

MEMORANDUM

Agenda Item No. 8(C)(1)

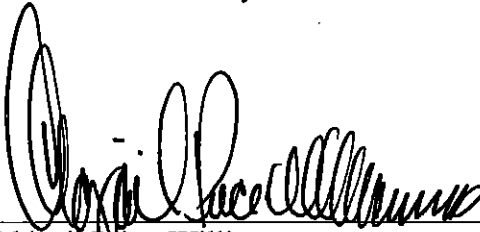
TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: March 6, 2018

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving and authorizing the recording of a Covenant Running with the Land in favor of the Florida Department of Transportation for maintenance within the right of way at the Adrienne Arsht Center for the Performing Arts of Miami-Dade County located at, near, or in the vicinity of 1300 Biscayne Boulevard, Miami, Florida; and further authorizing the County Mayor to execute covenant documents, to perform all actions set forth therein, to take all actions necessary to effectuate same, and record covenant

The accompanying resolution was prepared by the Cultural Affairs Department and placed on the agenda at the request of Prime Sponsor Vice Chairwoman Audrey M. Edmonson.




Abigail Price-Williams
County Attorney

APW/smm

Date: March 6, 2018

To: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Authorizing the County Mayor or Mayor's Designee to Execute and Record an FDOT-required Covenant to Implement Repairs and Upgrades to the Storm Water Management System at the Adrienne Arsht Center for the Performing Arts of Miami-Dade County

Recommendation

It is recommended that the Board of County Commissioners authorize the County Mayor or Mayor's designee to execute and record a Covenant Running with the Land, in substantially the form presented herein, in favor of the Florida Department of Transportation (FDOT) for repairs and upgrades to the storm water management system within the right-of-way and serving the Adrienne Arsht Center for the Performing Arts of Miami-Dade County (Arsht Center).

Scope

While the facility is located in Commission District 3, represented by Vice-Chairwoman Audrey M. Edmonson, the Arsht Center has countywide impact.

Fiscal Impact/Funding Source

The recording of the covenant required by FDOT only has nominal recording fees.

Track Record/Monitor

Miami-Dade County has an Operating Management Agreement with the Performing Arts Center Trust (PACT), the governing body of the Arsht Center, which has successfully managed the Center and implemented necessary repairs for over 10 years and who will oversee the execution of the design and construction work necessary to upgrade the Arsht Center's drainage system. The Miami-Dade County Department of Cultural Affairs is the County's liaison for the Arsht Center.

Background

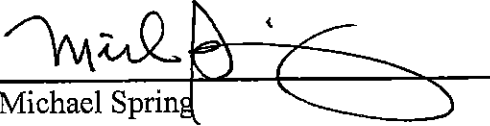
The Arsht Center is owned by Miami-Dade County and operated by the PACT through an Operating Management Agreement giving the PACT the authority and responsibility over the day-to-day operations of the facility, including the procurement of contractors for the maintenance and repairs to the facility. The Arsht Center has engaged the services of an engineering firm, Coastal Systems International, Inc., to assess the design and performance of the drainage system, to provide recommendations for necessary improvements, and to develop the construction documents required to implement the recommended improvements. The proposed improvements include connecting several of the drainage wells to take advantage of the ones that are being underutilized, therefore improving those that are near capacity as well as adding a new well. The construction documents have been completed and are in the process of being permitted. Part of the permitting process requires FDOT's review and approval since the work will be carried out along Biscayne Boulevard, between NE 13 Street and NE 14 Street and on NE 13 Street between Biscayne Boulevard and North Bayshore Drive. FDOT requires that a covenant running with the land be

recorded by the property owner to implement the improvements needed for the storm water management system.

A Joint Project Agreement and Highway Maintenance Agreement amongst the County, the PACT, and FDOT related to the maintenance responsibilities for non-standard improvements in the FDOT right-of-way was authorized by the Board via resolutions No. R-931-01 and No. R-906-02 during the initial design and construction of the Arsht Center. The non-standard improvements include street furniture, a pedestrian bridge, pavers in the sidewalk and street, landscaping, and the storm water management system. The Covenant Running with the Land updates the previously established agreements to incorporate the currently proposed improvements.

