Agreement, as provided in the Indenture and the Loan Documents; and

WHEREAS, the parties have executed this Agreement for the purpose of setting forth (i) the obligations of the District in providing the Project; (ii) the conditions under which the County and the City shall be required to make Economic Incentive Payments to the District; (iii) the conditions under which the County and the City shall cause the Community Redevelopment Agency to pay Tax Increment Revenues to the District; (iv) the amounts to be paid by the County and the City and the sources from which the County and the City may, and may not, make such payments; (v) the obligation of the City and the County to cause the Community Redevelopment Agency to establish the Community Redevelopment District; and (vi) other specific provisions relating to the payment of funds by the County and the City to the District; and

WHEREAS, in order to equitably apportion the burden of the costs of the Parking Garage Project, the District shall use the Economic Incentive Payments received from the City and the County and the Tax Increment Revenues received from the Community Redevelopment Agency to reduce the amount of Special Assessments actually collected on each parcel of land specially benefited by the Parking Garage Project in proportion to the amount of Economic Incentive Payments and/or Tax Increment Revenues generated by each such benefited parcel, all in accordance with the terms and conditions of the Indenture (defined herein) and the Special Assessment proceedings of the District; and

WHEREAS, the acquisition, construction, equipping and financing of the Project constitutes a public purpose in accordance with Section 166.021, Florida Statutes, and Section

125.045, Florida Statutes, and is in the best interests of all of the parties and their respective residents and citizens;

NOW THEREFORE, for and in consideration of the mutual premises set forth above and the covenants, obligations, duties and benefits set forth in this Agreement, the District, the City and the County agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. In addition to terms defined within the text of this Agreement and in the Indenture, the capitalized terms set forth below shall have the following meanings, unless the context requires a different meaning:

“Annual Debt Service” shall mean level payments of principal and interest on the Bonds each year in accordance with the debt service schedule determined at the time the Bonds are issued.

“Bonds” shall mean the Midtown Miami Community Development District Special Assessment Bonds issued initially in one or more series pursuant to the provisions of the Indenture to finance the Parking Garage Project. “Bonds” shall not include the General Infrastructure Project Bonds.

“Certificate of Occupancy” shall mean a certificate of occupancy issued by the City pursuant to Section 106.1 of the Florida Building Code.

“Community Redevelopment Agency” shall mean a community redevelopment agency established by the City pursuant to the Redevelopment Act, with such powers delegated to it by the County pursuant to the Redevelopment Act.

“Community Redevelopment District” shall mean the community redevelopment district established by the County and the City pursuant to the Redevelopment Act that has the same boundaries as the District and from which Tax Increment Revenues shall be derived.

“Completed Development Component” shall mean a Development Component with respect to which a Certificate of Occupancy has been issued.

“County Loan” shall mean the loan by the County to the District derived from the proceeds of the Section 108 Loan and secured by a pledge of Special Assessments in accordance with the Loan Documents.

“Development Component” shall mean each of the development components listed as Phase I Components, Phase II Components, Phase III Components, Phase IV Components, Phase V Components, and Phase VI Components in Schedule I to this Agreement, as such components may be substituted for other development components provided that the total number of

development units for each phase is equal to or greater than the number of development units listed on Schedule I to this Agreement for such phase.

“Economic Incentive Payment” shall mean annual payments to be made by the City and the County, respectively, from legally available Non-Ad Valorem Revenues, with respect to all Completed Development Components in accordance with Article III of this Agreement.

“Event of Impossibility” shall mean any official governmental approval or denial of approval (environmental, zoning, permitting, or otherwise), legislative or executive action (or failure to act), resolution, or ordinance of the State of Florida, the City, the County, or of any political subdivision or agency thereof, or any final decree or judgment of any court, or any change in the interpretation of any of the above by such governmental entity or court, which, in the reasonable judgment of the Developer, renders construction of the office component of Phase II impossible.

“Financial Advisor” shall mean an independent financial advisor engaged by the District, the City and the County for the purpose of delivering the certification in Section 3.4.1(B)(4) of this Agreement; provided, however, that the fees and expenses of the Financial Advisor shall be paid by the District.

“Fiscal Year” shall mean October 1 through September 30 of each year.

“General Infrastructure Project Bonds” shall mean one or more series of bonds issued under the Indenture to finance the General Infrastructure Project to which neither Economic Incentive Payments nor Tax Increment Revenues shall be pledged, and any additional bonds issued to refund all or a portion of the General Infrastructure Project Bonds or to complete the General Infrastructure Project.

“Indenture” shall mean the Master Trust Indenture, as amended and supplemented from time to time, to be entered into by and between the District and Wachovia Bank, National Association, as Trustee, in connection with the issuance of the Bonds and the General Infrastructure Project Bonds, if any.

“Loan Documents” shall mean the note, loan agreement and other related documents with respect to the County Loan.

“Maximum Annual Debt Service” shall mean, as of any particular date of calculation, the greatest amount of aggregate Annual Debt Service for the then current or any future bond year.

“Non-Ad Valorem Revenues” shall mean, with respect to the City and the County, as applicable, all revenues of the City and the County derived from any source whatsoever, other than ad valorem taxation on real or personal property, which is legally available to make the Economic Incentive Payments required herein, but only after provision has been made by the City or the County to pay for services and programs which are necessary for essential public

purposes affecting the health, welfare and safety of the inhabitants of the City or the County or which are legally mandated by applicable law.

“Redevelopment Trust Fund” shall mean the redevelopment trust fund to be established pursuant to Section 163.387 of the Redevelopment Act in which all Tax Increment Revenues shall be deposited by the Community Redevelopment Agency.

“Section 108 Loan” shall mean a loan by the U.S. Department of Housing and Urban Development to the County under Section 108 of the Housing and Community Development Act of 1974 for approximately \$20,600,000.

“Tax Increment Revenues” shall mean the tax increment revenues generated within the Community Redevelopment District and deposited in the Redevelopment Trust Fund pursuant to the Redevelopment Act.

ARTICLE II REPRESENTATIONS; FINDINGS

Section 2.1 The County represents and warrants as follows:

2.1.1 The County is duly organized and validly existing as a political subdivision of the State of Florida.

2.1.2 The County has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations under this Agreement.

2.1.3 The County has duly authorized the execution and delivery of this Agreement, and assuming its due authorization, execution and delivery by the City and the District, this Agreement constitutes a valid and legally binding obligation of the County, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

Section 2.2 The City represents and warrants as follows:

2.2.1 The City is duly organized and validly existing as municipal corporation under the laws of the State of Florida.

2.2.2 The City has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations under this Agreement.

2.2.3 The City has duly authorized the execution and delivery of this Agreement, and assuming its due authorization, execution and delivery by the County and the District, this Agreement constitutes a valid and legally binding obligation of the City, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by any

applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

Section 2.3 The District represents and warrants as follows:

2.3.1 The District is duly organized and validly existing as a local unit of special purpose government under the Act and the Charter and as an independent special district under Chapter 189, Florida Statutes.

2.3.2 The District has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations under this Agreement and to issue the Bonds and the General Infrastructure Project Bonds, if any, pursuant to the Act.

2.3.3 The District has duly authorized the execution and delivery of this Agreement, and assuming its due authorization, execution and delivery by the County and the City, this Agreement constitutes a valid and legally binding obligation of the District, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

Section 2.4 The City and the County agree as follows:

2.4.1 The County and City shall take all action necessary to cause the Community Redevelopment Agency to establish the Community Redevelopment District as soon as practicable, and to amend this Agreement to include the Community Redevelopment Agency as a party, if necessary.

2.4.2 The County and the City shall cause the annual budget for the Community Redevelopment Agency to require the Community Redevelopment Agency to pay Tax Increment Revenues from the Community Redevelopment District to the District annually in accordance with Article III of this Agreement. Excess Tax Increment Revenues shall be retained by the Community Redevelopment Agency in the Redevelopment Trust Fund and refunded to the City and the County at the end of each fiscal year of the Community Redevelopment Agency on a pro-rata basis in accordance with the annual budget and the Redevelopment Act.

