

MEMORANDUM

Agenda Item No. 8(K)(1)

TO: Honorable Acting Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: December 15, 2020

FROM: Geri Bonzon-Keenan
Successor County Attorney

SUBJECT: Resolution approving and authorizing the County Mayor to execute a first amendment to the existing ground lease between Miami-Dade County (“County”) and Brisas Del Rio Apartments, LLC, a Florida limited liability company and an affiliate of RUDG, LLC (“RUDG”), and amendment to the memorandum of the lease and a partial release of certain United States Department of Housing and urban related documents; approving by a two-thirds vote of the Board, a designated purchase pursuant to section 2-8.1(c)(3) of the Code, for a development agreement with RUDG and River Parc Riverwalk, LLC, for overseeing engineering and construction of a seawall and public riverwalk (“project”) in amount not to exceed \$4,000,000.00 to be funded with Building Better Communities General Obligation Bond Program funds and section 255.20(c)(10), Florida statutes, to select Fortune Urban Construction, LLC as contractor for the project; authorizing the County Mayor to execute the development agreement and exercise all provisions contained therein and all provisions contained in the amendments and release

The accompanying resolution was prepared by the Public Housing and Community Development Department and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins.



Geri Bonzon-Keenan
Successor County Attorney

GBK/uw

Memorandum



Date: December 15, 2020

To: Honorable Acting Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Daniella Levine Cava *Daniella Levine Cava*
Mayor

Subject: Approval of Development Agreement, Selection of Construction Contractor and Amendment to Lease to Reduce Leased Premises for the construction of a Seawall and Riverwalk on existing public housing site undergoing redevelopment

Recommendation

It is recommended that the Miami-Dade Board of County Commissioners (Board) adopt the attached resolution which:

- 1) Approves and authorizes the County Mayor or the County Mayor's designee to execute the first amendment (attached as Exhibit 1 to the resolution) to the ground lease ("lease") between Miami-Dade County ("County") and Brisas Del Rio Apartments, LLC, a Florida limited liability company and an affiliate of RUDG, LLC ("RUDG"), amendment to the memorandum of the lease (attached as Exhibit 2 to the resolution) and a partial release of certain United States Department of Housing and Urban (HUD) related documents (attached as Exhibit 3 to the resolution) for the purpose of releasing a portion of land covered by the lease for the construction of a seawall and public riverwalk (the "project") located at the Martin Fine Villas, Haley Sofge and Robert King High public housing Sites (collectively referred to as the Senior Campus);
- 2) Approves a designated purchase, pursuant to section 2.8.1(c)(3) of the Code of Miami-Dade County ("County Code") and section 255.20(c)(10), Florida Statutes, by a two-thirds vote of the Board in order to approve and authorize the County Mayor or Mayor's designee to execute a Development Agreement (attached as Exhibit 4 to the resolution) with RUDG and River Parc Riverwalk, LLC, (the "developer"), a Florida limited liability company and an affiliate of RUDG for the purpose of managing and overseeing the design and construction of the project and for its use of Fortune Urban Construction, LLC, a Florida limited liability company ("contractor"), as the construction contractor to build the project; and
- 3) Approves the use and allocation of \$4,000,000.00 of the Building Better Communities General Obligation Bond ("Bond") Program from Project No. 126 – "Miami River Greenway" for the construction and development of the project.

Scope

The scope of work includes the construction of the project, which is located within County Commission District 5 represented by Commissioner Eileen Higgins.

Fiscal Impact/Funding Source

The fiscal impact to the County for this item is \$4,000,000.00, which will be funded through the Bond Program Project No. 126. The total original allocation of Project No. 126 was \$7,500,000.00 and, to date, \$4,490,161.06 remains unused.

Track Record/Monitor

This project will be monitored by Michael Liu, Director of the Public Housing and Community Development Department (Department).

Background

Request for Proposal No. 794 was issued on July 14, 2011 to solicit offers from developers to maximize and expedite the development potential of over 100 existing public housing sites and vacant land sites owned by the County and administered by the Department. The solicitation sought to establish partnerships with qualified entities to rehabilitate/upgrade existing public housing units, remove and replace obsolete public housing units, increase the number of units on underutilized sites, develop vacant land owned by the County, and also incorporate commercial and other special purpose uses, where appropriate, at particular public housing sites or vacant land sites. Additionally, the Department sought to replace its older units with new contemporary designs that resemble market-rate units (regardless of whether these are public housing, affordable or market-rate units) and incorporate creative and sustainable design solutions.

On November 23, 2011, the Board adopted Resolution No. R-1026-11, which awarded site control of a total of 28 project sites, including, but not limited to, the Senior Campus, through ground leases to six developers, including RUDG, for the redevelopment of the Senior Campus. On May 21, 2013, the Board also adopted Resolution No. R-399-13 with RUDG or its assignee, which, in part, authorized the execution of a ground lease for the redevelopment of Martin Fine Villas and Haley Sofge Towers. Additionally, on October 22, 2013, the Board adopted Resolution No. R-855-13, which, in part, authorized the execution of a ground lease with RUDG for the redevelopment of Robert King High. Finally, on April 8, 2014, the Board adopted Resolution No. R-331-14, which, in part, authorized the execution of a master development agreement with RUDG for the development of Martin Fine Villas, Haley Sofge Towers, and Robert King High developments (collectively referred to as the Senior Campus). A portion of the land upon which the Senior Campus sits includes the project area.

In order to proceed with the project, RUDG has agreed to release the portion of the land where the project will be constructed from the lease. Accordingly, upon approval of the attached resolution, the lease and a related documents, will be executed to release the land from the lease and RUDG's interest in the land.

Additionally, a development agreement will be executed between the County, RUDG and the developer, which will serve as the master developer and construction manager for the project. Currently, the contractor is under contract and is undertaking the construction and development of the Senior Campus. The location of the project is affiliated with the redevelopment of the Senior Campus as it is immediately adjacent to, and will largely and principally service the residents of

the Senior Campus. The contractor is mobilized and on-site for the work on the Senior Campus and is therefore uniquely qualified to undertake the construction work for the project. Moreover, it is not practicable nor in the best interest of the County to seek another entity to undertake the oversight, construction and development of the project as the need for the Department to closely coordinate and manage simultaneous construction of the Senior Campus and the project on adjacent sites would likely result in additional, significant expenses to the County, duplication of efforts and equipment on site, and hardships on nearby residents and businesses with two construction firms being mobilized simultaneously. Finally, RUDG and the developer have agreed to pay for all architectural and engineering services needed for the project, thereby resulting in a significant benefit to the County. The Development Agreement requires developer and contractor to comply with all County and statutory requirements pertaining to construction on County property of public improvements, including obtaining a payment and performance bond, complying with the County's small business program and measures, and paying responsible wages for the construction work on the project.

The Bond Program funds will be used to fund the construction of the project. The architect of record for the project has provided a written recommendation, per section 255.20(10)(d), Florida Statutes, that the construction of the project should be undertaken by contractor without a competitive process for many of the reasons set forth herein, and the recommendation is attached hereto as Attachment 2. In accordance with the requirements of section 255.20(10)(a)-(d) pertaining to the non-competitive selection of the contractor for the project, the County has published notice at least 14 days prior to the public meeting at which this item will be approved by the Board. The Department has consulted with and obtained approval from HUD of the project, which is attached hereto as Attachment 1 and incorporated herein by reference.

Attachments

From: [Bly, Belinda L](#)
To: [Efrem Levy](#); [Smith, Terrence \(CAO\)](#); [Meza, Ana \(PHCD\)](#); [Rizo, Monica \(CAO\)](#)
Cc: [Iyen A. Acosta](#); [Dotson, Gail A](#); [Ogunbola, Abbey O](#); [Patricia Green](#); [Ogunbola, Abbey O](#); [Wilson, Susan](#)
Subject: RE: Seawall - Brisas del Rio
Date: Thursday, April 16, 2020 12:50:20 PM
Attachments: [image001.png](#)

EMAIL RECEIVED FROM EXTERNAL SOURCE.

Good Afternoon,

This is a quick note to communicate that the Office of Revitalization and Urban Development needs no further action from Miami-Dade to proceed with the partial release of the Property as described in previous documents. Our legal counsel, Gail Dotson has reviewed Miami-Dade County's ("County") request for partial release of property. A Riverwalk is being constructed and there is a slight overlap between the Riverwalk and the land included in the Ground Lease. The County has proposed to release that portion (overlap) of the land and return it to the County to be used as a public Riverwalk. Upon review of the documents submitted for our review, it was have determined that the proposed Partial Release of HUD Documents is legally sufficient. Please include the re-recorded document in your final evidentiary binder that will be submitted to Abbey Ogunbola.

Thank you for your notification to this office of this minor change. We look forward to seeing pictures of this development project as it proceeds.

Belinda

Belinda L. Bly

Supervisory, PHRS, Office of Urban Revitalization
Office of Public Housing Investments
Office: (202) 402-4104
Cell: (202) 423-3233
belinda.bly@hud.gov

From: Efrem Levy <elevy@renocavanaugh.com>
Sent: Wednesday, April 15, 2020 2:44 PM
To: Ogunbola, Abbey O <Abbey.O.Ogunbola@hud.gov>; Dotson, Gail A <Gail.A.Dotson@hud.gov>; Patricia Green <PGreen@stearnsweaver.com>; Smith, Terrence (CAO) <Terrence.Smith@miamidade.gov>
Cc: Iyen A. Acosta <IAcosta@renocavanaugh.com>; Bly, Belinda L <belinda.l.bly@hud.gov>; Meza, Ana (PHCD) <Ana.Meza@miamidade.gov>; Rizo, Monica (CAO) <Monica.Rizo@miamidade.gov>
Subject: RE: Seawall - Brisas del Rio



OCEAN CONSULTING, LLC · 340 Minorca Avenue, Suite 7 · Coral Gables, FL 33134
Tel: 305-921-9344 · Fax: 305-677-3254
www.oceanconsultingfl.com

19-9390

September 3, 2020

Mr. Thomas Walsh
RIVER PARC MASTER PLAN, LLC
444 Brickell Avenue, Suite 301
Email: twalsh@relatedgroup.com
Phone: (305) 459-8158

Dear Mr. Walsh:

I am the permitting consultant for the new seawall to be constructed along the Miami River for Miami-Dade County ("Project"). In accordance with Section 255.20(c)(10)(b)(i) of the Florida Statutes, I recommend that Fortune Urban Construction, LLC ("Contractor") be awarded the construction contract for the Project without a competitive bidding process.

Section 255.20(c)(10)(b)(i) of the Florida Statutes authorizes the County to waive competitive bidding if "there is one appropriately licensed contractor who is uniquely qualified to undertake the Project because that contractor is currently under contract to perform work that is affiliated with the Project." The Project is located on and adjacent to the land utilized for the Martin Fine Villas/ Haley Sofge and Robert King High Public Housing Sites (the "Land"). The Project is affiliated with the redevelopment of the public housing sites located on the Land (the "Development"). The Contractor has recently completed the initial phases of the Development on the Land and is currently constructing a new phase of the Development on the Land. The Contractor is therefore familiar with the Land and the Development, and is already mobilized on the Land.

Selecting the Contractor to construct the Project would reduce any hardship on nearby businesses and residences by permitting the simultaneous construction of the Project and the adjacent development on the Land. The Contractor is also uniquely qualified to construct the Project based on its ongoing work on the affiliated Development. The Contractor therefore meets the requirements of Section 255.20(c)(10)(b)(i) of the Florida Statutes, and a waiver of competitive bidding is appropriate.

Thank you for your review of this information. Should you have any questions regarding this proposal, please do not hesitate to contact me at (305) 457-5573.

Sincerely,
OCEAN CONSULTING, LLC

A handwritten signature in blue ink, appearing to read "Kirk J. Lofgren".

Kirk J. Lofgren
Principal

September 3, 2020

Andrew Velo-Arias
Development Manager
River Parc Riverwalk, LLC.
444 Brickell Ave, Suite 301
Miami, FL 33131

Re: **River Parc Master Plan
Miami, Florida**

Dear Mr. Velo-Arias,

MODIS Architects is the Architect of Record for the River Parc Master Plan and its associated seawall and river walk to be constructed along the Miami River for Miami-Dade County ("Project"). In accordance with Section 255.20(c)(10)(b)(i) of the Florida Statutes, I recommend that Fortune Urban Construction, LLC ("Contractor") be awarded the construction contract for the Project without a competitive bidding process.

Section 255.20(c)(10)(b)(i) of the Florida Statutes authorizes the County to waive competitive bidding if "there is one appropriately licensed contractor who is uniquely qualified to undertake the project because that contractor is currently under contract to perform work that is affiliated with the project." The Project is located on and adjacent to the land utilized for the Martin Fine Villas/ Haley Sofge and Robert King High Public Housing Sites (the "Land"). The Project is affiliated with the redevelopment of the public housing sites located on the Land (the "Development"). The Contractor has recently completed the initial phases of the Development on the Land and is currently constructing a new phase of the Development on the Land, for which MODIS Architects is the Architect of Record. The Contractor is therefore familiar with the Land and the Development and is already mobilized on the Land.

Selecting the Contractor to construct the Project would reduce any hardship on nearby businesses and residences by permitting the simultaneous construction of the Project and the adjacent development on the Land. The Contractor is also uniquely qualified to construct the Project based on its ongoing work on the affiliated Development. The Contractor therefore meets the requirements of Section 255.20(c)(10)(b)(i) of the Florida Statutes, and a waiver of competitive bidding is appropriate. Should you have any questions do not hesitate to contact us at your earliest convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Morisette', with a stylized flourish at the end.

Modis Architects, LLC.
Robert K. Morisette, AIA, NCARB, LEED AP BD+C, CDP
Principal



September 4, 2020

Mr. Michael Liu
Director
Miami Dade Public Housing And Community Development
701 NW 1st Court - 16th Floor East
Miami, FL 33136

RE: River Parc Seawall Project - Justification Waiver

Dear Mr. Liu:

CSA Central, Inc. (CSA) has a Professional Service Agreement (PSA) with Miami Dade County Public Housing and Community Development (PHCD) to provide architectural and engineering consulting services. Under this PSA, CSA evaluated the scope of work of the new River Parc Master Plan (previously Martin Fine Villas, Haley Sofge and Robert King High) and the River Parc Seawall Project to determine that a Justification Waiver pursuant to Chapter 255.20(1)(c)(10)(b)(I) of the Florida Statutes is warranted. The recommendation is to waive the competitive selection process for the River Parc Seawall Project for the following reasons:

- Related Urban (RUDG, LLC) is currently developing the River Parc Master Plan on behalf of PHCD. This housing project is going through a major redevelopment that will result in a quality of life improvement for county residents. RUDG, LLC has contracted with Fortune Urban Construction, LLC for construction activities. Both entities are currently mobilized on site.
- Part of the site development activities include the design and construction of a seawall project on Miami Dade County premises and the Miami River, known as River Parc Seawall Project.
- The River Parc Seawall Project has been designed by Dynamic Solutions Engineering, Inc. for River Parc Master Plan, LLC, a subsidiary of RUDG, LLC. Currently the construction plans are in the final stages of permitting.
- It is in the County's best interest for Fortune Urban Construction, LLC, on behalf of River Parc Master Plan, LLC, be granted the construction of the River Parc Seawall Project because:
 - Fortune Urban Construction, LLC is currently mobilized on site and is qualified to undertake the River Parc Seawall Project.
 - The seawall project is affiliated to the site development activities of the River Parc Master Plan.

- Additional mobilization and other related costs for the County would be reduced by utilizing contractors already present on site working on an affiliated project.
- Disruption to the residents and general public will be minimized by reducing construction procurement time and allowing concurrent construction activities between the River Parc Seawall Project and River Parc Master Plan to take place.

Please do not hesitate to contact us if there are any questions.

Respectfully,




Roberto León, PE
Senior Vice President



MEMORANDUM
(Revised)

TO: Honorable Acting Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: December 15, 2020

FROM: 
Gen Bonzon-Keenan
Successor County Attorney

SUBJECT: Agenda Item No. 8(K)(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 present ____, 2/3 membership , 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) 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(K)(1)
12-15-20

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE A FIRST AMENDMENT TO THE EXISTING GROUND LEASE BETWEEN MIAMI-DADE COUNTY ("COUNTY") AND BRISAS DEL RIO APARTMENTS, LLC, A FLORIDA LIMITED LIABILITY COMPANY AND AN AFFILIATE OF RUDG, LLC ("RUDG"), AND AMENDMENT TO THE MEMORANDUM OF THE LEASE AND A PARTIAL RELEASE OF CERTAIN UNITED STATES DEPARTMENT OF HOUSING AND URBAN RELATED DOCUMENTS; APPROVING BY A TWO-THIRDS VOTE OF THE BOARD, A DESIGNATED PURCHASE PURSUANT TO SECTION 2-8.1(C)(3) OF THE CODE OF MIAMI-DADE COUNTY, FOR A DEVELOPMENT AGREEMENT WITH RUDG AND RIVER PARC RIVERWALK, LLC, FOR OVERSEEING ENGINEERING AND CONSTRUCTION OF A SEAWALL AND PUBLIC RIVERWALK ("PROJECT") IN AMOUNT NOT TO EXCEED \$4,000,000.00 TO BE FUNDED WITH BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND PROGRAM FUNDS AND SECTION 255.20(C)(10), FLORIDA STATUTES, TO SELECT FORTUNE URBAN CONSTRUCTION, LLC AS CONTRACTOR FOR THE PROJECT; AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE THE DEVELOPMENT AGREEMENT AND EXERCISE ALL PROVISIONS CONTAINED THEREIN AND ALL PROVISIONS CONTAINED IN THE AMENDMENTS AND RELEASE

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:

Section 1. This Board adopts the foregoing recital and the accompanying memorandum as if fully set forth herein.

Section 2. This Board approves and authorizes the County Mayor or the County Mayor's designee to execute of a first amendment to the ground lease ("lease") between Miami-Dade County ("County") and Brisas Del Rio Apartments, LLC, a Florida limited liability company and an affiliate of RUDG, LLC ("RUDG"), an amendment to the memorandum of the lease and a partial release of certain United States Department of Housing and Urban ("HUD") related documents, in substantially the forms attached to this resolution as Exhibits 1, 2 and 3 and incorporated herein by reference, for the purpose of releasing a portion of land covered by the lease and more fully described in such exhibits for the construction of a seawall and public riverwalk located at the Martin Fine Villas, Haley Sofge and Robert King High public housing sites (the "project").

Section 3. This Board hereby finds that it is in the best interest of Miami-Dade County to approve and hereby approves, by a two-thirds vote of the Board, a designated purchase pursuant to section 2-8.1(c)(3) of the Code of Miami-Dade County, Florida, for the development agreement with RUDG and River Parc Riverwalk, LLC, a Florida limited liability company and an affiliate of RUDG, in substantially the form attached to this resolution as Exhibit 4, for the project, and pursuant to section 255.20(c)(10), in order to select Fortune Urban Construction, LLC, a Florida limited liability company ("contractor"), as the construction contractor to build the project because contractor is uniquely qualified to undertake the construction of the project as contractor is already under contract and is currently undertaking construction work at the site of the project related to the affiliated redevelopment of the Martin Fine Villas, Haley Sofge and Robert King High public housing sites. The development agreement approved hereby is for an amount not to exceed \$4,000,000.00 to be funded with Building Better Communities General Obligation Bond Program Project No. 126 – "Miami River Greenway" funds.

