Memorandum

MIAMI-DADE COUNTY

Date: November 6, 2007

Agenda Item No. 8(A)(1)(B)

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution Authorizing the Mayor or his Designee to Execute the Interlocal Agreement by and between Miami-Dade County, Florida, and the City of Miami Regarding Miami International Airport Zoning

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RECOMMENDATION

It is recommended that the Board approve the attached Resolution authorizing the Mayor or his designee to execute the Interlocal Agreement by and between Miami-Dade County, Florida, and the City of Miami, Florida, regarding Article XXXVII of the Miami International Airport (MIA) Zoning Ordinance. This Interlocal Agreement was a request by the Federal Aviation Administration (FAA) as a precursor to the FAA's concurrence with the County's recent amendments to the MIA Height Zoning Ordinance.

SCOPE

Miami International Airport is located primarily within Commission District Six. However, the impact of this agenda item is countywide in nature as Miami International Airport is a regional asset. The scope consists of the execution of the Interlocal Agreement by and between Miami-Dade County, Florida, and the City of Miami, Florida, regarding Article XXXVII of the Miami International Airport (MIA) Zoning Ordinance.

FISCAL IMPACT/FUNDING SOURCE

No fiscal impact.

MONITOR

Jose Ramos, Chief of Aviation Planning.

BACKGROUND

The City of Miami formally approached the County, seeking an amendment to Article XXXVII of the Miami International Airport (MIA) Zoning Ordinance, to allow for a relaxation of current height restrictions by considering increases in the maximum allowable height for structures and an expanded High Structure Set-Aside Area (HSA) to permit a larger development area in the City's urban core where the City and developers want to construct tall (1,000 ft. plus) commercial and residential structures.

The County and City recognize their mutual obligations and responsibilities for the protection of the Airport's airspace; limitations must be set on the height of structures and other objects near the airport

as set forth and amended from time to time in the MIA Zoning Ordinance and the Airport Height Zoning District Map Miami International Airport (MIA Height Map).

These limitations have been based upon imaginary surfaces in the airspace for MIA in accordance with criteria set forth in Federal Aviation Regulations (FAR) Part 77 and the U.S. Standard for Terminal Instrument Procedures (TERPS). These surfaces establish the maximum height that objects on the ground can reach without potentially creating constraints or hazards to the use of the airspace by aircraft approaching, departing, or maneuvering in the vicinity of the airport. The County, through ordinance 07-92, enacted the aforementioned amendment to the MIA Zoning Ordinance on July 10, 2007.

The purpose of the Interlocal Agreement with the City of Miami is to ensure the City's consistency and compliance with specific requirements, established for the protection of navigable airspace and for the protection and preservation of operational safety and capacity at MIA (the County's only presently scheduled commercial air-service airport), in exchange for the City's request for development relief amendments that raise the height restrictions in the new (expanded) HSA above the City. The Interlocal Agreement was approved by the City on August 1, 2007.

This Agreement serves as the precursor to the FAA's final concurrence with the County's amendments to MIA's Height Zoning Ordinance and is necessary to assure the FAA and the County that the City will comply with the revised maximum allowable heights in the amended HSA and not endeavor in the future to seek nor entertain any variances to the new HSA.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: November 6, 2007

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

SUBJECT: Agenda Item No. 8(A)(1)(B)

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. 8(A)(1)(B)

11-06-07

RESOLUTION NO. _____

RESOLUTION APPROVING INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI RELATING TO THE CITY OF MIAMI'S ACCEPTANCE OF BUILDING HEIGHT RESTRICTIONS AND OTHER PROVISIONS CONTAINED WITHIN THE COUNTY'S ZONING CODE APPLICABLE TO MIAMI INTERNATIONAL AIRPORT; AUTHORIZING MAYOR OR DESIGNEE TO EXECUTE SUCH INTERLOCAL AGREEMENT AND TO EXERCISE THE TERMINATION PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and documents, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the Interlocal Agreement between Miami-Dade County and the City of Miami in substantially the form attached hereto, under which the City of Miami accepts the building height restrictions and the requirements, standards and procedures set forth in the County's Miami International Airport Zoning Ordinance, codified as Article XXXVII, Section 33-330, *et seq.,* of the Miami-Dade County Code, as such Ordinance may be amended from time to time, and agrees to take certain actions consistent with such Ordinance; authorizes the Mayor or designee to execute the Interlocal Agreement for and on behalf of the County and to exercise the termination provisions contained therein.

