Memorandum

MIAMI-DADE COUNTY

Date: July 21, 2009

Agenda Item No. 9(A)(2)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution Approving Form of Interlocal Agreement for *Building Better Communities* Bond Program Project No. 233 – "Miami Beach Convention Center" and Authorizes the County Mayor or his Designee to Finalize, Deliver and Execute Such Agreements and Exercise Authority Delegated Pursuant to Resolution No. R-595-05

Recommendation

It is recommended that the Board of County Commissioners adopt the attached resolution which approves an interlocal agreement with the City of Miami Beach for the Building Better Communities General Obligation Bond Program (BBC GOB) Project No. 233, listed in Resolution No. R-917-04 (Authorizing Resolution). It further authorizes the County Mayor or County Mayor's designee to finalize, deliver and execute such agreements. It is anticipated that multiple agreements related to this project will be executed between the County and City. The BBC-GOB funding for this project remains at $55 million.

Scope

The project is located in County Commission District 5, but has a countywide and regional impact.

Fiscal Impact/Funding Source

There is no fiscal impact as the project funding remains at $55 million. The funding source is the BBC-GOB program.

Track Record/Monitor

The implementing agency is City. The responsible party for the contract monitoring of this project is Johnny Martinez, P.E., Director of the Office of Capital Improvements (OCI).

Delegation of Authority

There is no additional delegation of authority related to this item other than the authority delegated pursuant to Resolution No. R-595-05.

Background

The County and City have been working for quite some time to address the City's request to modify the standard BBC GOB interlocal agreement for the Convention Center project. It is recommended that the Board modify the language in Section 2 and Section 11 of the BBC-GOB standard interlocal.

Section 2 of the BBC GOB standard interlocal states that, "In the event that the Project Milestones, as defined and set forth in Exhibit 1 of this Agreement are not within 10 percent of completion, the dollars to be funded for subsequent Milestones may be delayed for one calendar year." The modified BBC GOB interlocal agreement before you today replaces the "10 percent" with "25 percent" and replaces "one calendar year" to "one calendar quarter."

Section 11 of the BBC GOB standard interlocal states that, "In the event that any naming rights or advertisement space is offered on a facility constructed or improved with BBC-GOB Program funds, then Miami-Dade County's name, logo, and slogan shall appear on the facility not less than once and

equal to half the number of times the most frequent sponsor or advertiser is named, whichever is greater. Lettering used for Miami-Dade County will be no less than 75 percent of the size of the largest lettering used for any sponsor or advertiser unless waived by the Board." The proposed language in the attached BBC GOB interlocal would delete that language and replace it with, "The County's logo/tombstone and other wordage acknowledging the Building Better Communities Bond Program funding as a contributor to the funding of the project will be placed by the Municipality in a prominent location(s) next to each of the City's logo and/or tombstone(s), but not less than once, following project completion. The associated costs will be paid from project funds provided by Building Better Communities Bond Program."

On June 25, 2009, the BBC-GOB Citizens' Advisory Committee (CAC), one member short of a quorum, agreed by consensus of the nine members present that the changes to Section 2 and Section 11 should be forwarded for consideration by the Board with a favorable recommendation.

There is an accompanying significant modification item for the Miami Beach Convention Center project on this agenda.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: July 21, 2009

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

SUBJECT: Agenda Item No. 9(A)(2)

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 Mayor'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. 9(A)(2)
7-21-09

RESOLUTION NO. _____

RESOLUTION APPROVING FORM OF INTERLOCAL AGREEMENT FOR BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND PROGRAM PROJECT NO. 233 - "MIAMI BEACH CONVENTION CENTER" AND AUTHORIZES THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO FINALIZE, DELIVER AND EXECUTE SUCH AGREEMENTS AND EXERCISE AUTHORITY DELEGATED PURSUANT TO RESOLUTION NO. R-595-05

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 hereby approves the form of an Interlocal Agreement for Building Better Communities General Obligation Bond (BBC GOB) Program Project No. 233 – "Miami Beach Convention Center" in substantially the form attached hereto as Exhibit "A"and authorizes the County Mayor or Mayor's Designee to finalize, deliver and execute such BBC GOB Agreements, and exercise authority delegated pursuant to Resolution No. R595-05, after review by the County Attorney's Office, all as more particularly described in the accompanying memorandum.