Section 4. This Board authorizes the County Mayor or the County Mayor’s designee to execute the development agreement and to exercise all provisions contained therein and all provisions contained in the amendments and partial release approved in section 2 of this resolution.

Section 5. This Board directs the County Mayor or Mayor’s designee to provide the Property Appraiser’s Office with copies of the executed lease amendment within 30 days of its execution. Further, pursuant to Resolution No. R-974-09, this Board: (a) directs the County Mayor or Mayor’s designee to record the partial release of the HUD documents in the public records of Miami-Dade County and to provide a recorded copy thereof to the Clerk of the Board within 30 days of execution; and (b) directs the Clerk of the Board to attach and permanently store a recorded copy of the partial release of HUD documents together with this resolution.

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:

| | |
|--------------------------------|------------------------|
| Rebeca Sosa, Acting Chairwoman | |
| Jose “Pepe” Diaz | Sen. René García |
| Oliver G. Gilbert, III | Keon Hardemon |
| Sally A. Heyman | Danielle Cohen Higgins |
| Eileen Higgins | Joe A. Martinez |
| Kionne L. McGhee | Jean Monestime |
| Raquel A. Regalado | Sen. Javier D. Souto |

The Chairperson thereupon declared this resolution duly passed and adopted this 15th day of December, 2020. 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.

MRP

Monica Rizo Perez
Terrence A. Smith

EXHIBIT 1

**AMENDMENT NO. 1 TO THE GROUND LEASE BETWEEN
MIAMI-DADE COUNTY AND BRISAS DEL RIO APARTMENTS, LLC**

This Lease Amendment (“Amendment”) made effective as of the ____ day of _____, 2020 by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida and a “public housing agency” as defined in the United States Housing Act of 1937 (42 USC 1437 et seq., as amended) (“Landlord”), and BRISAS DEL RIO APARTMENTS, LLC, a Florida limited liability company (“Tenant”).

WITNESSETH:

A. By Ground Lease by and between Miami-Dade County, a political subdivision of the State of Florida, Lessor, and Brisas del Rio Apartments, LLC, a Florida limited liability company, Lessee, dated November 27, 2019, as evidenced by that Memorandum Of Ground Lease dated November 27, 2019, recorded December 2, 2019, in Official Records Book 31709, Page 2628 of the Public Records of Miami-Dade County, Florida (the “Lease”) Landlord demised and leased to Tenant certain real property, as more specifically described in the Lease. Terms which are capitalized but not defined herein shall have the meanings given to such terms in the Lease.

B. Landlord and Tenant desire to modify the Lease and amend the corresponding Memorandum of Lease that is recorded in the Public Records of Miami-Dade County, to amend the legal description set forth therein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant covenant and agree as follows:

1. The foregoing Recitals are true and correct and by this reference are incorporated as if fully set forth herein.
2. Terms capitalized but not defined herein shall have the meanings give to such terms in the Lease.
3. The Lease is hereby modified to provide that that portion of the Land legally described on Exhibit “A” attached hereto (the “Release Parcel”) is released from the operation of the Lease and no longer included in the Land or the Premises.
4. This Amendment may be executed in one or more counterparts, which, taken together, shall constitute a single document.
5. Except as expressly modified and amended by this Amendment, the terms and provisions of the Lease are hereby ratified and confirmed.

EXHIBIT 1

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment on the date first set forth above.

Witnesses:

LANDLORD:

Miami-Dade County, a political subdivision of the State of Florida

By: _____

Name: _____

Title: _____

Attest: _____

County Clerk

Approved as to form and legal sufficiency:

By: _____

Terrence A. Smith

Assistant County Attorney


EXHIBIT 1

Witnesses:

TENANT:

BRISAS DEL RIO APARTMENTS LLC, a
Florida limited liability company

By: Brisas del Rio Apartments Manager,
LLC, a Florida limited liability
company, its manager



Antonio Vasquez

Jim Polglase

Tim Polglase

By: 

Tony Del Pozzo, Vice President

EXHIBIT 1

EXHIBIT "A"

RELEASE PARCEL

A PARCEL OF LAND BEING A PORTION OF TRACT "A", MIAMI RIVER COMPLEX FLORIDA 5-26, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 92, PAGE 39, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SE CORNER OF SAID TRACT "A", THENCE RUN N00°01'30"W, ALONG THE EASTERLY LINE OF SAID TRACT "A", FOR A DISTANCE OF 614.19 FEET, TO THE MOST EASTERLY SOUTHEASTERLY CORNER OF BRISAS DEL RIO PARCEL; THENCE CONTINUE N00°01'30"W, FOR A DISTANCE OF 281.58 FEET; THENCE RUN N65°04'34"W FOR A DISTANCE OF 153.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N65°04'34"W FOR A DISTANCE OF 203.69 FEET; THENCE RUN S24°55'26"W FOR A DISTANCE OF 10.67 FEET; THENCE RUN S67°51'02"E FOR A DISTANCE OF 203.97 FEET; THENCE RUN N22°08'58"E FOR A DISTANCE OF 0.80 FEET TO THE POINT OF BEGINNING.

CONTAINING MORE OR LESS 1,168.42 SQUARE FEET.

Exhibit 2

This Instrument Was Prepared By, Record and Return to:

Patricia K. Green, Esq.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler St., Suite 2200
Miami, Florida 33130

(RESERVED)

AMENDMENT TO MEMORANDUM OF GROUND LEASE

KNOW ALL MEN BY THESE PRESENTS of this Amendment To Memorandum of Ground Lease made as of the ____ day of _____, 2020, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida and a “public housing agency” as defined in the United States Housing Act of 1937 (42 USC 1437 et seq., as amended), having an address at c/o Miami-Dade Public Housing and Community Development, 701 N.W. 1st Court, 16th Floor, Miami, FL 33136 (herein referred to as “Lessor”) and BRISAS DEL RIO APARTMENTS, LLC, a Florida limited liability company, having an address at 315 South Biscayne Boulevard, Miami, FL 33131 (herein referred to as “Lessee”).

WITNESSETH:

For good and valuable consideration and in further consideration of the rents reserved and covenants and conditions more particularly set forth in that certain Ground Lease by and between Miami-Dade County, a political subdivision of the State of Florida, Lessor, and Brisas del Rio Apartments, LLC, a Florida limited liability company, Lessee, dated November 27, 2019, as evidenced by that Memorandum Of Ground Lease dated November 27, 2019, recorded December 2, 2019, in Official Records Book 31709, Page 2628 of the Public Records of Miami-Dade County, Florida (the “Memo of Lease”), Lessor and Lessee hereby covenant and agree as follows:

1. The Memo of Lease is hereby modified by releasing therefrom the real property legally described on Exhibit “A” attached hereto.
2. Other than as provided herein, the Memo of Lease remains in full force and effect and is not modified in any way.
3. This Amendment (a) shall be governed by and construed in accordance with the laws of the State of Florida; (b) may be executed in multiple counterparts, each of which shall constitute an original; (c) shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and assigns; and (d) may not be modified, amended or altered except in writing and signed by the parties hereto. This Amendment is solely for notice and

-1-

recording purposes and shall not be construed to alter, modify, expand, diminish or supplement any provisions of the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall prevail.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the parties have executed this Amendment to Memorandum of Ground Lease the day and year first above written.

Witnesses:

LESSOR:

MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida and a "public housing agency" as defined in the United States Housing Act of 1937 (42 USC 1437 et seq., as amended)

Print Name: _____

By: _____

Name: Maurice L. Kemp

Title: Deputy Mayor

Print Name: _____

Approved as to form and legal sufficiency:

Terrence A. Smith
Assistant County Attorney

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of [] physical appearance or [] audio visual means, this ____ day of _____, 2020, by Maurice L. Kemp, as Deputy Mayor of MIAMI-DADE COUNTY, a political subdivision of the State of Florida and a "public housing agency" as defined in the United States Housing Act of 1937 (42 USC 1437 et seq., as amended), who is personally known to me or has produced _____, as identification.

Notary Public
State of Florida at Large
My Commission Expires:

Witnesses:

LESSEE:

BRISAS DEL RIO APARTMENTS LLC, a Florida limited liability company

By: Brisas del Rio Apartments Manager, LLC, a Florida limited liability company, its manager

[Signature]
Print Name: Audie Vasquez

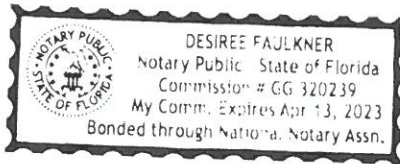
[Signature]
Print Name: Tim Poljase

By: [Signature]
Tony Del Pozzo, Vice President

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of physical appearance or [] audio visual means this 22nd day of September, 2020, by Tony Del Pozzo, Vice President of Brisas del Rio Apartments Manager, LLC, a Florida limited liability company, the Manager of Brisas del Rio Apartments, LLC, a Florida limited liability company, on behalf of the companies. He is personally known to me or has produced _____, as identification.



[Signature]
Notary Public
State of Florida
My Commission Expires: 04.13.2023

EXHIBIT "A"
(Release Parcel)

A PARCEL OF LAND BEING A PORTION OF TRACT "A", MIAMI RIVER COMPLEX FLORIDA 5-26, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 92, PAGE 39, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SE CORNER OF SAID TRACT "A", THENCE RUN N00°01'30"W, ALONG THE EASTERLY LINE OF SAID TRACT "A", FOR A DISTANCE OF 614.19 FEET, TO THE MOST EASTERLY SOUTHEASTERLY CORNER OF BRISAS DEL RIO PARCEL; THENCE CONTINUE N00°01'30"W, FOR A DISTANCE OF 281.58 FEET; THENCE RUN N65°04'34"W FOR A DISTANCE OF 153.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N65°04'34"W FOR A DISTANCE OF 203.69 FEET; THENCE RUN S24°55'26"W FOR A DISTANCE OF 10.67 FEET; THENCE RUN S67°51'02"E FOR A DISTANCE OF 203.97 FEET; THENCE RUN N22°08'58"E FOR A DISTANCE OF 0.80 FEET TO THE POINT OF BEGINNING.

CONTAINING MORE OR LESS 1,168.42 SQUARE FEET.

EXHIBIT 3

This Instrument Was Prepared By:

Patricia K. Green, Esq.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler St., Suite 2200
Miami, Florida 33130

Record and Return To:

Patricia K. Green, Esq.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler St., Suite 2200
Miami, Florida 33130

PARTIAL RELEASE OF HUD DOCUMENTS

RECITALS

- A. Brisas del Rio Apartments, LLC, a Florida limited liability company (“Owner”) entered into that certain Ground Lease by and between Miami-Dade County, a political subdivision of the State of Florida as Lessor, and Owner as Lessee, dated November 27, 2019, as evidenced by that Memorandum Of Ground Lease dated November 27, 2019, recorded December 2, 2019, in Official Records Book 31709, Page 2628, leasing certain property located in Miami-Dade County, Florida, and more particularly described on Exhibit “A” attached hereto (the “Property”).
- B. Owner is constructing a multifamily apartment building (the “Project”) on the Property.
- C. In connection with the redevelopment of the Project with 27 units of public housing, HUD required that Borrower enter into certain agreements with regard to the public housing units (collectively the “HUD Documents”), including, without limitation, a Regulatory and Operating Agreement, a Declaration of Trust and Restrictive Covenants, and a Non-Disturbance and Attornment Agreement. The County, in its capacity as a “public housing agency” as defined in the United States Housing Act of 1937 (42 USC 1437 et seq., as amended) (the “County”), is a party to certain of the HUD Documents.

The HUD Documents include the following:

- 1. Declaration of Trust and Restrictive Covenants [Operating Funds Only] by and the County and Owner for the benefit of the United States of America, acting by and through the Secretary of Housing and Urban Development (“HUD”) dated January 22, 2020, recorded on February 3, 2020, in Official Records Book 31802, Page 552.

2. Non-Disturbance and Attornment Agreement by and between HUD and Owner, dated January 22, 2020, recorded on February 3, 2020, in Official Records Book 31802, Page 562.
3. Regulatory and Operating Agreement for Mixed-Finance Project by and between the County and Owner dated January 22, 2020, recorded on February 3, 2020, in Official Records Book 31802, Page 569.
4. Unrecorded documents:
 - (a) Mixed-Finance Amendment to The Consolidated Annual Contributions Contract with Rider and Exhibits [Operating Funds Only];
 - (b) PHA Mortgaged Transaction for Development Amendment to the Consolidated Annual Contributions Contract;
 - (c) Property Management Agreement with Mixed Finance Rider; and
 - (d) Management Plan.

ALL RECORDING INFORMATION REFERS TO THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

WHEREAS, Owner has requested that the County and HUD, as applicable, release the premises hereinafter described, being part of the Property, from the operation of the HUD Documents;

NOW, THEREFORE, each of the County and HUD, as applicable, in consideration of the sum of TEN (\$10.00) DOLLARS and other good and valuable consideration, to it paid by Owner at the time of execution of this instrument, the receipt whereof is hereby acknowledged, does release the following-described portion of the Property from the operation of the HUD Documents:

SEE EXHIBIT B ATTACHED HERETO

SIGNATURES APPEAR ON FOLLOWING PAGES

IN WITNESS WHEREOF, each of the County and HUD have caused these presents to be executed in its name by its duly authorized and appointed signatories this _____ day of _____, 2020.

HUD:

UNITED STATES OF AMERICA
SECRETARY OF HOUSING AND
URBAN DEVELOPMENT

By: _____

Victor Atkins
Acting Division Director of the
Office of Public Housing

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

I HEREBY CERTIFY that on this day, before me by means of [choose one] () physical presence or () online notarization, appeared Victor Atkins, as Acting Division Director of the office of Public Housing, Miami Field Office and the authorized representative of the United States of America acting by and through the Secretary of Housing and Urban Development, who is personally known to me or has produced a driver's license as identification.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 2020.

Print or Stamp Name: _____
Notary Public, State of Florida
Commission No.:
My Commission Expires:

COUNTY:

MIAMI-DADE COUNTY, a political subdivision
of the State of Florida

Approved as to form and legal sufficiency: By: _____
Maurice L. Kemp, Deputy Mayor

By: _____
Terrence A. Smith
Assistant County Attorney

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of physical presence
or online notarization this ____ day of _____, 2020, by Maurice L. Kemp, as
Deputy Mayor of MIAMI-DADE COUNTY, a political subdivision of the State of Florida.

Personally Known _____ OR Produced Identification _____

Type of Identification Produced: _____

Print or Stamp Name: _____
Notary Public, State of Florida
Commission No.: _____
My Commission Expires: _____

EXHIBIT A
PROPERTY

A PARCEL OF LAND BEING A PORTION OF TRACT 'A', MIAMI RIVER COMPLEX FLORIDA, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 92, AT PAGE 39, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, AND ALSO BEING A PORTION OF LOT 7, OF CORRECTED PLAT OF RIVERMONT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK B, AT PAGE 95 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SE CORNER OF SAID TRACT 'A', THENCE RUN N00°01'30"W, ALONG THE EASTERLY LINE OF SAID TRACT 'A', FOR A DISTANCE OF 614.19 FEET, TO THE POINT OF BEGINNING; THENCE CONTINUE N00°01'30"W, FOR A DISTANCE OF 281.58 FEET; THENCE RUN N65°04'34"W FOR A DISTANCE OF 357.30 FEET; THENCE RUN S24°55'26"W FOR A DISTANCE OF 251.97 FEET; THENCE RUN N67°46'03"W FOR A DISTANCE OF 61.13 FEET; THENCE RUN S22°13'57"W FOR A DISTANCE OF 311.47 FEET; THENCE S67°46'03"E FOR A DISTANCE OF 30.11 FEET; THENCE RUN N23°53'09"E FOR A DISTANCE OF 40.94 FEET; THENCE RUN S67°46'32"E FOR A DISTANCE OF 225.85 FEET; THENCE RUN N22°35'15"E FOR A DISTANCE OF 246.55 FEET; THENCE RUN S67°24'44"E FOR A DISTANCE OF 277.86 FEET TO THE POINT OF BEGINNING.

EXHIBIT B"
RELEASED PARCEL

A PARCEL OF LAND BEING A PORTION OF TRACT "A", MIAMI RIVER COMPLEX FLORIDA 5-26, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 92, PAGE 39, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SE CORNER OF SAID TRACT "A", THENCE RUN N00°01'30"W, ALONG THE EASTERLY LINE OF SAID TRACT "A", FOR A DISTANCE OF 614.19 FEET, TO THE MOST EASTERLY SOUTHEASTERLY CORNER OF BRISAS DEL RIO PARCEL; THENCE CONTINUE N00°01'30"W, FOR A DISTANCE OF 281.58 FEET; THENCE RUN N65°04'34"W FOR A DISTANCE OF 153.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N65°04'34"W FOR A DISTANCE OF 203.69 FEET; THENCE RUN S24°55'26"W FOR A DISTANCE OF 10.67 FEET; THENCE RUN S67°51'02"E FOR A DISTANCE OF 203.97 FEET; THENCE RUN N22°08'58"E FOR A DISTANCE OF 0.80 FEET TO THE POINT OF BEGINNING.

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (this “**Agreement**”) is dated as of the [_____] day of _____, 2020], and made by and among MIAMI-DADE COUNTY, a political subdivision of the State of Florida (the “**County**”), having an office and place of business at 701 NW 1st Court, 16th Floor, Miami, Florida 33136, RUDG, LLC, a Florida limited liability company (the “**Master Developer**”) and RIVER PARC RIVERWALK, LLC, a Florida limited liability company (hereinafter called the “**Developer**” and together with the County and the Master Developer, collectively referred to herein as the “**Parties**”), the Master Developer and the Developer both having an office and place of business at 315 S. Biscayne Boulevard, Miami, FL 33131.

WITNESSETH:

WHEREAS, the County owns the land described on Exhibit A (the “**Land**”) which land is adjacent to the Miami River and upon which land the County desires to construct a seawall (the “**Seawall**”) and a public river walk (the “**Riverwalk**” and collectively with the Seawall, the “**Project**”).

WHEREAS, pursuant to Resolution No. R-331-14 the County entered into a Master Development Agreement with the Master Developer for the redevelopment of the Martin Fine Villas/ Haley Sofge and Robert King High Public Housing Sites wherein the Land is contained.

WHEREAS, the Developer is an affiliate of the Master Developer.

WHEREAS, the Master Developer hereby assigns to the Developer any rights and/or responsibilities that the Master Developer has under the Master Development Agreement relating to the Project.

WHEREAS, pursuant to Resolution [____ - ____] the County has set aside \$4,000,000 from Project No. 126 of the Building Better Communities General Obligation Bond Program (the “**Bond Funds**”) for the construction and development of the Project.