2.4.3 The County and the City shall cause the Community Redevelopment District and the Community Redevelopment Agency to remain in existence and the Tax Increment Revenues to remain unencumbered (except as contemplated by this Agreement) for so long as the Bonds are outstanding under the Indenture.

2.4.4 The County and the City shall enter into such agreements, and cause the Community Redevelopment Agency to enter into such agreements, and provide such annual information, and cause the Community Redevelopment Agency to provide such annual information, as shall be necessary to comply with Securities and Exchange Commission Rule

15c2-12 with respect to the Bonds. The County and the City shall provide, and cause the Community Redevelopment Agency to provide, information to the District necessary for inclusion in the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum relating to the Bonds, and shall execute such closing certificates at the time of issuance of the Bonds as shall be reasonably requested by the District and the underwriter of the Bonds as to the accuracy of the information provided by each for inclusion therein.

Section 2.5 The District agrees as follows:

2.5.1 The Indenture shall provide that the holders of the Bonds will be on a parity with the County Loan and the General Infrastructure Project Bonds, if any, with respect to the Special Assessments. The District shall not pledge, permit a lien to be filed against or encumber in any manner the Special Assessments, other than as provided in this Agreement, the Indenture and the Loan Documents.

2.5.2 The District approves the establishment of a Community Redevelopment District and the Community Redevelopment Agency by the County and the City to fund the Tax Increment Revenues and agrees to amend this Agreement to add the Community Redevelopment Agency as a party, if necessary.

2.5.3. The District shall not dissolve or expand or contract its boundaries for so long as the County Loan is outstanding under the Loan Documents and the Bonds are outstanding under the Indenture.

Section 2.6 It is found and declared that:

2.6.1 Expending public funds to finance the design, acquisition and construction of the Project is in the best interests of the City, the County and the District and their respective citizens and residents.

2.6.2 Expending public funds to finance the design, acquisition and construction of the Project will serve the valid and important public purpose of economic development and redevelopment by improving the local infrastructure of the City and the County and facilitating the development of the Development.

2.6.3 The construction of the Project and the development of the Development will serve the valid and important public purpose of protecting the health and welfare of the citizens of the City, the County and the District by fostering economic growth within the District and eliminating blight by attracting, creating and retaining retail and commercial business enterprises and residential development in the City and the County.

2.6.4 Development of the Project and the Development will result in designation of the lands within the District as a "brownfield site" and remediation of environmental hazards.

**ARTICLE III
FINANCING PLAN**

Section 3.1 Generally.

3.1.1 Pursuant to the terms of the Indenture, the District shall issue the Bonds to pay a portion of the costs of the Project, and shall levy Special Assessments pursuant to the Act and Chapter 170, Florida Statutes, to the extent and in the amount necessary to pay outstanding debt service on the Bonds, the County Loan and the General Infrastructure Project Bonds, if any. As provided in the Indenture, for each bond year, the District shall evidence and certify to the tax collector or cause the property appraiser to certify to the tax collector for collection pursuant to Chapter 197, Florida Statutes, or any successor statutes, as applicable, an amount equal to the Special Assessments levied by the District less the amount of Economic Incentive Payments and Tax Increment Revenues received by the District and available for payment in such bond year. In accordance with Section 3.2.3 below, the amount of Economic Incentive Payments to be paid by the County and the City each year shall be reduced by the amount of Tax Increment Revenues paid by the Community Redevelopment Agency in such year, and in the event the conditions set forth in Section 3.4 below are satisfied, the obligations of the County and the City to contribute Economic Incentive Payments shall be released. As provided in the Indenture, all Economic Incentive Payments and Tax Increment Revenues received by the District will be held by the Trustee in the funds and accounts established under the Indenture and disbursed by the Trustee in accordance with the terms and conditions of the Indenture.

3.1.2 In the event that the County Loan is not provided to the District, the District may issue the General Infrastructure Project Bonds or make alternate arrangements satisfactory to the County and the City to finance the costs of the General Infrastructure Project, as set forth in more detail in Section 3.2.4 below. The General Infrastructure Project Bonds shall be secured by Special Assessments on a parity with the Bonds.

3.1.3 The County and City are not responsible for any other costs or expenses of any kind with respect to the Parking Garage Project other than debt service on the Bonds as expressly provided for in this Agreement.

3.1.4 In the event Economic Incentive Payments and/or Tax Increment Revenues are insufficient to meet the Annual Debt Service on the Bonds, the District shall be responsible for the deficiency, and the District may collect Special Assessments to pay for such deficiency.

Section 3.2 Economic Incentive Payments.

3.2.1 Subject to Subsection 3.2.4 and 3.2.5, and Section 3.4 below, the City and the County shall each pay the Economic Incentive Payments to the District in the amounts set forth in Schedule I for each Completed Development Component, provided that such Economic

Incentive Payments do not exceed the corresponding Annual Debt Service requirements on the Bonds. The Economic Incentive Payments corresponding to each Completed Development Component as set forth in Schedule I shall become payable to the District annually as described in Subsection 3.2.2 below, commencing, (i) with respect to the Economic Incentive Payments corresponding to Completed Development Components for Phase I, in the calendar year following the calendar year in which Certificates of Occupancy have been issued for at least ninety percent (90%) of the Development Components for Phase I, one of which must be the retail component, as described in Schedule I of this Agreement, (ii) with respect to the Economic Incentive Payments corresponding to Completed Development Components for Phase II, in the calendar year following the calendar year in which Certificates of Occupancy have been issued for at least ninety percent (90%) of the Development Components for Phase II, one of which must be, subject to the occurrence of an Event of Impossibility, the office component, and (iii) with respect to the Economic Incentive Payments corresponding to Completed Development Components for Phases III through VI, in any calendar year following the calendar year in which Economic Incentive Payments corresponding to Completed Development Components for Phase II become payable to the District, all continuing each and every year thereafter through the term of this Agreement, subject to reduction in accordance with Subsection 3.2.3 below and elimination pursuant to Section 3.4 below.

3.2.2 No later than January 31st of each year during the term of this Agreement, the District shall submit a progress report (the "Progress Report") to the City, the County and the Community Redevelopment Agency setting forth the Completed Development Components, if any, as of January 1 of that year. For each Completed Development Component identified in such Progress Report, the City shall verify that a Certificate of Occupancy was issued for each. No later than December 31st of that same year, the City and the County shall pay to the District, subject to reduction in accordance with Subsection 3.2.3 below, the Economic Incentive Payments set forth in Schedule I due for each Completed Development Component described in the Progress Report, as well as for all Completed Development Components described in all prior Progress Reports. The District shall use the Economic Incentive Payments received from the City and the County solely to pay corresponding Annual Debt Service on the Bonds.

3.2.3 In the event that the Community Redevelopment District and the Redevelopment Trust Fund are established on or before June 30, 2005, and the conditions set forth in Section 3.4.1(A) are satisfied, or in the event that the Community Redevelopment District and the Redevelopment Trust Fund are established after June 30, 2005 and the conditions set forth in Section 3.4.1(B) are satisfied, the obligation of the County and the City to contribute Economic Incentive Payments to the District shall be extinguished. In the event that the Community Redevelopment District and the Redevelopment Trust Fund are established after June 30, 2005, and Tax Increment Revenues are paid to the District pursuant to Section 3.3 below, the County and the City shall not be required to contribute Economic Incentive Payments to the District in any year in which the Tax Increment Revenues contributed to the District are at least equal to the debt service due on the Bonds for that year. Subject to Section 3.3.1. below, if the amount of Tax Increment Revenues contributed to the District in any year is less than the Annual Debt Service on the Bonds for that year and the Economic Incentive Payments have not been released pursuant to Section 3.4 below, the County and the City shall make Economic Incentive Payments to the District in an amount equal to the difference between the Annual Debt Service on the

Bonds for that year and the Tax Increment Revenues received by the District in that year, provided that the sum of the Tax Increment Revenues and the Economic Incentive Payments contributed to the District in any year shall not exceed the total Economic Incentive Payments due to the District in that year pursuant to Schedule I attached to this Agreement.