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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro
Carlos A. Gimenez
Barbara J. Jordan
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto
Audrey M. Edmonson
Sally A. Heyman
Joe A. Martinez
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 21st day of July, 2009. 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. MR

Monica Rizo

S

EXHIBIT A

AGREEMENT
BETWEEN
THE CITY OF MIAMI BEACH FLORIDA
AND
MIAMI-DADE COUNTY

GOB Project Number 233-70871/Expand and enhance the Miami Beach Convention Center

THIS AGREEMENT (the "Agreement") by and between Miami-Dade County, a political subdivision of the State of Florida (the "County"), through its governing body, the Board of County Commissioners of Miami-Dade County, Florida (the "Board") and the City of Miami Beach, Florida, a municipal corporation organized under the laws of the State of Florida, through its governing body, the Mayor and Commissioners of the City of Miami Beach, Florida (the "Municipality") is entered into this _____ day of _____, 2009.

WITNESSETH

WHEREAS, on July 20, 2004, the Board enacted Resolution Nos. R-912-04, R-913-04, R-914-04, R-915-04, R-916-04, R-917-04, R-918-04 and R-919-04 authorizing the issuance of $2.926 billion in general obligation bonds for capital projects and on November 2, 2004, a majority of those voting approved the bond program (the "BBC GOB Program"); and

WHEREAS, the aforementioned Resolutions include specific countywide projects, neighborhood projects for the Unincorporated Municipal Service Area and municipalities and associated allocations for activities such as but not limited to development, improvement, rehabilitation, restoration or acquisition of real property; and

WHEREAS, GOB Project Number 233-70871/ Expand and enhance the Miami Beach Convention Center, (the "Project") is eligible for funding from the BBC GOB Program in a total amount not to exceed $55,000,000 (the "Funding Allocation"); and

WHEREAS, the Municipality is undertaking completion of [**Describe Project**] which was specifically approved as part of the BBC GOB Program or is eligible for funding from one of the programs to be funded under the BBC GOB Program; and

WHEREAS, the Expand and enhance the Miami Beach Convention Center is estimated to cost [**Total Project Cost**] (the "Total Project Cost") and will be funded from the sources listed in Exhibit 1; and

WHEREAS, pursuant to the terms of this Agreement the County has agreed to allocate [$] from the Series 2008 B Bonds for the Project (the "Funding Cycle Allocation"); and

WHEREAS, the Commissioners of both the County and the Municipality have authorized, by resolution, their respective managers to enter into this Agreement for each Funding Cycle Allocation describing their respective roles in the funding for the Project costs with respect to such Funding Cycle Allocation,

NOW THEREFORE, ~~pursuant to Resolution No. R-595-05, which specifically authorizes the County Manager to execute such agreements, sub-agreements and other required contracts and documents, to expend Building Better Communities bond funds received for the purpose described in the funding request, and~~ in consideration of the mutual promises and covenants contained herein and the mutual benefits to be derived from this Agreement, the parties hereto agree as follows:

Section 1. **Purpose**: The purpose of this Agreement is to clarify the parties' roles and obligations regarding the funding being provided with respect to the Project.

Section 2. **Funding Responsibilities**:

a. **Project Funding Plan**: A Project funding plan identifying the Funding Allocation to be funded by the County solely from BBC GOB Program proceeds and the costs to be funded by the Municipality through a local funding plan or written project funding commitments from third parties is attached as Exhibit 1. Included shall be a projected timetable for each Funding Cycle Allocation and the amount funded to date, if any.

b. **Representations of the Municipality**: The Municipality covenants and warrants that it has, in combination with the Funding Allocation, the amount of funding necessary for the completion of the Project. The additional sources of funding are listed in Exhibit 1.

c. **Responsibilities of the County**: The County agrees to provide solely from BBC GOB Program proceeds for the Funding Cycle Allocation in an amount equal to $_____. This amount represents a portion of the amount necessary to complete the Project. This sum shall be provided in accordance with the reimbursement procedures contained in the County's GOB Administrative Rules attached as Attachment 1. In the event that the Project Milestones, as defined and set forth in Exhibit 1 of this Agreement are not within ~~10%~~ 25% of completion, the dollars to be funded for subsequent Milestones may be delayed for one calendar ~~year~~ quarter in accordance with the Administrative Rules, see Section 18 of this Agreement.

Section 3. **Effective Date and Term**: This Agreement shall take effect upon execution and shall terminate upon the completion of the Project, including the completion of all final closeout documentation.

