Memorandum

MIAMI-DADE COUNTY

Date: April 22, 2008

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

Agenda Item No. 12(A)(1)

From: George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Subject: Resolution Authorizing Settlement Agreement between Miami-Dade County and Fisher Island Community Association, Inc., Related to Outstanding Business Issues

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RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing execution of a Settlement Agreement between Miami-Dade County and Fisher Island Community Association, Inc., ("FICA") related to outstanding business issues.

SCOPE

The Port of Miami is located within District 5 – Chairman Bruno A. Barreiro. The impact of this agenda item is countywide as the Port of Miami is a regional asset and generates employment for residents throughout all of Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

As a result of this Settlement Agreement, FICA will pay the Port a total of $1,075,000; of which $475,000 has already been paid to the Port and $600,000 is payable in twelve (12) quarterly installments at an interest rate of six percent (6%) compounded quarterly beginning April 1, 2008.

TRACK RECORD/MONITOR

The Seaport Department staff members responsible for monitoring this agreement are Juan Kuryla, Assistant Port Director, Maritime Services and Miriam Abreu, Assistant Port Director, Finance.

BACKGROUND

On May 19, 1998, the Board approved resolution No. R-570-98, which authorized the execution of a lease agreement with Island Developers, Ltd., ("IDL") for the purpose of conducting a commercial barge operation to and from Fisher Island at the Port of Miami. In July 1998, IDL assigned all of its interests, rights, duties, and obligations under the lease to Fisher Island Holdings, LLC ("FIH") pursuant to a written assignment and assumption agreement. While Section 15.01 of the Lease Agreement provides for FIH to pay all of the security costs associated with and/or related to FIH's commercial barge operations at the Port, the County did not invoice for such security costs until October 2006.Consequently, prior to October 2006, the County did not receive reimbursement from FIH for any Port-incurred security costs relating to FIH's barge operation at the Port of Miami.

Upon discovering this fact, the Port reached out to FIH representatives to seek reimbursement for such Port-incurred security costs in accordance with Section 15 of the Lease. The Port can substantiate through available records approximately $1,293,249 in security costs incurred by the Port at the Fisher Island commercial barge operation checkpoint for the period of October 29, 2004 to May 31, 2007. These are security costs for which the Port has submitted documentation to FIH. Upon receipt of the Port's invoice for past due security costs, FIH disputed the amount and propriety of these charges.

To resolve this issue, Fisher Island has agreed to pay the County a total $1,075,000 in accordance with the following terms: an upfront payment of $275,000 (already received by the Port on June 1, 2007); payment of another $200,000 (received by the Port on February 19, 2008); and $600,000 payable over a three-year period, on a quarterly basis beginning on April 1, 2008, at an interest rate of six percent (6%) compounded quarterly.

In February 2008, FIH assigned all of its interests, rights, duties, and obligations under the lease to FICA (Fisher Island Community Association, Inc.) pursuant to a written assignment and assumption agreement. Subject to and conditioned upon FICA fully satisfying all of its payment and other obligations to the County under the attached Settlement Agreement and the Lease (as amended), the County will discharge FICA from further claims which the County had, now has, or may have against FICA for fees, penalties or late charges related to Port security costs imposed by the County prior to June 1, 2007. Likewise, under the proposed Settlement Agreement, FICA will discharge the County from all claims which FICA, FIH or IDL had, now has, or may have against the County relating to the Lease or any of its operations on the Port of Miami as well as those claims relating to security or the Port's imposition of security fees, penalties, or late charges imposed by the County prior to February 29, 2008.

In addition, under the proposed Settlement Agreement and Lease Amendment 1 (presented under separate cover) effective June 1, 2007, Fisher Island's security cost reimbursement obligations to the County shall be $16,500 per month. This amount represents a reduction from previous monthly staffing costs due to modifications in the Port's Facility Security Plan as well as the reallocation of duties for the staff working the Fisher Island barge operations post. Fisher Island has already prepaid these costs through mid-April 2008. In our settlement negotiations to resolve the disputed amount of Fisher Island's outstanding indebtedness to the County for previously incurred Port security costs relating to and arising from Fisher Island's on-Port barge operation, both parties agreed to the $1,075,000 settlement, payable in accordance with the terms set forth above.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: April 22, 2008

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

SUBJECT: Agenda Item No. 12(A)(1)

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. 12(A)(1)
4-22-08

RESOLUTION NO. _____

RESOLUTION AUTHORIZING SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND FISHER ISLAND COMMUNITY ASSOCIATION, INC., RELATED TO OUTSTANDING BUSINESS ISSUES; AUTHORIZING THE COUNTY MAYOR OR DESIGNEE TO EXECUTE THE SETTLEMENT AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY, TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

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

Section 1. Authorizes the execution of the Settlement Agreement between Miami-Dade County and Fisher Island Community Association, Inc., related to outstanding business issues in substantially the form attached hereto and made a part hereof.