3.2.4. As a precondition to the obligation of the County and the City to pay Economic Incentive Payments under this Section 3.2, the County shall have received approval from the U.S. Department of Housing and Urban Development for the Section 108 Loan, or (i) the District or the Developer shall have made alternate arrangements satisfactory to the County and the City to finance the General Infrastructure Project, which may include, without limitation, a loan from a third party lender or the issuance of General Infrastructure Project Bonds, notes, bond anticipation notes or other indebtedness under the Indenture secured by Special Assessments on a parity basis with the Bonds, and (ii) the Developer shall have delivered an agreement in writing to the City and the County regarding certain job creation requirements, a copy of which is attached to this Agreement as Exhibit C.

3.2.5. Notwithstanding anything contained in this Agreement to the contrary, the aggregate amount of Economic Incentive Payments contributed by the County and the City to the District in each year shall not exceed Annual Debt Service for that year.

Section 3.3 Tax Increment Revenues.

3.3.1 The City and the County desire to establish the Community Redevelopment District and to cause the Community Redevelopment Agency to contribute Tax Increment Revenues to the District from the Redevelopment Trust Fund annually in an amount not to exceed Annual Debt Service on the Bonds. The County and the City shall cause the Community Redevelopment Agency to include such Tax Increment Revenue payments in the Community Redevelopment Agency's annual budget, and to require that such Tax Increment Revenues received by the Community Redevelopment Agency by January 1 of each year be transferred to the District no later than January 15 of the same year.

Notwithstanding anything to the contrary herein, the Community Redevelopment Agency shall not be obligated to contribute Tax Increment Revenues to the District until such time as Certificates of Occupancy have been issued for at least ninety percent (90%) of the Development Components for Phase I, one of which must be the retail component, as described in Schedule I of this Agreement. Upon the issuance of such Certificates of Occupancy, the Community Redevelopment Agency shall contribute Tax Increment Revenues to the District in accordance with this Section 3.3; provided, however, that the continued contribution of such Tax Increment Revenues is subject to the issuance of Certificates of Occupancy for at least ninety percent (90%) of the aggregate Development Components for Phases I and II by December 31, 2007, one of which must be, subject to the occurrence of an Event of Impossibility, the office component for Phase II. In the event that such Certificates of Occupancy are not issued by December 31, 2007, the Community Redevelopment Agency shall cease contributing Tax Increment Revenues until such time as such Certificates of Occupancy have been issued.

3.3.2 In the event that the amount of Tax Increment Revenues deposited in the Redevelopment Trust Fund are insufficient to pay debt service on the Bonds and the obligations of the City and the County to contribute Economic Incentive Payments have not been extinguished pursuant to Section 3.4, all of the Tax Increment Revenues on deposit in the Redevelopment Trust Fund shall be contributed to the District and the County and the City shall provide Economic Incentive Payments to the District in an amount necessary to satisfy such deficiency in accordance with Section 3.2 above.

3.3.3 Any Tax Increment Revenues on deposit in the Redevelopment Trust Fund in any calendar year in excess of the amounts due and transferred to the District under this Agreement in such year shall be refunded to the County and the City at the end of each fiscal year of the Community Redevelopment Agency on a pro-rata basis in accordance with the annual budget and the Redevelopment Act.

3.3.4 In no event shall the aggregate amount of payments of Tax Increment Revenues contributed to the District exceed the aggregate Annual Debt Service requirement on the Bonds. The obligation to transfer Tax Increment Revenues shall cease when the Bonds are no longer outstanding.

Section 3.4 Release of Economic Incentive Payment Obligations.

3.4.1 The obligations of the County and City to contribute Economic Incentive Payments to the District pursuant to Section 3.2 above shall be extinguished and replaced by the Community Redevelopment Agency's obligation to contribute Tax Increment Revenues pursuant to Section 3.3 above, if:

(A) In the event that the Community Redevelopment District and the Redevelopment Trust Fund are established no later than June 30, 2005, each of the following conditions is satisfied:

(1) this Agreement is amended to add the Community Redevelopment Agency as a party; and

(2) the District, the County and the City agree that the percentage of Tax Increment Revenues to be contributed to the Redevelopment Trust Fund by the County and the City in each calendar year while the Bonds are outstanding under the Indenture, shall be equal to the lesser of (i) the maximum percentage authorized by Section 163.387 of the Redevelopment Act, which currently is 95% (the "Maximum Percentage"), or (ii) a percentage less than the Maximum Percentage but sufficient to enable the Community Redevelopment Agency to pay to the District in each calendar year Tax Increment Revenues equal to the debt service on the Bonds in each such year for the remaining term of the Bonds; and

(3) the issuance of Certificates of Occupancy for at least ninety percent (90%) of the aggregate Development Components for Phases I and II, one of which must be the retail component for Phase I, and one of which must be, subject to the occurrence of an Event of Impossibility, the office component for Phase II; or

(B) In the event that the Community Redevelopment District and the Redevelopment Trust Fund are established after June 30, 2005, each of the following conditions is satisfied:

(1) the County and the City are current on all Economic Incentive Payments due under this Agreement;

(2) this Agreement is amended to add the Community Redevelopment Agency as a party;

(3) the District, the County and the City agree that the percentage of Tax Increment Revenues to be contributed to the Redevelopment Trust Fund by the County and the City in each calendar year while the Bonds are outstanding under the Indenture, shall be equal to the lesser of (i) the maximum percentage authorized by Section 163.387 of the Redevelopment Act, which currently is 95% (the "Maximum Percentage"), or (ii) a percentage less than the Maximum Percentage but sufficient to enable the Community Redevelopment Agency to pay to the District in each calendar year Tax Increment Revenues equal to the debt service on the Bonds in each such year for the remaining term of the Bonds;

(4) the Financial Advisor certifies in writing to the District and the Trustee for the Bonds, that funds on deposit in the Redevelopment Trust Fund in the current calendar year are sufficient to enable the Community Redevelopment Agency to pay to the District Tax Increment Revenues equal to the Maximum Annual Debt Service on the Bonds; and

(5) the issuance of Certificates of Occupancy for at least ninety percent (90%) of the aggregate Development Components for Phases I and II, one of which must be the retail component for Phase I, and one of which must be, subject to the occurrence of an Event of Impossibility, the office component for Phase II.

Upon satisfaction of the conditions under paragraph (A) or (B) above, the County's and the City's obligations to contribute Economic Incentive Payments under this Agreement shall terminate.

Section 3.5 Issuance of Bonds.

3.5.1 The District may issue Bonds in one or more series to pay the capital costs of the Parking Garage Project including all costs and expenses related to the issuance of the Bonds; provided, however, that the obligations of the County and the City to contribute Economic Incentive Payments and the obligation of the Community Redevelopment Agency to contribute Tax Increment Revenues in a given year shall not exceed Annual Debt Service on the Bonds in such year. The District may also issue General Infrastructure Project Bonds to finance the cost of the General Infrastructure Project and all costs and expenses related thereto in the event that the County Loan is not provided to the District.

3.5.2 The District may issue additional refunding Bonds provided the maturity on the refunding Bonds does not exceed the maturity on the refunded Bonds and the aggregate debt service on the refunding Bonds is equal to, or less than, the debt service on the refunded Bonds.