The foregoing resolution was 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:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of November, 2007. 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. TPA

Thomas P. Abbott

INTERLOCAL AGREEMENT BY AND BETWEEN MIAMI-DADE COUNTY, FLORIDA, AND THE CITY OF MIAMI, FLORIDA, REGARDING MIAMI INTERNATIONAL AIRPORT (WILCOX FIELD) ZONING

This is an Interlocal Agreement between Miami-Dade County, a political subdivision of the State of Florida (the "County") and the City of Miami, a municipal corporation of the State of Florida (the "City"), entered into this ____ day of _____, 2007 (the "Agreement").

RECITALS

1. The City of Miami formally approached the County, seeking an amendment to Article XXXVII Miami International Airport (MIA) Zoning Ordinance, hereafter called the "MIA Height Zoning Ordinance," to allow for a relaxation of current height restrictions by considering increases in the maximum allowable height for structures and an expanded High Structure Set-Aside Area (HSA) to permit a larger development area in the City's urban core where the City and developers want to construct tall (1,000 ft. plus) commercial and residential structures. The City is a designated urban infill zone under applicable laws and regulations.

2. The County intends to enact the proposed amendment to the MIA Height Zoning Ordinance within 90 days of the execution of this Agreement, subject to the receipt of FAA's letter of concurrence.

3. The County and City recognize their mutual obligations and responsibilities for the protection of the airport's airspace; limitations must be set on the height of structures and other objects near the airport as set forth and amended from time to time in the MIA Height Zoning Ordinance and the Airport Height Zoning District Map Miami International Airport (MIA Height Map).

4. These limitations have been based upon Imaginary surfaces in the airspace for MIA in accordance with criteria set forth in Federal Aviation Regulations (FAR) Part 77 and the U.S. Standard for Terminal Instrument Procedures (TERPS). These surfaces establish the maximum height that objects on the ground can reach without potentially creating constraints or hazards to the use of the airspace by aircraft approaching, departing, or maneuvering in the vicinity of the airport.

5. The County and City recognize that notification to the County, pursuant to Section 7 of this Agreement, is required before the issuance of any permit or approval and that the City will need to obtain a letter of determination from the County establishing a maximum allowable height above mean sea level (AMSL), for any proposed structure based on the latest MIA Height Map adopted by County ordinance.

6. The County and City recognize that in addition to notification to and written approval from the County, there exists a separate Federal Aviation Administration (FAA) Notification Requirement of FAR Part 77 that the City will require any proponent requesting a permit to file with the FAA. Subpart B of the Regulations requires that the proponent of any project which exceeds a specified set of height criteria submit a Notice of Proposed Construction or Alteration (Form 7460-1) to the FAA, at least 60 days prior to the commencement of construction. The height criteria associated with this notification requirement are lower than those spelled out in Part 77, Subpart C, which defines airspace obstructions. The purpose of the notification is to determine if the proposed construction would constitute a potential hazard or obstruction to flight. City shall require the applicant to provide a valid FAA "Determination of No Hazard" to the County prior to the issuance of any permit for any project that meets the review criteria of the MIA Height Zoning Ordinance, as amended.

7. The County and City recognize that as operational procedures, navigational systems, and aircraft performance technology changes occur faster than ordinance changes, the County will apply the more restrictive of the height limits between the ordinance map and FAA determination.

8. The County and City recognize this agreement is necessary to fulfill FAA conditional approval requirement to implement the amendments to the MIA Height Zoning Ordinance.

9. The City and County recognize that the planned modifications to the HSA (which modifications will take the HSA to the maximum height limits tolerable) leave no room for error for instrument approach minimums, and as a result inclement weather west-flow capacity at MIA will be adversely impacted.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the City agree as follows:

1. Recitals. The foregoing recitals are hereby acknowledged as true and correct, and are incorporated herein by reference.