Section 4. **Compliance with Codes and Laws**: Each party agrees to abide by all Applicable Laws necessary for the development and completion of the Project. "Applicable Law" means any applicable law (including, without limitation, any environmental law), enactment, statute, code, ordinance, administrative order, charter, tariff, resolution, order, rule, regulation, guideline, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, or other direction or requirement of any governmental authority, political subdivision, or any division or department thereof, now existing or hereinafter enacted, adopted, promulgated, entered, or issued. Notwithstanding the foregoing, "Applicable Laws" and "Applicable Laws" shall expressly include, without limitation, all applicable zoning, land use, DRI and Florida Building Code requirements and regulations, all applicable impact fee requirements, all requirements of Florida Statutes, specifically including, but not limited to, Section 255.05 related to payment and performance bonds, Section 255.20 related to contractor selection and Section 287.055 related to competitive selection of architects and engineers, all requirements of Chapters 119 and 286 of the Florida Statutes, Section 2-11.15 of the Code (Art in Public Places), and all other applicable requirements contained in this Agreement and Attachment 1, which exhibit is hereby incorporated in this Agreement by this reference.

Section 5. **Contractual obligation to comply with certain County requirements**:

All records of the Municipality and its contractors pertaining to the Project shall be maintained in Miami-Dade County and, upon reasonable notice shall be made available to representatives of the County. In addition, the Office of Inspector General of Miami-Dade County shall have access thereto for any of the purposes provided in Sec. 2-1076 of the Code of Miami-Dade County.

The Municipality shall cause each contract to include a provision that contractor shall comply with all requirements of Section 2-1076, and that contractor will maintain all files, records, accounts of expenditures for contractor's portion of the Work and that such records shall maintained within Miami-Dade County and County shall have access thereto as provided in this Agreement.

The Municipality shall comply with the requirements of Florida Statutes related to retainage of funds due a contractor and shall include appropriate language in its construction contracts and shall require the contractor to include such language in its subcontracts.

All applicable County Rules, Regulations, Ordinances, Resolutions, Administrative Orders, and the County Charter referenced in this agreement are posted on the County's website: "miamidade.gov".

Section 6. **Access and Audits**: The Municipality shall maintain adequate records to justify all charges, expenses, and costs incurred which represent the funded portion of the Project for at least three (3) years after completion of the Project. The County shall have access to all books, records, and documents as

required in this section for the purpose of inspection or auditing during normal business hours.
Pursuant to Section 2-1076 of the Miami-Dade County Code the County shall have the right to engage the services of an independent private-sector inspector general ("IPSIG") to monitor and investigate compliance with the terms of this Agreement. The Office of the **MIAMI-DADE COUNTY INSPECTOR GENERAL (IG)** shall have the authority and power to review past, present and proposed County programs, accounts, records, contracts and transactions, and contracts such as this Agreement for improvements some cost of which is funded with County funds.

As such, the IG may, on a random basis, perform audits on this Agreement throughout the duration of said Agreement (hereinafter "random audits"). This random audit is separate and distinct from any other audit by the County.

The IG shall have the power to retain and coordinate the services of an **Independent Private Sector Inspector General (IPSIG)** who may be engaged to perform said random audits, as well as audit, investigate, monitor, oversee, inspect, and review the operations, activities and performance and procurement process including, but not limited to, project design, establishment of bid specifications, bid submittals, activities of the Municipality and contractor and their respective officers, agents and employees, lobbyists, subcontractors, materialmen, staff and elected officials in order to ensure compliance with contract specifications and detect corruption and fraud. The IG shall have the power to subpoena witnesses, administer oaths and require the production of records. Upon ten (10) days written notice to the Municipality (and any affected contractor and materialman) from IG, the Municipality (and any affected contractor and materialman) shall make all requested records and documents available to the IG for inspection and copying.

The IG shall have the power to report and/or recommend to the Board whether a particular project, program, contract or transaction is or was necessary and, if deemed necessary, whether the method used for implementing the project or program is or was efficient both financially and operationally. Monitoring of an existing project or program may include reporting whether the project is on time, within budget and in conformity with plans, specifications, and applicable law. The IG shall have the power to analyze the need for, and reasonableness of, proposed change orders.

The IG is authorized to investigate any alleged violation by a contractor of its Code of Business Ethics, pursuant Miami-Dade County Code Section 2-8.1.

The provisions in this section shall apply to the Municipality, its contractors and their respective officers, agents and employees. The Municipality shall incorporate the provisions in this section in all contracts and all other agreements executed by its contractors in connection with the performance of this Agreement. Any rights that the County has under this Section shall not be the basis for any liability to accrue to the County from the Municipality, its contractors or third parties for such monitoring or investigation or for the failure to have

conducted such monitoring or investigation and the County shall have no obligation to exercise any of its rights for the benefit of the Municipality.