3.5.3 The District may, subject to Subsection 3.5.1 above, issue completion bonds under the Indenture to pay costs that exceed \$51,204,019, the estimated cost of the Parking Garage Project to be financed through the issuance of the Bonds. The County and the City shall not be obligated to contribute Economic Incentive Payments and the Community Redevelopment Agency shall not be obligated to contribute Tax Increment Revenues to pay debt service on such completion bonds.

ARTICLE IV COVENANT TO BUDGET AND APPROPRIATE

Section 4.1. The City and the County each covenant and agree to appropriate in their respective annual budgets, by amendment, if necessary, from Non-Ad Valorem Revenues lawfully available in each Fiscal Year, amounts sufficient to pay the Economic Incentive Payments when due pursuant to this Agreement, provided, that such Economic Incentive Payments shall not exceed the debt service on the Bonds in any Fiscal Year, less the amount of Tax Increment Revenues paid to the District in such year. Such covenant and agreement on the part of the City and the County to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent Economic Incentive Payments pursuant to this Agreement remain unpaid, and shall continue until such Economic Incentive Payments are paid, provided, however, such covenant and agreement shall terminate once the obligations of the County and the City to make Economic Incentive Payments are extinguished pursuant to Section 3.4. Notwithstanding the foregoing covenant of the City and the County, the City and the County do not covenant to maintain any services or programs, now provided or maintained by either the City or the County, which generate Non-Ad Valorem Revenues.

Section 4.2. Such covenant to budget and appropriate does not create any lien upon or pledge of Non-Ad Valorem Revenues, nor does it preclude the County or the City from pledging in the future their Non-Ad Valorem Revenues, nor does it require the City or the County to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the District a prior claim on the Non-Ad Valorem Revenues of the City and the County as opposed to claims of general creditors of the City or the County. Such covenant of the City and the County to appropriate Non-Ad Valorem Revenues is subject in all respects to the payment of any obligations secured by a pledge of Non-Ad Valorem Revenues prior to or subsequent to the date of this Agreement (including the payment of debt service on bonds and other debt instruments). However, the covenant to budget and appropriate in the City's and the County's general annual budget for the purposes and in the manner stated in this Agreement shall have the effect of making available in the manner described in this Agreement, Non-Ad Valorem Revenues and placing on the City and the County a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet their respective obligations of making the Economic Incentive Payments, to the extent required by this Agreement, subject, however, in all respects to the restrictions of Section 166.241, Florida Statutes, and Section 129.07, Florida Statutes, which provide, in part,

that the governing body of each such municipality and county, respectively, make appropriations for each Fiscal Year which, in any one fiscal year, shall not exceed the amount to be received from taxation or other revenue sources, and subject further, to payments for services and programs which are essential public purposes affecting the health, welfare and safety of the inhabitants of the County and the City or which are legally mandated by applicable law.

Section 4.3. The Bonds shall not constitute a general obligation of the City, the County or the District within the meaning of any constitutional or statutory provision or limitation or a pledge of the City's, the County's or the District's full faith and credit, but shall be secured by and payable as to principal, premium, if any, and interest solely from the "Pledged Revenues" as defined in the Indenture, including primarily the Special Assessments, the Economic Incentive Payments, and the Tax Increment Revenues in the manner described in the Indenture.

ARTICLE V PUBLIC INFRASTRUCTURE IMPROVEMENTS

Section 5.1. Roadways and Traffic Signals. As part of the Project, and pursuant to the Act, the District shall fund and construct new roadways within the boundaries of the District and fund and improve certain existing roadways outside the boundaries of the District. In particular, the District shall fund and construct certain new roadways within the boundaries of the District. They are East Coast Avenue (NE 35th Street to NE 30th Street); NE 36th Street (East Coast Avenue to North Miami Avenue); Midtown Boulevard (NE 36th Street to NE 29th Street); NE 32nd Street (East Coast Avenue to North Miami Avenue); NE 34th Street (East Coast Avenue to North Miami Avenue); NE 31st Street (Midtown Boulevard to North Miami Avenue); Buena Vista Avenue (NE 36th Street to NE 32nd Street); NE 35th Street (East Coast Avenue to Midtown Boulevard); NE 30th Street (East Coast Avenue to Midtown Boulevard) (collectively, the "New Roadways"). Except for East Coast Avenue, which shall be owned and maintained by the District, the New Roadways shall be constructed within public rights of way.

The District shall also fund and improve certain roadways, which are located outside the boundaries of the District. They are NE 29th Street (between East Coast Avenue and North Miami Avenue) and NE 34th Street (between the District's eastern boundary line and NE 2nd Avenue) both of which are owned and operated by the City (the "Improved City Roadways"); and North Miami Avenue (between NE 29th Avenue and NE 36th Street) and NE 2nd Avenue (approximately 50' north and south of the intersection), both of which are owned and operated by the County (the "Improved County Roadways"). The improvements to the Improved County Roadways and the Improved City Roadways shall be within public rights of way of the County and the City, respectively. See Exhibit B prepared by the District's Consulting Engineer for a more complete description of the roadway improvements.

The District shall also fund and construct three new traffic signals at North Miami Avenue & NE 34th Street; NE 2nd Avenue and NE 34th Street; and Buena Vista Avenue and NE 36th Street.

The District shall agree to fund the costs of enhanced maintenance for the roadway improvements pursuant to a subsequent agreement to be entered into by the City and the District.

Section 5.2. Public Spaces. As part of the Project, and pursuant to the Act, the District shall also fund and construct public spaces, which will be owned and maintained by the District. The spaces are generally described as three public squares on the east edge of Midtown Boulevard located at the intersections of contiguous development parcels; one public space located on the west side of Buena Vista Avenue between NE 32nd Street and NE 34th Street; one public space with a fountain located in the block abutting NE 36th Street between Buena Vista Avenue and Midtown Boulevard; and two or three linear parks along the west side of Midtown Boulevard. The public spaces may consist of landscaping, fountains, benches, parking, decorative lighting, pavers and other appurtenances.

ARTICLE VI GENERAL PROVISIONS

Section 6.1 Term of Agreement. The term of this Agreement shall expire on the date that the Bonds and the General Infrastructure Project Bonds, if any, are no longer outstanding under the Indenture and the County Loan has been satisfied (the “Term”). The obligation of the City and the County to make Economic Incentive Payments and the obligation of the Community Redevelopment Agency to make transfers of Tax Increment Revenues shall cease on the date the Bonds are no longer outstanding under the Indenture, even if such date is earlier than the end of the Term, provided, however, that the obligations of the County and the City to make Economic Incentive Payments may cease earlier pursuant to Section 3.4.

Section 6.2. Execution In Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6.3. Limitation on Governmental Liability. Nothing in this Agreement shall be deemed a waiver of immunity limits of liability of either the City, the County or the District beyond any statutory limited waiver of immunity or limits of liability contained in Section 768.28, Florida Statutes, as amended, or other statute. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

No covenant, stipulation, obligation or agreement contained in this Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the governing body or agent or employee of the County, the City or the District in its, his or their individual capacity, and neither the members of the governing body of the County, the City or the District nor any official executing this Agreement shall be liable personally or shall be subject to any accountability for reason of the execution by the County, the City or the District of this Agreement or any related act.

Section 6.4. Default. Each of the parties shall give the other parties written notice of any default under this Agreement and shall allow the defaulting party 30 days from the date of its receipt of such notice within which to cure any such default or, if it cannot be cured within the 30 days, to commence and thereafter diligently pursue to completion good faith efforts to effect such cure and to thereafter notify the other parties of the actual cure of any such default.

Section 6.5. Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows.