Section 2. Authorizes the County Mayor or his designee to execute the Settlement Agreement after review and approval by the County Attorney's Office; to exercise any cancellation and renewal provisions, and all other rights conferred 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 22nd day of April, 2008. 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. SBB

Steven B. Bass

SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND FISHER ISLAND COMMUNITY ASSOCIATION, INC. RELATED TO OUTSTANDING SECURITY COST DISPUTES

THIS AGREEMENT (hereinafter the "Agreement") is entered this _____ day of _____, 2008, by and between Fisher Island Community Association, Inc., a Florida not for profit corporation (hereinafter "FICA") and Miami-Dade County, Florida, a political subdivision of the State of Florida (hereinafter the "County"). FICA and the County are hereinafter collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the County owns certain lands located in Miami-Dade County, Florida, on which the Dante B. Fascell Port of Miami-Dade (hereinafter the "Port") is located; and

WHEREAS, the County operates the Port through the Miami-Dade County Seaport Department, a department of the County; and

WHEREAS, on June 15, 1998, the County and Island Developers Limited ("IDL") entered into an agreement for IDL to lease a portion of Port property on which to conduct a commercial barge operation (the Lease). The site of the current (Fisher Island) barge operation at the Port is located on a portion of Dodge Island along the South Channel, south of Seaboard Marine, and east of Passenger Terminal J; and

WHEREAS, FICA represents that on or about July 30, 1998 IDL assigned all of its interest, rights, duties and obligations under the Lease to FISHER ISLAND HOLDINGS, LLC, a Florida limited liability company (FIH) pursuant to a written assignment and assumption agreement; and

WHEREAS, on or about February 8, 2008, FIH assigned all of its interest, rights, duties and obligations under the Lease to FICA pursuant to a written assignment and assumption agreement under which FICA, among other things, assumed all of the duties, obligations, and liabilities of lessee under the Lease; and

WHEREAS, Article 15 - Section 15.01 et seq. of the agreement provides for Lessee to pay all of the security costs associated with, necessitated by and/or related to Lessee's commercial barge operation on the Port; and

WHEREAS, the Port incurred over $1,000,000 in security costs relating to and necessitated by FIH's commercial barge operation at the Port without receiving any reimbursement from FIH as required under the Lease; and

WHEREAS, although earlier verbal notice was provided, the County did not submit any written security cost invoices to FIH or FICA until approximately October of 2006; and

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WHEREAS, on or about April 13, 2007, the Port sent FIH a certified demand letter seeking reimbursement for $1,183,895 in Port incurred security costs relating to FIH's leased premises and operations on the Port of Miami; and

WHEREAS, while FIH and FICA dispute the propriety and amount of the Port-invoiced security costs, the Parties hereto now wish to amicably resolve these particular security cost disputes, and memorialize their agreement in this document;

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants, terms, conditions, and agreements hereinafter contained, the sufficiency of which are hereby acknowledged, the Parties hereto do and hereby mutually agree and bind themselves as follows:

1. The County asserts that FICA, as successor in interest to IDL and FIH, and otherwise, owes the Port approximately $1,293,249 in overdue and immediately payable security costs that were incurred by the Port in connection with and relating to FIH's commercial barge operation at the Port between October 29, 2004 and May 31, 2007. The $1,293,249 FIH debt represents the amount of Port-incurred security costs for which the Port has submitted written documentation to FIH for the period from October 29, 2004 to May 31, 2007.

2. Although FIH and FICA dispute the propriety and amount of these Port-incurred security costs that were invoiced to FIH per Article 15 of the Lease, to resolve the issue of outstanding security costs, FICA hereby acknowledges and agrees to pay the County a total of $1,075,000 (plus interest as set forth below) to resolve the security cost dispute covering the period from October 29, 2004 through May 31, 2007 in accordance with the following terms and requirements:

    a. The parties acknowledge that on or about June 1, 2007, FIH paid the County $275,000, via cashier's check, in partial fulfillment of FIH's indebtedness to the County and the Port for security costs due under the Lease.

    b. FICA shall pay the County an additional amount of $600,000, amortized over a three year period at an interest rate of six percent (6%) (interest on the $600,000 principal shall accrue from April 1, 2008 and shall be compounded quarterly), payable to the County on a quarterly basis beginning on April 1, 2008, per the amortization schedule attached hereto as Exhibit 1.

    c. FICA shall pay the County an additional amount of $200,000, via cashier's check or other immediately available funds, payable to the County immediately upon execution of the Agreement.

