

Date: March 23, 2009

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

From: George M. Burgess
County Manager

Subject: Termination of Interlocal Cooperation Agreement among the County, City of Miami and Miami Sports and Exhibition Authority and Approval of Interlocal Cooperation Agreement between the County and the City of Miami Regarding Convention Development Tax Receipts

Special Item No. 2

Resolution No. R-319-09

Recommendation

It is recommended that the Board of County Commissioners approve the accompanying resolution which terminates the existing Interlocal Cooperation Agreement (2004 Interlocal) dated December 14, 2004 by and among the County, the City of Miami (City) and the Miami Sports and Exhibition Authority (MSEA); approves a new Interlocal Cooperation Agreement (Interlocal) between the County and the City relating to the distribution of available Convention Development Tax receipts ("CDT Receipts"); and authorizes the County Mayor or the Mayor's designee to execute and deliver the Interlocal after certain conditions have been satisfied.

Scope

The overall impact of this resolution is countywide.

Fiscal Impact/Funding Source

The Interlocal attached to the Resolution has a fiscal impact on the distribution of CDT Receipts. It sets forth how available CDT Receipts will be pledged or used for eligible projects, including funding for the baseball stadium at the Orange Bowl site (Ballpark) and related City parking (City Parking). The funding source is the convention development tax imposed by the County pursuant to State law.

Background

The County, pursuant to Section 212.0305(4)(b), Florida Statutes, Section 29-60 of the Code of Metropolitan Dade County, Florida, and Ordinance No. 83-91 enacted by the Board of County Commissioners of Miami-Dade County (Board) on June 5, 1984 (collectively, Authorization), imposes a levy on the exercise within its boundaries of the taxable privilege of leasing or letting transient rental accommodations at the rate of three percent of the total consideration charged for such accommodations (Convention Development Tax or CDT) and has the discretion to determine the use of the CDT Receipts. The Authorization provides that one-third of the CDT (One Third CDT Share) receipts are required to be used for eligible projects, such as stadiums, exhibition halls, arenas, coliseums, etc., in the most populous municipality in the County, which is the City.

In 1992, the County agreed to distribute the One Third CDT Share to MSEA as collateral for bonds issued by MSEA to fund the cost of the Miami Arena. The One Third CDT Share was also used by MSEA to pay for the operations of the Miami Arena. In 1996, the County agreed to allow the City to use certain accumulated CDT-related funds held by MSEA to offset the operating cost of City-operated CDT-eligible projects.

The 2004 Interlocal essentially eliminated the payment to MSEA of the One Third CDT Share once the Miami Arena was sold and the MSEA bonds defeased, which happened in December 2004. It also provided that the City would receive a portion of the CDT Receipts for the funding of the Ballpark and renovations to the Orange Bowl. The 2004 Interlocal established that CDT Receipts would be distributed to the City (i) in an amount that would compensate the City for its contribution of \$60 million (through a financing or cash payment) toward the Ballpark project if definitive stadium agreements were approved by all parties before September 1, 2005; and (ii) in the amount of \$2 million per year until 2020 (for CDT-eligible projects) if the definitive agreements were not approved by that date. The City has received \$2 million per year from FY 2004-05 to FY 2007-08, for a total of \$8 million since the passing of the September 1, 2005, deadline. The County's obligation to pay the City was subordinate to CDT obligations in existence at the time and certain future obligations for the PAC (up to a cap of \$67 million) and the Ballpark (up to a cap of \$82 million).

Since MSEA is no longer a necessary party and the City and County need to amend the distribution of the CDT Receipts with respect to the current Ballpark project, the 2004 Interlocal should be terminated and replaced with the proposed Interlocal. The Interlocal provides that the 2004 Interlocal shall terminate upon the receipt by the County and the City of evidence from MSEA that it has terminated the 2004 Interlocal, and, upon the approval, execution and delivery of the Interlocal by the County and the City. The Resolution authorizes the County Mayor or County Mayor designee to execute and deliver the Interlocal if these conditions have been satisfied.

Pursuant to the Interlocal, the County will make monthly payments to the City solely from CDT Receipts, based on an annual amount of \$2 million until July 1, 2009. If the Ballpark Project is not terminated prior to July 1, 2009, the County shall make monthly payments solely from CDT Receipts to the City based on an annual amount set forth in the attached Exhibit "B" until June 30, 2039. The Interlocal also sets forth in Section D the rights and obligations of the City and the County in the event the Ballpark project is terminated after the City and the County have issued debt to finance their obligations, but prior to the completion of the Ballpark Project. Their rights and obligations change depending on which entity, including the Marlins, caused the termination. In most circumstance, the County's obligation to fund will be limited to CDT Receipts. The payment of the CDT Receipts by the County to the City is subordinate to the obligations set forth in the attached Exhibit "A".