If to the City:	The City of Miami, Florida 3500 Pan American Drive Miami, Florida 33133 Attention: City Manager
With Copy to:	City Attorney's Office The City of Miami, Florida 444 S.W. 2 nd Avenue, Suite 945 Miami, Florida 33130 Attention: City Attorney
If to the County:	Miami-Dade County, Florida Stephen P. Clark Center 111 N.W. 1 st Street, Suite 2910 Miami, Florida 33128 Attention: County Manager
With a Copy to:	Office of the County Attorney Miami-Dade County, Florida Stephen P. Clark Center 111 N.W. 1 st Street, Suite 2810 Miami, Florida 33128 Attention: County Attorney

If to the District: Midtown Miami Community Development District
c/o Severn Trent Services Inc.
210 N. University Drive, Suite 802
Coral Springs, Florida 33071
Attention: District Manager

With a Copy to: Billing, Cochran, Heath, Lyles, Mauro &
Anderson, P.A.
888 S.E. 3rd Avenue, Suite 301
Fort Lauderdale, Florida 33316
Attn: Dennis Lyles

Section 6.6. Assignment or Transfer. Except with respect to the District's pledge of Economic Incentive Payments and Tax Increment Revenues to the Trustee under the Indenture to secure the Bonds a party may not assign or transfer its rights or obligations under this Agreement to another unit of local government, political subdivision or agency of the State of Florida without the prior written consent of the other party or to a private party or entity.

Section 6.7. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the City, the County, the District, and their respective successors.

Section 6.8. Amendment and Waivers. Any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed to by the District, the City Manager and the County Manager; provided, however, that any amendment or waiver that is material or results in a substantive change in the County's or the City's obligations under this Agreement shall be subject to the approval of the County Commission or the City Commission, as the case may be.

Section 6.9. Filing. After approval of this Agreement by the respective governing bodies of the City, the County, and the District and its execution by the duly qualified and authorized officers of each of the parties, the District shall cause this Agreement to be filed with the Clerk of the Circuit Court of Miami-Dade County, Florida, in accordance with the requirements of Section 163.01(11), Florida Statutes.

Section 6.10. Applicable Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the State of Florida. In any action, in equity or law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the County.

Section 6.11. Severability. If any part of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable part shall be deemed severable and the remaining parts of this Agreement shall continue in full force and effect provided that the rights and obligations of the parties are not materially prejudiced and the intentions of the parties can continue to be effected.

Section 6.12. Entire Agreement. This instrument and all the attached exhibits and schedules constitute the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City, the County, and the District have each caused this Agreement to be executed and delivered as of the date indicated above:

(SEAL)

MIAMI-DADE COUNTY, FLORIDA

County Manager

ATTEST:

County Clerk

(SEAL)

THE CITY OF MIAMI, FLORIDA

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM AND
CORRECTNESS:

City Attorney

(SEAL)

MIDTOWN MIAMI COMMUNITY
DEVELOPMENT DISTRICT

Chairman, Board of Supervisors

ATTEST:

Secretary, Board of Supervisors

needed at the intersections: North side of NE 32nd St., both the north and south sides of NE 34 St. and the South side of NE 36th St., respectively.

Midtown Blvd. The improvements consist of constructing approximately 2,450 ft. of new 2-lane, urban roadway from NE 29th St. to NE 36th St. The roadway will have on-road, municipal parallel parking on both its east and west sides excluding approximately 50-100 ft. of clearance as needed on both sides of each of the respective intersections as needed: NE 29th St. (North side only), NE 31st St., NE 32nd St., NE 34th St. and NE 36th St. (South side only).

East Coast Ave. The improvements consist of constructing approximately 1,800 ft. of 2-lane urban, roadway from NE 30th St. to NE 35th St. The roadway will include on-road, private/loading parallel parking on the West side only. The parallel parking will run along the entire length of the avenue, and will provide approximately 50-100 ft. of clearance as needed on both sides of each respective street as needed: NE 30th St. (North side only), NE 32nd St., NE 34th St. and NE 35th St. (South side only).

NE 30th St. The improvements will consist of constructing approximately 350 ft. of urban, 2-lane roadway from NE 1st Pl. to E. Coast Ave. The roadway will include on-road, municipal parallel parking on both its north and south sides, providing approximately 75-100 ft. of clearance as needed at each of the respective intersections: NE 1st Pl and E. Coast Ave.

NE 31st St. The improvements will consist of constructing approximately 600 ft. of urban, 2-lane roadway from N. Miami Ave. to NE 1st Pl. The roadway will include on-road, municipal parallel parking on both its north and south sides, providing approximately 50-100 ft. of clearance as needed at each of the respective intersections: N. Miami Ave. and NE 1st Pl.

NE 35th St. The improvements will consist of constructing approximately 375 ft. of urban, 2-lane roadway from NE 1st Pl. to E. Coast Ave. The roadway will include on-road, municipal parallel parking on both its north and south sides, providing approximately 75 ft. of clearance at each of the respective intersections: NE 1st Pl and E. Coast Ave.

NE 32nd St. The improvements will consist of constructing approximately 1,050 ft. of urban, 2-lane roadway from N. Miami Ave. to E. Coast Ave. The roadway will include on-road,

municipal parallel parking on both its north and south sides, providing approximately 50-100 ft. of clearance as needed at each of the respective intersections: East side of N. Miami Ave., East and West sides of Market St. and NE 1st Pl., and West side of E. Coast Ave.

NE 34th St. The improvements will consist of constructing approximately 1,175 ft. of urban, 2-lane roadway from N. Miami Ave. to E. Coast Ave. The roadway will include on-road, municipal parallel parking on both its north and south sides along its length, providing approximately 50-100 ft. of clearance as needed at each of the respective intersections: East side of N. Miami Ave., East and West sides of Market St. and NE 1st Pl., and West side of E. Coast Ave. In the center of the right-of-way there will be medians along the length of the roadway, providing approximately 50-75 ft. of clearance as needed at each of the respective intersections: East side of N. Miami Ave., East and West sides of Market St. and NE 1st Pl., and West side of E. Coast Ave.

Schedule I

Economic Incentive Payments (E.I.P.)

Development Components By Phases

Phase I Components must be issued a Certificate of Occupancy no later than December 31, 2006

	Sq.Ft./ Units	Devp. Unit	E. I. P. per Devp. Unit Phase C.O.	E.I.P. Per C.O. Devp.Component	Debt Service
Retail	600,000.00	600.00			
Parking & Plaza	2,914.00	258.56			
Condo Twr #1 w/ Rest.-Bar (374,500sq. Ft.)	374,500.00	374.50			
		<u>1,233.06</u>	\$2,075.87	\$2,559,680.00	\$2,559,680.00
90% CO Issued*		1,109.76	\$2,306.52	\$2,559,680.00	

Phase II Components must be issued a Certificate of Occupancy no later than December 31, 2007

Hotel/Spa (235,000 sq. ft.)	235,000.00	235.00			
Apartments (292,000 Sq. Ft.)	292,000.00	292.00			
Office	150,000.00	150.00			
Condo Twr #2 w/ Rest.-Bar (395,500 sq. ft.)	395,500.00	395.50			
Total Phase II		<u>1,072.50</u>			
Cumulative Phase II		2,305.56	\$2,602.12	\$5,999,360.00	\$5,999,360.00
90% CO Issued**		2,075.01	\$2,891.25	\$5,999,360.00	

Phase III Components

Condo Twr #3 w/Rest.-Bar (395,500 sq. ft.)	395,000.00	395.00			
Condo Twr #4 w/Rest.-Bar (395,500 sq. ft.)	395,000.00	395.00			
Total Phase III		<u>790.00</u>			
Cumulative Phase III		3,095.56	\$1,937.53	\$5,997,760.00	\$5,997,760.00

Phase IV Components

Condo Twr #5 w/Rest.-Bar (395,500 sq. ft.)	395,000.00	395.00			
Total Phase IV		<u>395.00</u>			
Cumulative Phase IV		3,490.56	\$1,718.05	\$5,996,960.00	\$5,996,960.00

Phase V Components

Condo Twr #6 w/Rest.-Bar (395,500 sq. ft.)	395,000.00	395.00			
Condo Twr #7 w/Rest.-Bar (395,500 sq. ft.)	395,000.00	395.00			
Total Phase V		<u>790.00</u>			
Cumulative Phase V		4,280.56	\$1,400.89	\$5,996,610.00	\$5,996,610.00