WHEREAS, the County desires, due to the Master Developer’s ongoing construction of affordable housing developments on property adjacent to the Land, and the Developer has agreed to be the developer for the Project pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County, the Master Developer and the Developer agree as follows:

1. **Incorporation of Recitals; Defined Terms.** The recitals are true and correct, and are hereby incorporated into this Agreement. The terms set forth below, when used anywhere in this Agreement, shall be defined as follows:

(a) “**Agreement**” shall mean this Development Agreement and all amendments, supplements, addenda or renewals thereof.

(b) “Applicable Law” shall mean all present and future applicable laws, ordinances, rules, regulations, authorizations, orders and requirements of all federal, state, county and municipal governments, the departments, bureaus or commissions thereof, authorities, boards or officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions having or acquiring jurisdiction over all or any part of the Land and/or the Project.

(c) “Board” shall mean Miami-Dade County’s Board of County Commissioners.

(d) “Bond Funds” shall have the meaning set forth in the recitals of this Agreement.

(e) “Business Day” shall mean any day that is not a Saturday, Sunday or other day on which the County is officially closed for business or banks located in the County are required or authorized by law or executive order to close.

(f) “Commencement of Construction” shall mean the later of the filing of the notice of commencement under Section 713.13 of the Florida State Statutes and the visible start of work on the Project. The phrase “visible start of work” shall not include testing, surveying, or other due diligence activities, nor shall it include groundbreaking ceremonies, but shall instead mean significant site work such as land clearing and/or the commencement of excavation.

(g) “County” shall have the meaning set forth in the preamble of this Agreement.

(h) “County Representative” will be the primary contact for the Developer on behalf of the County in connection with this Agreement and any submissions, approvals, consents, joinders or inquiries with respect to this Agreement and the Project. The County may replace the County Representative at any time by prior written notice to the Developer. The County Representative shall be the Director of the County’s Department of Public Housing and Community Development or his designee.

(i) “Developer” shall have the meaning set forth in the preamble of this Agreement.

(j) “Developer Representative” will be the primary contact for the County on behalf of the Developer in connection with this Agreement and any submissions, approvals, consents, joinders or inquiries with respect to this Agreement and the Project. The Developer may replace the Developer Representative at any time by prior written notice to the County.

(k) “Draw Request” shall be Developer’s request for reimbursement for work performed.

(l) “Effective Date” shall mean the date written on the first page of this Agreement, and shall be the date that this Agreement is fully executed by all Parties including execution by the County Mayor or County Mayor’s designee; such execution shall not occur until Board approval of this Agreement, which approval shall not be effective until the earlier of (i) the

date the Mayor of Miami-Dade County indicates approval of such Board action, or (ii) the lapse of ten (10) days without the Mayor's veto. In the event that the County Mayor vetoes the Board approval, the Board approval shall not be effective in the absence of an override of the County Mayor's veto that shall be at the next regularly scheduled meeting of the Board after the veto occurs.

(m) "Force Majeure" shall mean the occurrence of any (i) act of terrorism deemed a terrorism act by the County or the State of Florida, (ii) war, violent act of foreign enemy or armed conflict, (iii) insurrection, riot or civil commotion, (iv) blockade or embargo, (v) epidemics, pandemics, quarantine or severe health alerts issued by a Governmental Authority relating thereto, (vi) named windstorm and any ensuing storm surge, including the direct action of wind originating from a named windstorm, (vii) fire, explosion, or flood, (viii) an official or unofficial strike, lockout, go-slow, or other labor dispute or (ix) a change in Applicable Law that occurs after the Effective Date that, in each case, has a material adverse effect on a Party's ability to perform its obligations hereunder.

(n) "Governmental Authority" shall mean any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, administrative, public or statutory instrumentality, authority, body, agency, bureau, commission, board, department or other entity or any arbitrator with authority to bind a party at law, in each case having jurisdiction over the Project and/or the Land.

(o) "Liens" shall mean any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever, in each case, in the nature of security.

(p) "Master Developer" shall have the meaning set forth in the preamble of this Agreement.

(q) "Permits" shall mean any and all development, zoning, platting, subdivision, site plan, design, Plans and Specifications, construction permit and other applicable permits and approvals and variances, if necessary, from all applicable Governmental Authorities pertaining to the Project.

(r) "Persistent Developer Breach" shall mean a material breach of this Agreement by the Developer that (i) continues for more than thirty (30) consecutive days or (ii) occurs three (3) or more times within any twelve (12) month period.

(s) "Project" shall have the meaning set forth in the recitals of this Agreement.

(t) "Project Costs" means all Project Hard Costs and the Project Soft Costs incurred in connection with the design, development, construction and completion of the Project and shall include no other costs. Notwithstanding anything contained herein to the contrary, all Project Costs shall be subject to and in accordance with the requirements of the Building Better

Communities General Obligation Bond Program and its Administrative Rules attached hereto as Exhibit B and incorporated herein.

(u) “Project Hard Costs” means, and shall include, the cost of all labor, construction materials, fixtures, equipment, landscaping and hardscaping incorporated into the Project, including but not limited to locating and installing any required facilities for sewer, water, electrical, and other utilities as needed to service the Project, the cost of any required compliance with the Art in Public Places provisions in Section 2.11.15 of the Miami-Dade County Code and in the Dade County Guide to Art in Public Places.

(v) “Project Soft Costs” means the Project Costs relating to surveyors, attorneys, permitting, insurance and surety related expenses and any other fees and expenses directly related to the development of the Project, but excluding hard construction costs. The Project Soft Costs shall include mitigation expenses and/or contributions required by the County to compensate for water quality impacts associated with the Project. The Project Soft Costs exclude fees paid to lobbyists, auditors, accountants, or tax expenses, payments or commissions to brokers and salespersons, payments to sponsors or supporters, interest payments, or any professional services not expressly enumerated in Florida’s Consultant’s Competitive Negotiation Act, Fla. Stat. Section 287.055 and any fees or expenses not allowed by the rules and regulations that govern the Bond Funds.

(w) “Riverwalk” shall have the meaning set forth in the recitals of this Agreement.

(x) “Seawall” shall have the meaning set forth in the recitals of this Agreement.

(y) “Term” shall mean from the Effective Date until the date that is three (3) years after the Effective Date as such term may be automatically extended pursuant to the terms of this Agreement.

(z) “Unavoidable Delay” shall have the meaning set forth herein below.

2. **Project Development, Design and Construction.** Developer and County have agreed that Developer shall oversee the construction of the Project for the County. Developer agrees to develop, design and construct the Project for the County in accordance with the procedures set forth in this Agreement. The Developer shall undertake development of the Project in accordance with the deadlines set forth in this Agreement and, in all instances, shall obtain Completion of Construction of the Project within twenty-four (24) months of the Commencement of Construction. The Developer shall obtain the Permits on or before March 31, 2021 which date is subject to one or more extensions of time for a time period not to exceed one year (March 31, 2022), if approved in writing by County Mayor or County Mayor’s designee. The County will be responsible for all Project Costs up to \$4,000,000 and the Developer shall be responsible for any Project Costs in excess of \$4,000,000, and Developer shall be responsible for the selection, oversight, and management of all contractors and consultants necessary to design and construct the Project in a diligent, competent and professional manner all in accordance with the provisions of this Agreement which includes consultation with and approval by the County, such approval

not to be unreasonably withheld and consistent with Section 2(c)(ix). In undertaking the development, design and construction of the Project, Developer shall comply, and shall cause its contractor(s) and consultant(s) to comply, with all Applicable Laws.

(a) Funding. Recognizing that the County has \$4,000,000.00 available for the construction of the Project, the construction of the Project shall be undertaken by the Developer pursuant to the terms of this Agreement. The Developer, Master Developer and the County understand and agree that the County's Bond Funds and funding obligations to be paid therewith shall be limited to Project Hard Costs and any necessary Project Soft Costs that are not for professional services covered by Florida Statutes Section 287.055, otherwise known as the "Consultants' Competitive Negotiation Act". All Project Soft costs for professional services subject to the provisions of Section 287.055 shall be funded and paid by Developer or Master Developer from its own funds and no County funds shall be used therefor.

(i) The County shall fund all eligible Project Costs on a reimbursement basis to Developer based on Developer's monthly invoices and supporting documentation provided to the County, including but not limited to Capital Project Payment Certificate (County Form 1028-CP), SBD Monthly Utilization Reports, subconsultants' and subcontractors' invoices, and releases of lien. During the construction phase of the Project, the County shall withhold ten percent (10%) of each invoice as retainage in order to ensure satisfactory completion of the Project. Upon Completion of Construction of the Project, the retainage shall be released by the County to the Developer.

(ii) The County anticipates that the uses of the Bonds Funds shall be as follows: (i) \$450,000 for eligible Project Soft Costs, none of which are for professional services covered by section 287.055; \$2,300,000 for Project Hard Costs relating to the Seawall; \$1,000,000 for Project Hard Costs relating to the Riverwalk; \$200,000 to Developer for supervising construction ("**Developer Fee**"), and \$50,000 for Art in Public Places related expenses (collectively, the "**Project Uses**"). The County acknowledges that the Developer may reallocate the Project Uses among the different categories or among new categories that are consistent with the terms of this Agreement as long as the total of the reallocated uses does not exceed the total amount of the Bond Funds and provided that Developer first obtains the County's written consent.

(b) Design Professionals and Contractor. Developer has or will select appropriately licensed and qualified architects to design and engineer the Project ("**Design Professionals**"). Developer has identified FORTUNE URBAN CONSTRUCTION, LLC, a Florida limited liability company, as the contractor to undertake the construction of the Project ("**Contractor**"). The Developer intends to apply for an exemption to the competitive bidding requirements of Section 255.20, Florida Statutes for the Project as part of the County's approval of this Agreement and the County's execution of this Agreement will be proof that the exemption has been approved by the County. The Developer shall oversee and ensure that the Design Professionals work together with the Contractor during: (i) the design process in order for the County to be confident as to the total cost of the design and construction of the Project and as the quality and aesthetics of the proposed design; and (ii) the construction process in order to minimize errors and construct the Project in accordance with the approved Plans and Specifications.

(c) The first phase of the Project (the "**Permitting Phase**") shall consist of the following elements:

(i) Developer will obtain a survey of the Land. The survey shall be certified to the County, and may be certified to any other party identified by Developer.

(ii) The plans and specifications dated July 13, 2020 for the seawall component of the Project have been submitted to the County for review and approval (the "**Seawall Drawings**"). The plans and specifications for the riverwalk component of the Project will be finalized and submitted to the County for review and approval during the Permitting Phase (the "**Riverwalk Drawings**"). The Developer anticipates that the Riverwalk Drawings shall be consistent with the June 2020 Riverwalk Concept Drawings prepared by Kimley Horn and attached hereto as Exhibit C with such changes and revisions that are mutually agreed upon by the Developer and the Director of County's Department of Public Housing and Community Development. During the Permitting Phase, the Seawall Drawings and Riverwalk Drawings that were approved by the County (together, the "**Plans and Specifications**") will be provided to the Contractor, so that the Contractor may provide a preliminary cost estimate for construction of the Project pursuant to the Plans and Specifications. In the event that Contractor's preliminary cost estimate for construction of the Project, including all Project Costs, exceeds the amount of the Bond Funds, and the County is unwilling to bear the additional costs, County and Developer shall work together in good faith to revise the Plans and Specifications (including, for example, reducing the size of the Project) until same are acceptable to County. Provided however, that if despite the Developer's diligent and good faith efforts, the County and Developer are unable to reach a resolution on the revisions to the Plans and Specifications so as to bring the cost of the Project within the amount of available Bond Funds within thirty (30) days after the County's receipt of the Contractor's preliminary cost estimate, the deadlines for Developer to obtain Completion of Construction for the Project shall be extended on a day per day basis for every day beyond 30 days that it takes the parties to reach agreement on how to proceed. Provided further that if the Developer and the County are unable to reach an agreement on the foregoing within ninety (90) days after the County's receipt of the Contractor's preliminary cost estimate, the County shall have the right to terminate this Agreement without any further cost or liability to the County whatsoever.

(iii) During the Permitting Phase, the Developer shall cause the preparation of more detailed design drawings of the Project (the "**Construction Plans**"). The Construction Plans shall illustrate and describe the further development of the Project, setting forth the quality levels of materials and systems and other requirements for the construction of the Project, all in detail sufficient and appropriate for a Contractor to agree to a guaranteed maximum price contract for construction of the Project (the "**GMP Contract**"). The Construction Plans will include specifications for or descriptions of all materials (materials to construct are not specified) to be utilized in the course of the construction of the Project.

(iv) The Developer shall provide the 50% completed Construction Plans to the County for the County's review, comment and approval. Developer shall incorporate

all of the County's comments and revisions into the 50% Construction Plans. The Developer shall provide the 100% completed Construction Plans to the County for the County's review, comment and approval; provided, however, that the County shall not have any right to disapprove any element or feature of the 100% Construction Plans that were previously approved by the County in the 50% Construction Plans. The Developer shall incorporate all of the County's comments and revisions consistent with the terms of this Agreement into the 100% completed Construction Plans.

(v) During the Permitting Phase, the Construction Plans will be provided to the Contractor, so that the Contractor can provide an updated cost estimate for construction of the Project.

(vi) Within sixty (60) days after the County and all other Governmental Agencies have approved all of the necessary Permits for the construction of the Project, the Developer shall enter into a GMP Contract with Contractor for construction of the Project. The GMP Contract will specify the price to be charged by Contractor and specify and/or provide, among other things, a construction schedule in Microsoft Project software, prepared using a critical path method, that identifies, coordinates and integrates the construction milestones for the Project, reviews by Governmental Authorities having jurisdiction over the development of the Project, and other activities as are necessary for the timely completion of the Project.

(vii) In the event that the cost of construction set forth in the GMP Contract and other Project Costs exceed the amount available from Bond Funds, and in the event that the County is unwilling to bear the additional cost of construction and other Project Costs, then the County, Developer, Contractor and other professionals will work together in good faith in order to revise the Construction Plans (including, if necessary, adjusting the size of the Project) and the GMP Contract until such time as the revised Construction Plans and the revised GMP Contract are acceptable to the County and the Developer. Provided however, that if despite the Developer's diligent and good faith efforts, the County and Developer are unable to reach a resolution on the revisions to the Construction Plans and/or the GMP Contract within thirty (30) days after the County's receipt of the Developer's notice that Project Costs exceed available Bond Funds, the deadlines for Developer to obtain Completion of Construction for the Project shall be extended on a day per day basis for every day beyond 30 days that it takes the parties to reach agreement on how to proceed. Provided further that if the Developer and the County are unable to reach an agreement on the foregoing within ninety (90) days' after the County's receipt of the Contractor's notice that Project Costs exceed available Bond Funds, the County shall have the right to terminate this Agreement without any further cost or liability to the County beyond those incurred by the Contractor through the date of termination.

(viii) During the Permitting Phase, Developer shall provide the County with a set of the final signed Construction Plans and in both electronic and hard copy formats. In the event any change is proposed after approval of the final Construction Plans other than minor revisions, then Developer must submit the proposed changes to the

Construction Plans for the County's approval. The County expressly consents to minor changes in the Construction Plans which do not materially increase total Project Costs or materially extend the time to achieve substantial completion of the Project and which are necessary to comply with Applicable Laws.

(ix) After the Permitting Phase and pursuant to the requirements of this Agreement, Developer shall execute the GMP Contract with the Contractor, and the Contractor will submit the Construction Plans to the Building Department, along with an application for issuance of a Building Permit. Developer acknowledges, understands and agrees that it is its responsibility to submit the final Construction Plans to the Building Department and any other applicable and required Governmental Authority with sufficient time to enable review, comments and resubmittals by and to the Governmental Authorities, if necessary, so as to ensure that the Building Permit is timely issued.

(x) For each submittal of Construction Plans, Developer shall submit two (2) sets of prints to the County, with the date noted on each print, along with two CADD / Revit / any applicable electronic files CDs with such drawings.

(xi) The County's approval of any plans pursuant to this Agreement will be undertaken pursuant to the County's proprietary, and not governmental or regulatory, capacity. The County's approval of any plans pursuant to this Agreement shall not relieve Developer of its obligations under law to file such plans with any department of the County or any other Governmental Authority having jurisdiction over the issuance of Building Permits or other permits and to take such steps as are necessary to obtain issuance of such permits. Developer acknowledges that any approval given by the County pursuant to this Agreement shall not constitute an opinion or agreement by the County that the plans are structurally sufficient or in compliance with any Applicable Laws, and no such approval shall impose any liability upon the County.

(d) The second phase of the Project (the "**Construction Phase**") shall consist of the following elements:

(i) At least ten (10) days prior to ordering any supplies or materials or undertaking any work on the Project, the Developer shall obtain and shall record in the public records of Miami-Dade County, Florida, a statutory payment and performance bond in compliance with Section 255.05, Florida Statutes for the full amount of the construction cost of the Project and which names the County as an additional obligee and beneficiary thereof.

(ii) Developer will act as developer and construction manager for the Construction Phase. Developer shall cause Commencement of Construction to occur within three (3) months after all necessary Permits and financing for the construction of the Project have been obtained. Developer shall achieve substantial completion of the Project within twenty-four (24) months after Commencement of Construction with final completion of construction and all punchlist items to be completed within six (6) months thereafter.

(iii) The Developer will enforce the GMP Contract while assuming full responsibility for supervising the complete performance for all of the work under the GMP Contract, and for the methods, means, and equipment used in performing the GMP Contract and for all materials, tools, apparatus, and property of every description used in connection therewith.

(iv) County will cooperate with Developer and Contractor during the Construction Phase in executing necessary documents and permits necessitated by its status as owner of the Land and the Project and provided that such cooperation does not require the expenditure or commitment of any County funds beyond that specified in this Agreement.

(v) Developer and County will review all of Contractor's applications for payment. Contractor shall pay for the costs of the construction of the Project before seeking reimbursement from the County for the costs thereof.

(vi) The County may request change orders and amendments to the GMP Contract so long as such change orders and amendments do not increase the total Project Costs or extend the time for achieving Completion of Construction of the Project.

(vii) If at any time during the development of the Project, as a result of unforeseen conditions, Developer reasonably anticipates that the Project Costs will exceed \$4,000,000.00, then Developer shall immediately notify the County of same. The Developer and the County (and, as appropriate, the Contractor) shall then meet and confer in order to agree on the necessary revisions to the Construction Plans, which revisions shall be subject to the approval of the County, not to be unreasonably withheld, conditioned or delayed. Developer shall not be required to make any County-requested change orders which Developer reasonably anticipates will cause the Project Costs to exceed \$4,000,000.00 unless and until such time as County has revised this Agreement to ensure availability of funds to pay such excess Project Costs.

(viii) Developer shall comply and shall cause the Contractor to comply with Section 2-1701 of the Code of Miami-Dade County, Florida ("**County Code**"), known as the Community Workforce Program, with a goal of having a minimum of 10% of the persons performing the construction trades and labor work for the development of the Project be residents of Designated Target Areas (as such term is defined in Section 2-1701 of the County Code).

(ix) After Completion of Construction of the entire Project, Developer shall provide to County two (2) sets of As-Built Plans, and two CADD / Revit / any applicable electronic files CDs for the Project. Developer shall require the preparer of the Construction Plans to grant, in writing, the County a perpetual license to use the Construction Plans in connection with the development, modification, renovation and operation of the Project.