2. Purpose. The purpose of this Agreement is to ensure the City's consistency and compliance with specific requirements, established for the protection of navigable airspace and for the protection and preservation of operational safety and capacity at MIA (the County's only presently scheduled commercial air-service airport), in exchange for the City's request for development relief amendments that raise the height restrictions in the new (expanded) HSA above the City.

This Agreement serves as the precursor to the FAA's concurrence with the County's proposed amendments to MIA's Height Zoning Ordinance and is necessary to assure the FAA and the County that the City will comply with the revised maximum allowable heights in the amended HSA and not endeavor in the future to seek nor entertain any variances to the new HSA.

3. County. The County shall provide notice to the City, pursuant to section 7 of this Agreement, of any amendments to the MIA Height Zoning Ordinance. The County shall further provide to the City prior notice of all hearings and public meetings at which modifications to such ordinance are to be considered.

4. City. The City shall exercise such powers and perform the duties as set forth in this agreement in strict compliance (1) with the requirements, standards and procedures provided in the MIA Height Zoning Ordinance, as such may be amended from time to time; and (2) with applicable State and federal laws. The City shall also comply with the following:

a. Prior to issuing any development permit for any proposed structure, the City shall obtain written approval for such structure from the County. Such approval will establish the structure's maximum allowable height above mean sea level (AMSL), based on the latest version of the MIA Height Zoning Ordinance. The County will not unreasonably delay or withhold the issuance of its written approval under this section."

b. When any proposed development meets FAA notification criteria, the City will require the applicant to file said development with the FAA and obtain a "Determination of No Hazard." The City will not issue building permits unless in receipt of this "Determination" from the FAA when the applicant's proposed structure meets or exceeds FAA notification criteria.

c. City agrees that the City's land use ordinances and comprehensive plan will be amended to copy and concur with the height restrictions set forth in the MIA Height Zoning Ordinance, as amended.

d. City will, in the early stages of any comprehensive plan amendment, seek a formal consistency review from the County and allow the County 45 days after receiving the request from the City to provide a written determination of consistency with the MIA Height Zoning Ordinance requirements.

e. City will comply with a notification process for project submittals as follows and shall include the following information in its notification to the County:

1) Property location data (assessor's parcel number, street address, subdivision lot number).

2) An accurately scaled map showing the relationship (distance and direction) of the project site to the airport boundary and runways. When readily available, a digital version of the map should be provided along with a paper copy.

3) A description of the existing use(s) of the land in question, including current comprehensive plan and zoning designations, height of structures, usage intensity, and other applicable information.

4) A description of the proposed use(s) and the type of land use action being sought from the City (e.g., zoning change, building permit, etc.).

5) If applicable, a detailed site plan showing ground elevations, the location of structures, open spaces, and water bodies, and building elevations indicating the maximum heights of structures and trees

above mean sea level. A profile view of proposed features is also to be provided in instances where height is an issue. When available a digital version of the drawings should be provided along with the paper version.

6) Identification of any characteristics that could create electrical interference, confusing or bright lights, glare, smoke, or other known or perceived electrical or visual hazards to aircraft flight.

7) Any airspace determination that has been obtained from the Federal Aviation Administration in accordance with Part 77 of the Federal Aviation Regulations.

8) Other related, relevant information that County staff determine to be reasonably necessary to enable a comprehensive review of the proposal.

9) Any applicable review fees as established by the Board of County Commissioners.

f. The City reassures (in the form of this legally binding agreement) that it will not violate nor seek further relief or variances of any form for even taller structures or request further modification or increases to the HSA or the MIA Height Zoning Ordinance. This reassurance will automatically expire upon termination of this agreement.

g. In addition to following the County's procedures set forth in the MIA Height Zoning Ordinance for the permitting of construction and other cranes, the City shall establish a process and issue permits for construction cranes that operate

within the City limits and submit a copy of each crane permit it has issued along with its corresponding "Determination of No Hazard" to the County. The City may provide this information in electronic format as a scanned PDF document of each "Determination of No Hazard".

h. Prior to the City's issuance of a crane permit, the City shall require that the applicant:

1) Provide a valid FAA "Determination of No Hazard" for said crane.