Phase VI Components

Condo Twr #8 w/Rest.-Bar (395,500 sq. ft.)	395,000.00	395.00			
Total Phase VI		<u>395.00</u>			
Cumulative Phase VI		4,675.56	\$1,282.49	\$5,996,360.00	\$5,996,360.00
Total Cumulative EIP				<u>\$32,546,730.00</u>	
Total Cumulative Debt Service					<u>\$32,546,730.00</u>

**Upon Construction
Completion of Phases**

Year	Devp. Unit	E.I.P. per Devp.Comp.	Total E.I.P per yr.	Total EIP During Const.
2008-2013			\$32,546,730.00	
2014	4745.52	\$1,263.48	\$5,995,860.00	
2015	4745.52	\$1,264.30	\$5,999,760.00	
2016	4745.52	\$1,263.79	\$5,997,360.00	
2017	4745.52	\$1,264.07	\$5,998,660.00	
2018	4745.52	\$1,263.92	\$5,997,960.00	
2019	4745.52	\$1,263.28	\$5,994,910.00	
2020	4745.52	\$1,264.17	\$5,999,160.00	
2021	4745.52	\$1,264.28	\$5,999,660.00	
2022	4745.52	\$1,263.52	\$5,996,060.00	
2023	4745.52	\$1,263.93	\$5,998,010.00	
2024	4745.52	\$1,264.24	\$5,999,460.00	
2025	4745.52	\$1,263.24	\$5,994,710.00	
2026	4745.52	\$1,264.02	\$5,998,410.00	
2027	4745.52	\$1,264.17	\$5,999,160.00	
2028	4745.52	\$1,263.56	\$5,996,260.00	
2029	4745.52	\$1,264.14	\$5,999,010.00	
2030	4745.52	\$1,263.51	\$5,996,010.00	
2031	4745.52	\$1,263.63	\$5,996,560.00	
2032	4745.52	\$1,263.14	\$5,994,260.00	
2033	4745.52	\$1,263.94	\$5,998,060.00	
2034	4745.52	\$1,263.55	\$5,996,210.00	
2035	4745.52	\$1,263.86	\$5,997,660.00	
2036	4745.52	\$1,263.44	\$5,995,660.00	
2037			<u>-\$250,940.00</u>	
Total Net Debt Service			\$170,234,620.00	

Assumptions & Sources:

1. Source for Development Components, Size and Value were obtained from March 24, 2004 Development Components, Schedule and Values. (Briggs & Fishkind), ERUs have been renamed Development Units, Total Just Value has been renamed Improvements.
2. Office/Hotel/Spa Land value was split 50/50 and incorporated to the \$ amount of improvements for the Office and Hotel.
3. Debt Service has been updated to reflect April 22, 2004 revisions by BOA.
4. Payment for Phase II will revert to Phase I payment amount if less than 90% of the phase is not issued a Certificate of Occupancy in accordance to Schedule. Phases I & II require 90% of the development units to have received Certificates of Occupancy, otherwise only Phase I payment amount will made throughout the maturity of the Bond.
5. Methodology for ERU developed by Dr. Fishkind did not include ERUs for the parking garage and plaza. We estimated the Devp. (ERU) units for that component using the following analysis: Total cost of development for Retail, Anchor Tenant & Retailers FF&E / by Sq. Ft. of Retail to arrive at cost per sq. ft. multiplied by # of sq. ft in ERU (1000). Total cost of Parking & Plaza / number of parking spaces to arrive at a cost per parking unit. Divided cost Retail ERU by cost of parking unit, obtaining the resulting 11.27parking units to 1 Retail unit.
6. Type of Development Units may be substituted as defined in the Schedule as long as the Cumulative Phase Totals are equal to or greater than the amounts shown on the schedule for each phase. This provision does not apply to Retail Development Units.
7. Office, as described above, must be issued a Certificate of Occupancy no later than December 31, 2007, unless State Statute and or environmental constraints prevent developer from acquiring Certificate of Occupancy by the aforementioned date.
8. Principal Amount of Bond: \$76,705,000. Net Debt Service on the Bonds must be equal to or less than the yearly amounts shown on this Schedule.

Notes:

- * Total EIP Payment of \$2,559,680.00 for Phase I Component will be made if at least 90% of the Total Phase Development Units are issued a certificate of Occupancy.
- ** Total EIP Payment of \$5,999,360. for Phase II Components will be made if at least 90% of the Total Phase Development Units are issued a certificate of Occupancy.

a) Economic Incentive Payment per development unit will be adjusted incrementally to allow for delivery of units between 91 and 99% for Phase I and Phase II.

EXHIBIT A

Part 1

The following table lists the components and the estimated cost of the Project:

<u>Component</u>	<u>Estimated Cost</u>
Roadways	\$5,597,737
Water/Sewer	2,290,822
Drainage	2,791,286
Streetscape/Landscape	6,387,668
Irrigation	510,013
Plaza #P1	3,617,019
Overall Improvements	5,136,166
Parking Garages	45,337,889
Midblock Plaza & Misc. Public Improvements	<u>5,866,130</u>
Total	<u>\$77,534,730</u>

Part 2

The following table lists the components and the estimated cost of the Parking Garage Project:

<u>Component</u>	<u>Estimated Cost</u>
Parking Garages	\$45,337,889
Midblock Plaza & Misc. Public Improvements	<u>5,866,130</u>
Total	<u>\$51,204,019</u>

Part 3

The following table lists the components and the estimated cost of the General Infrastructure Project:

<u>Component</u>	<u>Estimated Cost</u>
Roadways	\$5,597,737
Water/Sewer	2,290,822
Drainage	2,791,286
Streetscape/Landscape	6,387,668
Irrigation	510,013
Plaza #P1	3,617,019
Overall Improvements	5,136,166
Total	<u>\$26,330,711*</u>

* The District expects to finance a portion of the General Infrastructure Project with certain grant monies contributed by various governmental entities.

EXHIBIT B

Roadway Improvements

Roadway Improvements. All roads will be designed and constructed in accordance with all applicable jurisdictional agency standards. (i.e. Miami-Dade County, City of Miami or Florida Department of Transportation (FDOT). Roadway construction will include sub-grade base, curbing, sidewalks, signage and striping. Roadway lighting will be constructed along the roads within the District.

Roadways outside the Boundary of the District (Off-site)

N. Miami Ave. The improvements consist of reconstructing approximately 1,350 ft. of existing, 4-lane urban roadway. The proposed center medians will be located between NE 32 street and NE 34 street. There will be sections of on-road, municipal parallel parking on the East side of the right-of-way located: between NE 32th St. and NE 35st St. with a clearance of approximately 50 ft. from each respective intersection. There will be dedicated left turn lanes where feasible from NE 29th street to NE 36th street.

NE 36th St. This is a state road. The improvements consist of reconstructing approximately 2,100 ft. of existing, 4-lane urban roadway. The proposed center medians will be located between where feasible.

NE 29th St. (West of R/R). The improvements consist of reconstructing approximately 800 ft. of existing, 4-lane urban roadway. Where feasible there will be municipal parallel parking on both sides of the road.

Roadways inside the Boundary of the District (On-site)

Buena Vista Ave. The improvements consist of constructing approximately 1400 ft. of new 2-lane, urban roadway. The road, which runs from NE 32nd St. to NE 36th St., will have on-road, municipal parallel parking on both its East and West sides. The parallel parking on both sides will run on the entirety of the street, but will provide approximately 50-100 ft. of clearance as

THE DRAFT
CITY OF MIAMI
AGENDA ITEM
FOR 4/29/04
REGARDING
THE INTERLOCAL
AGREEMENT
BETWEEN THE
COUNTY, THE CITY
AND MIDTOWN MIAMI CDC

April 23, 2004

The Honorable Mayor and Members
Of the City Commission

Joe Arriola
City Manager

Resolution regarding Interlocal Agreement
between City of Miami, Miami-Dade
County and Midtown Miami CDD, and a
“Finding of Necessity Study” for the
creation of a Community Redevelopment
District.