CDT Priority Commitments

<u>Current Bonds</u>	<u>Amount</u>
Series 1996 PAC and Series 1997 PAC	\$368,757,228
Series 2005A and 2005B	\$184,312,247
	(outstanding principal amount)
<u>Existing Obligations</u>	
Miami Beach	\$4,500,000*
American Airlines Arena	\$6,400,000
Cultural Grants	\$1,000,000
Performing Arts Center Trust	\$1,700,000
South Miami-Dade Cultural Center	\$770,000

Projects to be Financed (New Bonds)

Ballpark	\$81 million, but not to exceed \$100 million	Unused authorization shall be terminated after issuance of bonds
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*Pursuant to Interlocal Cooperation Agreement with the City of Miami Beach dated June 21, 1996, as amended, the annual payment of \$4,500,000 may be increased if CDT Receipts exceed a threshold that is greater than anticipated/projected CDT Receipts.

"Exhibit B"
Annual CDT Payments to the City

2009	2,000,000
2010	3,000,000
2011	3,000,000
2012	3,000,000
2013	3,000,000
2014	3,000,000
2015	3,000,000
2016	4,000,000
2017	4,000,000
2018	4,000,000
2019	4,000,000
2020	4,000,000
2021	5,000,000
2022	5,000,000
2023	5,000,000
2024	5,000,000
2025	5,000,000
2026	6,000,000
2027	6,000,000
2028	6,000,000
2029	6,000,000
2030	6,000,000
2031	8,000,000
2032	8,000,000
2033	8,000,000
2034	8,000,000
2035	8,000,000
2036	8,000,000
2037	8,000,000
2038	8,000,000



MEMORANDUM

(Revised)

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

DATE: March 23, 2009

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

SUBJECT: Special Item No. 2

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Mayor's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

Special Item No. 2
3-23-09

RESOLUTION NO. R-319-09

RESOLUTION TERMINATING INTERLOCAL COOPERATION AGREEMENT AMONG MIAMI-DADE COUNTY, THE CITY OF MIAMI AND MIAMI SPORTS AND EXHIBITION AUTHORITY DATED DECEMBER 14, 2004 AFTER CERTAIN CONDITIONS ARE SATISFIED; AND APPROVING FORM AND EXECUTION OF INTERLOCAL COOPERATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI RELATED TO DISPOSITION OF CONVENTION DEVELOPMENT TAX RECEIPTS

WHEREAS, this Board wishes to terminate the Interlocal Cooperation Agreement by and among Miami-Dade County (the "County"), The City of Miami (the "City") and the Miami Sports and Exhibition Authority dated December 14, 2004 (the "2004 Interlocal") upon the satisfaction of certain conditions and to approve the form and execution of a new interlocal cooperation agreement between the County and the City (the "2009 Interlocal") with respect to the disposition of available convention development tax receipts (the "CDT Receipts") for the purposes set forth in the memorandum that accompanies this resolution (the "Memorandum"),

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that with respect to the disposition of available CDT Receipts and for the purposes set forth in the Memorandum, the Board (i) agrees to terminate the 2004 Interlocal upon evidence that MSEA has terminated the 2004 Interlocal and upon the execution and delivery by the County and the City of the 2009 Interlocal in substantially the form attached to this resolution as Exhibit

“A”; (ii) approves the form of the 2009 Interlocal; and (iii) authorizes the County Mayor or County Mayor’s designee to execute and deliver the 2009 Interlocal on behalf of the County upon receipt of evidence that MESA has terminated the 2004 Interlocal.

The foregoing resolution was offered by Commissioner **Bruno A. Barreiro** who moved its adoption. The motion was seconded by Commissioner **Jose “Pepe” Diaz** and upon being put to a vote, the vote was as follows:

	Dennis C. Moss, Chairman	aye	
	Jose "Pepe" Diaz, Vice-Chairman	aye	
Bruno A. Barreiro	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	nay	Sally A. Heyman	aye
Barbara J. Jordan	aye	Joe A. Martinez	aye
Dorrin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	nay	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 23rd day of March, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: **Kay Sullivan**
Deputy Clerk



Approved by County Attorney as
to form and legal sufficiency.