The Arsht Center and Miami-Dade County are partners in ensuring that the facility is maintained to the highest standards for its users, patrons and visitors. The repairs and upgrades to the drainage system that services the Arsht Center will ensure that the County protects its interests in this world-class facility and will help ensure the continued success of the Center.

Attachments: Exhibit A – FDOT Covenant
Exhibit B – Permit Plans


Michael Spring
Senior Advisor

This instrument prepared by,
or under the direction of:
Alicia Trujillo, Esq.
District Six Chief Counsel
State of Florida
Department of Transportation
1000 N.W. 111th Ave.
Miami, FL 33172

**COVENANT RUNNING WITH THE LAND
FOR MAINTENANCE WITHIN RIGHT OF WAY**

WHEREAS, Miami-Dade County, a political subdivision of the State of Florida, hereinafter referred to as "Owner", is the fee simple owner of the following described property:

see Exhibit "A" attached hereto and made part hereof (the "Property")

has requested to install drainage improvements (the "Improvements") within the state right of way of the Florida Department of Transportation, hereinafter referred to as the Department, identified as SR5/Biscayne Boulevard (the "state right-of-way"), between NE 13th Street and NE 14th Street, and on NE 13th Street from SR5/Biscayne Boulevard to North Bayshore Drive (the "public right-of-way") in the City of Miami, in Miami-Dade County, Florida;

IN CONSIDERATION of the approval of a permit by the Department, copy of which is attached hereto and made part hereof as Exhibit B, Owner agrees as follows:

1. To maintain, repair, restore and replace, at Owner's sole cost and expense, where necessary, the Improvements within the state right-of-way and the public right-of-way, and to undertake the restoration, repair or reconstruction of any portion of the state right-of-way that is damaged as a result of the Owner's Improvements on the state right-of-way. Such activities are subject to approval by the Department and may be subject to Owner obtaining a permit from the Department. If it becomes necessary for the Department to maintain, repair, restore and/or replace the Improvements within the state right-of-way (including, without limitation, to maintain, repair, restore and/or replace the Improvements and all related features appurtenant thereto) by reason of the Owner's failure to do so, and/or in order to mitigate any damage to the state right-of-way, such cost and expense shall be paid by the Owner to the Department, or the same shall constitute a lien against the above described property until paid in full. The Department has entered into a maintenance agreement with the City of Miami for maintenance of pavers within the state right-of way defined herein; as such, any repairs, replacement and/or restoration of the pavers within the state right-of-way are also subject to a permit and/or approval by the City of Miami as the maintaining authority.
2. Subject to the limitations of FL Statutes Section 768.28 and the monetary caps set forth therein, the Owner agrees to indemnify, hold harmless and relieve the Department from any legal action, damage, cost or expense (including but not limited to attorneys' fees and costs), that may result from the installation, repair, restoration, replacement and/or and maintenance of the Improvements within the state right-of-way, including but not limited to any death or injury to person, or any damage to

person or property, and/or for the cost of any maintenance, repair, restoration and/or replacement thereto.

3. In the event that the Department concludes that the Improvements interfere in any way with the use of the state right-of way, or with the Department's maintenance, improvement, extension or expansion of the state roadway facility, within thirty (30) days written notice from the Department to the Owner, the Owner shall remove or relocate the Improvements at Owner's sole cost and expense. If Owner does not timely remove the Improvements, the Department may proceed to do so, at the Owner's cost and expense.
4. For purposes of notices required hereunder, the address of each the Department and the Owner appear below. Upon the sale and conveyance of the Property, Owner shall notify the Department of the new information for purposes of notices required hereunder.

As to the Department: Florida Department of Transportation
ATT: District 6 Maintenance Engineer
1000 NW 111th Avenue
Miami, FL 33172

With copy to: Florida Department of Transportation
ATT: District 6 Permit Office
1000 NW 111th Avenue
Miami, FL 33172

As to the County: Michael Spring
Senior Advisor, Miami-Dade County Office of the Mayor
Director, Miami-Dade County Department of Cultural Affairs
Stephen P. Clark Building
111 NW 1st Street, Suite 625
Miami, FL 33128