2) Verify that the Latitude and Longitude stated on the applicant's "Determination of No Hazard" is the applicant's intended job site.

i. The City shall not issue a time extension to a crane permit that exceeds the applicant's "Determination of No Hazard" validity time frame or for a height greater than that stated in the applicant's "Determination of No Hazard."

5. <u>Indemnification</u>. To the extent allowed by Section 768.28, Florida Statutes, the City shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the City or its officers, employees, agents, servants, partners, principals, or subcontractors. To the extent allowed by Section 768.28, Florida Statutes, the City shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorneys' fees which may issue thereon. The City expressly agrees

and understands that any insurance protection provided at the option of the City shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided to the extent allowed by Section 768.28, Florida Statutes.

6. Termination. This Agreement may be terminated by either party for any or no cause by giving advance notice to the other party of not less than one hundred and eighty (180) days in the manner set forth in Section 7 of this Agreement. However, termination of this Agreement shall not abridge or modify the height restrictions as outlined in the MIA Height Zoning Ordinance as amended. Termination of this Agreement by either party shall not give rise to any inference that the City is not require to follow and comply with all applicable laws of the County related to height restrictions or any other airport zoning requirements or procedures.

7. Notice. Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery or recognized overnight courier (such as Federal Express), or if by certified U.S. mail, with return receipt requested, addressed to the party for whom it is intended, at the place specified. For the present, the parties designate the following as the respective places for notice purposes:

If to the County:	Miami-Dade County Manager Stephen P. Clark Center 111 N.W. 1st Street, Suite 2900 Miami, Florida 33128
With a copy to:	Miami-Dade County Attorney Stephen P. Clark Center 111 N.W. 1st Street, Suite 2800 Miami, Florida 33128
With a copy to:	Director Miami-Dade Aviation Department P.O. Box 025504 Miami, FL 33102-5504

If to the City:

City Manager
City of Miami
3500 Pan American Drive
Miami, FL 33133

With a copy to:

City of Miami City Attorney
Miami Riverside Center
444 S.W. 2nd Avenue, 9th Floor
Miami, FL 33130-1910

8. Entire Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

9. Amendment. This Agreement may be amended or modified only by an agreement in writing and signed by the duly authorized representatives of the City and the County.

10. Term and Effective Date. This Agreement shall become effective upon the final execution by the duly authorized representatives of the City and the County and shall continue in force and effect unless terminated in accordance with the provisions contained herein.

11. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Florida. Exclusive venue for any litigation between the parties shall be in Miami-Dade County, Florida.

12. Conflict Resolution. The parties (in lieu of termination) may seek to negotiate conflicts between them arising under this agreement pursuant to the "Florida Governmental Conflict resolution Act, Sections 164.101 – 164.1061, Florida Statutes.

12. Severability. If any term or provision of this Agreement or the application of either shall to any extent be determined to 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 The remainder of this Agreement shall be enforced to the extent permitted by law.

13. Waiver. The failure of either party to this Agreement to object or take affirmative action with respect to any conduct of the other party which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Interlocal Agreement this ___ day of _____, 2007.

ATTEST:

By:_____

As Deputy Clerk

Miami-Dade County, Florida

By:_____
GEORGE M. BURGESS
Miami-Dade County Manager

ATTEST:

By: Pamela Burns 8-1-07
PRISCILLA A. THOMPSON
As City Clerk

City of Miami, Florida

By:_____
PEDRO G. HERNANDEZ
City Manager

APPROVED AS TO LEGAL FORM:

By: _____
JORGE L. FERNANDEZ
City Attorney

RSR

Approved as to form
and legal sufficiency

_____
Assistant County Attorney

APPROVED AS TO PLANNING:

By: _____
ANA GELABERT-SANCHEZ
Planning Director, City of Miami