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3. In addition to the above, the County and FICA hereby acknowledge and agree that the amount of security cost reimbursement FICA owes the County under the Lease for the ten month period from June 1, 2007 through March 31, 2008 is $16,500. per month or $165,000. The Port acknowledges that FICA has paid these security fees through the end of March 2008.

4. Subject to and conditioned upon FICA fully satisfying all of its payment and other obligations hereunder, the County will release, waive, and forever discharge FICA from claims which the County had, now has, or may have against FICA specifically for overdue security fees, penalties or late charges specifically related to and arising from the security costs imposed by the County prior to June 1, 2007 for which FIH was responsible under its Lease. FICA hereby releases, waives, and forever discharges the County from all claims which FICA, FIH or IDL had, now has, or may have against the County arising from or relating to the Lease or any of its operations on the Port of Miami, relating to security or the Port's imposition or invoicing of or for security fees, penalties, or late charges imposed by the County prior to February 29, 2008.

5. Miscellaneous.

a) FICA hereby represents and warrants that it has not assigned, transferred, sold or otherwise transferred to any third party any of its actual or potential rights, claims and/or causes of action against the County that arise from or relate to the Lease or any of IDL's, FIH's or FICA's current or former operations at the Port of Miami, and also represents and warrants to the County that all of IDL's prior interest in the Lease (including any IDL claims arising thereunder) was transferred to and accepted by FIH in 1998 and that all of FIH's interest in the Lease (including any FIH claims arising thereunder) was transferred to and accepted by FICA in February 2008.

b) Parties Represented by Counsel. In executing this Agreement, the parties declare and acknowledge that they have had the opportunity to consult legal counsel and that the terms of this Agreement are fully understood and voluntarily accepted without duress or coercion.

c) Execution and Acceptance. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be a duplicate original, but all of which together shall constitute one and the same agreement.

d) Severability. Should any provision of this Agreement be held invalid or illegal, such illegality or invalidity shall not invalidate the whole of this Agreement, but rather the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

e) No Verbal Amendments Allowed. It is expressly understood and agreed that the terms of this Agreement cannot be altered, changed or modified except by a writing duly executed by an authorized representative of both parties.

f) Delivery. The parties may exchange this Agreement with facsimile signatures with originals to be provided with a reasonable time thereafter.

g) Choice of Law/Exclusive Venue. This Agreement shall be governed by and construed in accordance with Florida law and venue for any action arising here from or to enforce or construe any provision hereof shall lie exclusively in Miami-Dade County, Florida.

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

MIAMI-DADE COUNTY

By_____
George M. Burgess
County Manager

ATTEST:
CLERK OF THE COURT

By:_____
Deputy Clerk

_____Approved as to Form
and Legal Sufficiency.

FISHER ISLAND COMMUNITY ASSOCIATION, INC. (FICA)

By_____
Name: Mark James
Title: President-& CEO
2.20.08

ATTEST:

By: _____
Name: Lori Mohr
Title: Notary Public – Florida

Fisher Island
Amortization Schedule

Principal Balance:	$	600,000	beginning April 1, 2008
Interest Rate:		6.00%	
Number of Years:		3	
Payments Per Year:		4	
Monthly Payment:	$	54,612	
Total Payments:	$	650,728	
Total Interest:	$	50,728	

Month	Beginning Balance	Principal	Interest	Ending Balance
April 1, 2008	600,000	50,000	-	550,000
July 1, 2008	550,000	46,362	8,250	503,638
October 1, 2008	503,638	47,057	7,555	456,581
January 1, 2009	456,581	47,763	6,849	408,818
April 1, 2009	408,818	48,479	6,132	360,339
July 1, 2009	360,339	49,207	5,405	311,133
October 1, 2009	311,133	49,945	4,667	261,188
January 1, 2010	261,188	50,694	3,918	210,494
April 1, 2010	210,494	51,454	3,157	159,040
July 1, 2010	159,040	52,226	2,386	106,814
October 1, 2010	106,814	53,009	1,602	53,805
January 1, 2011	53,805	53,805	807	(0)
Total		600,000	50,728	

Exhibit 1

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