RECOMMENDATION

It is respectfully recommended that the City Commission adopt the attached resolution authorizing the City Manager to execute an Interlocal Agreement (“ILA”) in substantially the attached form by and between the City of Miami (“City”), Miami-Dade County (“County”) and Midtown Miami Community Development District (“CDD”) (collectively, the “Parties”) for the Midtown Miami project previously supported by the Commission through Resolution R-03-1135. The ILA sets forth the understanding between the Parties with respect to the financial contributions by the City and the County to the District which are to be used for the payment of the debt service on District bonds issued to fund the costs of certain public infrastructure improvements. The resolution further authorizes the City Manager to prepare a “Finding of Necessity Study” pursuant to Chapter 163, Florida Statutes, for the creation of a Community Redevelopment District.

BACKGROUND

The “Midtown Miami” project entails three often-utilized elements of economic development; residential, office, and commercial development. The 56-acre site, formerly known as the Buena Vista Rail Yards, is located in the Wynwood/Buena Vista neighborhood and is in close proximity to Little Haiti, Overtown, Allapattah, Design District, and the Biscayne Boulevard corridor. This parcel was identified as a catalyst for redevelopment within the FEC Corridor Strategic Redevelopment Plan (the “FEC Plan”). The FEC Plan was adopted by the City Commission in November of 2002.

It is anticipated that approximately \$303 million will be invested in the first phase of the development scheduled to be completed in 2006 and an additional \$197 million in the second phase to be completed in 2007. The overall development will be constructed in six incremental phases and is expected to include a 600,000 square foot retail shopping center, over 400 apartments, several restaurants/bars, two public plazas, 2,900 integrated and on-grade parking spaces, an office tower, a hotel and spa, and eight condominium towers having 3,000 units and 148,000 square feet of retail space. The aggregate construction cost of is estimated to be nearly \$1.2 billion. Biscayne Development LLC (“Biscayne”) and Developers Diversified Realty Corporation (“DDR”) or their affiliate, will be taking on this massive development venture.

DDR is expected to develop the retail shopping center called “Shops at Midtown” and Biscayne will develop the residential towers, known as “Midtown Miami”.

FINANCING PLAN

The site has no street, water, sewer or other infrastructure in place. Total infrastructure costs are estimated to be \$106 million. In order to facilitate public financing assistance the developers have formed Midtown Miami Community Development District bounded solely by the 56- acre site (the “CDD”). The City Commission supported creation of the CDD on November 13, 2003.

The developers of this site have requested public financing assistance for infrastructure costs up to \$76.0 million (of the total \$106 million) from the City and the County. Approximately \$51 million will fund hard costs for 2,900 on-grade and integrated parking spaces (“Parking”) and a public plaza (the “Midtown Plaza) plus \$25 million for debt service, reserves and other costs associated with the bond issuance.

The CDD will issue bonds, through a public financing, to fund the Parking and Midtown Plaza components of the infrastructure. The bonds are proposed to be repaid through economic incentive payments (“EIP”) from the City of Miami and Miami-Dade County, tax increment revenues and, if needed, Special Assessments to property owners.

All other infrastructure, excluding Parking and the Midtown Plaza (“Other Infrastructure”) will consist of roadways, water and sewer improvements, drainage and irrigation, streetscape and landscape and public plazas. Other Infrastructure is estimated to cost \$30 million and will be paid for by property owners through Special Assessments or will be satisfied by other loans and public grants (from entities other than the City) yet to be finalized. Grant funding sources for Other Infrastructure may include public grants, such as a \$2 million EDA grant and a \$2.5m FDOT grant, an \$800 thousand loan from the South Florida Regional Planning Council, and a \$400 thousand (BEDI) loan from Miami-Dade County.

A Section 108 Loan Guarantee was recently approved by the Board of County Commission and may finance up to \$20.6 million of Other Infrastructure. The Section 108 loan will be paid through Special Assessments against the property owners in the CDD (“Special Assessments”). In the event the Section 108 Loan is not secured or used by the developers, the CDD will issue bonds to fund Other Infrastructure

STRUCTURE OF BONDS

As noted above, Bonds will be issued by the CDD in an aggregate principal amount estimated to be \$76 million. The face amount of Bonds is estimated to exceed construction costs of Parking and the Midtown Plaza by \$25 million due to capitalization of interest during the construction period (three years) of Parking and the Midtown Plaza, bond issuance costs and interest reserves.

Bonds will be secured by EIP, tax increment revenues and Special Assessments (the "Bonds"). The pledge of Special Assessments will be on parity with the Section 108 Loan or any other borrowing used to fund the \$30 million of infrastructure costs other than Parking and the Midtown Plaza

The Bonds will be structured for interest only payments for the first three years, to be paid out of Capitalized Interest estimated at \$17 million. Total debt service (principal and interest) on the Bonds is estimated to be \$170 million through 2037. It should be noted that the actual principal amount of the Bonds will be determined after they are priced and sold. Debt service on the Bonds will be paid through EIP (City and County), tax increment revenues and, if needed, Special Assessments to the property owners. Special Assessments would be required in the event that construction of the development does not occur at the pace currently planned or if EIP and or tax increment revenue are not sufficient to meet annual debt service.

EIP and/or tax increment revenues have been structured so that there will be no impact on the City's general fund should construction not proceed as scheduled. The failure of the developers to deliver completed units in time to generate real property tax revenues sufficient to pay debt service on bonds, will result in a Special Assessment on property owners.

The Bonds will be issued in the name of the CDD and will not be issued based upon the credit or reputation of the County or the City. A default on the Bonds would not have an impact on the City's or County's credit standing in the markets.

The attached ILA proposes that the City and County provide EIP and/or tax increment revenues solely for the debt service on the Bonds. Payments of EIP and/or tax increment revenues are directly related to the completion of construction, in particular the approximate \$500 million of total construction in the first two phases.

The City estimates that, if the entire project is constructed as currently planned and tax values increase at 3% per year, the City will receive incremental tax revenues of at least \$315 million, after debt service, from 2008 through 2037. The computations were derived conservatively, using construction costs alone, rather than the estimated values of properties upon completion. At the very worst, assuming the project is stopped after completion of phases 1 and 2 (approximately \$500 million of construction costs) and nothing else is built on the remaining land, the City's estimated tax revenues for the 2008-2037 period of \$198,000 would cover the City's portion of debt service by a 2 to 1 ratio. These computations do not take into consideration the incremental tax base resulting from the impact of a redevelopment project of this size on the surrounding neighborhood or other revenues such as personal property taxes, sales taxes and parking surcharge.

INTERLOCAL AGREEMENT

The attached legislation requests your approval for the City to enter into the ILA with the County and CDD in substantially the form attached as Exhibit "A" to the resolution. Its purpose is to set forth the obligations of the CDD to provide financing for the Project and the conditions under which the City and County shall make EIP to the CDD including the method by which the amounts shall be calculated and sources used to fund City and County payments under the agreement.

The City and County shall make EIP to the District annually based on Completed Development Components (see Schedule I of ILA). The City's Share of EIP is approximately 60% ("City Share") and the County's Share is approximately 40% ("County Share"). The actual amount due in any year shall be determined in accordance with Schedule I of the ILA which will be updated to reflect actual debt service upon sale of the Bonds. The City and County, through the ILA, have agreed to budget and appropriate from non ad valorem revenues sufficient funds to meet their obligations for the payment of the above-described EIP. In the event that the City's and County's EIP payments for completed components are insufficient to cover the debt service, then the CDD property owners will be responsible for the deficiency. This situation would occur should development of the first two phases take longer than currently planned.

