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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: March 3, 2009

Agenda Item No. 12(A)(1)

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

From: George M. Burgess
County Manager

Resolution No. R-156-09

Subject: *Building Better Communities*/General Obligation Bond (BBC/GOB) Program – Execution of BBC/GOB Grant Agreement with the Miami Art Museum (MAM), BBC/GOB Project #296

This item, listed as Agenda Item No. 5A on the February 9, 2009 Recreation, Culture & Tourism Committee agenda, was amended by the Committee as follow:

A sentence was added to Section 15(d)(4) of the Grant Agreement that reads, "In the event that the Grantee fails to execute the Master Development Agreement and the Environmental Remediation Agreement with the City of Miami within the time specified in the Grantee's lease agreement with the City of Miami, then either party shall have the right to terminate this Agreement by giving written notice of termination to the other party. In the event this Agreement is terminated pursuant to this Section 15(d)(4), the Grantee shall return to the County any funds that have been advanced to the Grantee but not yet spent, and the County shall have no further obligations to Grantee under this Agreement." (page 10 of the Grant Agreement)

Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution granting the County Mayor or County Mayor's designee the authority to execute the second *Building Better Communities*/General Obligation Bond (BBC/GOB) grant agreement with the Miami Art Museum of Dade County Association, Inc., (MAM), a Florida not-for-profit, BBC/GOB Project #296, in the amount of $8.4 million (Exhibit A) to fund pre-design, planning, preliminary engineering and related costs associated with the development of the Museum at Museum Park (aka Bicentennial Park). The resolution also waives the requirement in the BBC/GOB Administrative Rules that grantees demonstrate site control as a pre-condition to receiving BBC/GOB funds. The BBC/GOB funding will come from bond series 2008 B that totals $350 million of which the first tranche of $146 million was issued in December 2008. Receiving the next installment of BBC/GOB funding is critical at this time in order to keep the project moving forward.

Scope

Although MAM will be located in County Commission District 3, the project will have a countywide impact.

Fiscal Impact/Funding Source

The BBC/GOB Program has an allocation of $100 million for MAM. The Museum will be responsible for any cost overruns associated with the project.

Track Record/Monitor

MAM is a not-for-profit in good standing with Miami-Dade County. They will be responsible for the implementation of their project with oversight provided by the Miami-Dade County Department of Cultural Affairs. The County's Office of Capital Improvements (OCI) will be the monitoring agency to ensure compliance with the BBC/GOB requirements.

Background

The funds from the first grant agreement approved by the Board last year were specifically used for design costs and have been spent. In addition, the Board and the City of Miami Commission approved a Memorandum of Understanding (MOU) which addresses the contractual relationships necessary for developing the Museum Park project between the City of Miami, MAM, the Miami Science MAM/Historical Museum of Southern Florida (MSM/HMSF) and the County. At that time, the Board was told that further BBC/GOB funding allocations beyond the initial installment amount would not be committed until MAM demonstrated site control of the property.

On December 11, 2008, the City of Miami Commission approved lease agreements with the Miami Art Museum and Miami Science Museum for their respective four acre parcels in Museum Park. The lease agreements provide the museums with 99 year terms for their buildings' sites. Although the leases have been approved, they are conditioned upon successful negotiation and approval of the Master Development Agreement and the Environmental Remediation Agreement, so at this time the leases do not meet the site control requirements of the BBC/GOB Administrative Rules. The City and the Museums report that significant progress already has been made on negotiating these agreements and expect to have the Master Development Agreement finalized by the end of February 2009 and the Environmental Remediation Agreement finalized by July 2009. Given the action of the City Commission approving the leases and the progress made on these subsequent agreements, we feel confident enough regarding the City's commitment to the Museums' projects to recommend releasing the next installment of BBC/GOB funding to MAM.

Payments to MAM under this agreement will be made on a reimbursement basis in accordance with the BBC/GOB Administrative Rules. Allocation of the balance of the BBC/GOB funds will be authorized through the execution of subsequent grant agreements as the work progresses subject to the museum demonstrating site control.