(x) After Completion of Construction for the Project, Developer shall warrant to the County for a period of one (1) year, that the condition of the Project shall be in good, workmanlike condition and free of any defects. This shall be the sole warranty of Developer with respect to the construction of the Project, and in lieu of any and all other warranties, express or implied. Developer shall, to the extent possible, assign to the County all manufacturers' warranties with respect to fixtures and furnishings included as part of the Project as well as any continuing obligations of the contractor relating to the work on the Project.

(e) **Small Business and Workforce Programs.** Developer shall comply with all of the County's small business measures, programs, responsible wages and local workforce requirements. Specifically, Developer hereby acknowledges that in accordance with the Code of Miami-Dade County, Florida, Developer must comply with Miami-Dade County's Small Business Enterprise Program as set forth in Sections 10-33.02, 2-10.4.01, 2-8.1.1.1.1, and 2.8.1.1.1.2 of the County Code, and related implementing orders, including Implementing Orders 3-22, 3-32, and 3-41, that set forth the standards and requirements for small business participation in the acquisition of design services, construction services, and goods for the design and construction of the Project. As a result, the Developer hereby agrees to timely submit, or cause to be submitted, any design and construction packages, to the Small Business Development Division of the Internal Services Department ("SBD") prior to advertisement, for review and determination of appropriate small business program measures, and the application of same. Developer further agrees that all design and construction packages must be advertised and awarded with the applicable small business measures in accordance with the requirements of the above-mentioned sections of the County Code. Developer shall comply, and shall cause its contractors to comply with the County's applicable Responsible Wages, Residents First Training and Employment, Employ Miami-Dade Program, and First Source Hiring programs, as set forth in Sections 2-11.16 and 2-11.17 of the County Code, and Administrative Order No. 3-63 for the Project. Developer shall require that its contractor(s) shall, at a minimum, use the County's Small Business Division's hiring clearinghouse, Employ Miami-Dade Register, and Employ Miami-Dade Project – all available through CareerSource to recruit workers to fill needed positions for skilled laborers on the Project.

3. **Construction Manager.** Prior to commencement of design of the Project, a Capital Project Manager ("CPM") may be assigned by the County during the Permitting Phase and the Construction Phase of the Project. The CPM may monitor compliance with the terms and conditions of this Agreement relating to the Project; and perform periodic site visits and reviews to monitor compliance with the scope of services and schedule during the design and construction of the Project. The Developer shall invite the CPM to all of the progress meetings, construction meetings, and site visits of the Project.

4. **Developer Fee.** The Developer shall be paid the Developer Fee for the Project which shall be paid in accordance with the County approved Schedule of Values and commensurate with the progress of the work.

(a) If required, Developer shall make all applications as are required to secure land use and zoning approval for the construction of the Project, including without limitation, any replatting applications required therefor. County shall reasonably cooperate with Developer in

connection with such approvals, including without limitation, signing any application, plat or other document as a joint applicant, provided that County also approves with the matters and substance contained therein. County shall provide its signature to any such document within fourteen (14) days after request by Developer or shall, within such fourteen (14) day period provide any revisions or comments to be addressed by Developer prior to the County being able to provide its signature and approval.

(b) Developer, as construction manager (on behalf of County, and at County's cost), has or shall make all applications as are required for the issuance of Permits for the construction of the Project. Developer shall diligently pursue such applications. Costs incurred in connection with this provision are Project Soft Costs. County shall cooperate with Developer in connection with such applications, including without limitation, signing any application, or other document as a joint applicant. County shall provide its signature to any such document within fourteen (14) days after request of Developer or shall, within such fourteen (14) day period provide any revisions or comments to be addressed by Developer prior to the County being able to provide its signature and approval.

(c) The Developer shall enter into a written agreement with the Contractor, which agreement shall (i) incorporate, and be consistent with, all of the terms and conditions of the this Agreement, and (ii) provide that the County is an express third-party beneficiary to such contract. The Developer shall cause the Contractor to comply with all Applicable Laws, including those specifically set forth in this Agreement. The Contractor shall not discriminate against any employee or applicant for employment in the performance of the contract with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex or physical handicap except when based on bona fide occupational qualifications; or because of marital status, race, color, religion, national origin or ancestry. All construction contracts/subcontracts shall include the above non-discrimination provisions.

(d) Developer shall not allow any Encumbrances to be placed on, or to cloud title of, County's fee simple interest in the Land and shall indemnify County for any costs, expenses, or damages County incurs by reason thereof, in the event that any such Encumbrance is not removed as a lien on the County's fee simple interest in the Land within forty five (45) days after Developer receives written notice from County demanding removal of such Encumbrance. Developer shall promptly take all steps required to promptly remove or otherwise resolve all such Encumbrances of which Developer has been given actual notice.

(e) **Commencement and Completion of Construction.** The Developer shall be responsible for the management of the construction of the Project substantially in accordance with the final Construction Plans; the quality and workmanship shall meet or exceed the final Construction Plans for the Project; and the work shall comply with all Permits and Applicable Laws. The construction shall not be materially changed from that approved in the final Construction Plans without the County's approval. Such approval shall not be deemed as a substitute for approval from any Governmental Agency which issues permits and whose approval of modifications is required. All construction shall be performed by licensed contractors and

subcontractors, provided that such contractors and subcontractors are in good standing with the County.

(i) During the Construction Phase, the CPM may attend construction meetings, as needed, and periodically visit the Project to review the progress of construction to ensure adequate performance and conformity with the approved final Construction Plans.

(ii) In addition to the regular construction meetings, the Developer may schedule and coordinate a pre-construction meeting, a 50% progress meeting, a 75% progress meeting and a 100% substantial completion walk-thru meeting with the CPM.

(iii) The CPM may provide input to the construction punch-list items and may coordinate with the Developer for the final acceptance of the Project once all work has been completed and all permits have been approved and closed by all regulatory agencies having jurisdiction.

5. **Binding Effect.** All terms and provisions of this Agreement are binding upon the parties hereto and their respective successors and assigns. Further, all terms and provisions of this Agreement and all rights, privileges, benefits and burdens created hereunder are covenants running with the lands described herein, binding upon and inuring to the benefit of the parties hereto, their respective heirs, successors, successors-in-title, legal representatives and assigns.

6. **Breach; Events of Default.**

(a) Each of the following events shall constitute events of default of the Developer hereunder (collectively, the "**Developer Events of Default**"):

(i) a material breach by the Developer of its obligations under this Agreement to the extent the Developer fails to cure such breach within sixty (60) days of receipt of notice from the County in respect thereof; provided that, to the extent such breach is not capable of being cured within such sixty (60)-day period, the Developer shall have such longer period (but no more than ninety (90) additional days) to cure such breach;

(ii) use by the Developer of any part of the Bond Funds for costs and expenses not permitted under this Agreement, unless such funds are returned to the County within five (5) Business Days following receipt of notice from the County in respect thereof;

(iii) the occurrence of a Persistent Developer Breach to the extent that the County had previously notified the Developer of the same underlying material breach and, following such initial notice from the County, (A) such breach continues for an additional thirty (30) or more consecutive days; or (B) such breach recurs three (3) or more times within the eighteen (18)-month period following such notice; and

(iv) a failure by the Developer to obtain any necessary third-party approvals with respect to the design of the Project prior to the Commencement of Construction thereof.

(b) Each of the following events shall constitute events of default of the County hereunder (collectively, the “**County Events of Default**”):

(i) a material breach by the County of its obligations under this Agreement to the extent the County fails to cure such breach within sixty (60) days of receipt of notice from the Developer in respect thereof; provided that, to the extent such breach is not capable of being cured within such sixty (60)-day period, the County shall have such longer period (but no more than ninety (90) additional days) to cure such breach; and

(ii) a failure by the County to fulfill a Draw Request that is compliant with all of the requirements of this Agreement in the timeframe required by this Agreement to the extent the County fails to fulfill the Draw Request in question within ten (10) Business Days following receipt of notice from the Developer in respect thereof.

7. **Termination.**

(a) If not earlier terminated pursuant to other provisions of this Agreement, this Agreement shall automatically terminate at the expiration of the Term.

(b) This Agreement may be terminated by the County upon the occurrence and during the continuance of a Developer Event of Default.

(c) This Agreement may be terminated by the Developer upon the occurrence and during the continuance of a County Event of Default.

(d) To the extent this Agreement is terminated, upon the request of any Party, the Parties will execute a termination agreement to be recorded in the Public Records of Miami-Dade County, Florida to evidence such termination of this Agreement.

8. **Remedies.** Subject to the limitations of liability otherwise expressly set forth in this Agreement, upon the occurrence and during the continuance of a County Event of Default or a Developer Event of Default, the County or the Developer, as applicable, shall have all rights at law and equity, including a demand for specific performance, to address any material breach of this Agreement. Notwithstanding and prevailing over the foregoing, nothing in this Agreement shall prevent either party from seeking relief on an emergency or temporary basis from a court of competent jurisdiction to the extent that a breach by another party of this Agreement causes an immediate threat to the life and safety of the public or an immediate and significant threat or risk of loss to property.

9. **Authority of the County’s and Developer’s Representatives.** The County Representative and the Developer Representative, or such additional person as is subsequently designated by the County upon written notice to the Developer or such additional person as is

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subsequently designated by the Developer upon written notice to the County, shall have the power, authority and right on behalf of, in the County Representative's case, the County, and, in the Developer Representative's case, the Developer, to:

- (a) review and approve Draw Requests submitted by the Developer to the County pursuant to this Agreement; and/or
- (b) receive reports on the status of the development.

10. **Construction of Terms and Miscellaneous.**

(a) **Notices.** All notices, demands or requests to the County or to the Developer, as applicable, shall be deemed to have been properly served or given, if addressed to:

- (i) Developer: at 315 S. Biscayne Boulevard, Miami, FL 33131;

And to such other address and to the attention of such other party as the Developer may, from time to time, designate by written notice to the County. If the Developer at any time during the term hereof changes its office address as herein stated, the Developer will promptly give notice of same in writing to the County.

- (ii) County: at 111 NW 1st Street, 29th Floor, Miami, Florida 33128,
Attention: County Mayor

with a copy to: 701 NW 1st Court, 16th Floor, Miami, Florida 33136,
Attention: Department of Public Housing and Community Development,
Director

with a copy to: 111 NW 1st Street, Suite 2810, Miami, Florida 33128,
Attention: County Attorney

And to such other addresses and to the attention of such other parties as the County may, from time to time, designate by written notice to the Developer. If the County at any time during the term hereof changes its office address as herein stated, the County will promptly give notice of same in writing to the Developer.

All notices, demands or requests shall be sent by: (i) United States registered or certified mail, return receipt requested, (ii) hand delivery, (iii) nationally recognized overnight courier, or (iv) electronic transmission, provided the transmission is electronically confirmed and the original of the Notice is sent by one of the foregoing means of transmitting Notice within twenty-four (24) hours of the electronic transmission. All postage or other charges incurred for transmitting the aforementioned shall be paid by the party sending same and shall be deemed served or given on the earlier of: (x) the date received, (y) the date delivery of such notice, demand or request was refused or unclaimed, or (z) the date noted on the return receipt or delivery receipt as the date

delivery thereof was determined impossible to accomplish because of an unnoticed change of address.

(b) Unavoidable Delays. In the event that either Party hereto shall be delayed or prevented from the performance of any act required hereunder or under any other Transaction Document (in each case, other than a payment obligation), by reason of (i) a Force Majeure event, or (ii) a breach by another Party of any of its obligations under this Agreement (collectively, an “Unavoidable Delay”), then such delay in the performance of such act shall be excused with performance extended for a period equivalent to the period of such delay.

(c) Severability. If any provisions of this Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue valid and be enforced to the fullest extent permitted by law.

(d) Captions. The section headings and captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect this Agreement.

(e) Relationship of Parties. This Agreement does not create the relationship of principal and agent or of mortgagee and mortgagor or of partnership or of joint venture or of any association between the Parties, the sole relationship between the Parties being that of Parties to this Agreement.

(f) Recording. This Agreement shall be recorded among the Public Records of Miami-Dade County, Florida, at the sole cost of the Developer.

(g) Construction. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The Parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arm’s length so that the judicial rule of construction to the effect that a legal document shall be construed against the draftsman shall be inapplicable to this Agreement which has been drafted by counsel for both the Parties.

(h) Consents. Whenever in this Agreement the consent or approval of the County or the Developer is required, such consent or approval:

(i) in the case of the County, shall be made by the County Representative on behalf of the County;

(ii) shall not be unreasonably or arbitrarily withheld, conditioned, or delayed unless specifically provided to the contrary in this Agreement, and shall not require a fee from the Party requesting same;

(iii) shall not require the expenditure of funds by the Party from whom a consent or approval is sought, unless specifically provided to the contrary in this Agreement;

(iv) shall not be effective unless it is in writing; and

(v) shall apply only to the specific act or transaction so approved or consented to and shall not relieve the Developer or the County, as applicable, of the obligation of obtaining the other's prior written consent or approval to any future similar act or transaction.

(i) Amendments. All substantive amendments to this Agreement shall require the prior consent of the Board and the Developer and shall not be effective until the consent of each of those entities is obtained, and any amendments shall only be effective thereafter if reduced to writing and executed with the same formality as this Agreement. The Board hereby delegates approval rights for any non-substantive amendments to the County Mayor.

(j) Entire Agreement. This Agreement and exhibits attached were approved by the Board of County Commissioners of Miami-Dade County, Florida and contains the entire agreement with respect to the construction of the Project between the Parties hereto and supersedes all prior agreements, whether written or oral.

(k) Successors and Assigns. The terms herein contained shall bind and inure to the benefit of the County, its successors and assigns, and the Developer, its successors and assigns, except as may be otherwise provided herein. Any Developer assignment shall be subject to the prior approval of the Board.

(l) Governing Law and Venue. This Agreement shall be governed by the laws in the State of Florida and venue for any legal proceeding shall be in Miami-Dade County, Florida. In the event of litigation or other dispute, each Party shall bear its own attorneys' fees and costs.

(m) Cooperation. The Parties agree to cooperate with each other to the full extent practicable pursuant to the terms and conditions of this Agreement. The Parties agree that time is of the essence in all aspects of their respective and mutual responsibilities pursuant to this Agreement.

(n) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

(o) Compliance by the Parties. Throughout the Term, the Parties, at their own cost and expense, shall promptly comply with all Applicable Laws. To the extent that the Developer's compliance shall require the cooperation and participation of the County, the County agrees to use its best efforts to cooperate and participate.

(p) Conflicts. The event of a direct conflict between the terms and conditions of this Agreement and any other agreement between the Parties related to the Project, the terms and conditions of this Agreement shall prevail.

(q) Limitation on Liability. Neither Party shall be liable to the other Party for any incidental or consequential loss or damage whatsoever, including lost profits, arising from the rights of such Party hereunder.

(r) Advertising. Subject to the Developer's compliance with Applicable Law, including but not limited to the County's sign ordinance, the Developer shall be entitled to permit internal and external advertising on the Project.

(s) Miami-Dade County's Rights as Sovereign. The County retains all of its sovereign prerogatives and rights as a county under State of Florida and local law with respect to the planning, design, construction, development and operation of the Project. It is expressly understood that, notwithstanding any provisions of this Agreement and the County's status hereunder:

(i) The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county under State of Florida and local law, and shall in no way be estopped from withholding or refusing to issue any approvals or applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the planning, design, construction and development of the Project, or the operation thereof, or be liable for the same;

(ii) The County shall not, by virtue of this Agreement, be obligated to grant the Developer any approvals of application for building, zoning, planning, development or otherwise under present or future Applicable Laws of whatever nature applicable to the planning, design, construction, development and/or operation of the Project; and

(iii) Notwithstanding any provision hereof to the contrary, any County covenant or obligation that may be contained in this Agreement shall not bind the Board, the County's Regulatory and Economic Resources Department, the Division of Environmental Resources Management, or any other County, city, federal or state department or authority, committee or agency (i.e. any Governmental Authority) to grant or leave in effect any zoning changes, variances, Permits, waivers, contract amendments, or any other approvals that may be granted, withhold, or revoked in the discretion of the County or other applicable Governmental Authority in the exercise of its/their police power(s).

11. Representations and Warranties.

(a) The County hereby represents and warrants to the Developer that it has full power and authority to enter into this Agreement and perform in accordance with its terms and

provisions and that the parties signing this Agreement on behalf of the County have the authority to bind the County and to enter into this transaction, and the County has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Agreement. This Agreement has been duly authorized, executed and delivered by all necessary action of the County and constitutes a legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(b) The Developer hereby represents and warrants to the County that it has full power and authority to enter into this Agreement and perform in accordance with its terms and provisions and that the parties signing this Agreement on behalf of the Developer have the authority to bind the Developer and to enter into this transaction, and the Developer has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Agreement. This Agreement has been duly authorized, executed and delivered by all necessary action of the Developer and constitutes a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

12. **Indemnification.** The Developer shall comply with all insurance requirements set forth in this Agreement. The Developer shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and cost of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from Developer's or its employees, agents, servants, partners, principals or subcontractors negligence, gross negligence, willful misconduct or illegal misconduct. The Developer shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County where applicable, including appellate proceedings and shall pay all costs, judgements and attorney's fees which may issue thereon. Developer expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Developer shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. Developer shall have no obligation to indemnify County for any liability, losses or damages which result solely from County's negligence.

13. **Insurance.** Developer shall require Contractor to maintain reasonable insurance coverage as agreed to between the County and the Developer and may include the following:

- Worker's Compensation Insurance as required by Chapter 440, Florida Statutes.
- Commercial General Liability Insurance in an amount of \$10,000,000 per occurrence and \$10,000,000 in the aggregate. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

- Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this agreement in an amount not less than \$1,000,000 combined single limit.

In addition to the insurance required above, a certificate of insurance must be provided with respect to any design and construction phase, as applicable, on the Land as follows:

- Professional Liability or Errors & Omissions insurance maintained by prime contractor(s) in privity with Developer covering architectural and/or civil engineering project design, supervision, administration, surveying, engineering and any related professional qualifications or functions required by the Project. For structural engineers and civil engineers, coverage shall be not less than \$1,000,000 per occurrence, \$1,000,000 in the aggregate.
- Builders' Risk Special Perils Cause of loss including windstorm & hail and flood if applicable, with coverage in the amount of 100% of insurable value of the structures, with the exception of coverage for named windstorm, flood and earthquake which shall be subject to commercially reasonable limits available in the insurance market.

The insurance requirements above may be satisfied through a combination of primary and excess insurance.

The risk management division of Miami-Dade County Internal Services Department (or any successor department) reserves the right, upon reasonable notice, to examine or request the policies of insurance (including but not limited to binders, amendments, exclusions or riders, etc.) Miami-Dade County reserves the right to reasonably amend insurance requirements throughout the duration of this Agreement.

If, in connection with the future renewal of any insurance which the Developer is required to maintain or procure hereunder, any insurance term is either not available to the Developer in the North American insurance market or is subject to an insurance premium that is not commercially reasonable in light of the coverage provided, the Developer shall notify the County and shall thereafter procure available and commercially reasonable insurance that reasonably covers the relevant risk, if any.