5. The improvements are located within the state right-of-way, and the Department understands that the Owner has an on-going self-insurance program for General Liability covering employees and officials of the Owner. In compliance with and subject to the limitations of Florida Statutes, Section 768.28 and Chapter 440, provisions have been made to process any claims that may arise and the same protection will be afforded as would be provided by a policy of insurance. The Owner shall be obligated to provide a Self-Insured letter to the Department upon each renewal.
6. Owner shall comply with all to comply with the permit(s) issued, or to be issued, by the Department, in conjunction with the Improvements, and all special provisions contained therein, whether the same have been issued to third parties, including but not limited to, any contractor or subcontractor of the Owner, undertaking work for Owner on the state right-of-way. Additionally, Owner agrees to provide to all the successors in title of the Property with copies of the above-referenced permit(s) in order to provide due notice to such successors in title of the obligations therein contained.
7. Owner further agrees that the conditions herein shall be deemed a covenant running with the land, in favor of the Department, its successor and/or assigns, and burdening the Property, and shall remain in full force and effect and be binding on Owner, its heirs, assigns and successors in title, until such time as this Covenant has been cancelled, or partially terminated, by an affidavit, duly executed and filed in the Public Records of Miami-Dade County, Florida, by Department's authorized representative.

8. The execution and delivery of this Covenant has been duly authorized and approved by the Board of County Commissioners, pursuant to Resolution_____.

Signed, sealed, executed and acknowledged on _____ day or _____, 20__ at _____, Florida

ATTEST: _____

Clerk (or Deputy Clerk) of the Circuit Court

(Affix County Seal)

Miami-Dade County, Florida,
By its Board of County Commissioners

By: _____
Title: _____

(Address)

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this _____ day of _____ 20__, by _____, who is personally known to me or who has produced _____ as identification.

(Signature of person taking acknowledgment)

(Type, print or stamp name under signature)
Title or rank and serial number, if any:

EXHIBIT "A" – PROPERTY LEGAL DESCRIPTION

1300 BISCAYNE BLVD

PERFORMING ARTS CENTER OF MIAMI
PB 155-50 T-20256
TRACT A
LOT SIZE 3.524 Acres, more or less
Folio 01-3231-035-0010

31 53 42 3.65 AC
BOULEVARD TRACT PB 100-65
TR A & PORT OF ST LYG BETW BISC
BLVD & NE 13 ST DESC AS BEG AT
MOST ELY PT OF TR A TH S66.84FT
SWLY AD 39.25FT W56.61FT N 42 DEG
E 104.98FT NWLY AD 19.65FT TO POB
LOT SIZE 158925 SQ FT
OR 15273-175 1191 3
NAU 01-3231-056-0010-0020-0021

1301 BISCAYNE BLVD

PERFORMING ARTS CENTER OF MIAMI
PB 155-50 T-20256
PORTION OF TRACT B DESCRIBED as the South 140 Feet of Tract B,
LOT SIZE .883 Acres, more or less
Folios 01-3231-014-0010-0030 &

1351 BISCAYNE BLVD

PERFORMING ARTS CENTER OF MIAMI
PB 155-50 T-20256
TRACT B LESS the South 140Feet
LOT SIZE 1.466 Acres, more or less
Folios 01-3231-012-0150; 01-60-01700180 & 01-3231-015-0020

