

MEMORANDUM

Agenda Item No. 8(M)(6)

TO: Honorable Vice Chairwoman Audrey M. Edmonson and Members, Board of County Commissioners **DATE:** December 4, 2012

FROM: R. A. Cuevas, Jr.
County Attorney **SUBJECT:** Resolution authorizing the execution of an Access and Indemnification Agreement between Miami-Dade County and the City of Miami to conduct coastal resource enhancement at City of Miami shorelines

The accompanying resolution was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Prime Sponsor Commissioner Xavier L. Suarez.



R. A. Cuevas, Jr.
County Attorney

RAC/smm

Date: December 4, 2012

To: Honorable Vice Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Authorizing the Execution of an Access and Indemnification Agreement between Miami-Dade County and the City of Miami to Conduct Coastal Resource Enhancement at City of Miami Shorelines through the County's Biscayne Bay Restoration and Enhancement Program

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing the execution of an Access and Indemnification Agreement between Miami-Dade County and the City of Miami for the County's Biscayne Bay Restoration and Enhancement Program which would allow the County to conduct coastal resource enhancement along shorelines owned by the City of Miami.

Scope

The project sites are located in Commissioner Suarez's District 7, along the Virginia Key Marine Stadium Basin and along spoil islands offshore from the Dinner Key Marina.

Fiscal Impact/Funding Source

This Agreement would provide access to City lands for environmental restoration and enhancement work, without specifying the exact work to be done. At this time, the intended project costs are estimated at \$1,400,000, and the funding for these purposes has already been approved by this Board. Pursuant to Resolution Nos. R-301-11 and R-302-11, this Board approved a disbursement of \$700,000 from the Biscayne Bay Environmental Enhancement Trust Fund for shoreline stabilizations in Marine Stadium and the Dinner Key Islands and that money served as matching funds for an additional \$700,000 in grant funds awarded by the Florida Inland Navigation District to the County.

Track Record/Monitor

The Section Manager of the Restoration and Enhancement Section of the Department of Regulatory and Economic Resources, Stephen Blair, will monitor the activities performed under this Agreement.

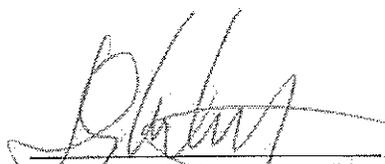
Background

Because eroding shorelines contribute to degraded water quality, the Biscayne Bay Management Plan ranks the stabilization of unconsolidated, eroding shorelines as a priority project area. The County's Biscayne Bay Restoration and Enhancement Program conducts environmental restoration and enhancement activities throughout Biscayne Bay with financial assistance from various local, state, and federal programs. These activities are conducted by outside contractors and County staff members.

These projects consist of removing exotic vegetation, planting native vegetation, and placing limestone boulders along 1,630 feet of eroding shoreline in the Marine Stadium Basin on Virginia Key and along 1,400 feet of eroding shoreline on two spoil islands located east of the Dinner Key Marina.

The purpose of the attached Access and Indemnification Agreement is to allow Miami-Dade County to access and conduct shoreline enhancement activities on parcels owned by the City of Miami.

This shoreline stabilization project will improve water quality in Biscayne Bay by reducing turbidity and will provide habitat for a variety of marine organisms.



Jack Osterholt, Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Vice Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: December 4, 2012

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

SUBJECT: Agenda Item No. 8 (M) (6)

Please note any items checked.

- "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
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(M)(6)
12-4-12

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN ACCESS AND INDEMNIFICATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI TO CONDUCT COASTAL RESOURCE ENHANCEMENT AT CITY OF MIAMI SHORELINES THROUGH THE COUNTY'S BISCAYNE BAY RESTORATION AND ENHANCEMENT PROGRAM; AND AUTHORIZING THE MAYOR OR MAYOR'S DESIGNEE TO EXERCISE THE PROVISIONS CONTAINED THEREIN

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

WHEREAS, Miami-Dade County has the expertise and resources to conduct the coastal resource enhancement activities as outlined in the accompanying memo; and

WHEREAS, the City of Miami has agreed to allow Miami-Dade County to pursue the coastal resource enhancement activities,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the Mayor or Mayor's designee to execute an Access and Indemnification Agreement between Miami-Dade County and the City of Miami to conduct coastal resource enhancement activities at City of Miami shorelines through the Miami-Dade County Biscayne Bay Restoration and Enhancement Program, subject to the terms and conditions set forth in the attached Agreement, in substantially the form attached hereto and made part hereof for and on behalf of Miami-Dade County; authorizes the Mayor or Mayor's designee to exercise amendments to this Agreement that are necessary to implement the intent of this Agreement; and authorizes the Mayor or Mayor's designee to exercise the provisions contained herein.