The insurance company must be rated no less than "A-" as to management, and no less than "Class VII" as to strength, by A.M. Best Company, Oldwick, New Jersey

or

the insurance company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Financial Services.

NOTE: CERTIFICATE HOLDER MUST READ:

**MIAMI-DADE COUNTY
111 NW 1st STREET SUITE 2340
MIAMI FL 33128**

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14. **Inspector General Reviews/Audit & Compliance.**

Independent Private Sector Inspector General Reviews. Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General ("IPSIG"), whenever the County deems it appropriate to do so. Subject to all Applicable Laws, upon written notice from the County, Developer shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall Developer's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein apply to Developer, its successors and assigns. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of Developer in connection with, and as and when provided under, this Agreement.

Miami-Dade County Inspector General Review. According to Section 2-1076 of the County Code, as amended by Ordinance No. 99-63, the County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Agreement shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be assumed by the County; and Developer shall have no liability therefore.

Nothing contained above shall in any way limit the powers of the Miami-Dade County Inspector General to perform audits on all County contracts. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Miami-Dade County Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs, all at no cost or expense to Developer. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Miami-Dade County Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders, if any, to the Agreement. The Miami-Dade County Inspector General is empowered to retain, at no expense or cost to Developer, the services of an IPSIG to, subject to all Applicable Laws, audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement processes, including but not limited to project design, specifications, proposal submittals, activities of Developer, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with the Agreement and to detect fraud and corruption.

Subject to all Applicable Laws and the terms and conditions herein, upon written notice to Developer from the Inspector General or IPSIG retained by the Inspector General, Developer shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying, at no cost or expense to Developer. The Inspector General and IPSIG shall have the right to inspect and, at no cost or expense to Developer, copy all such documents

and records in the Developer's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the Agreement, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records, provided that neither the Inspector General nor IPSIG shall be entitled to receive, review or copy any documents that are privileged, confidential or proprietary to Developer.

15. **Florida Public Records Act.** As it relates to this Agreement, pursuant to Section 119.0701 of the Florida Statutes:

(a) Developer understands, agrees and acknowledges that this Agreement and Developer's operations thereunder are subject to the provisions of Chapter 119 of the Florida Statutes commonly referred to as "Florida's Public Records Laws".

(b) For purposes of this section, the term "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the County.

(c) IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT **MIAMI-DADE PUBLIC HOUSING AND COMMUNITY DEVELOPMENT 701 NW 1ST COURT, 16TH FLOOR, MIAMI, FL 33136, ATTENTION: Lizette.Capote@miamidade.gov, (786) 469-4126.**

(d) Developer is required to keep and maintain public records required to perform under this Agreement and, upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by applicable law.

(e) Developer shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Developer does not transfer the records to the County

(f) Upon completion of the Agreement, Developer shall transfer, at no cost, to the County all public records in possession of the Developer or keep and maintain public records required by the County to perform the service. If the Developer transfers all public records to the County upon completion of the Agreement, the Developer shall destroy any duplicate public

records that are exempt or confidential and exempt from public records disclosure requirements. If the Developer keeps and maintains public records upon completion of the Agreement, the Developer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

(g) If the County does not possess public records responsive to a request to inspect or copy public records relating to this Agreement, the County shall immediately notify the Developer of the request, and the contractor must provide the records to the County or allow the records to be inspected or copied within a reasonable time.

(h) If Developer does not comply with a request for records, it shall be a material breach of this Agreement and the County shall have the right to the remedies set forth in Section 8 of this Agreement. In addition, if Developers fails to provide the public records within a reasonable time may be subject to penalties under s. 119.10.

(i) Developer's obligations under this section of the Agreement shall survive the termination of this Agreement.

(signatures on following pages)

IN WITNESS WHEREOF, the County has caused this Agreement to be executed in its name by the County Mayor or Deputy Mayor; as authorized by the Board, and Developer has caused this Agreement to be executed by its respective duly authorized representative all on the day and year first written above.

MIAMI-DADE COUNTY, a political
subdivision of the State of Florida

ATTEST:

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

HARVEY RUVIN, CLERK

By: _____
Name:
Title:

By: _____
Name:
MAYOR or DEPUTY MAYOR

Approved by County Attorney as to form and legal sufficiency

Print Name: _____

[SIGNATURES CONTINUE ON NEXT PAGE]

Signed in the presence of:

[Signature]
Print Name: Andrew Veb

[Signature]
Print Name: Jordan Davis

MASTER DEVELOPER:

RUDG, LLC, a Florida limited liability company

By: *[Signature]*
Name: Alberto Milo, Jr
Title: President

STATE OF FLORIDA)

) SS:

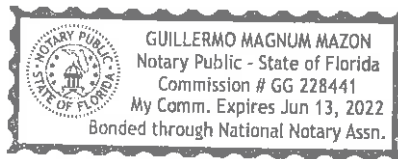
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this 4 day of September, 2020, by Alberto Milo, as President of RUDG, LLC, a Florida limited liability company.

Personally Known OR Produced Identification _____

Type of Identification Produced _____

[Signature]



Signed in the presence of:

[Signature]
Print Name: Andrew Vela

[Signature]
Print Name: Jillian Davis

DEVELOPER:

RIVER PARC RIVERWALK, LLC, a Florida limited liability company

BY: RUDG, LLC, a Florida limited liability company, its manager

By: *[Signature]*
Name: Alberto Milo Sr
Title: President

STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this 4 day of September, 2020, by Alberto Milo, as President of RUDG, LLC, a Florida limited liability company, the manager of River Parc Riverwalk, LLC, a Florida limited liability company.

Personally Known ✓ OR Produced Identification _____

Type of Identification Produced _____

[Signature]

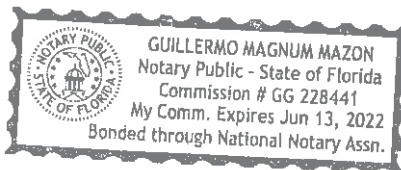


EXHIBIT A

Legal Description of the Land

A PORTION OF LOTS 7 AND 8, CORRECTED PLAT OF RIVERMONT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK B, PAGE 95, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA;

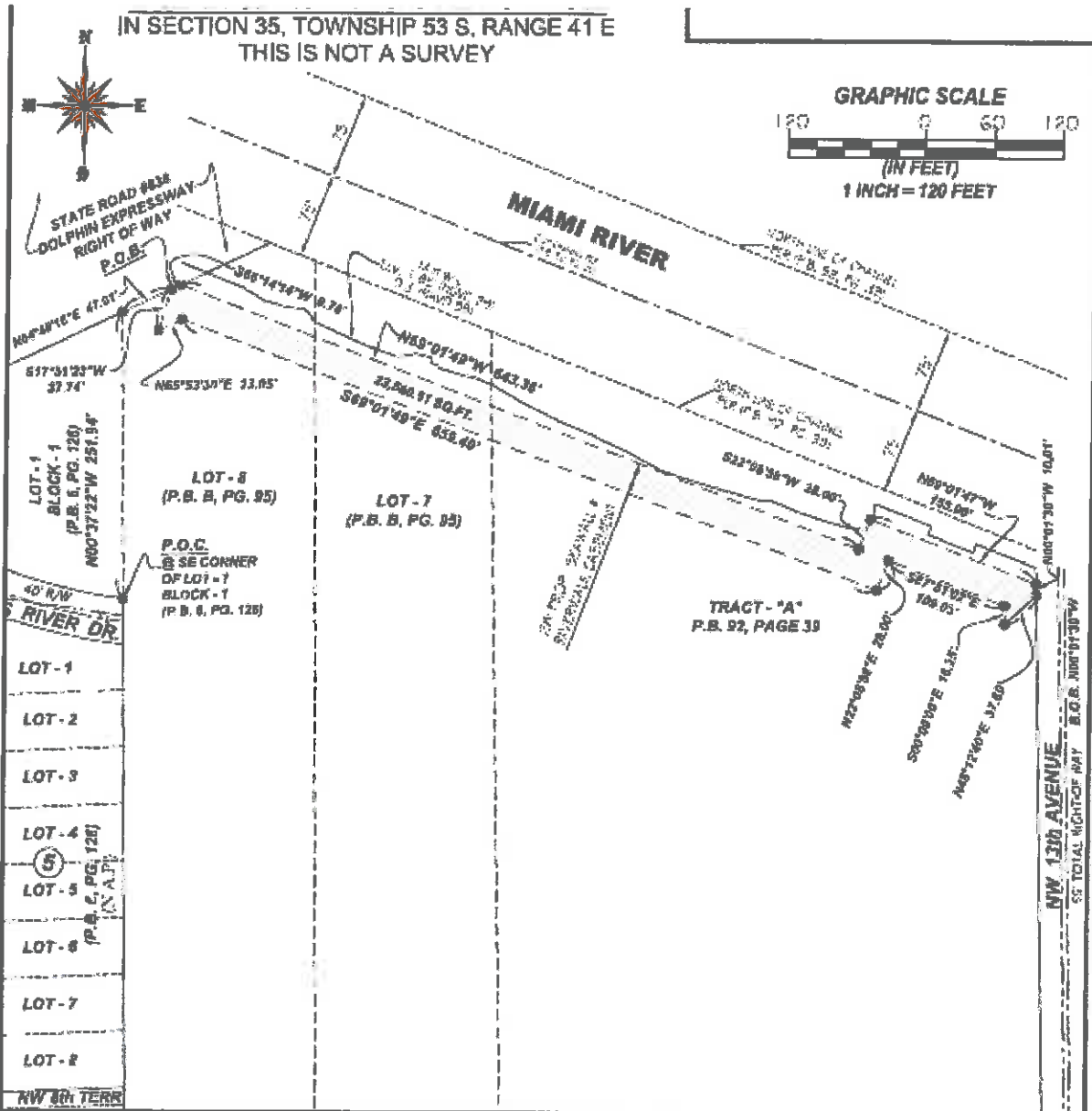
AND

A PORTION OF TRACT "A", MIAMI RIVER COMPLEX FLORIDA 5-26, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 92, PAGE 39, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.


BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF LOT 1, BLOCK 1, OAK TERRACE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 6, PAGE 126, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; THENCE RUN N00°33'24"E, ALONG THE EASTERLY LINE OF SAID LOT 1, FOR A DISTANCE OF 251.94 FEET TO A POINT LYING IN THE SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD #836 (DOLPHIN EXPRESSWAY); THENCE RUN N65°59'03"E, ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD # 836, FOR A DISTANCE OF 47.01 FEET TO THE POINT OF BEGINNING; THENCE RUN S17°51'23"W, A DISTANCE OF 37.74 FEET; THENCE RUN N65°53'30"E, A DISTANCE OF 23.05 FEET; THENCE RUN S67°51'02"E, A DISTANCE OF 659.40 FEET; THENCE RUN N22°08'58"E, A DISTANCE OF 28.00 FEET; THENCE RUN S67°51'02"E, A DISTANCE OF 109.03 FEET; THENCE RUN S00°00'00"E, A DISTANCE OF 16.25 FEET; THENCE RUN N48°12'40"E, A DISTANCE OF 37.60 FEET TO A POINT ON THE EASTERLY LINE OF SAID TRACT "A"; THENCE RUN N00°01'30"W, ALONG SAID EASTERLY LINE OF TRACT "A", FOR A DISTANCE OF 10.01 FEET; THENCE RUN N67°51'00"W, A DISTANCE OF 155.90 FEET; THENCE RUN S22°08'58"W, A DISTANCE OF 28.00 FEET; THENCE RUN N67°51'02"W, A DISTANCE OF 643.36 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD #836 (DOLPHIN EXPRESSWAY); THENCE RUN S66°14'14"W, A DISTANCE OF 9.78 FEET TO THE POINT OF BEGINNING.

CONTAINING 23,560.51 SQ. FT. MORE OR LESS OR 0.541 ACRES MORE OR LESS.



| | |
|-------------|-------------|
| DRAWN BY: | DA |
| DATE: | 03/18/2020 |
| SCALE: | 1"=120' |
| SURVEY NO.: | 20-001292-1 |
| SHEET: | 2 OF 2 |



JOHN IBARRA & ASSOCIATES, INC.
Professional Land Surveyors & Mappers
www.ibarralandsurveyors.com

777 NW 72nd AVENUE
SUITE 9029
MIAMI, FLORIDA 33156
PH | (305) 552-0400
FAX | (305) 552-0401

3728 DEL PIASO BLVD, S
SUITE B
CAPE CORAL, FL 33904
PH | (239) 545-8888
FAX | (239) 540-8884



Digitally signed
by John A. Ibarra
Date:
2020.03.20
11:39:30 -0500
Adobe Acrobat
version:
2020.005.20042

L.B.# 7806 SEAL

MIAMI 7068810.5 79701/89842

EXHIBIT B

Building Better Communities General Obligation Bond Program Administrative Rules

(attached on following pages)

**BUILDING BETTER COMMUNITIES
GENERAL OBLIGATION BOND
PROGRAM
ADMINISTRATIVE RULES**

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ARTICLE I - GENERAL CONDITIONS

SECTION 1. BACKGROUND

These administrative rules govern the implementation by Miami-Dade County (the "County") of its Building Better Communities General Obligation Bond Program as established by Ordinance No. 05-47 (the "Ordinance").

SECTION 2. SCOPE

These administrative rules have been prepared to address the administration and allocation of funds for the projects and programs identified in the Building Better Communities General Obligation Bond Program ("BBC GOB Program"). In addition to the funding of Projects specifically listed in the BBC GOB Program, eligible projects may be funded through the process described in these administrative rules with monies from four (4) funds. The funds are the Historical Preservation Fund, the Economic Development Fund, the Not-for-Profit Community Organization Capital Fund, and the Primary Health Care Facilities Fund (collectively, the "Funds").

SECTION 3. GENERAL

All recipients of funding for specific projects identified in the BBC GOB Program and for projects approved for funding from one of the Funds are required to follow these administrative rules. Failure to do so may lead to disqualification.

Additional copies of the administrative rules and/or application materials may be obtained by contacting the Office of Management and Budget. All inquiries, correspondence and applications for the BBC GOB Program should be addressed to:

Miami-Dade County
Office of Management and Budget
111 NW 1 Street
22nd Floor
Miami, Florida 33128
Attention: Coordinator, Office of Management and Budget

or to a Department or agency of Miami-Dade County, serving as the County Mayor's Designated Representative.

SECTION 4. DEFINITIONS

The following is a list of terms and definitions that are used in these administrative rules:

"Acquisition" means the act of obtaining real property and/or capital assets or interests and rights in real property and/or capital assets by various legal means to serve public purposes.

"Applicant" means a Public Agency, not-for-profit organization, Municipality or other entity eligible to participate in the BBC GOB Program, which submits a Funding Application Package to the County.

"Application" means the process described in these rules to make a formal request for Funding Allocation which remains open until the execution of a Grant Agreement or Interlocal Agreement, as the case may be, or a decision by the County not to provide a Funding Allocation.

"Application Submission Period" means a formally announced period of time for the submission of a Funding Application Package in a given Funding Cycle.

"Authorizing Resolutions" mean Resolution Nos. R - 912-09, R - 913-09, R - 914-09, R - 915-09, R - 916-09, R - 917-09, R - 918-09 and R - 919-09, as each may be amended from time to time.

"Board of County Commissioners" or **"Board"** means the legislative and the governing body of the County.

"Community-Based Organization" or **"CBO"** shall refer to any not-for-profit 501(c)(3) agency, group, organization, society, association, partnership, or individual whose primary purpose is to provide a community service designed to improve or enhance the well-being of the community of Miami-Dade County at large or to improve or enhance the well-being of certain individuals within this community who have special needs.

"County" means Miami-Dade County, Florida.

"County Mayor" or **"Mayor"** means the head of the administrative branch of the County government or his/her designated representative.

"Development" means the act of physically improving an area, facility, resource or site to increase its ability or capacity to serve the public.

"Designated Projects" means the specific Projects listed in Appendix A to each of the Authorizing Resolutions for inclusion in the BBC GOB Program.

"Fixtures, Furniture and Equipment" or **"FF&E"** means 1) Fixtures - items that are permanently affixed to the building or property, i.e., doors, bathroom stalls, A/C units, etc.; 2) Furniture - indoor furnishings needed to allow proper use of a building, i.e., desks, chairs, tables, workstations, etc.; and 3) Equipment - non-consumable tangible property with a life of at least one year that is directly related to the funded project, such as bleachers for courts, audio/visual equipment for community rooms, computers for computer labs, portable basketball goals for gymnasiums, etc.

"Fund Projects" means the specific Projects approved by the Board pursuant to these administrative rules for a Funding Allocation from one of the Funds.

"Funding Allocation" means (i) the total amount of Building Better Communities General Obligation Bond funds approved by the Board for use by a Recipient for a specific Project as set forth in the Authorizing Resolutions; or (ii) the total amount approved by the Board from a Fund for use by a Recipient for a specific Project.

"Funding Application Form" means the base application form provided by the County Mayor or County Mayor's designee to be completed by the Applicant and submitted as part of a Funding Application Package.

"Funding Application Package" means the complete submittal package required by these administrative rules and submitted by an Applicant for a Project. (See Article II, Section 2).

"Funding Cycle" means the time between the opening of an Application Submission Period and the approval by the Board of the Projects to receive a Funding Cycle Allocation.

"Funding Cycle Allocation" means the amount of the Building Better Communities General Obligation Bond funds approved by the Board in a given year for use by a Recipient for implementation of a Project pursuant to these administrative rules.

"Funds" means any and/or all of the following four funds included in the BBC GOB Program to address grant requests for Fund Projects: the Economic Development Fund, the Historical Preservation Fund, the Not-for-Profit Community Organization Capital Fund, and the Primary Healthcare Facilities Fund.

"Grant Agreement" means an executed grant agreement between the County and a Recipient (other than a grant to a Municipality or Public Agency, which grant will be evidenced by an executed Interlocal Agreement) setting forth mutual obligations regarding a Funding Cycle Allocation and/or Funding Allocation for a Project.

"Interlocal Agreement" means an executed grant agreement between the County and a Recipient that is a Municipality or Public Agency setting forth mutual obligations regarding a Funding Cycle Allocation and/or Funding Allocation for a Project.

"LEED" refers to *Leadership in Energy and Environmental Design* and means an ecology oriented building certification under a program sponsored by the U.S. Green Building Council.

"Match" means cash committed by the Recipient, as stipulated in the approved Grant Agreement or the Interlocal Agreement, as the case may be, to complement funding awarded from the BBC GOB Program.

"Municipality" means a political unit, such as a city, town, or village, incorporated for local self-government within the confines of Miami-Dade County.

"Ordinance" means the Building Better Communities General Obligation Bond Ordinance No. 05-47.

"Pre-Agreement Expenses" means eligible expenses identified in Article III, Section 1(B), of these rules incurred by a Recipient for accomplishment of a Project prior to full execution of a Grant Agreement or an Interlocal Agreement, as the case may be.

"Project" means each Designated Project or Fund Project, as the case may be, approved by the County for a Funding Allocation.

"Public Agency" or **"Public Agencies"** means an agency or agencies or administrative division or divisions of the United States government, the State of Florida, the County, or any Municipality within the County.