EXHIBIT "B" – PERMIT PLANS

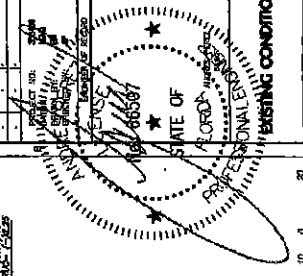
ADRIENNE ARSHT CENTER

ADRIENNE ARSHT CENTER FOR THE PERFORMING ARTS
1800 MCKAYNE BLVD
MIAMI, FL 33133

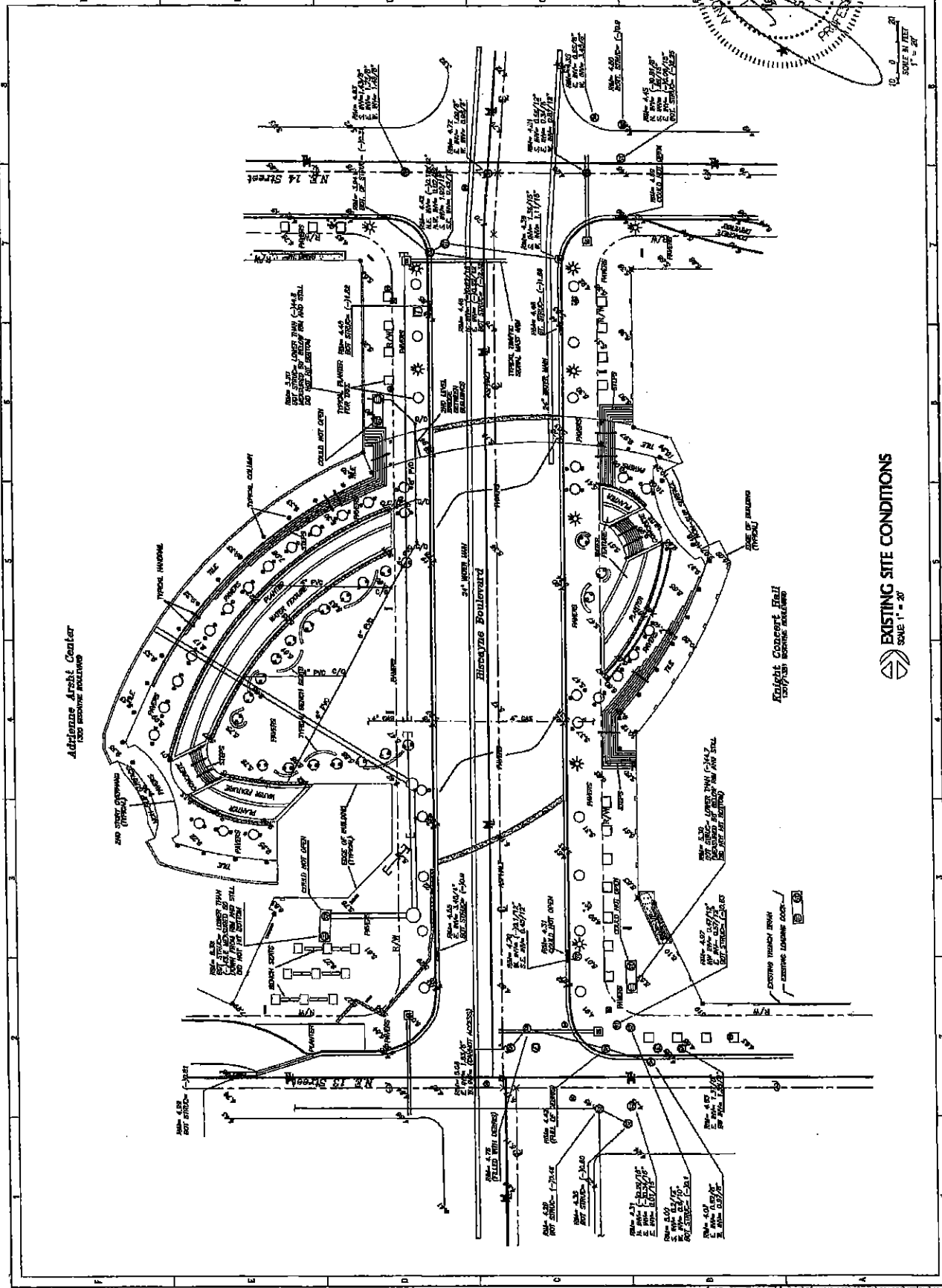


COASTAL SYSTEMS INTERNATIONAL, INC.
 44 South Bay, Miami, FL 33133
 Tel: 305-358-1111
 Fax: 305-358-1111
 Telex: 305-358-1111
 Teletype: 305-358-1111
 C/O: International and Management Consultants

NO.	DATE	DESCRIPTION
1	10/1/78	PRELIMINARY
2	10/1/78	REVISIONS
3	10/1/78	REVISIONS
4	10/1/78	REVISIONS
5	10/1/78	REVISIONS
6	10/1/78	REVISIONS
7	10/1/78	REVISIONS
8	10/1/78	REVISIONS
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49	10/1/78	REVISIONS
50	10/1/78	REVISIONS