The first GOB grant agreement to MAM was for $235,000 (less than ¼ of 1% of their total GOB allocation). These funds have been expended for eligible project costs. In addition, MAM has

received $14,880,000 from the private sector's multi-year pledges, all of which has been expended on project costs to date. It is essential to provide the next allocation of GOB funds necessary to sustain work on the completion of the planning and design phase of the new building and to maintain this project's tight timetable.

Project Description and Funding

On November 2, 2004 voters approved eight ballot questions authorizing the issuance of general obligation bonds to fund more than 300 capital improvements throughout the County over the next 15 to 18 years. BBC/GOB Project #296 included a total allocation of $100 million to fund the development of a new MAM to be built on City-owned Bicentennial Park. In 2005, the City of Miami contracted with Cooper, Robertson & Partners to work with MAM, the Miami Science Museum/Historical Museum of Southern Florida (MSM/HMSF) and the County to develop a master plan for the redevelopment of Bicentennial Park. A product of this work is a site plan for the approximately 29-acre Bicentennial Park that features specific locations for developing new art and science museums on a total of eight acres (4 acres for each Museum) and a 21-acre park design.

MAM presently occupies approximately 33,000 square feet in the Miami-Dade Cultural Center, a County-owned facility adjacent to the Stephen P. Clark Center in downtown Miami. MAM has long outgrown its present facilities. In 2008, MAM had total attendance of 62,000 visitors. Annual attendance is estimated by MAM to be 190,000 at the new museum where MAM will present exhibitions, expand its art collections and offer educational programs for the benefit, enjoyment and education of the public. Currently, the County's contribution totals approximately 35% of MAM's operational budget. The operating budget for the new facility is estimated at $12.9 million. Over the next two years, we will work with MAM to present revised budget proposals reflective of the museum's increased operational costs to the Board for consideration. Such proposals will factor in, to the extent possible, expected private operating endowment support, administrative revenues, and grant funds.

MAM ownership of the facility is expected to facilitate their on-going fundraising efforts and makes MAM totally responsible for any cost overruns. At this time, MAM is continuing its fundraising campaign and is making significant progress. The $45 million in private sector pledges secured to date are earmarked for the construction, commissioning and operational needs of the new building (including operating endowments for the new building). With the approved GOB funding, the museum has already sufficient funds committed to cover the design and construction costs of the building and is currently raising funds for its own internal development costs and an operating endowment.

BBC/GOB Project #296 was approved by the Board on July 20, 2004. MAM will occupy approximately four acres of City-owned land at Bicentennial Park. The design for the MAM Project provides approximately 200,000 square feet of interior and exterior program space. As called for by the functional building program, the 120,000 square foot interior spaces are programmed for galleries, back of house, mechanical and amenities on four levels and the 80,000 square foot covered exterior spaces are programmed for exhibiting large-scale works of

art, video and film projections, educational events, special events and a restaurant. The design also allows for an additional 30,000 square feet of interior program space in the future. Free of charge outdoor art components are also planned.

The design also includes under-building parking of approximately 78,000 square feet which will be contiguous with the parking for the Miami Science Museum (MSM). The total number of parking spaces beneath the two museums is estimated at approximately 480.

The current overall project budget for the new museum is $220 million ($131 million for the building, $70 million for an operating endowment and $19 million for transitional expenses). The $100 million from the BBC/GOB will be used for the design and construction of the building.

Selection of the Design Team

In September 2006, MAM selected the firm of Herzog & de Meuron as its design architect. The design architect will be involved primarily in conceptual and preliminary design while the executive architect, Handel Architects, will develop the detailed construction and permit plans. On June 6, 2006, the Board approved Ordinance 06-88 amending Section 2-8.2.10 of the Code of Miami-Dade County which allows municipalities and not-for-profits implementing BBC/GOB-funded projects to use their own procurement procedures. As a result, County procurement procedures do not apply. Nevertheless, MAM has followed the County process and on April 11, 2007, went before the County's Small Business Department's Review Committee for the recommendation of Community Business Enterprise (CBE) goals for six relevant design professions. Although not required by the BBC/GOB Administrative Rules, MAM has committed to assign approximately 15% of that design work to CBEs.