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:

Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	Juan C. Zapata

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of December, 2012. 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.



Abbie Schwaderer-Raurell

ATTACHMENT A

**ACCESS AND INDEMNIFICATION AGREEMENT
BETWEEN
THE CITY OF MIAMI
AND
MIAMI-DADE COUNTY**

This Access and Indemnification Agreement (the "Agreement") is made and entered into this ____ day of _____, 2012, by and between the City of Miami ("City"), a municipal corporation of the State of Florida and Miami-Dade County ("County"), a political subdivision of the State of Florida.

WITNESSETH

WHEREAS, the City is the fee simple owner of certain real property located at 3501 Rickenbacker Causeway, Miami, Florida, known as Marine Stadium and Dinner Key Islands in Miami, Florida depicted in Exhibits 'A' and 'B' respectively, attached hereto and made a part hereof ("Property"); and

WHEREAS, the County is undertaking a coastal/environmental project entitled "Marine Stadium Basin and Dinner Key Islands Shoreline Stabilization Project" ("Project"); and

WHEREAS, the City and the County have determined that the Project is in the best interest of the parties and it is of a mutual benefit to the residents of the City of Miami and Miami-Dade County; and

WHEREAS, the City grants to the County, its agents, representatives, employees or contractors herein after collectively referred to as "County," a non-exclusive permit, to enter and remain upon the Property, for the sole and limited purpose of performing certain work within the scope of the Project relating to planting shoreline stabilization vegetation below the water-line along the Marine Stadium Basin and Dinner Key Islands and creating construction-related improvements below the waterline along the Marine Stadium Basin and Dinner Key Islands, and for no other purpose whatsoever without permission of the City Commission; and

WHEREAS, the City grants the County access to perform the work specified herein, limited to below the waterline along the Marine Stadium Basin and Dinner Key Islands. All work performed by the County under this agreement is limited to the area below the waterline along the Marine Stadium Basin and Dinner Key Islands; and shall not include or interfere with the commercial marina operations near or within the Property in any way.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants herein set forth, the parties hereto agree as follows

1. **EFFECTIVE DATE AND TERM:**

This Agreement shall take effect upon its execution, following approval by the Board of City Commissioners and Board of County Commissioners and shall continue for a period of twenty-four (24) months from the date of notice by the County. If additional time is required, the County shall notify the City, in writing, at least ten (10) days prior to the commencement of the work.

2. FUNDING:

The County shall find and expend the funds necessary to construct the Project.

3. PERMITS AND APPROVALS:

The County shall acquire at its sole expense, all necessary or applicable permits (local, state, and federal) and all necessary or applicable approvals (local, state, and federal) to implement the construction of the Project.

4. SELF-INSURANCE:

The County is self-insured in accordance with and subject to the limitations of Section 768.28, Florida Statutes, and shall provide written evidence of acceptable self-insurance under the laws of the State of Florida to the City's Department of Risk Management Director, 444 SW 2nd Av. 9th Floor, Miami, FL 33130 prior to execution of this Agreement. The County represents that its self-insurance program covers actions to recover for injury or loss of property, personal injury, or death caused by the negligent or wrongful acts or omission of its officers and employees.

5. INDEMNIFICATION/CONTRACTOR'S INSURANCE:

A. INDEMNIFICATION

To the extent authorized by Florida law, the County hereby agrees to indemnify, defend, save and hold harmless the City and its respective officers, and employees, to the extent of all the limitations included with Section 768.28, Florida Statutes, from all claims, demands, liabilities, damages, losses, and suits of any nature whatsoever resulting from the County's actions under this Agreement, or arising out of, because of, or due to the breach of this Agreement by the County, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the City for its sole negligence or breach of contract.