The ILA requires that the City and the County take all actions necessary to cause a community redevelopment agency to establish a community redevelopment district ("CRD"), the boundaries of which would be limited to the boundaries of the CDD. Upon creation of the CRD, EIP would be reduced to the extent of tax increment revenues; however, in no event would the sum of EIP and tax increment revenues exceed amounts that would have been paid by the City and the County had the CRD never been created.

FISCAL IMPACT ANALYSIS

Over the 30-year term of the CDD bond, the maximum debt service in any year is projected to be \$6 million of which the City's Share is approximately 60%, or \$3.6 million, and the County's Share is approximately 40%, or \$2.4 million. If all development components are constructed and completed according to the established schedule, build-out is expected to occur in 2011.

The City estimates that, if the entire project is constructed as currently planned and tax values increase at 3% per year, the City will receive incremental tax revenues of \$316 million, after debt service, from 2008 through 2037. The computations were derived conservatively, using construction costs alone, rather than the estimated values of properties upon completion. At the very worst, assuming the project is stopped after completion of phases 1 and 2 (approximately \$500 million of construction costs) and nothing else is built on the remaining land, the City's estimated tax revenues for the 2008-2037 period of \$198,000 would cover the City's portion of debt service by a 2 to 1 ratio. These computations do not take into consideration the

incremental tax base resulting from the impact of a redevelopment project of this size on the surrounding neighborhood or any other additional revenues to the city such as personal property taxes, parking surcharge, or sales taxes.

In the event that the development components are delayed, or not constructed at all, the City's and County's EIP against the debt service on the Bond would be reduced, and any shortfall to repay the debt service will be passed through to the property owners in the form of assessments. After the CRD is formed, any development components in Phases 1 and 2 not completed on schedule may result in insufficient incremental revenues to meet annual debt service requirements, at which time the property owners would be assessed for any shortfalls.

OTHER BENEFITS

A condition precedent to signing the ILA will require the Developers to establish a goal of 51% Minority participation verified through quarterly reports.

During the seven year construction period for the project, it is anticipated that over 700 full-time jobs will be created. To date 85% of labor related contracts, totaling nearly \$18 million, have gone to minority contractors.

The Developers have also partnered with organizations such as the Puerto Rican Chamber of Commerce and South Florida Workforce as part of their community outreach for job development. In addition, the Developers have also hired 30 people from the Wynwood community to fill security-related positions. These newly created positions include medical benefits and accrual of vacation days.

Upon completion of the development it is anticipated that over 2500 permanent full-time jobs will be created from entry level to senior positions. Resumes and applications obtained through the Developer's community outreach efforts will be provided to tenants occupying the retail and office components. These newly created positions will pay more than the average historical per-capita income of \$9,127 for the area as reported by Census data.

In conclusion, this project implements recommendations found in the Commission adopted FEC Corridor Strategic Redevelopment Plan. The purpose of the plan was to develop a rational blueprint for the economic revitalization of one of the most economically challenged areas of the City.



**City of Miami
Legislation
Resolution**

City Hall
3500 Pan American
Drive
Miami, FL 33133
www.ci.miami.fl.us

File Number:

Final Action Date:

A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTER-LOCAL AGREEMENT ("AGREEMENT") IDENTIFIED AS EXHIBIT "A", IN SUBSTANTIALLY THE ATTACHED FORM, WITH MIAMI DADE COUNTY, FLORIDA, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA (THE COUNTY) AND THE MIDTOWN MIAMI COMMUNITY DEVELOPMENT DISTRICT ("THE DISTRICT") A LOCAL UNIT OF SPECIAL PURPOSE GOVERNMENT, BOUNDARIES OF WHICH ARE IDENTIFIED IN EXHIBIT ("B"), FURTHER AUTHORIZING THE CITY MANAGER TO PREPARE A "FINDING OF NECESSITY STUDY" FOR THE DISTRICT PURSUANT TO REQUIREMENTS OF CHAPTER 163, FLORIDA STATUTES FOR THE CREATION OF A COMMUNITY REDEVELOPMENT AGENCY.

WHEREAS, On November, 13, 2003, the City of Miami Commission adopted Resolution R-03-1135 supporting the petition submitted by Biscayne Development Partners, LLC to the Miami-Dade County Commission for the creation of the Midtown Miami Community Development District; and

WHEREAS, the Midtown Miami Community Development District was created by the County pursuant to Ordinance No. 03-271 adopted by the Board of County Commissioners on December 16, 2003, for the purpose of delivering certain community development services and facilities within and outside the boundaries of the District; and

WHEREAS, the District has decided to undertake the design, acquisition and construction of certain roadways (within and outside the boundaries of the District), water and sewer facilities, a storm-water management system, streetscape and landscape, and parking garages as described in the Agreement; and

WHEREAS, it is the purpose and intent of this Agreement to permit and authorize the City, the County and the District to make the most efficient use of their respective powers, resources, authority and capabilities by enabling them to cooperate on the basis of mutual advantage and to achieve the results provided for in this Agreement pursuant to Section 163.01, Florida Statutes, known as the Florida Interlocal Cooperation Act of 1969 (the "Cooperation Act"); and

WHEREAS, Section 163.01(5)(f) of the Cooperation Act provides that an Interlocal agreement may contain a method or formula for equitably providing for and allocating and financing capital and operating costs for capital projects and for the payment of debt service, including establishment of reserves on bonds, on the basis of the amount of benefits received or conferred by each participating government; and

WHEREAS, the Development is expected to stimulate economic development and growth within the City and the County benefiting their citizens and to generate significant revenues for the City and the County, including without limitation, increased ad valorem tax revenue, sales tax revenue, gas tax revenue, tourist or convention development tax revenue and other fees and charges related to the Development; and

WHEREAS, in light of these anticipated significant material and fiscal benefits to be received and enjoyed by the City and the County and their respective residents as a result of the development, and in consideration for the performance by the District of its obligations described in the Agreement, it is fitting for the City and the County to participate in the development of the Project, by equitably apportioning the burden of the costs of the Project through the use of Economic Incentive Payments, as described in the Agreement; and

WHEREAS, in the City's desire to revitalize the area, the City Manager is authorized to prepare a Finding of Necessity Study pursuant to requirements of Chapter 163, Florida Statutes for the creation of a Community Redevelopment District; and

WHEREAS, in the event that the Community Redevelopment District is established, the City and the County shall cause the Community Redevelopment Agency to contribute Tax Increment Revenues to the District, and the City and the County shall reduce the amount of Economic Incentive Payments to be paid to the District in proportion to the amount of Tax Increment Revenues paid to the District and may, under certain circumstances, terminate their obligations to pay Economic Incentive Payments entirely, all in accordance with Article III of the Agreement,

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. The City Manager is authorized to enter into an Interlocal Agreement with Miami Dade County and Midtown Miami CDD for the purposes described therein, to prepare a Finding of Necessity Study pursuant to requirements of Chapter 163, Florida Statutes for the creation of a Community Redevelopment District.

Section 3. The City Manager is further authorized to execute the necessary document(s), in a form acceptable to the City Attorney, to enter into the Interlocal Agreement and for the preparation of a Finding of Necessity Study pursuant to requirements of Chapter 163, Florida Statutes for the creation of a Community Redevelopment District.

Section 4. This Resolution shall become effective immediately upon its adoption and signature of the Mayor.

APPROVED AS TO FORM AND CORRECTNESS:

ALEJANDRO VILARELLO
CITY ATTORNEY

Footnotes:

{1} The herein authorization is further subject to compliance with all requirements that may be imposed by the City Attorney, including but not limited to those prescribed by applicable City Charter and Code provisions.

{2} If the Mayor does not sign this Resolution, it shall become effective at the end of ten calendar days from the date it was passed and adopted. If the Mayor vetoes this Resolution, it shall become effective immediately upon override of the veto by the City Commission.