Project Schedule

MAM has done considerable programming and conceptual design work having started their Concept Design in October 2007. MAM has completed the Concept Design and Schematic Design Phases, as well as 75% of the Design Development Phase. MAM expects that: Design Development will be completed by July 1, 2009; environmental remediation (if needed) will commence in fall 2009 and lead directly into the Construction Phase in late 2009/early 2010 with the opening in 2012.

I have previously informed this Board that the primary oversight responsibility on behalf of the County rests with the Miami-Dade Department of Cultural Affairs. My office will be directly involved in overseeing these efforts.

Alex Muñoz - Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: March 3, 2009

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

SUBJECT: Agenda Item No. 12(A)(1)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Mayor's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(1)
3-3-09

RESOLUTION NO. **R-156-09**

RESOLUTION APPROVING THE TERMS OF AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE SECOND BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND GRANT AGREEMENT WITH THE MIAMI ART MUSEUM OF DADE COUNTY ASSOCIATION, INC. IN THE AMOUNT OF $8.4 MILLION TO FUND PRE-DESIGN, PLANNING, PRELIMINARY ENGINEERING AND RELATED COSTS ASSOCIATED WITH THE DEVELOPMENT OF THE MUSEUM AT MUSEUM PARK

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the terms of and authorizes the County Mayor or County Mayor's designee to execute the Building Better Communities General Obligation Bond Program Grant Agreement, in substantially the form attached hereto as Exhibit A, by and between the County and the Miami Art Museum of Dade County Association, Inc. ("MAM") in the amount of $8.4 million to fund pre-design, planning, preliminary engineering and related costs associated with the development of MAM's Museum at Museum Park.

The foregoing resolution was offered by Commissioner **Joe A. Martinez** , 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	**aye**	Sally A. Heyman	**aye**
Barbara J. Jordan	**aye**	Joe A. Martinez	**aye**
Dorrin D. Rolle	**aye**	Natacha Seijas	**aye**
Katy Sorenson	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd 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.

Monica Rizo

Exhibit A

MIAMI-DADE COUNTY
BUILDING BETTER COMMUNITIES
GRANT AGREEMENT

GOB Project Number 296-70428 / New Miami Art Museum Facility

This Agreement (the "Agreement") by and between Miami-Dade County, a political subdivision of the State of Florida (the "County"), through its governing body, the Board of County Commissioners of Miami-Dade County, Florida (the "Board") and The Miami Art Museum of Dade County Association, Inc., a Florida nonprofit corporation (the "Grantee") is entered into this ___ day of _____, 2009.

WITNESSETH:

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

WHEREAS, the aforementioned Resolutions include specific projects such as but not limited to development, improvement, rehabilitation, restoration or acquisition of real property; and

WHEREAS, the Grantee is undertaking the construction of a new art museum for presenting exhibitions, expanding its art collections and offering educational programs and a sculpture garden as part of the Museum Park Project (the "Project") which was specifically approved as part of the BBC GOB Program or is eligible for funding from one of the programs to be funded under the BBC GOB Program and is described more specifically in Exhibit 1 to this Grant Agreement; and

WHEREAS, the New Miami Art Museum (MAM) Facility is estimated to cost $131,000,000 (the "Total Project Cost") and will be funded from the sources listed in Exhibit 1; and

WHEREAS, the New Miami Art Museum Facility / GOB Project Number 296-70428 is eligible for funding from the BBC GOB Program in a total amount not to exceed $100,000,000 (the "Funding Allocation"); and

WHEREAS, pursuant to the terms of this Agreement the County has agreed to allocate $8,400,000 from the Series 2008 B Bonds for the Project (the "Funding Cycle Allocation"); and

WHEREAS, the Project physically improves an area, facility, resource or site to increase its ability or capacity to serve the public; and

for each Funding Cycle Allocation describing their respective roles in the funding for the Project costs with respect to such Funding Cycle Allocation,

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

Section 1. Parties, Effective Date and Term: The parties to this Agreement are the Grantee and the County. The County has delegated the responsibility of administering this grant to the County Manager, or his designee, who shall be referred to herein as the "County Manager."