Gerald T. Heffernan

**INTERLOCAL AGREEMENT
DATED _____, 2009
BETWEEN MIAMI-DADE COUNTY AND
THE CITY OF MIAMI**

This Interlocal Agreement made this _____ day of _____, 2009 (the "Interlocal") by and between Miami-Dade County, a political subdivision of the State of Florida (the "County") and the City of Miami, a municipal corporation organized under the laws of the State of Florida (the "City") regarding the use and disposition of a portion of the Convention Development Tax as defined in this Interlocal Agreement.

WITNESSETH:

WHEREAS, the County, pursuant to Section 212.0305(4)(b), Florida Statutes (the "Act"), Section 29-60 of the Code of Metropolitan Dade County, Florida, and Ordinance No. 83-91 enacted by the Board of County Commissioners of Miami-Dade County (the "Board") on June 5, 1984, imposed a levy on the exercise within its boundaries of the taxable privilege of leasing or letting transient rental accommodations at the rate of three percent of the total consideration charged for such accommodations (the "Convention Development Tax" or "CDT"); and

WHEREAS, under Section 212.0305(b)2.d, Florida Statutes, the County has the statutory responsibility to determine the use of the CDT Receipts (as defined below); and

WHEREAS, the County and City along with the Miami Sports and Exhibition Authority ("MSEA") previously entered into an Interlocal Cooperation Agreement dated December 14, 2004 (the "Prior Interlocal") regarding the disposition of the CDT Receipts, which shall terminate in accordance with the terms of this Agreement; and

WHEREAS, the County has pledged the CDT Receipts to certain County bonds ("County CDT Bonds") and eligible projects, as set forth on Exhibit "A" to this Interlocal, which have priority over any future disposition or use of the CDT Receipts; and

WHEREAS, the County intends to issue additional County CDT Bonds to satisfy its obligation to provide certain funds for the construction of the Ballpark (defined below) and related public infrastructure (the "County CDT Ballpark Bonds") which will also have a priority over any future disposition or use of the CDT Receipts as set forth in Exhibit "A"; and

WHEREAS, the County and City wish to enter into this Interlocal for the purpose of setting forth the terms and conditions upon which the County shall transfer a portion of the CDT Receipts to the City, which will be subordinate to the obligations set forth on Exhibit "A", but shall have priority over all other obligations secured by the CDT Receipts to be used by the City to satisfy the City Obligations (defined below),

NOW, THEREFORE, the County and the City agree as follows:

A. DEFINITIONS

- (1) "Ballpark" shall mean the major league baseball facility to be constructed at the former Orange Bowl site for use by the Florida Marlins.
- (2) "Ballpark Project" shall mean the Ballpark, the City Parking, and associated infrastructure to be developed at the former Orange Bowl site.
- (3) "Board" shall mean the Board of County Commissioners of Miami-Dade County.
- (4) "CDT Receipts" shall mean the revenues collected annually (excluding any carryover from prior year collections) by the County of the levy on the exercise within its boundaries of the taxable privilege of leasing or letting transient rental accommodations at the rate of three percent (3%) of the total consideration charged therefore as currently authorized pursuant to Section 212.0305(4)(b), Florida Statutes (net of Tax Collector administrative costs for local administration pursuant to Section 212.0305(5)(b)5, Florida Statutes).
- (5) "City Commission" shall mean the City Commission of the City of Miami.
- (6) "City Obligations" shall mean all financial obligations of the City under the Stadium Agreements, including the obligation to provide certain funds for the construction of public infrastructure and City Parking, including City Parking Bonds.
- (7) "City Parking" shall mean approximately 5,500 parking spaces which will be available to the Florida Marlins, LP or its affiliates and their patrons for parking in accordance with the City Parking Agreement (described below).
- (8) "City Parking Bonds" shall mean the taxable or tax-exempt debt issued by the City, or any other governmental entity on behalf of the City, and secured, in whole or in part, by the Current Share in an aggregate amount sufficient (taking into account issuance costs, required reserves and capitalized interest during construction) to fund \$60 million of the City Parking design and construction costs. The City Parking Bonds shall not be deemed to include any bonds issued on parity or on a subordinated basis to fund design and construction costs for the City Parking in excess of \$60 million.
- (9) "Construction Administration Agreement" shall mean the agreement by and among the County, the City and Marlins Stadium Developer, LLC dated _____.
- (10) "Current Share" shall mean an amount equal to the annual CDT payments set forth on the attached Exhibit "B" from the County to the City solely from CDT Receipts.