G-3
 EXISTING CONDITION



Adrienne Arsht Center
 1800 MCKAYNE BLVD

EXISTING SITE CONDITIONS
 SERIES 1 - 30



ADRIENNE ARSHIT CENTER

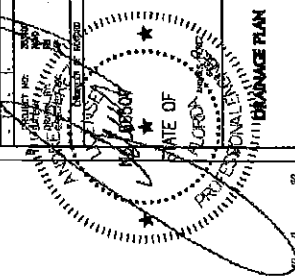
**ADRIENNE ARSHIT CENTER FOR THE PERFORMING ARTS
1000 BISCAYNE BLVD
MIAMI, FL 33132**



COASTAL SYSTEMS INTERNATIONAL, INC.
241 South Main Highway
Orlando, Florida 32801
Tel: 305-461-1114
Fax: 305-461-1114
www.coastalsystems.com
Professional Seal
Civil, Mechanical, Electrical, Environmental,
and Engineering and Surveying

CORRELATIONS

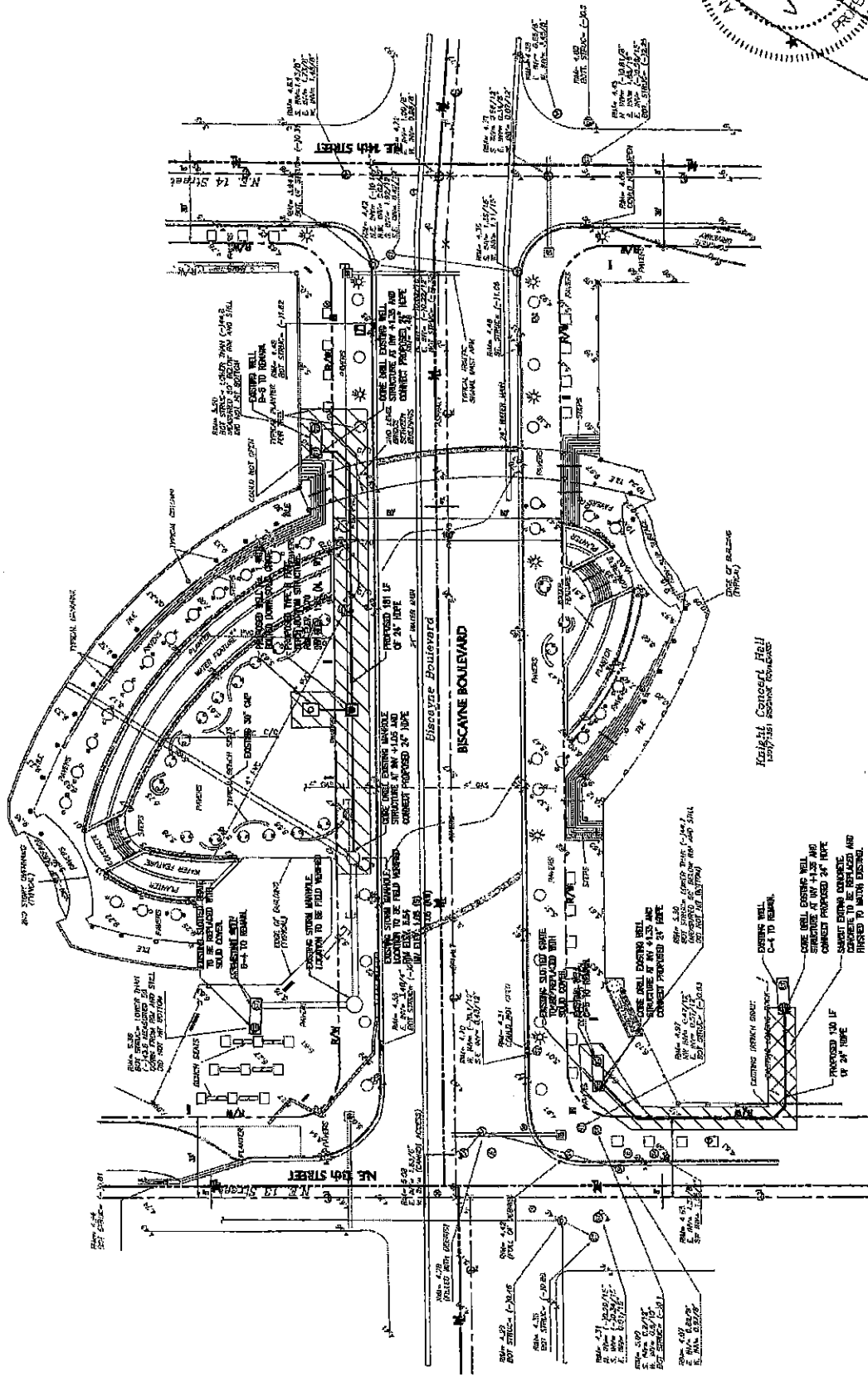
NO.	REVISION	DATE	DESCRIPTION
1	REVISED	04/20/14	AS SHOWN