This Agreement shall take effect upon execution and shall terminate upon the completion of the Project, including the completion of all final closeout documentation.

Section 2. **Amount of Funding Cycle Allocation and Payment Schedule:** A Project funding plan identifying the Funding Allocation to be funded by the County solely from BBC GOB Program proceeds and the costs to be funded by the Grantee through written project funding commitments from third parties is attached as Exhibit 1. Included shall be a projected timetable for each Funding Cycle Allocation and the amount funded to date, if any. The County agrees to provide solely from the BBC GOB Program proceeds for the Funding Cycle Allocation an amount equal to $8,400,000. This amount represents a portion of the amount necessary to complete the Project. By making this grant, Miami-Dade County assumes no obligation to provide financial support of any type whatever in excess of the Funding Allocation. Cost overruns are the sole responsibility of the Grantee. The Funding Cycle Allocation shall be provided in accordance with the Administrative Rules which are attached as Attachment 1 ("Administrative Rules") and incorporated in this Agreement by this reference. In the event that the Funding Cycle Allocation is not expended on schedule, additional allocations may be delayed for one calendar year or more depending on the bond schedule, in accordance with the Administrative Rules and Section 22 of this Agreement.

Payment(s) of Funding Cycle Allocation funds will be made to the Grantee pursuant to the reimbursement provisions in the Administrative Rules and its Exhibits.

Miami-Dade County shall only be obligated to reimburse the Grantee provided the Grantee is not in breach of this Agreement and the Grantee has demonstrated that it has adequate funds to complete the Project. The County shall administer, in accordance with the appropriate regulations, the funds available from the BBC GOB Program as authorized by Board Resolutions. Any and all reimbursement obligations of the County shall be fully subject to and contingent upon the availability of funding solely from the BBC GOB Program funds. The Grantee shall be solely responsible for submitting all documentation, as required by this Agreement and by the Administrative Rules, to the County Manager.

Section 3. **Project Description:** The Grantee may only use the Funding Cycle Allocation for the purpose of purchasing, building, renovating and/or equipping facilities for the Project as specifically described in Exhibit 1. Further, it is expressly understood and agreed, that the Grantee's Project which is supported by Funding Cycle Allocation must be open and accessible to the public, provide public exposure and benefit the public unless otherwise noted under Section 25 of this Agreement.

If the Grantee wishes to revise the Project for the purpose of completing the Project and such revisions substantially alter the original Project, the Grantee must request in writing that the County Manager review and approve such revisions. Grantee's request must be given at least fourteen (14) days prior to implementation of revisions. The County Manager will make the final determination on revisions within fourteen (14) business days of the date of receipt of the request in the County Manager's offices.

Section 4. **Project Budget:** The Grantee agrees to demonstrate fiscal stability and the ability to administer the Funding Cycle Allocation responsibly and in accordance with standard accounting practices by developing and adhering to a Project budget that is based upon reasonable revenue development and expenditures projected to complete the Project within the Total Project Cost. This Project budget is attached as Exhibit 1. Further, Grantee agrees that all expenditures will be subject to the terms of this Agreement. If Grantee wishes to revise the budget for the purpose of completing the Project, including line item changes, and such revisions substantially alter the original Project, the Grantee must request in writing that the County Manager review and approve such revisions. Grantee's request must be given at least fourteen (14) days prior to implementation of the revisions. The County Manager will make the final determination on revisions within fourteen (14) business days of the date of receipt of the request in the County Manager's offices.

Section 5. **Expenditure Deadline:** The Grantee shall spend or commit all of the Funding Cycle Allocation and matching funds on or before January 22, 2012 (the "Expenditure Deadline"). Any Funding Cycle Allocation funds not spent or committed by the Expenditure Deadline or for which a Project extension has not been requested shall revert to the County and this Agreement shall be terminated in accordance with the provisions of this Agreement. A Project extension may be requested in writing from the County Manager at least thirty (30) business days prior to the Expenditure Deadline. The County Manager, at his discretion, may grant an extension of up to one (1) year from the Expenditure Deadline so long as such extension will not significantly alter the Project including its quality, impact, or benefit to the organization, the County or its citizens. Additional extensions may be authorized by the County Manager if the Grantee can document in a written request sufficient Project progress and cause for such an extension to be warranted.