- (11) "Stadium Agreements" shall mean collectively the Construction Administration Agreement, the Operating Agreement, the Assurance Agreement, the Non-Relocation Agreement and the City Parking Agreement entered into by and among the County, the City, Marlins Stadium Developer, LLC, Marlins Stadium Operator, LLC, and Florida Marlins, L.P., as the case may be, with respect to the development, operation and management of the Ballpark Project.
- (12) "Team and Team Affiliates" shall mean Florida Marlins, L.P., Marlins Stadium Developer, LLC, and Marlins Stadium Operator, LLC.

B. TERMINATION OF PRIOR INTERLOCAL

The County and the City agree that the Prior Interlocal shall terminate upon the receipt by the parties of evidence from MSEA that it has terminated the Prior Interlocal and the approval, execution and delivery of this Interlocal by the parties.

C. PRIORITY LIEN

It is recognized and the parties agree that the outstanding County CDT Bonds, the County CDT Ballpark Bonds to be issued and the obligations of the County secured by a pledge of the CDT Receipts, all as specifically set forth in Exhibit "A", which Exhibit "A" is incorporated in this Interlocal by reference, shall have a first claim on such CDT Receipts prior to any other payments required under this Interlocal. It is agreed by the Parties that after the obligations of Exhibit "A" have been satisfied, the payments required under this Interlocal shall have a priority lien on the CDT Receipts ahead of all other obligations secured by the CDT Receipts.

D. DISPOSITION OF THE CDT RECEIPTS

1. Subsequent to the termination of the Prior Interlocal and prior to July 1, 2009, the County shall pay to the City solely from the CDT Receipts an amount equal to \$2 million per year for a term commencing upon the effective date of this Interlocal pursuant to Section B above and ending on July 1, 2009 for use by the City solely to fund CDT-eligible projects in accordance with State law.
2. If the Ballpark Project moves forward as evidenced by approval and execution of the Stadium Agreements and such agreements are not terminated by the parties in accordance with Sections 11.1.1 or 11.1.2 of the Construction Administration Agreement, commencing on July 1, 2009 and ending on June 30, 2039, the County shall remit the Current Share to the City in accordance with Section 7..
3. If the Stadium Agreements are terminated in accordance with their terms prior to the issuance of the City Parking Bonds, the County shall no longer be obligated to pay the City the Current Share, as set forth in subsection (2) above, and the City shall have no obligation to issue the City Parking Bonds. Instead, the County shall pay to the City solely from the CDT Receipts an amount equal to \$2 million per year commencing on the date first day of the month following the termination date of the

Stadium Agreements and ending on September 30, 2020 for use by the City solely to fund CDT-eligible projects in accordance with State law. Notwithstanding the foregoing, any payments made by the County to the City of the Current Share that are in excess of those payments due pursuant to this Section shall be credited against future payments due from the County to the City until credited in full. Once all future payments are credited in full, if any payments made by the County to the City of the Current Share exceed those payments due pursuant to this Section, the City shall reimburse the County such excess amount within 30 days' written notice from the County that such payment is due.

4. If the Stadium Agreements are terminated in accordance with Sections 11.1.1, 11.1.2 or 11.1.4 of the Construction Administration Agreement to the extent the default is caused solely by the Team and the Team Affiliates after the issuance of debt by the City to secure the City Obligations ("City Debt"), the City shall use all bond proceeds and interest earnings on deposit in any funds or accounts established to secure the City Debt, to defease and/or redeem the City Debt on the first call date. If those amounts are insufficient to call and redeem the City Debt (including payment of any redemption premium) on such date, the County shall be obligated to annually remit the Current Share to the City until the City is reimbursed for any deficit attributed to \$60 million of the City Debt after the City defeased all the City Debt, provided, however, the County's obligation to remit the Current Share to the City shall cease on June 30, 2039. Notwithstanding the foregoing, if the City elects to recover and is awarded damages against the Team and the Team Affiliates for the amount the County is obligated to remit annually to the City pursuant to the preceding sentence, the County shall not be obligated to pay the City the Current Share upon the City 's collection of such damages from the Team or the Team Affiliate, but shall instead pay to the City solely from the CDT Receipts an amount equal to \$2 million per year commencing on the date of collection of such damages and ending on September 30, 2020 for use by the City solely to fund CDT-eligible projects in accordance with State law.
5. If the Stadium Agreements are terminated in accordance with Section 11.1.4 of the Construction Administration Agreement because the County is a Defaulting Party after the issuance of the City Debt, the City shall use all bond proceeds and interest earnings on deposit in any funds or accounts established to secure the City Debt to redeem the City Debt on the first call date. To the extent those amounts are insufficient to call and redeem the City Debt (including payment of any redemption premium) on such date, the County shall be obligated to annually remit the Current Share to the City until the City is reimbursed for such deficit, provided, however, the County's obligation to remit the Current Share to the City shall cease on June 30, 2039. Notwithstanding the foregoing, if the City elects to recover and is awarded damages against the County which include the amount the County is obligated to remit annually to the City pursuant to the preceding sentence, the County shall not be obligated to pay the City the Current Share upon the City's collection of such damages from the County, but shall instead pay to the City solely from the CDT Receipts an amount equal to \$2 million per year commencing on the date of