"Recipient" means an entity receiving a Funding Allocation.

"REMI Model" means a simultaneous equations econometric model developed by REMI, Inc., and suitable for estimating the dynamic economic impacts of real property and other capital investments in Miami-Dade County.

"Soft Costs" means real and verifiable expenditures for administration, project management (not related to construction supervision), indirect costs (accounting/purchasing/personnel, etc.), imposed fees (e.g., permit processing fees), and those costs NOT related to construction material, labor, equipment, or construction sub-contractors. Soft Costs for the purpose of this Program are classified by the following three areas:

- Project Administration - administration, project management (not related to construction supervision), indirect costs (accounting/purchasing/personnel, etc.), and imposed fees (e.g., Professional Services Agreement selection/permit processing fees). Project management related to construction supervision is not considered a soft cost; and
- Planning Services - Master Plan development and approval and feasibility studies; and
- Design Services - schematic design, design development, construction documents, bidding or negotiation and as-built drawings.

Construction supervision and/or inspection are not considered Soft Costs. All costs associated with land acquisition such as: appraisals, due diligence, cost of land, project administration related to land purchase, legal fees, etc. are not part of the Soft Costs.

"Strategic Area" means geographic areas identified as the Opa-locka Executive Airport property and designated adjacent areas, the Civic Center/Medical District area, the Port of Miami, the Kendall-Tamiami Executive Airport and designated adjacent areas, and the Homestead Air Force Reserve Base and designated adjacent areas. The boundaries of these areas are identified in Exhibit L to these Administrative Rules.

"Targeted Urban Areas" or **"TUA"** means the geographical communities that have been designated by the Board and defined in the County Code of Ordinances Article VI, Sec.30A-129(2).

"UMSA" means Unincorporated Municipal Service Area of the County for which the County provides municipal services. Projects occurring within areas defined as UMSA are subject to the same administrative rules as any other project seeking Building Better Communities General Obligation Bond funding, regardless of the entity involved in the Project.

ARTICLE II – FUNDING PROCEDURES

SECTION 1. FUNDING CYCLES; APPLICATION SUBMISSION PERIODS

An Application Submission Period may be established on a periodic basis or a Funding Allocation may be awarded to a Recipient by the Board on a case by case basis. Each Project may be awarded a Funding Cycle Allocation during one or more Funding Cycles.

Eligible entities must apply for these Funding Cycle Allocations. A Grant Agreement or Interlocal Agreement between the County and the Recipient, as the case may be, implements the Funding Cycle Allocations.

If an Application Submission Period is opened, the Funding Application Package shall be delivered on or before the last day of the announced Application Submission Period. The County may announce an additional Application Submission Period if funds remain or become available after the preceding Application Submission Period is complete. Each Application Submission Period and other pertinent application information shall be publicly announced in newspapers of general circulation in the County at least one (1) month prior to the deadline for submission of the Funding Application Package, unless otherwise waived by the Board.

Funding Application Packages for Projects under the Economic Development Fund program will be evaluated on a case by case basis, and may be submitted for review by the County Mayor or the County Mayor's designee at any time as long as funding under this Fund is available.

Final grant award of Funding Allocations pursuant to an Application Submission Period are subject to approval by the Board.

SECTION 2. FUNDING APPLICATION

An Applicant must submit a complete Funding Application Form in order to be eligible to receive a Funding Allocation award. A complete Funding Application Package means one that meets all the requirements of the Ordinance and these administrative rules and is supported by proper documentation required by these administrative rules. The Funding Application Package shall consist of:

- 1) Completed Funding Application Form.
- 2) Completed line item budget. The line item budget must be submitted with budget justifications for the Construction and Fixtures, Furniture and Equipment line items. The justification should provide detailed descriptions of the project elements. Reimbursement for Fixtures, Furniture & Equipment is contingent upon prior inclusion and approval of these expenses in the Grant Agreement or Interlocal Agreement, as the case may be. (See Article III, Section 1(C), and for Projects under the Economic Development Fund Program, Article II, Section 3(B) 1).
- 3) Letter(s) of commitment for matching funds that complement the Funding Allocation request as may be required by the Application.
- 4) Projected completion date for the Project and if the Project will be constructed in phases, the completion date of each phase.
- 5) Project location map.
- 6) For Development Projects, certification of ownership of a site by the Applicant or evidence of land tenure sufficient to satisfy the County that the Project may be developed on the designated site.
- 7) Written evidence (resolution or other legally required documentation), which at a minimum:
 - (i) authorizes the execution of the Grant Agreement or the Interlocal Agreement, as the case

may be; (ii) commits the Applicant to complete the Project; (iii) as applicable, commits the Applicant to provide operating, maintenance and programming funds upon completion of the Project, to the extent allowed by law; and (iv) provides that the Funding Allocation shall not be used in substitution of other capital project funding available to the Applicant.

8) Any other documentation that the Board may require from time to time.

An Applicant may request funding for a major Project in phases. Each phase shall constitute a distinct portion of the proposed Project. Each Applicant requesting funding for a Project in phases shall commit to completing the Project as defined in the Grant Agreement or the Interlocal Agreement, as the case may be, unless otherwise modified by approval of the Board in accordance with these rules and the Ordinance.

In the event an applicant intends to submit a request for pre-agreement reimbursement, the applicant shall comply with Article III, Section 1(B).

SECTION 3. ELIGIBILITY REQUIREMENTS

A) Designated Projects

Eligibility requirements for Applicants:

- Active and duly registered Florida not-for-profit 501(c)(3) corporation. Comply with the County's Administrative Order 3-15.
- Active and duly registered Florida for-profit corporation or recognized business entity.
- Municipality or Public Agency based in Miami-Dade County.
- Owner or lessee of residential or commercial property located within Miami-Dade County on which the Designated Project shall be situated.
- Financially stable including financial commitments to complete the Designated Project.

B) Fund Projects

1. Funds Objectives

The Economic Development Fund (the "EDF") is a component of the Building Better Communities Bond Program and is available for the purpose of providing infrastructure improvements to spur economic development and attract new businesses to the community in order to create jobs. The EDF includes \$75 million that is available countywide and \$15 million that is specifically focused on the County's designated Targeted Urban Areas. Eligible uses of the EDF include, but are not limited to: infrastructure funding for road construction, water and sewer lines, fencing, sidewalks, entryways, lighting, and handicap accessibility; acquisition of land or buildings subject to certain limitations and to be evaluated on a case-by-case basis; new construction or renovation of buildings subject to certain limitations and to be evaluated on a case-by-case basis; and construction or acquisition of parking lots and structures subject to certain limitations and to be evaluated

on a case-by-case basis. Ineligible uses of the EDF include but are not limited to: working capital; furniture and fixtures; office equipment; and other non-capital related expenses.

The Historical Preservation Fund, the Primary Healthcare Facilities Fund and the Not-for-Profit Community Organization Capital Fund are a component of the Building Better Communities General Obligation Bond initiative for the purpose of funding projects that support the County's historic preservation, primary healthcare, and community agency infrastructure needs. These are capital projects that improve the quality of life for the County's citizens, enhance medical facilities, rehabilitate historic properties, save irreplaceable historic venues, and serve as a catalyst for preserving and protecting Miami-Dade County's future. Medical institutions, historically and culturally significant properties, and Community-Based Organizations needing capital funds for construction, renovation, and expansion of facilities within the community that meet the criteria for the following programs may be eligible for assistance from these funds.

2) Program Descriptions and Criteria

a) Economic Development Fund.

The Economic Development Fund includes \$75 million that is available for "game changing" projects. The primary objectives of this program are to provide infrastructure improvements to spur economic development and attract new businesses to the community in order to create jobs by providing incentives that catalyze private sector investments, accelerate job creation, and attract capital investments with a strong potential to transform the local economy in ways that strengthen the economy's capacity for innovation and commercialization of scientific advancements, expand leadership in local industry clusters, such as Aviation and Aerospace, Financial and Professional Services, Homeland Security and Defense, Information Technology, Life Sciences, and International Trade and Global Commerce, and/or produce job opportunities. These industry clusters exist in the Strategic Areas (see Exhibit L attached to these Administrative Rules). This component of the Economic Development Fund is referred to as Project No. 124. No more than \$15 million or less than \$10 million may be allocated to any single entity or project.

The Economic Development Fund also includes \$15 million that is specifically available for projects in the County's designated Targeted Urban Areas to spur economic development and attract new businesses in order to create jobs. This component of the Economic Development Fund is referred to as Project No. 320. No more than \$3 million from Project 320 may be allocated to any single Targeted Urban Area.

Eligibility Requirements for Applicants:

Notwithstanding eligibility requirements for applicants set forth in any other section of these administrative rules, the eligible applicants for the Economic Development Fund are:

- Active and duly registered Florida not-for-profit 501(c)(3) corporation.

- Active and duly registered Florida for-profit corporation or recognized business entity.
- Owner or lessee of residential or commercial property located within Miami-Dade County on which the Economic Development Fund Project will be situated.
- Demonstrated financial capacity and financial commitment using other non-County sources to complete the Economic Development Fund Project.

b) Historic Preservation Fund

This program includes \$10 million and is intended to provide matching funds to private property owners, private nonprofit organizations, and municipal government agencies for the acquisition, relocation and rehabilitation of designated historic properties, or properties eligible for designation as a historic property or as a contributing historic district property, which has applied for such a designation within Miami-Dade County.

Eligibility Requirements for Applicants:

Notwithstanding eligibility requirements for applicants set forth in any other section of these administrative rules, the eligible applicants for the Historic Preservation Fund are:

- Active and duly registered Florida not-for-profit 501(c)(3) corporation.
- Active and duly registered Florida for-profit corporation or recognized business entity.
- Municipality entity or Public Agency based in Miami-Dade County.
- Owner of residential or commercial property located within Miami-Dade County.
- Individually listed as municipal, County, State or National Register of historic property located in Miami-Dade County.
- Contributing Property within a designated municipal, County, State or national historic district located in Miami-Dade County.
- Property determined eligible for listing as an individual historic site or as a contributing historic district property, and which has applied for such designation, in a Municipality, County, State or National Register, and located within Miami-Dade County.
- Those listed in any Request For Proposal's related to this Fund.

c) Not-for-Profit Community Organization Capital Fund

The objective of this fund is to build and sustain the capability and capacity of the not-for-profit sector and support entities that enhance the quality of life of Miami-Dade County by delivering needed services. The \$30 million allocated to this fund recognizes the importance and continuing contributions that these organizations make to the future of Miami-Dade County.

Eligibility Requirements for Applicants:

Notwithstanding eligibility requirements for applicants set forth in any other section of these administrative rules, the eligible applicants for the Not-for-Profit Community Organization Capital Fund are:

- Legally incorporated 501(c)(3) not-for-profit organization lacking access to government sources of capital funding.
- Demonstrable financial stability.
- Organization's mission is consistent with goals identified in the Miami-Dade County Strategic Plan.
- Demonstrate ownership of or intent to purchase a facility.
- Letter of Commitment confirming the resources necessary to accomplish the project.
- Architectural/engineering study and/or equipment specifications and professional cost estimate.
- Two (2) year management and budget plan for the facility.
- Those listed in any Request For Proposal's related to this Fund.

d) Primary Healthcare Facilities Fund

The objective of this fund is to build and sustain the capability and capacity of the not-for-profit sector and support entities that enhance the quality of primary healthcare within Miami-Dade County by delivering needed services. The \$25 million allocated to this fund recognizes the importance and continuing contributions that these organizations, and the care that they provide, make to the future of Miami-Dade County.

Eligibility Requirements for Applicants:

Notwithstanding eligibility requirements for applicants set forth in any other section of these administrative rules, the eligible applicants for the Primary Healthcare Facilities Fund are:

- Legally incorporated 501(c)(3) not-for-profit organization lacking access to government sources of capital funding.
- Demonstrable financial stability.
- Organization's mission is consistent with goals identified in the Miami-Dade County Strategic Plan.
- Demonstrate ownership of or intent to purchase a facility.
- Letter of Commitment confirming the resources necessary to accomplish the project.
- Architectural/engineering study and/or equipment specifications and professional cost estimate.
- Two (2) year management and budget plan for the facility.
- Those listed in any Request For Proposal's related to this Fund.

SECTION 4. ELIGIBILITY DETERMINATION AND EVALUATION

A) Economic Development Fund -- Project 124

The County Mayor or the County Mayor's designee will review and evaluate each Funding Application Package for funding eligibility or ineligibility. The County Mayor or the County

Mayor's designee may consult with the following entities to assist in the review of the Funding Application Package:

- Department of Housing and Community Development
- Coalition of Chambers of Commerce
- Task Force on Urban Revitalization
- Miami-Dade Economic Advocacy Trust
- Beacon Council
- Greater Miami Chamber of Commerce
- Dade League of Cities

1. Eligibility Requirements for Projects

- Grant awards under Project 124 must be used for public infrastructure, including parking structures, public facilities and other improvements subject to certain limitations and evaluated on a case by case basis, and support economic development activities and attract new businesses having the potential to create a significant number of permanent jobs in Miami-Dade County; and
 - Economic development projects supported with Project 124 funds must demonstrate long-term economic benefits to Miami-Dade County in spurring future economic growth through an analysis of local economic and County fiscal impacts over a 20-year time period using a Miami-Dade County REMI model or an equivalent economic impact model widely available and professionally accepted among economists for economic and fiscal impact analysis; and
 - Does the project improve infrastructure for a greater area of impact that can advance economic development substantially beyond the project footprint?; and
 - Is the project a target industry identified in the May 2012 One Community One Goal Strategic Report or identified by the Beacon Council, from time to time?; and
 - Does it advance green technology or energy green industry?; and
 - Does it enhance or advance transit-oriented development?; and
- Would the project be vulnerable to sea level rise that would require adaptation strategies and, if so, would it contribute to any overall sea level rise adaptation goals established by the County?

Development projects that are LEED certified will receive additional consideration in the evaluation process commensurate with the level of LEED certification in order to provide an incentive to build energy efficient facilities and reduce CO₂ emissions.

2. Special Conditions Regarding Reimbursements

- The grant may reimburse up to 100 percent of public infrastructure costs per project, but subject to a maximum cap of \$15 million and a minimum amount of \$10 million.
- Actual grant funds would be disbursed on a reimbursement basis only after verified completion of the public infrastructure project upon receipt of an audited financial accounting of infrastructure development costs and subject to funding availability and compliance with federal tax laws.
- Grants in excess of \$5 million would be disbursed over no more than a 5 year period from the date the public infrastructure improvements are completed when taxable

bonds are issued to fund such public infrastructure improvements. If tax-exempt bonds are issued for the public infrastructure improvements reimbursements for such public infrastructure improvements will be disbursed over no more than a three year period from the date of the expenditure but in no case later than 18 months from the date the public infrastructure project is placed in service.

- Annual benchmarks for required non-infrastructure capital investments in a Project will be established and specified in the Grant Agreement, and disbursement of grant funds would be subject to attainment of said benchmarks in accordance with IRS rules and regulations governing the issuance of tax exempt bonds. A clawback provision in the event that established benchmarks are not met subsequent to disbursement of grant funds shall be included in the Grant Agreement. The Grant Agreement shall require that the grant recipient provide collateral securing the clawback provision. The collateral may include, but shall not be limited to, any instrument such as a personal guarantee, performance bond, restrictive covenant, or any other collateral as appropriate. A prorated grant disbursement may be allowed when actual project investment falls short of benchmarks.
- As a condition of the grant award for public infrastructure improvements, the grant recipient agrees as a matter of contract to the application of Section 2-11.16 of the Code on the portion of the project that is specifically tied to EDF-funded public infrastructure improvements.

3. Determination and Evaluation

The County Mayor or the County Mayor's designee will review and evaluate each Funding Application Package and may recommend to the Board an award of a Funding Allocation, by submitting a resolution seeking award of grant funds, and approval of the terms of a Grant Agreement or Interlocal Agreement, as the case may be.

B) Economic Development in Targeted Urban Areas Fund – Project 320

1. Eligibility Requirements for Projects

- Grant awards under Project 320 must be used for public infrastructure, including parking structures, public facilities and other improvements subject to certain limitations and evaluated on a case by case basis, within the boundaries of the County's Targeted Urban Areas.
- The infrastructure improvements must support economic development and attract new businesses in order to create jobs in the Targeted Urban Areas.
- The project must include private sector investment and leverage public bond monies with other funding sources.
- The project must create a significant number of jobs that are available to residents of a Targeted Urban Area.

2. Special Conditions Regarding Reimbursements

- No more than \$3 million of reimbursements can be allocated within any one Targeted Urban Area.
- The grant may reimburse up to 100 percent of public infrastructure costs per project, but subject to a cap of the lesser of \$3 million or the total amount of grant funding

available within such Targeted Urban Area.

- Actual grant funds would be disbursed on a reimbursement basis only after verified completion of the public infrastructure project upon receipt of an audited financial accounting of infrastructure development costs and subject to funding availability and compliance with federal tax laws.
- Grants would be disbursed over no more than a 5 year period from the date the public infrastructure improvements are completed when taxable bonds are issued to fund such public infrastructure improvements. If tax-exempt bonds are issued for the public infrastructure improvements reimbursements for such public infrastructure improvements will be disbursed over no more than a three year period from the date of the expenditure but in no case later than 18 months from the date the public infrastructure project is placed in service.
- Benchmarks for required non-infrastructure capital investments in a Project will be established and specified in the Grant Agreement, and disbursement of grant funds would be subject to attainment of said benchmarks. A clawback provision in the event that established benchmarks are not met subsequent to disbursement of grant funds shall be included in the Grant Agreement. The Grant Agreement shall require that the grant recipient provide collateral securing the clawback provision. The collateral may include, but shall not be limited to, any instrument such as a personal guarantee, performance bond, restrictive covenant, or any other collateral as appropriate. A prorated grant disbursement may be allowed when actual project investment falls short of benchmarks.
- As a condition of the grant award for public infrastructure improvements, the grant recipient agrees as a matter of contract to the application of Section 2-11.16 of the Code on the portion of the project that is specifically tied to EDF-funded public infrastructure improvements.

3. Determination and Evaluation

The County Mayor or the County Mayor's designee will review and evaluate each Funding Application Package and may recommend to the Board an award of a Funding Allocation by submitting a resolution seeking award of grant funds and approval of the terms of a Grant Agreement or Interlocal Agreement, as the case may be. The County Mayor or the County Mayor's designee may convene a committee of members of the Task Force on Urban Economic Revitalization, community leaders and/or economic development experts to assist in the review of Project 320 grant applications. Any such entity shall adhere to protocols specified under Administrative Order No. 3-31 and Florida law.

C) Determination and Evaluation of Applications for Other Funds

If an Application Submission Period is established, then following closure of the Application Submission Period, the County Mayor or the County Mayor's designee will review and evaluate each Funding Application Package for funding eligibility or ineligibility. The County Mayor or the County Mayor's designee may use entities such as the following to assist him in the review and may create Project Review Committees.