Section 7. **Relationship of the Parties**: The parties agree that the Municipality is an independent entity responsible solely for the Project and not an agent or servant of the County. No party or its officers, elected or appointed officials, employees, agents, independent contractors or consultants shall be considered employees or agents of any other party, nor to have been authorized to incur any expense on behalf of any other party, nor to act for or to bind any other party, nor shall an employee claim any right in or entitlement to any pension, workers' compensation benefit, unemployment compensation, civil service or other employee rights or privileges granted by operation of law or otherwise, except through and against the entity by whom they are employed.

Section 8. **Liability**: The parties to this Agreement shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party. Nothing contained herein shall be construed as a waiver, by either party, of the liability limits established in Section 768.28 of the Florida Statutes. The Municipality acknowledges that the County, its employees, commissioners and agents are solely providing funding assistance for the Project and are not involved in the design, construction, operation or maintenance of the Project.

Section 9. **Breach, Opportunity to Cure and Termination**:

(a) Each of the following shall constitute a default by the Municipality:

(1) If the Municipality uses the Funding Cycle Allocation for costs not associated with the Project (i.e. ineligible costs), and the Municipality fails to cure its default within thirty (30) days after written notice of the default is given to the Municipality by the County; provided, however, that if not reasonably possible to cure such default within the thirty (30) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice if within thirty (30) days after such written notice the Municipality commences diligently and thereafter continues to cure.

(2) If the Municipality shall breach any of the other covenants or provisions in this Agreement other than as referred to in Section 9(a)(1) and the Municipality fails to cure its default within thirty (30) days after written notice of the default is given to the Municipality by the County; provided, however, that if not reasonably possible to cure such default within the thirty (30) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice if within thirty (30) days after such written notice the Municipality commences diligently and thereafter continues to cure.

(b) Each of the following shall constitute a default by the County:

(1) If the County shall breach any of the covenants or provisions in this Agreement and the County fails to cure its default within

thirty (30) days after written notice of the default is given to the County by the Municipality; provided, however, that if not reasonably possible to cure such default within the thirty (30) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice if within thirty (30) days after such written notice the County commences diligently and thereafter continues to cure.

(c) Remedies:

(1) Upon the occurrence of a default as provided in Section 9(a)(1) and such default is not cured within the applicable grace period, in addition to all other remedies conferred by this Agreement, the Municipality shall reimburse the County, in whole or in part as the County shall determine, all funds provided by the County hereunder.

(2.) Either party may institute litigation to recover damages for any default or to obtain any other remedy at law or in equity (including specific performance, permanent, preliminary or temporary injunctive relief, and any other kind of equitable remedy).

(3) Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default.

(4) Any failure of a party to exercise any right or remedy as provided in this Agreement shall not be deemed a waiver by that party of any claim for damages it may have by reason of the default.

(d) Termination:

(1) Notwithstanding anything herein to the contrary, either party shall have the right to terminate this Agreement, by giving written notice of termination to the other party, in the event that the other party is in material breach of this Agreement.

(2) Termination of this Agreement by any Party is not effective until five (5) business days following receipt of the written notice of termination.

(3) Upon termination of this Agreement pursuant to Section 9(d)(1) above, no party shall have any further liability or obligation to the other party except as expressly set forth in this Agreement; provided that no party shall be relieved of any liability for breach of this Agreement for events or obligations arising prior to such termination.

Section 10. **Litigation Costs/Venue**: In the event that the Municipality or the County institutes any action or suit to enforce the provisions of this Agreement, the prevailing party in such litigation shall be entitled to reasonable costs and attorney's fees at the trial, appellate and post-judgment levels. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The County and the Municipality agree to submit to service of process

and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court for the Southern District of Florida, in Miami-Dade County, Florida.

Section 11. **Naming Rights and Advertisements**: ~~In the event that any naming rights or advertisement space is offered on a facility constructed or improved with BBC GOB Program funds, then Miami-Dade County's name, logo, and slogan shall appear on the facility not less than once and equal to half the number of times the most frequent sponsor or advertiser is named, whichever is greater. Lettering used for Miami-Dade County will be no less than 75% of the size of the largest lettering used for any sponsor or advertiser unless waived by the Board.~~ The County's logo/tombstone and other wordage acknowledging the *Building Better Communities Bond Program* funding as a contributor to the funding of the project will be placed by the Municipality in a prominent location(s) next to each of the City's logo and/or tombstone(s), but not less than once, following project completion. The associated costs will be paid from project funds provided by *Building Better Communities Bond Program.* Additionally, the Municipality must include the following credit line in all promotional marketing materials related to this funding including web sites, news and press releases, public service announcements, broadcast media, programs, and publications: "THIS PROJECT IS SUPPORTED BY THE BUILDING BETTER COMMUNITIES BOND PROGRAM AND THE MAYOR AND BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY."