The County hereby voluntarily and knowingly waives any and all claims against the City for personal injury or property damage sustained by the County, arising out of or related to the activities undertaken by the County, its agents, employees, contractors, sub-contractors, or consultants upon the Property or in connection with the work, and release the City for any claims in connection therewith. The County, its agents, representatives, or contractors cannot, under Florida law, place any type of lien or encumbrance on the property.

Notwithstanding any other term or provision herein, it is expressly understood and agreed by the County that the City is not responsible, liable, or otherwise answerable to pay any fee, cost, expense, reimbursement or other monetary compensation to the County, its agents, representatives, employees or contractors for their work or their services under this Agreement.

To the extent authorized by Florida law, the City hereby agrees to indemnify, defend, save and hold harmless the County and its respective officers, and employees, to the extent of all the limitations included with Section 768.28, Florida Statutes, from all claims, demands, liabilities, damages, losses, and suits of any nature whatsoever resulting from the City's actions under this

Agreement, or arising out of, because of, or due to the breach of this Agreement by the City, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the City for its sole negligence or breach of contract.

The City hereby voluntarily and knowingly waives any and all claims against the County for personal injury or property damage sustained by the City, arising out of or related to the activities undertaken by the City, its agents, employees, contractors, sub-contractors, or consultants upon the Property or in connection with the work, and release the County for any claims in connection therewith. The City, its agents, representatives, or contractors cannot, under Florida law, place any type of lien or encumbrance on the property.

Notwithstanding any other term or provision herein, it is expressly understood and agreed by the City that the County is not responsible, liable, or otherwise answerable to pay any fee, cost, expense, reimbursement or other monetary compensation to the City, its agents, representatives, employees or contractors for their work or their services under this Agreement.

B. INSURANCE

The following insurance requirements will apply. Within ten (10) days from Notice of Award the contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the contractor's operations under the Contract, whether such operations be by himself or by any Sub-Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

Contractor shall purchase and maintain such insurance as required by Exhibit C-Insurance Requirements.

C. CERTIFICATE OF INSURANCE:

Proof of insurance must be timely submitted, updated and transmitted to the City Risk Manager, whom shall review and comment upon or approve all required insurance.

Certificate of Insurance shall contain a provision that coverage afforded under the policies will not be cancelled until at least (30) days prior written notice has been given to the City's Risk Manager. The City must be named as additional insured on all coverage with the exception of Workmen's Compensation. Policies shall be issued by companies authorized to do business under the Laws of the State of Florida. Policyholders and Financial Ratings must be no less than "A-" and Class (V) respectively in the latest edition of "Best's Key Rating Guide", published by A.M Best Company.

6. THIRD PARTY BENEFICIARY:

This Agreement is solely for the benefit of the parties hereto and no third party shall be entitled to claim or enforce any rights hereunder.

7. **COMPLIANCE WITH LAWS:**

The parties shall comply with applicable federal, state and local laws, codes, ordinances, rules and regulations in performing their respective duties, responsibilities, and obligations pursuant to this Agreement and with all applicable laws relating to the Project. The parties shall not unlawfully discriminate in the performance of their respective duties under this Agreement.

8. **NO PARTNERSHIP:**

Nothing contained herein shall make, or be construed to make any party a principal, agent, partner or joint venture of the other.

9. **HEADINGS:**

Title and paragraph headings are for convenient reference and are not a part of this Agreement.

10. **AUTHORITY:**

Each of the parties hereto acknowledges it is duly authorized to enter into this Agreement and that the signatories below are duly authorized to execute this Agreement in their respective behalf.

11. **ENTIRE AGREEMENT, AMENDMENTS:**

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and 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, the parties agree 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 no modification, amendment or alteration in the terms contained herein shall be effective unless set forth in writing in accordance with this section. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties.

12. **NOTICES:**

Any and all notices required to be given under this Agreement shall be sent by first class mail, addressed to the following:

To the City:

Attention: Alice Bravo, P.E.
Assistant City Manager/Chief of Infrastructure
City of Miami
444 SW 2nd Avenue, 10th Floor
Miami, Florida 33130
(305) 416-1025

With a Copy to:

Attention: Director of Public Facilities
City of Miami
444 SW 2nd Avenue, 3rd Floor
Miami, Florida 33130
(305) 416-1458

To the County:

Attention: Gary Milano
Environmental Resources Project Supervisor
Miami-Dade County Regulatory and Economic Resources (RER)
701 NW 1st Court
Miami, Florida 33136
(305) 372-6851

13. FLORIDA GOVERNMENTAL CONFLICT RESOLUTION ACT.

The City and the County shall attempt to resolve any disputes, controversies or claims that may arise between them under the provisions of this Agreement under the provisions of the Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes.