DRAINAGE PLAN

C-1

Adrienne Arshitt Center
1000 Biscayne Boulevard



EXISTING SITE CONDITIONS
SCALE 1" = 20'

AREA TO BE RESTORED TO ITS ORIGINAL STATE. PAVEMENT ARE TO BE NOT TO BE IMPROVED FROM THE PAVEMENT EXISTING. SHALL BE MAINTAINED AND REPAIRED.



DRAINAGE WELL NOTE:
EXISTING WELLS TO BE USED FOR DRAINAGE. EXISTING WELLS TO BE NOT TO BE IMPROVED FROM THE PAVEMENT EXISTING. SHALL BE MAINTAINED AND REPAIRED.

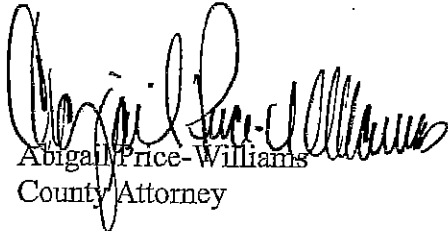


MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: March 6, 2018

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(C)(1)

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
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor'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(C)(1)
3-6-18

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING THE RECORDING OF A COVENANT RUNNING WITH THE LAND IN FAVOR OF THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR MAINTENANCE WITHIN THE RIGHT OF WAY AT THE ADRIENNE ARSHT CENTER FOR THE PERFORMING ARTS OF MIAMI-DADE COUNTY LOCATED AT, NEAR, OR IN THE VICINITY OF 1300 BISCAYNE BOULEVARD, MIAMI, FLORIDA; AND FURTHER AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE COVENANT DOCUMENTS, TO PERFORM ALL ACTIONS SET FORTH THEREIN, TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE SAME, AND RECORD COVENANT

WHEREAS, Miami-Dade County owns the Adrienne Arsht Center for the Performing Arts of Miami-Dade County ("Arsht Center"), previously known as the Performing Arts Center; and

WHEREAS, in 2001, via Resolution R-931-01, this Board authorized a Joint Project Agreement and Highway Maintenance Agreement amongst Miami-Dade County, the Performing Arts Center Trust, Inc. and the Florida Department of Transportation ("FDOT") related to the maintenance responsibilities for non-standard improvements in the FDOT right-of way; and

WHEREAS, in 2002, via Resolution R-906-02, this Board authorized amendments to these agreements to include additional improvements; and

WHEREAS, the non-standard improvements include custom street furniture, pedestrian bridge, pavers in sidewalk and street, landscaping, and the storm water management system; and

WHEREAS, the Arsht Center has engaged an engineering firm to assess the performance of the storm water management system and to design repairs and upgrades necessary to maximize its efficacy; and

WHEREAS, FDOT requires that a covenant running with the land be recorded by the property Owner to implement the improvements needed to the storm water management system,

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

Section 1. This Board authorizes the County Mayor or County Mayor's designee to execute and record the Covenant Running with the Land (attached to this resolution as Attachment A) in favor of FDOT in order to implement the repairs and upgrades necessary to the storm water management system at the Arsht Center and perform all actions set forth therein and take all actions necessary to effectuate same.

Section 2. Pursuant to Resolution No. R-974-09, this Board (a) directs the County Mayor or County Mayor's designee to record the covenant in the public records of Miami-Dade County and to provide a recorded copy of the instrument to the Clerk of the Board within 30 days of recordation of the easement; and (b) directs the Clerk of the Board to attach and permanently store a recorded copy of said covenant together with this resolution.


The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of March, 2018. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the 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.



Monica Rizo Perez