Section 12. **Notice**: Any notice, consent or other communication required to be given under this Agreement shall be in writing, and shall be considered given when delivered in person or sent by facsimile or electronic mail (provided that any notice sent by facsimile or electronic mail shall simultaneously be sent personal delivery, overnight courier or certified mail as provided herein), one business day after being sent by reputable overnight carrier or 3 business day after being mailed by certified mail, return receipt requested, to the parties at the addresses set forth below (or at such other address as a party may specify by notice given pursuant to this Section to the other party):

The County:
George M. Burgess, County Manager
Miami-Dade County, Stephen P. Clark Center
111 NW 1 Street, Suite 2130
Miami, Florida 33128

The Municipality:
Jorge M. Gonzalez, Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

Section 13. **Modification and Amendment**: Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.

Section 14. **Joint Preparation**: The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter

of judicial construction, be construed more severely against one of the parties than the other.

Section 15. **Headings**: Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

Section 16. **Waiver**: There shall be no waiver of any right related to this Agreement unless in writing and signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement. Waiver by any party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

Section 17. **Representation of the Municipality**: The Municipality represents that this Agreement has been duly authorized, executed and delivered by Mayor and Commissioners, as the governing body of the City of Miami Beach, Florida and it has granted the City Manager, or his designee, the required power and authority to execute this Agreement. The Municipality agrees to a) maintain the Project for a minimum of 25 years, b) agrees to govern itself, in regards to the subject Project, in accordance with Article 6 of the County Charter, c) keep the Project open safely and properly maintained for all Miami-Dade County residents, and d) allow all Miami-Dade County residents equal access and use of the Project and not discriminate when charging facility admission fees based on where a resident resides in the County. The Municipality also agrees to accept and comply with the Administrative Rules as stated in Attachment 1 and as may hereafter be amended.

Section 18. **Representation of the County**: The County represents that this Agreement has been duly approved, executed and delivered by the Board, as the governing body of the County, and it has granted the Miami-Dade County Manager the required power and authority to execute this Agreement. The County agrees to provide the Funding Cycle Allocation to the Municipality for the purpose of developing and improving the Project in accordance with each of the attached Exhibit Forms, incorporated herein as Exhibits A-J of Attachment 1 (Administrative Rules). Miami-Dade County shall only be obligated to reimburse the Municipality provided the Municipality is not in breach of this agreement and the Municipality has demonstrated that it has adequate funds to complete the Project. The County shall administer, in accordance with the appropriate regulations, the funds available from the BBC GOB Program as authorized by Board Resolutions. Any and all reimbursement obligations of the County shall be fully subject to and contingent upon the availability of funding from the County for the specific purpose contained herein. The Municipality shall be solely responsible for submitting all documentation, as required by the specific Administrative Rules incorporated herein as Attachment 1, to the County Manager or his designee for this purpose.

Section 19. **Invalidity of Provisions, Severability**: Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

Section 20. **Indemnity**: The Municipality does hereby agree to indemnify and hold harmless the County to the extent and within the limitations of Section 768.28 Florida Statutes, subject to the provisions of that statute, whereby the Municipality shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of $100,000, or any claim or judgments or portions thereof, which when totaled with all other occurrences, exceeds the sum of $200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the Municipality. However, nothing herein shall be deemed to indemnify the County from any liability or claim arising out of the negligent performance or failure of performance of the County or any unrelated third party.

The County does hereby agree to indemnify and hold harmless the Municipality to the extent and within the limitations of Section 768.28 Florida Statutes, subject to the provisions of that statute, whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of $100,000, or any claim or judgments or portions thereof, which when totaled with all other occurrences, exceeds the sum of $200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the County. However, nothing herein shall be deemed to indemnify the Municipality from any liability or claim arising out of the negligent performance or failure of performance of the Municipality or any unrelated third party.

Section 21. **Assignment**: The Municipality may not assign all or any portion of this Agreement without the prior written consent of the County.

Section 22. **Entirety of Agreement**: This Agreement, and the attachments thereto, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

IN WITNESS THEREOF, the parties through their duly authorized representatives hereby execute this AGREEMENT with an effective date of _____, 2009.

City of Miami Beach, Florida

By: _____ _____
City Manager Date

For the Board of Commissioners,
City of Miami Beach, Florida

, CLERK
Attest:

By: _____ _____
Clerk Date

MIAMI-DADE COUNTY, FLORIDA

By: _____
County Mayor

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

Stephen P. Clark Center
111 NW 1 Street
Miami, Florida 33128

HARVEY RUVIN, CLERK
Attest:

By: _____ _____
Deputy Clerk Date

Approved by County Attorney as
to form and legal sufficiency.

_____