Historic Preservation Fund

- Dade Heritage Trust
- Historic Preservation Board

Not-for-Profit Community Organization Capital Fund

- Alliance for Human Services
- Dade Community Foundation

Primary Healthcare Facilities Fund

- Office of Countywide Health Care Planning

Any such entity shall adhere to protocols specified under Administrative Order No. 3-31 and Florida law. Funding Allocations for eligible projects may be recommended to the County Mayor or the County Mayor's designee by the Project Review Committee. The County Mayor or the County Mayor's designee and the Project Review Committee may determine that a Funding Application Package be classified as:

- Ineligible.** Declaration that the Project identified in a Funding Application Package is ineligible.
- Conditionally Eligible.** Declaration that a Project is eligible for funding upon satisfaction of specified conditions.
- Eligible.** Declaration that a Project identified in a Funding Application Package is fully eligible.

Funding Application Packages determined to be Eligible or Conditionally Eligible shall be reviewed and competitively evaluated to recommend Funding Allocations. A listing of all Funding Application Packages shall be presented to the Board by the County Mayor or the County Mayor's designee in the form of a Resolution stating the eligibility determination, presenting the funding recommendations of the County Mayor or the County Mayor's designee based on the competitive evaluation and seeking approval for the award of a Funding Allocation and the disbursement of funds. In the event that an award of a Funding Allocation to a Conditionally Eligible Recipient is approved by the Board, staff shall verify that all conditions precedent have been satisfied prior to executing a Grant Agreement or an Interlocal Agreement, as the case may be.

ARTICLE III – GRANT ADMINISTRATION

SECTION 1. FUNDING ALLOCATION ADMINISTRATION & REIMBURSEMENT POLICY

A) Grant Agreement or Interlocal Agreement

- 1) As a condition of award of a Funding Cycle Allocation, the County and the Recipient shall enter into a Grant Agreement or an Interlocal Agreement, as the case may be, which sets forth the responsibilities and duties of each regarding administration of the approved Project and approved Funding Cycle Allocation.
- 2) The Grant Agreement or the Interlocal Agreement, as the case may be, shall specify the following and shall incorporate such other terms and conditions as may be required by particular circumstances:
 - a) A Project Narrative/Description of Project, including location of Project, and beginning and end dates;
 - b) An overall budget for the final Project, identifying additional sources of revenue;
 - c) A Funding Cycle Allocation and Funding Allocation line item budget (proposed use of BBC GOB funds);
 - d) If the Recipient is a Community-Based Organization or other entity (not a Municipality or Public Agency), a letter of commitment of matching funds validly executed committing the organization to raise any additional capital funds necessary to complete the Project, and committing to provide operating, maintenance and programming funds upon completion of the Project, all as authorized and approved by the Recipient's Board of Directors or governing entity;
 - e) If the Recipient is a Municipality or Public Agency, a letter of commitment of matching funds validly executed committing the organization to appropriate capital funds necessary to complete the Project and to provide operating, maintenance and programming funds upon completion of the Project, all as authorized and approved by the governing board of such Municipality or Public Agency;
 - f) Certification of ownership, or evidence of lease or other use agreement for a minimum un-expired term of 25 years;
 - g) Business plan and/or operating pro-forma, defining and identifying strategies to address the impact the Project will have on the organization's operational structure; and
 - h) A list of consultants that will be involved in the development of the Project (e.g., Owner's project manager(s), Architecture and Engineering team, Specialty Consultants, Developers, General Contractor or Construction Manager, etc.) as they become available.

B) Pre-Agreement Expenses. The incurring of Pre-Agreement Expenses by a Recipient creates no obligation on the County to execute a Grant Agreement or Interlocal Agreement, as the case may be, or otherwise satisfy those expenses. However, prior to the effective date of the Grant Agreement or Interlocal Agreement, as the case may be, a Recipient may incur eligible Pre-Agreement Expenses and then after the effective date of the Grant Agreement or Interlocal Agreement, as the case may be, be reimbursed for those costs, provided that:

- 1) The costs and activities are funded as part of the Funding Allocation award and are in compliance with the requirements of the Ordinance and these rules.

- 2) For those Projects funded by bond proceeds from bond sales subsequent to the sale of the Series 2005 Bonds, reimbursement of Pre-Agreement Expenses is limited to those Pre-Agreement Expenses incurred one (1) year prior to the first day of the Application Submission Period, unless previously approved by the Board. Pre-Agreement Expenses in the case of Economic Development Fund projects are limited to those Pre-Agreement Expenses incurred one (1) year prior to the application for an Economic Development Fund award.
- 3) The Recipient has notified the County Mayor or the County Mayor's designee in writing of the intent to submit eligible Pre-Agreement expenses for reimbursement within 30-days of a Grant Agreement or Interlocal Agreement being executed. Recipients shall send a letter addressed to the County Mayor or the County Mayor's designee for review and approval of eligible expenses.

C) Payment. Recipients are paid allocated funds subject to the following conditions:

- 1 **BBC GOB Program Administration.** Not more than one percent (1%) of the value of each Funding Allocation award may be earmarked for all costs incidental to the administration of the BBC GOB Program.
- 2 **Timing.** With the exception of eligible Pre-Agreement Expenses, Project costs eligible for reimbursement shall be incurred between the effective date of, and the Project completion date identified in, the Grant Agreement or the Interlocal Agreement, as the case may be.
- 3) **Soft Cost Limits.** Project Soft Costs for Planning Services, Design Services and Project Administration, as defined in Article 1, Section 4, "Soft Costs", are eligible for funding provided that bond proceeds utilized to pay for such costs do not exceed seventeen percent (17%) of the total bond proceeds allocated to a given Project. This limitation may be waived by the Board. Where a major Project is funded in phases, this cost limit may not necessarily apply to each individual Project phase, but must apply to the Funding Allocation for the Project.

In order for GOB project to effectively comply with the Sustainable Building Ordinance (Ordinance 07-65), the amount eligible for reimbursement for project soft costs will be increased from 17% to 20% to accommodate both the costs of green building design, commissioning and pre-certification services in accordance with the Sustainable Buildings Ordinance and Implementing Order 8-8. For those projects where it is not practical to attain certification, design services can be employed to implement design interventions that on the average will result in an estimated payback of up to 10 years. Typical categories of payback include, but are not limited to, energy efficiency, water efficiency, productivity and operations, and maintenance.

- 4) Recipients will implement their own procurement process; however, they shall comply with all applicable Federal, State and local laws and regulations, including the County ordinances and regulations.
- 5) Recipients are responsible for managing the day-to-day operations of Funding Cycle Allocation supported activities, and maintaining communications with the County Mayor or the County Mayor's designee regarding the Project. Recipients must monitor Funding Cycle Allocation supported activities to assure compliance with the Ordinance, these rules, the Grant

Agreement or Interlocal Agreement, as the case may be, and all applicable Federal, State and local requirements.

- 6) Payments to the Recipient may be withheld at any time that the Recipient fails to comply with the terms of the Grant Agreement or the Interlocal Agreement, as the case may be. Funds withheld for failure to comply with the terms of the Grant Agreement or the Interlocal Agreement, as the case may be, but without suspension of the Funding Cycle Allocation shall be released to the Recipient upon subsequent compliance. Recipients will not be required to reimburse the County for payments already received by the County unless the Recipient fails to acquire, purchase, construct, develop and/or operate the Project for the purpose described in the Funding Application Package or is otherwise in default under the Grant Agreement or Interlocal Agreement.
- 7) Recipients must complete the authorized signature form (Exhibit A).
- 8) a. In general, payment shall be made on a reimbursement basis. A Funding Cycle Allocation Recipient may submit a Request for Advance Payment form (Exhibit B) for review and approval by the County Mayor or the County Mayor's designee. Approved Recipients may receive an advance payment no more than 180 days in advance of the allocation schedule approved by the Board, for up to 25% of the value of the Funding Allocation for the subject Project.

b. However, in accordance with the guidelines reflected below, the County Mayor or the County Mayor's designee may, on a case-by-case basis and at his sole discretion, consider advance payment of up to 90% of a Municipality's Funding Allocation for a specific project. Upon the decision by the County Mayor or the County Mayor's designee that a request for advance payment of up to 90% of a Municipality's Funding Allocation for a specific Project will be considered, the guidelines below will be applied consistently and in their entirety.

Conditions under which a Municipality may receive up to 90% of its Funding Allocation for a subject Project:

- A Municipality must not owe money to the County and the County must not have any outstanding claims against the Municipality;
- Project activity to date is proceeding on-schedule;
- Construction schedules are being updated on a monthly basis and all required documentation has been submitted to Miami-Dade's Office of Management and Budget (OMB);
- The Municipality must have contract(s) in place to complete the Project and no outstanding claims or disputes can exist between the Municipality and their contractors on the Project; and
- Municipality payments to contractors, subcontractors and suppliers are being made timely.

Field Evaluations will be conducted on a case-by-case basis by Miami-Dade's Office of Management and Budget (OMB) and will include items such as:

- Field audit determination that the Project is on-schedule including physical

construction; and

- Follow-up field audit inspections will be performed by OMB to ensure Project completion.

OMB will submit a written recommendation to the County Mayor or County Mayor's designee to approve any disbursement under these provisions. The Municipalities will be required to execute a supplemental agreement acknowledging these terms.

Safeguards/Corrective Actions to be implemented by the County in case of non-compliance by a Municipality with the BBC-GOB Program Administrative Rules or if satisfactory progress is not being maintained will include:

- Funding for municipal or other GOB-funded Project to be performed by the subject Municipality will be withheld;
- The County will ask to be reimbursed the amount given to the Municipality as part of the Grant Agreement and/or withheld funds due to the Municipality from other County funding sources such as PTP; and
- If the Municipality refuses to reimburse the County the amount due under the Grant Agreement, the County may employ all available means to recover the subject funds up to and including litigation.

The aforementioned safeguards will be implemented by the County in Cases of non-compliance. All conditions shall be a part of all Interlocal Agreements with a Municipality. All existing Interlocal Agreements will be amended to include the provisions referenced above and all new Interlocal Agreements will likewise include these provisions.

Any disbursement of funds under these provisions will be reported to the Board.

- c. All advance payments received by a Recipient shall be maintained in a separate interest bearing account and may not be commingled with other funds. All advances and interest earned must be fully accounted for. The Recipient shall submit evidence of interest earned (Exhibit C) to the County with any subsequent reimbursement request. The amount of interest earned shall be deducted from such subsequent payment to the Recipient. If at any time the amount of interest earned is greater than the reimbursement request, the Recipient shall submit payment to the county an amount equal to the interest earned less the reimbursement request. Upon the County's receipt of the payment and any required supporting documentation from the Recipient, the reimbursement request may be paid. Checks must be made payable to Miami-Dade County Board of County Commissioners and forwarded to the Office of Management and Budget.

- 9) Recipients must submit reimbursement/payment requests no later than quarterly. If a Recipient is unable to submit a reimbursement/payment request by the quarterly deadline, a written justification indicating the reason for the delay and expected submission date is required to be submitted by the deadline. Failure to comply with this requirement shall render the Recipient in non-compliance with the Administrative Rules and may result in reduction or forfeiture of payment, at the discretion of the County Mayor or the County Mayor's designee. Failure to submit two consecutive requests shall be deemed a forfeiture of all rights unless specifically waived by the County Mayor or the County Mayor's designee. The Recipient

must submit a written explanation for such delays in order to be considered for a waiver of this requirement and all such waivers shall be made at the sole discretion of the County Mayor or the County Mayor's designee.

- 10) Recipients shall complete, sign, and submit to the County the appropriate Reimbursement Request forms as necessary (Exhibits D through F) accompanied by supporting documentation (i.e., copies of invoices, receipts and check payments).
- 11) Reimbursement requests for Fixtures, Furniture & Equipment items must be included and approved in the Grant Agreement or the Interlocal Agreement, as the case may be, prior to acquisition. Written requests for Fixtures, Furniture & Equipment approval must be accompanied by Exhibit G.
- 12) In accordance with State law, five percent (5%) of the value of the BBC GOB Program funding for a given Project shall be retained by the County for all projects in excess of \$100,000, unless otherwise recommended in writing by staff and approved by the Board. Upon completion of a Project, a signed project completion certificate (Exhibit I) must be submitted with the final reimbursement request forms in order for the remaining retainage to be released.
- 13) The County Mayor or the County Mayor's designee may require that reimbursement requests for any Funding Allocations requiring a cash match must be accompanied by documentation of the expenditure of committed match funds (i.e., copies of invoices, canceled checks, etc.).
- 14) Each Recipient will ensure that all contractors and consultants perform in accordance with the terms, conditions, drawings and specifications of their contracts or purchase orders and that all Federal, State and local contracting rules apply.
- 15) Each Recipient shall maintain an accounting system, which meets generally accepted accounting principles, and shall maintain all required financial records to properly account for all Building Better Communities General Obligation Bond funds and any supplemental funds used for the Project. The Recipient shall at all times maintain a separate accounting of all Building Better Communities General Obligation Bond funds.
- 16) Each Recipient shall be responsible for reporting, on a continuous, on-going basis, any contractual relationship established to perform work on the project, start dates, progress payments, completion dates, etc. in the system provided by the County.
- 17) The Recipient shall be responsible for completing the Project. If the total cost of the Project exceeds the value of the Funding Allocation, then the Recipient must provide any supplemental funds required. In the event that supplemental funds are necessary for completion of a Project, as of the point in time that it is known that supplemental funds are needed, the Recipient must demonstrate that such supplemental funds have been committed to the Project prior to and as a condition of disbursement or further disbursement of Funding Cycle Allocations. The requirement for a Recipient to provide supplemental funds may be modified, in part or whole, by the Board, to the extent that it approves in writing any reduction or change to the Project scope of work in accordance with the Ordinance. Approval of any reduction or change in scope of work is at the sole discretion of the Board.

D) Acquisition Projects. Guidelines and requirements for administering Acquisition Project Funding Allocations are as follows:

- 1) **Appraisal Required.** Prior to acquisition of a Project site, a Recipient must obtain an appraisal or appraisals supporting the fair market value of the land to be acquired. Pursuant to State law, if the property is \$500,000 or less in appraised value, one appraisal is required. If the property exceeds \$500,000 in appraised value, two appraisals are required.
- 2) **Amount Authorized for Payment.** The amount of Funding Cycle Allocation authorized for payment for land acquisition shall in no case exceed the Funding Allocation available for the Project. In the event that the negotiated acquisition price exceeds by ten percent or greater the appraised value of the land, the disbursement of Funding Allocation shall be conditioned upon a written justification for the purchase price and other conditions attendant to the proposed purchase, which justification is declared satisfactory by the Board in writing. Appraisal costs are eligible Funding Allocation costs as long as the appraised property is being realistically and seriously considered for Acquisition, regardless of the outcome.
- 3) **Environmental Survey.** The Recipient may not acquire land for a BBC GOB Program funded Project until a Phase I environmental survey is completed, which demonstrates that the property is suitable for its intended general use and for the specific Project. GOB funds may be used for the necessary clean-up a Phase II environmental survey may require provided the scope of the Project is not impacted. Changes to the scope of the Project require BCC approval.
- 4) **Signage.** For six months following an Acquisition, the County shall post a sign, in the general design provided by the County, containing the Building Better Communities General Obligation Bond logo, identifying the source of Project funding. The cost of such a sign is eligible for payment from the Funding Allocation.
- 5) **Ownership.** Title to land acquired with BBC GOB Program funds or facilities constructed/developed with Building Better Communities General Obligation Bond funds shall vest with a Public Agency, a legally incorporated 501(c)(3) not-for-profit Community-Based Organization, or an active and duly registered Florida for-profit corporation or other recognized business entity.

E) Development Projects. Guidelines and requirements for administering Development Project Funding Allocations are as follows:

- 1) **Licensed Contractors; Contractor Bonds.** Duly licensed contractors shall perform all construction. Construction contracts for work in excess of the threshold amounts established in Section 255.20 of the Florida Statutes shall require payment and performance bonds, which comply with the requirements of Section 255.05, Florida Statutes, to the extent applicable.
- 2) **Cost Elements.**
 - a) **Construction Equipment.** Recipients are required to use their own equipment, if available. If a Recipient's equipment is used, the maximum Funding Allocation payment shall cover

operating and routine maintenance costs of such equipment; the Funding Allocation excludes any depreciation or replacement cost from payment. If a Recipient's equipment is used, a report or source document must describe the work performed, indicate the hours used and be related to the Project. If a Recipient does not have needed construction equipment available, then the Recipient may rent such equipment.

- b) **Construction Supplies and Materials.** Supplies and materials may be purchased for a specific Project or may be drawn from a central stock, providing they are claimed at a cost no higher than that which the Recipient paid. When supplies and/or materials are purchased with the intention of constructing a piece of equipment, structure or part of a structure, the costs that are charged as supplies and materials may be capitalized according to the Recipient's normal practice or policy. If capitalized, only the cost reasonably attributable to the Project may be claimed under the Project.
- c) **Personnel or Employee Services.** Services of the Recipient's employees who perform work directly related to the accomplishment of the Project are eligible costs payable from the Funding Allocation. These costs must be computed according to the Recipient's prevailing wage or salary scales and may include fringe benefit costs, such as vacations, sick leave, FICA, MICA, health and life insurance, and workers compensation at the Recipient's established fringe benefit rate. Costs charged to the Project must be computed on the basis of actual time spent on the Project, and supported by time and attendance records describing the work performed on the Project. Overtime costs may be allowed under the Recipient's established policy, provided that the regular work time was devoted to the same Project. Salaries and wages claimed for employees working on allocation-funded Projects must not exceed the Recipient's established rates for similar positions or rates per industry standards. Alternative methodologies for established wage rates must be pre-approved by the Board.
- d) **Consultant Services.** The costs of consultant services necessary for the Project are eligible for payment from the Funding Allocation. The Recipient must pay consultants according to the Recipient's customary or established method and rate. No consultant fee may be paid to the Recipient's own employees.

3) Cost Activities.

- a) **Construction activities.** The cost of all necessary construction activities, from site preparation (including demolition, survey, excavation and other site work) to the completion of a structure is eligible for payment from the Funding Allocation.
- b) **Fixtures, Furniture and Equipment.** Except for Projects funded by the Economic Development Fund, the cost of Fixtures, Furniture and Equipment necessary to operate the facility are eligible for payment from the Funding Allocation, if approved in the Grant Agreement or the Interlocal Agreement, as the case may be, and a detailed list of eligible items is submitted in writing and approved by the County Mayor or the County Mayor's designee prior to its purchase (See Article III, Section 1 (c)). Costs for consumable goods shall not be considered eligible for payment from the Funding Allocation. Also, refer to Article I, Section 4, for a detailed definition of Fixtures, Furniture, and Equipment.
- c) **Interpretive Signs and Aids.** The cost of signs, display boards or other interpretive aids

relating to the Project are eligible for payment from the Funding Allocation.

- d) **Signage.** During the time period of Development, the County shall post a sign in a prominent location at the Project site in the general design provided by the County depicting the Building Better Communities General Obligation Bond logo and identifying the source of funding for the Project. The cost of such a sign is eligible for payment from the Funding Allocation.