Section 6. **Report Deadline:** To demonstrate that the Funding Cycle Allocation has been used in accordance with the Project Description and Project budget information as outlined in Exhibit 1 and that Grantee has met and fulfilled all requirements as outlined in this Agreement, exhibits, and/or other substantive materials as may be attached or included as a condition to this Funding Cycle Allocation award, the Grantee must submit to the County Manager, a written report documenting that the Grantee is meeting or has fulfilled all Project and financial requirements. This report is

to be received by the County Manager monthly. The Grantee shall also submit a written report to the County Manager on or prior to September 30th of each year from the time of the execution of this Agreement through the termination of this Agreement demonstrating that the Grantee is fulfilling, or has fulfilled, its purpose, and has complied with all applicable municipal, Miami-Dade County, state and federal requirements. The County Manager may also request that a compilation statement or independent financial audit and accounting for the expenditure of Funding Cycle Allocation funds be prepared by an independent certified public accountant at the expense of the Grantee.

In the event that the Grantee fails to submit the required reports as required above, the County Manager may terminate this Agreement in accordance with Section 15. Further, the County Manager must approve these reports for the Grantee to be deemed to have met all conditions of the grant award.

Section 7. **Program Monitoring and Evaluation:** The County Manager may monitor and conduct an evaluation of the Grantee's operations and the Project, which may include visits by County representatives to: observe the Project or Grantee's programs, procedures, and operations; discuss the Grantee's programs with the Grantee's personnel; and/or evaluate the public impact of the Project. Upon request, the Grantee shall provide the County Manager with notice of all meetings of its Board of Directors or governing board, general activities and Project-related events. In the event the County Manager concludes, as a result of such monitoring and/or evaluation, that the Grantee is not in compliance with the terms of this Agreement or the Administrative Rules or for other reasons which significantly impact on the Grantee's ability to fulfill the conditions of this Funding Cycle Allocation award, then the County Manager must provide in writing to the Grantee, within thirty (30) days of the date of said monitoring/evaluation, notice of the inadequacy or deficiencies noted which may significantly impact on the Grantee's ability to complete the Project or fulfill the terms of this Agreement within a reasonable time frame. If Grantee refuses or is unable to address the areas of concern within thirty (30) days of receipt of such notice from the County Manager, then the County Manager, at his discretion, may take other actions which may include reduction or rescission of the Funding Cycle Allocation award, or withholding Funding Cycle Allocation funds until such time as the Grantee can demonstrate that such issues have been corrected. Further, in the event that the Grantee does not expend the Funding Cycle Allocation for the Project or uses any portion of the Funding Cycle Allocation for costs not associated with the Project and the Grantee refuses or is unable to address the areas of concern, then the County Manager may request the return of the full or partial Funding Cycle Allocation award. The County Manager may also institute a moratorium on applications from the Grantee to County grants programs for a period of up to one (1) year or until the deficient areas have been addressed to the satisfaction of the County Manager, whichever occurs first.

If the Project involves construction work, the Grantee shall: notify the County Manager of any applicable federal labor compliance requirements regarding procurement and pre-award procedures prior to scheduling pre-construction conferences; submit to the County Manager all plans and specifications and receive the approval of the County Manager prior to issuance and implementation; and comply with all applicable provisions of municipal, state, federal and County laws, regulations and rules.

Section 8. **Bank Accounts and Bonding:** Monies received pursuant to this Agreement shall be kept in accounts in established Florida banks, credit unions or savings and loan associations whose identity shall be disclosed in writing, with the identity and title of individuals whom the Grantee authorizes to withdraw or write checks on Funding Cycle Allocation funds from the banking institution identified on the "Bank Account Disclosure" form submitted by the Grantee. These accounts must be segregated from other accounts maintained by the Grantee. All persons authorized to withdraw funds from the Funding Cycle Allocation account must be bonded by a reputable licensed firm.