IN WITNESS WHEREOF, the parties hereto caused this Access and Indemnification Agreement to be executed this ____ day of _____, 2012.

ATTEST:

CITY OF MIAMI, a municipal corporation
of the State of Florida

By: _____
Priscilla A. Thompson, City Clerk

By: _____
Johnny Martinez, P.E., City Manager

APPROVED AS TO INSURANCE
REQUIREMENTS

APPROVED AS TO LEGAL FORM
AND CORRECTNESS

By: _____
Calvin Ellis, Director
Risk Management Department

By: _____
Julie O. Bru
City Attorney

ATTEST:

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

HARVEY RUVIN
CLERK OF THE BOARD

By: _____
Deputy Clerk

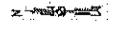
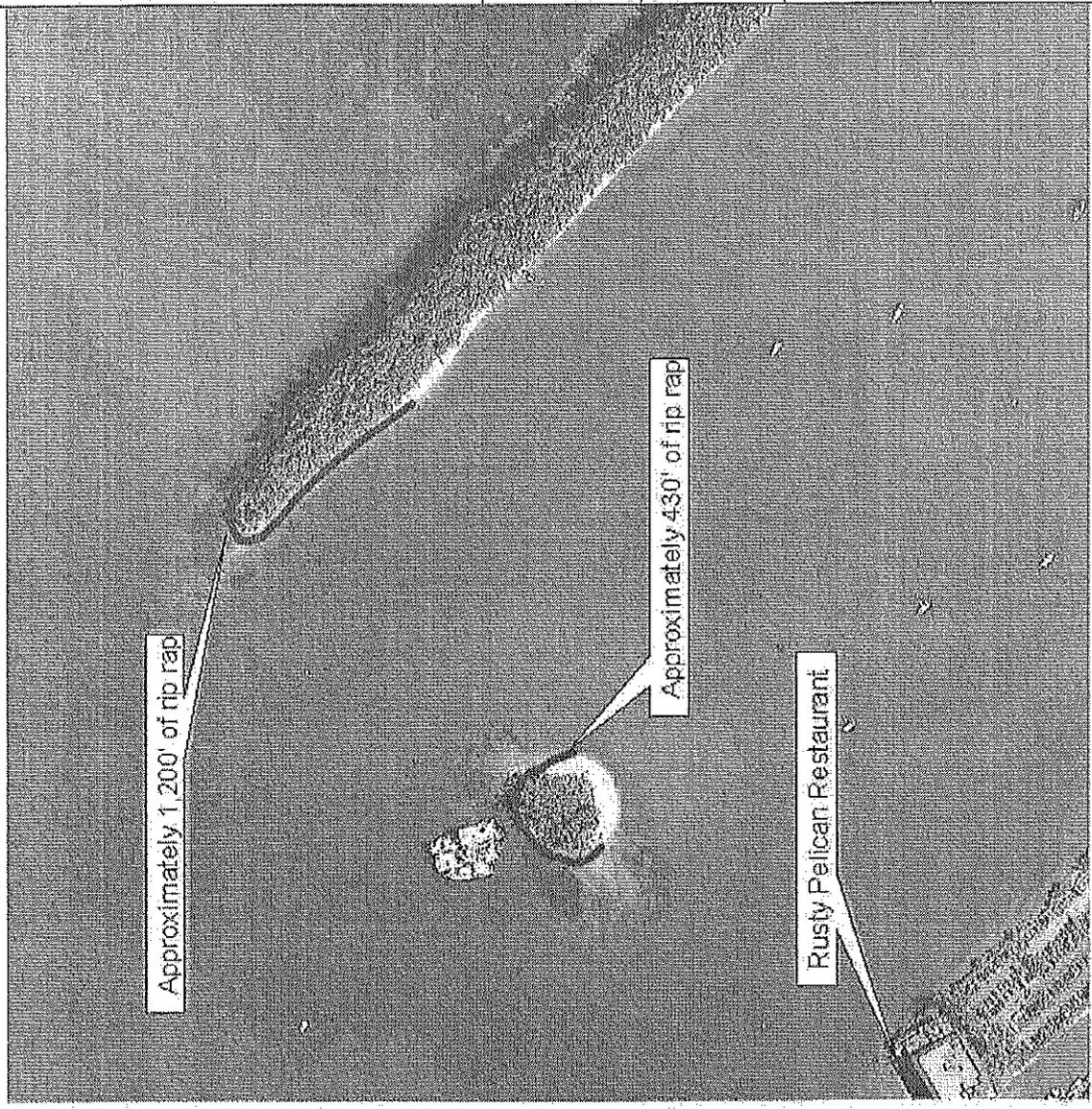
By: _____
County Mayor or County Mayor's Designee