Recipients are encouraged to use value-engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

4) The following is a nonexclusive list of costs ineligible for payment from the Funding Allocation:

- a) Funding Application costs.
- b) Ceremonial expenses.
- c) Expenses for publicity.
- d) Bonus payments unless specifically authorized by the Board.
- e) Charges in excess of the lowest responsive and responsible bid or proposal in accordance with the governing rules and procedures of the Recipient, when the law requires the Recipient to utilize competitive selection. In the event a selection process is used, other than a low bid process any cost in excess of the cost of the highest ranked firm shall be considered ineligible.
- f) Charges for deficits or overdrafts.
- g) Charges incurred contrary to the policies and practices of the Recipient.
- h) Interest expense (May be reimbursed at the discretion of the Board if incurred during the construction period and is attributable only to the construction period).
- i) Litigation expenses or judgments.
- j) The cost of services, material or equipment obtained under any other program.
- k) Costs of discounts not taken.
- l) The cost of purchasing a non-refundable option when acquiring land.

F) Budget Changes.

- 1) Recipients shall adjust their Project budgets to reflect actual costs and updated cost estimates and shall submit adjusted Project budgets to the County Mayor or the County Mayor's designee as soon as the recipient is aware of a material budget change.

- 2) Budget adjustments may not exceed the 17% Soft Cost limitation for design, planning, and program administration, with the exception of those projects meeting the Sustainable Building Ordinance, nor exceed the Project Funding Allocation without approval of the Board.
- 3) Recipients shall obtain the prior written approval of the Board whenever budget adjustments are anticipated as outlined in a, b, and c below. The request must be in the same budget format the Recipient used in the Grant Agreement or Interlocal Agreement, as the case may be, and shall be accompanied by a narrative justification for the proposed revision. Such request for adjustment shall, if approved, amend the Grant Agreement or Interlocal Agreement, as the case may be. Requests for budget changes shall be considered whenever any of the following adjustments are required:
 - a) For any Project involving both Acquisition and Development activities, any proposed budget transfers from Development to Acquisition.
 - b) Any proposed reduction or revision of the scope or objectives of the Project (regardless of whether there is an associated budget adjustment) that substantially changes the original intent of a project.
 - c) Any change that would increase Soft Costs for planning, design, and project administration which exceeds the limit specified in Article III, Section 3 (c)(1).

In the event that a Recipient has completed the approved scope of work for a Project and has unexpended funds, the Recipient may submit a request to the Office of Management and Budget to expend these funds in an existing or new budget line item for the Project. The County Mayor or the County Mayor's designee is authorized to approve such budget changes and expenses not to exceed 15% of the total budget.

- G) **Cost Overruns.** The Recipient shall fund all cost overruns. During the execution of work on a Project, the Recipient may find that actual Project costs exceed the approved budget. For cost overruns that will require additional funding for the Project, or otherwise require a budget adjustment for which prior Board approval is required pursuant to paragraph E above, the Recipient shall:
- 1) Provide a justification for the additional costs;
 - 2) Identify available funds for the completion of the Project; and, if necessary
 - 3) Request from the Board a change or revision in the Project scope consistent with the terms of the Ordinance and the Authorizing Resolutions.

The Board, at its discretion, may authorize in writing a change or revision in the scope of the Project: (i) where change or revision of the scope is consistent with the Ordinance; and (ii) where the change or revision is justified by the Recipient; and (iii) where the Recipient does not have sufficient funds to complete the Project with the available funds. Under those circumstances, the Board, in its sole discretion, may identify other funds available under the Ordinance for the Project.

SECTION 2. COMPLIANCE RESPONSIBILITIES

The following constitute general requirements for program compliance:

- A) An annual independent audit of the Building Better Communities General Obligation Bond funds must be submitted by all Recipients to the Office of Management and Budget no later than six months after the close of the Recipient's fiscal year for which a Funding Allocation was received and each year thereafter until Project completion. The audit report must include the Fund Summary Status Report, Exhibit J. The audit must be performed by certified independent auditors and include the following:
- 1) Test for compliance with the Grant Agreement or Interlocal Agreement, as the case may be, Miami-Dade County Ordinance No. 05-47, applicable resolutions and the Building Better Communities General Obligation Bond Administrative Rules.
 - 2) Test to verify compliance with advance requirements.
 - 3) Sufficient tests, as determined by the independent auditor, to verify true and accurate reflection of Project expenditures.
 - 4) Tests to verify expenditure of required match dollars.
 - 5) Verification of the Fund Summary Status Report.
- B) Land and facilities acquired, developed, improved, or rehabilitated by Funding Allocation shall be dedicated and maintained in perpetuity for the use and benefit of the general public except where leases are in effect. Any land, facilities, or equipment acquired with Building Better Communities General Obligation Bond funds may not be sold or transferred without the written consent of the County and may require an equitable reimbursement of bond funding based on residual value. All projects shall be open to the public at reasonable times and shall be managed in a safe and attractive manner appropriate for public use.
- C) Funding Allocation for the purposes of development, improvement, rehabilitation, or restoration shall be expended for these purposes only on lands owned by a Recipient or on lands for which the Recipient holds a lease or other use agreement. Such lease or other use agreement must be for an unexpired minimum term of 25 years. The Funding Allocation Recipient may demonstrate the eligibility of the Project to the reasonable satisfaction of the Board, through a joint ownership, use, franchise or other agreement, evidencing that the lands and/or the Project will be utilized for the public benefit, consistent with the terms of the Ordinance, for a term of at least 25 years in duration. The lease must not be revocable at will.
- D) Recipient shall maintain all financial and programmatic records, supporting documents and other records pertinent to the Funding Allocation for a period of three years from the starting date defined below. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three year period, the records must be retained until completion of the action and resolution of all issues that arise from it, or until the end of the regular three year period, whichever is later. When Funding Allocation support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the Recipient submits to the County its single or last expenditure report for that period. In all other cases, the retention period starts on the day the Recipient submits its final expenditure report.

- E) The Board and the County, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers or other records of the Recipient in order to make audits, examinations, excerpts and transcripts.

Office of the Miami-Dade County Inspector General (IG) (MDC Code Section 2-1076) shall have the authority and power to review past, present and proposed County programs, accounts, records, contracts, and transactions. 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 Recipient from IG, the Recipient 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 may, on a random basis, perform audits on all County contracts throughout the duration of said contract (hereinafter "random audits"). This random audit is separate and distinct from any other audit by the County. To pay for the functions of the Office of the Inspector General, any and all payments to be made to the Recipient under the Grant Agreement will be assessed one quarter of one percent of the total amount of the payment, to be deducted from each progress payment as the same becomes due unless, as stated in the Code or the Grant Agreement, the Project is federally or state funded and federal or state law or regulations preclude such a charge. The Recipient shall in stating its agreed prices be mindful of this assessment.

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 contractor, its officers, agents, and employees, lobbyists, County staff, and elected officials in order to ensure compliance with contract specifications and detect corruption and fraud.

- F) If a Recipient materially fails to comply with any term of an award, the Board or the County Mayor or the County Mayor's designee may take one or more of the following actions, as appropriate in the circumstances:
- 1) Temporarily withhold cash payments pending correction of the deficiency by the Recipient;
 - 2) Disallow all or part of the cost of the activity or action not in compliance;
 - 3) Wholly or partly suspend or terminate the current award for the Recipient's Project;
 - 4) Withhold further Funding Allocation awards from the Recipient; or
 - 5) Take other remedies that may be legally available.

- G) Any of the enforcement actions listed in paragraph F above, taken by the County Mayor or the County Mayor's designee, which are contested and unresolved between the Recipient and the County within thirty days of such action, will result in the Board providing the Recipient with an opportunity to be heard on the issue. Said hearing will occur within sixty days of the Board receiving the Recipient's written request. Staff will recommend appropriate action to the Board.
- H) Costs to Recipient resulting from obligations incurred by the Recipient during a suspension or after termination of an award are not eligible for reimbursement unless the County Mayor or his designee expressly authorizes them in the notice of suspension or termination or subsequently authorizes reimbursement in writing. Other costs incurred by the Recipient during suspension or after termination, which are necessary and not reasonably avoidable, are eligible for reimbursement, if:
- 1) The costs result from obligations that were properly incurred by the Recipient before the effective date of suspension or termination, were not in anticipation of it, and in the case of a termination, are non-cancelable; and
 - 2) The costs would be eligible for reimbursement if the award were not suspended or if the award expired normally at the end of the funding period in which the termination takes effect.
- D) Inspections. Staff of the Board or the County, or both, shall periodically inspect each Project to ensure compliance with these rules, the Ordinance, and the Grant Agreement or Interlocal Agreement, as the case may be. Staff shall perform an inspection of the Project site to ensure compliance prior to release of the final Funding Allocation payment.

SECTION 3. REPORTS

Recipients are required to submit the Project Status Report no later than monthly (Exhibit E), in the format stipulated by the County Mayor or the County Mayor's designee. Additional reports that shall be due upon request of the County Mayor or the County Mayor's designee may include, but are not limited to:

- A) Actual accomplishments of each Funding Cycle Allocation;
- B) Problems encountered in implementation of each Funding Cycle Allocation; and
- C) Anticipated start and/or completion dates of each Funding Cycle Allocation.

Recipient may be required to meet with the Board to discuss the Project.

SECTION 4. PROJECT CLOSE-OUT

- A) A Recipient has up to forty-five (45) days after the expiration or termination of the Funding Allocation to submit all final documentation including final reimbursement requests and Project completion certificates.
- B) The close-out of a Funding Allocation does not affect:
- 1) The County's right to disallow costs and recover funds on the basis of a later audit or review;
 - 2) The Recipient's obligation to return any funds due as a result of later refunds, corrections, or other transactions;
 - 3) Records retention responsibilities set forth above;
 - 4) Continuing responsibilities set forth in the Ordinance, the Grant Agreement or Interlocal Agreement, as the case may be, and these rules; and
 - 5) Audit rights set forth in these rules.
- C) Any amounts paid to Recipient in excess of the amount to which the Recipient is finally determined to be entitled under the terms of the Grant Agreement or Interlocal Agreement, as the case may be, constitute a debt to the County. If not paid within a reasonable period after demand, the County may reduce the debt by:
- 1) Making an administrative offset against other requests for reimbursement;
 - 2) Withholding payments otherwise due to the Recipient; or
 - 3) Taking other action provided by law.

Any overdue debt of the Recipient shall accrue interest at the maximum rate allowed by law.

SECTION 5. INTERPRETATION; ADMINISTRATION

These administrative rules have been promulgated under the Ordinance. In the event of a conflict between these rules and the provisions of the Ordinance, the Ordinance shall prevail.

The County Mayor or the County Mayor's designee shall be authorized to interpret the provisions of these administrative rules and their interpretation of any matters governed hereby shall be final and may only be overturned by a majority vote of the Board. The County Mayor or the County Mayor's designee shall submit recommendations amending these administrative rules to the Board, which may approve or reject such recommendations by majority vote.

The County Mayor or the County Mayor's designee shall be authorized and required to administer the Building Better Communities General Obligation Bond Program consistent with the Ordinance and these administrative rules.

EXHIBIT C

Riverwalk Concept Drawings

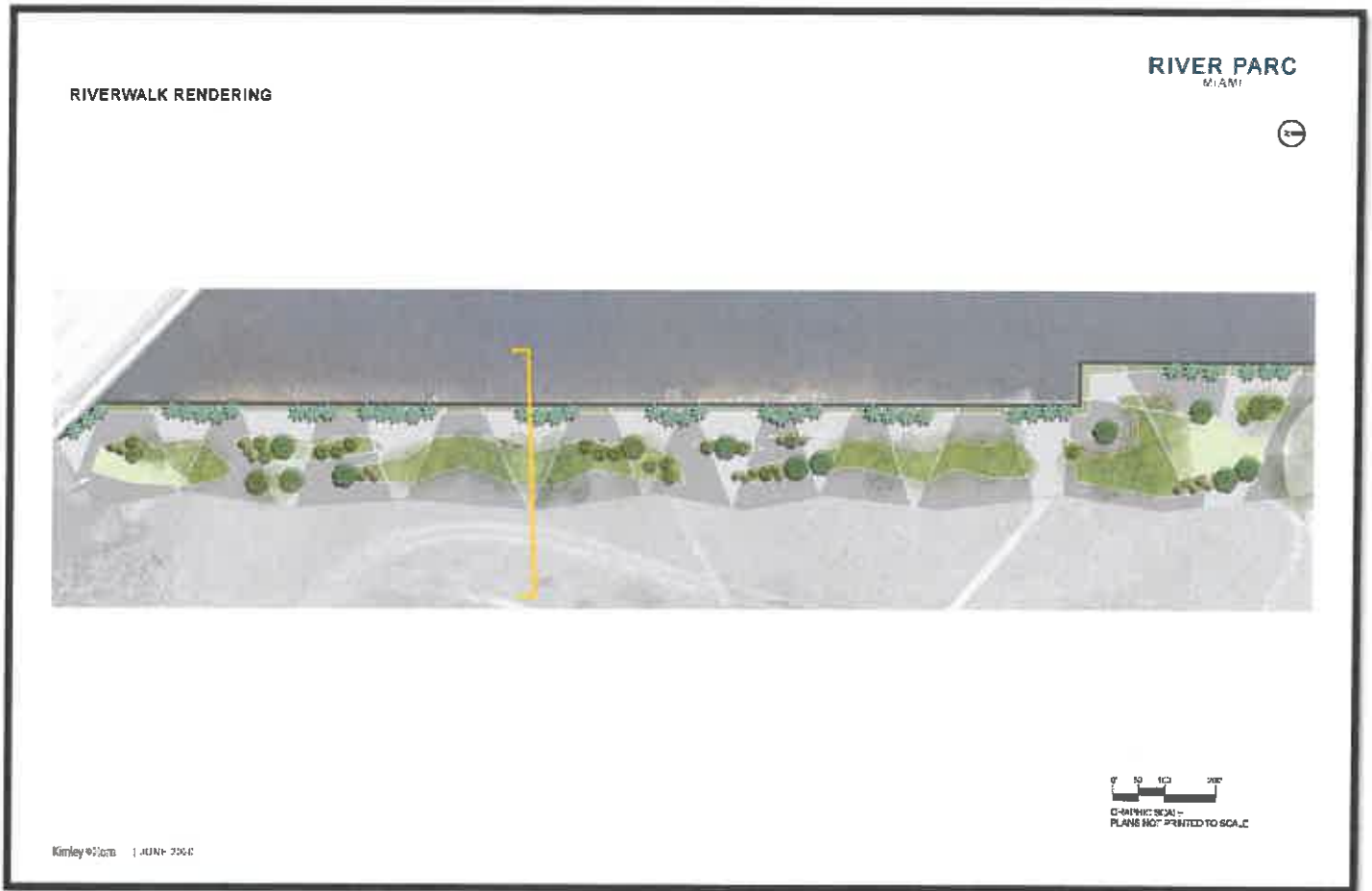


EXHIBIT C

Riverwalk Concept Drawing

(Continued)

RIVERWALK ENLARGEMENT

RIVER PARC

MAP 001

LEGEND

- ① SEATING
- ② RIVERWALK
- ③ SAFETY ZONE
- ④ FURNITURE ZONE
- ⑤ PASSIVE/LANDSCAPE ZONE
- ⑥ YAMIRIVER

N.T.S.

PARK PATTERNS

SEATING

SCULPTURE LIGHTING

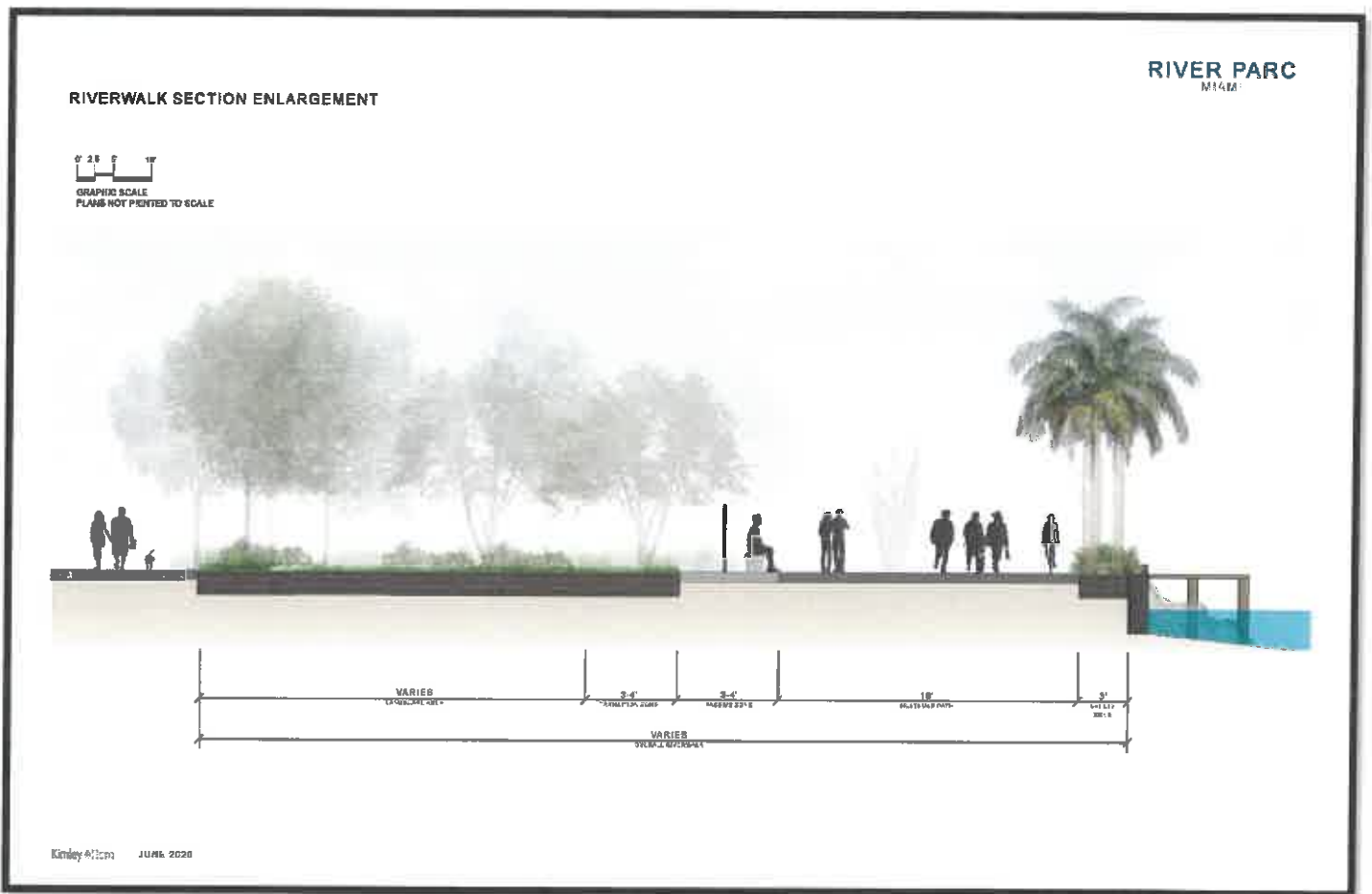
SWING CHAIRS

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EXHIBIT C

Riverwalk Concept Drawing

(Continued)



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