Section 9. **Accounting and Financial Review:** The Grantee must keep accurate and complete books and records for all receipts and expenditures of this Funding Cycle Allocation award and any matching funds required in conformance with reasonable general accounting standards. These books and records, as well as all documents pertaining to payments received and made in conjunction with the Funding Cycle Allocation, such as vouchers, bills, invoices, receipts and canceled checks, shall be retained in Miami-Dade County in a secure place and in an orderly fashion by the Grantee for at least three (3) years after the later of: the Expenditure Deadline specified in Section 5; the extended Expenditure Deadline, as approved by the County Manager, if any; the completion of a County requested or mandated audit or compliance review; or the conclusion of a legal action involving the Funding Cycle Allocation award, the Grantee and/or Project or activities related to the Funding Cycle Allocation award.

The County Manager may examine these books, records and documents at the Grantee's offices or other approved site under the direct control and supervision of the Grantee during regular business hours and upon reasonable notice. Furthermore, the County Manager may, upon reasonable notice and at the County's expense, audit or have audited all financial records of the Grantee, whether or not purported to be related to this grant.

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

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

The IG shall have the power to retain and coordinate the services of an **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 Grantee and contractor and their respective officers, agents and employees, lobbyists, subcontractors, materialmen, staff and elected officials in order to ensure compliance with contract specifications and detect corruption and fraud. The IG shall have the power to subpoena witnesses,

administer oaths and require the production of records. Upon ten (10) days written notice to the Grantee (and any affected contractor and materialman) from IG, the Grantee (and any affected contractor and materialman) shall make all requested records and documents available to the IG for inspection and copying.

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

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

The provisions in this section shall apply to the Grantee, its contractors and their respective officers, agents and employees. The Grantee shall incorporate the provisions in this section in all contracts and all other agreements executed by its contractors in connection with the performance of this Agreement. Any rights that the County has under this Section shall not be the basis for any liability to accrue to the County from the Grantee, its contractors or third parties for such monitoring or investigation or for the failure to have conducted such monitoring or investigation and the County shall have no obligation to exercise any of its rights for the benefit of the Grantee.

Section 10. **Publicity and Credits:** The Grantee must include the following credit line in all promotional marketing materials related to this funding including web sites, news and press releases, public service announcements, broadcast media, programs, and publications: "THIS PROJECT IS SUPPORTED BY THE BUILDING BETTER COMMUNITIES BOND PROGRAM AND THE MAYOR AND BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY."

Section 11. **Naming Rights and Advertisements:** In the event that any naming rights or advertisement space is offered on a facility constructed or improved with BBC GOB Program funds, then Miami-Dade County's name, logo, and slogan shall appear on the facility at least once. Lettering used for Miami-Dade County will be no less than 75% of the size of the largest lettering used for any sponsor or advertiser.

Section 12. **Liability and Indemnification:** It is expressly understood and intended that the Grantee, as the recipient of BBC GOB Program funds, is not an officer, employee or agent of Miami-Dade County, its Board of County Commissioners, its Mayor, nor the Miami-Dade County Department administering the Funding Cycle Allocation award. Further, for purposes of this Agreement, the Project or activity, the parties hereto agree that the Grantee, its officers, agents and employees are independent contractors and solely responsible for the Project.
The Grantee shall take all actions as may be necessary to ensure that its officers, agents, employees, assignees and/or subcontractors shall not act as nor give the appearance of that of an agent, servant, joint venturer, collaborator or partner of the Department administering this Grant, the Miami-Dade County Mayor, the Miami-Dade County Board of County Commissioners, or its employees. No party or its officers,

elected or appointed officials, employees, agents, independent contractors or consultants shall be considered employees or agents of any other party, nor to have been authorized to incur any expense on behalf of any other party, nor to act for or to bind any other party, nor shall an employee claim any right in or entitlement to any pension, workers' compensation benefit, unemployment compensation, civil service or other employee rights or privileges granted by operation of law or otherwise, except through and against the entity by whom they are employed.

The Grantee agrees to be responsible for all work performed and all expenses incurred in connection with the Project. The Grantee may subcontract as necessary to complete the Project, including entering into subcontracts with vendors for services and commodities, provided that it is understood by the Grantee that the County shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

The Grantee shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs 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 the performance of this Agreement by the Grantee or its employees, agents, servants, partners, principals, subconsultants or subcontractors. Grantee 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, judgments, and attorneys' fees which may issue thereon. Grantee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Grantee 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.