collection of such damages and ending on September 30, 2020 for use by the City solely to fund CDT-eligible projects in accordance with State law.

6. If the Stadium Agreements are terminated in accordance with Section 11.1.4 of the Construction Administration Agreement because of a default (failure to fund) by the City on or after July 1, 2009, the County shall no longer be obligated to pay the City the Current Share and the City shall be obligated to reimburse the County for all payments from the County to the City in excess of \$2 million since July 1, 2009. After the County has defeased the County CDT Ballpark Bonds and paid all related costs and expenses in connection with such defeasance, the County shall pay to the City solely from the CDT Receipts an amount equal to \$2 million per year ending on September 30, 2020 for use by the City solely to fund CDT-eligible projects in accordance with State law.
7. The County shall pay the annual payments set forth in subsections (1), (2), (3), (4), (5), or (6) above, as the case may be, to the City in equal monthly installments from the CDT Receipts received by the County that month, until the annual payment is paid in full. . If the CDT Receipts received by the County in any year are insufficient to pay the Current Share for that year (each such deficiency, a "Shortfall"), and if in subsequent years the amount of CDT Receipts exceed the Current Share for that year (each such excess amount, a "Surplus"), then the County shall remit such Surplus to the City up to the amount of the Shortfall. In the event the amount of a Surplus in any year is insufficient to pay the Shortfall for the immediately preceding year, then the County shall be obligated to continue to remit any Surplus, in any subsequent year, until all Shortfalls has been paid in full. Such amounts payable for the Shortfall shall be cumulative from year to year.
8. The City agrees that the Current Share shall first be pledged to fund the City's Parking Obligation. To the extent the Current Share exceeds the required amounts necessary to pay debt service on the City Parking Bonds, the City shall use such excess to fund CDT-eligible projects in accordance with State law and in accordance with the terms of this Interlocal.
9. Other than as previously authorized by the Board or as set forth in this Section D, the One-Third CDT share shall be disbursed in accordance with the Act, as determined by the County, for projects qualified pursuant to the Act and located solely within the most populous municipality in the County.

E. AUDIT RIGHTS

The County shall have the right, without limitation, but not the obligation, to separately audit all accounts, books, records, and the supporting documentation related to the CDT Receipts remitted either directly to the City and the expenditure of any funds on the, the City Parking, debt service on the City Parking Bonds or any other CDT-eligible projects in accordance with State law. Such auditor may be engaged to investigate, inspect and review the operations and activities of the City in connection with this Interlocal. The County shall be responsible for the cost of any separate audits performed at its request.

The City shall use its best efforts in assisting the auditor in its duties. Nothing in this Interlocal shall impair the County's existing rights to audit or to investigate past and future acts. Any rights that the County has under this section shall not be the basis for any liability to the County from the City or third parties for such investigation or for the failure to have conducted such investigation.

F. ENTIRE AGREEMENT

This Interlocal constitutes the sole and only agreement of the County and the City with respect to the CDT Receipts and correctly sets forth the rights, duties and obligations of each to the other as of its date. Any prior agreements (including the Prior Interlocal), promises, resolutions, negotiations, or representations not expressly set forth in the Interlocal are of no force and effect.

G. AMENDMENTS

No amendments to this Interlocal shall be binding on the parties unless in writing and executed by the parties.

Pedro G. Hernandez
City Manager
City of Miami

George M. Burgess
County Manager
Miami-Dade County

APPROVED AS TO FORM
AND CORRECTNESS:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

City Attorney

Assistant County Attorney

City Clerk

Clerk of the Board