Approved by County Attorney
as to form and legal sufficiency

By: _____
County Attorney

EXHIBIT A

Miami Marine Stadium Shoreline Stabilization Project



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ALL RIGHTS RESERVED. THIS DOCUMENT IS THE PROPERTY OF THE U.S. ARMY CORPS OF ENGINEERS AND IS LOANED TO YOU BY THE U.S. ARMY CORPS OF ENGINEERS. IT IS TO BE USED FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED IN THE CONTRACT DOCUMENTS. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE EXPRESS WRITTEN PERMISSION OF THE U.S. ARMY CORPS OF ENGINEERS.

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SCALE: 1 inch = 269.70 Feet

EXHIBIT C

**INSURANCE REQUIREMENTS
FROM GENERAL CONTRACTOR- MARINE STADIUM BASIN & DINNER KEY
ISLANDS SHORELINE STABILIZATION PROJECT**

I. Commercial General Liability (Primary & Non Contributory)

Limits of Liability

Bodily Injury and Property Damage Liability	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$1,000,000
Personal and Advertising Injury	\$1,000,000

Endorsements Required

City of Miami & Miami Dade County listed as an additional insured
Contingent & Contractual Liability
Primary Insurance Clause
Premises & Operations Liability
Explosion, Collapse and Underground Hazard
Loading and Unloading

II. Business Automobile Liability

Limits of Liability

Bodily Injury and Property Damage Liability	
Combined Single Limit	
Any Auto/Owned Autos/Scheduled	
Including Hired, Borrowed or Non-Owned Autos	
Any One Accident	\$1,000,000

Endorsements Required

City of Miami & Miami Dade County listed as an additional insured

III. Worker's Compensation

Limits of Liability

Statutory-State of Florida
Waiver of subrogation

USL&H IF APPLICABLE

IV. Employer's Liability

A. Limits of Liability

\$1,000,000 for bodily injury caused by an accident, each accident.
\$1,000,000 for bodily injury caused by disease, each employee
\$1,000,000 for bodily injury caused by disease, policy limit

V. Umbrella Policy/Excess Liability (Excess Follow Form)

A. Limits of Liability

Bodily Injury and Property Damage Liability
Each Occurrence \$2,000,000
Aggregate \$2,000,000

B. Endorsements Required

City of Miami & Miami Dade County listed as an additional insured

VI. Payment and Performance Bond \$TBD

City of Miami and Miami Dade County listed as Obligees

VII. Protection and Indemnity (If Applicable) \$1,000,000

Jones Act Included

VIII. Owners & Contractors Protective

A. Limits of Liability

Each Occurrence \$1,000,000
Policy Aggregate \$1,000,000

City of Miami and Miami Dade County listed as named insured

IX. Installation Floater (IF APPLICABLE)

Causes of Loss: All Risk-Specific Coverage Project Location

Valuation: Replacement Cost

Deductible: \$2,500 All other Perils

5% maximum on Wind

A. Limit/Value at Location or Site \$ _____

XI. Professional/Pollution Liability (IF APPLICABLE)

Each Claim \$1,000,000

Policy Aggregate \$1,000,000

Retro Date Coverage Included

The above policies shall provide the City of Miami with written notice of cancellation or material change from the insurer in accordance to policy provisions.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than "A-" as to management, and no less than "Class V" as to Financial Strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.