Section 13. **Assignment:** The Grantee is not permitted to assign this Agreement or any portion thereof. Any purported assignment will render this Agreement null and void and subject to immediate rescission of the full amount of the Funding Cycle Allocation award and reimbursement by the Grantee of its full value to the County.

Section 14. **Compliance with Laws:** It shall be a contractual obligation of the Grantee hereunder and the Grantee agrees to abide by and be governed by all Applicable Laws necessary for the development and completion of the Project. "Applicable Law" means any applicable law (including, without limitation, any environmental law), enactment, statute, code, ordinance, administrative order, charter, tariff, resolution, order, rule, regulation, guideline, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, or other direction or requirement of any governmental authority, political subdivision, or any division or department thereof, now existing or hereinafter enacted, adopted, promulgated, entered, or issued. Notwithstanding the foregoing, "Applicable Laws" and "applicable laws" shall expressly include, without limitation, all applicable zoning, land use, DRI and Florida Building Code requirements and regulations, all applicable impact fee requirements, all requirements of Florida Statutes, specifically including, but not limited to, Section 255.05

related to payment and performance bonds, Section 255.20 related to contractor selection and Section 287.055 related to competitive selection of architects and engineers, all requirements of Chapters 119 and 286 of the Florida Statutes, all disclosure requirements imposed by Section 2-8.1 of the Miami-Dade County Code, all requirements of Miami-Dade County Ordinance No. 90-133 (amending Section 2-8.1), County Resolution No R-754-93 (Insurance Affidavit), County Ordinance No. 92-15 (Drug-Free Workplace), and County Ordinance No. 91-142 (Family Leave Affidavit), execution of public entity crimes disclosure statement, Miami-Dade County disability non-discrimination affidavit, and Miami-Dade County criminal record affidavit, all applicable requirements of Miami-Dade County Ordinance No. 90-90 as amended by Ordinance 90-133 (Fair Wage Ordinance), Section 2-11.15 of the Code (Art in Public Places), the requirements of Section 2-1701 of the Code and all other applicable requirements contained in this Agreement.

The Grantee shall comply with Miami-Dade County Resolution No. R-385-98 which creates a policy prohibiting contracts with firms violating the Americans with Disabilities Act of 1990 and other laws prohibiting discrimination on the basis of disability and shall execute a Miami-Dade County Disability Non-Discrimination Affidavit confirming such compliance.

The Grantee covenants and agrees with the County to comply with Miami-Dade County Ordinance No. 72-82 (Conflict of Interest), Resolution No. R-1049 93 (Affirmative Action Plan Furtherance and Compliance), and Resolution No. R.-185-00 (Domestic Leave Ordinance).

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

The Grantee shall cause each contract to include a provision that contractor shall comply with all requirements of Section 2-1076 as provided in Section 9 herein, and that contractor will maintain all files, records, accounts of expenditures for contractor's portion of the Work and that such records shall maintained within Miami-Dade County and County shall have access thereto as provided in this Agreement.

The Grantee has certifiably indicated compliance to certain Applicable Laws by properly executing the affidavits attached hereto. See affidavits for specific provisions and declarations described.

Section 15. **Breach, Opportunity to Cure and Termination:**

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

(1) If the Grantee uses the Funding Cycle Allocation for costs not associated with the Project (i.e. ineligible costs), and the Grantee fails to cure its default within thirty (30) days after written notice of the default is given to the Grantee by the County; provided, however, that if not reasonably possible to cure such default within the thirty (30) day

period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice if within thirty (30) days after such written notice the Grantee commences diligently and thereafter continues to cure.

(2) If the Grantee shall breach any of the other covenants or provisions in this Agreement other than as referred to in Section 15(a)(1) and the Grantee fails to cure its default within thirty (30) days after written notice of the default is given to the Grantee by the County; provided, however, that if not reasonably possible to cure such default within the thirty (30) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice if within thirty (30) days after such written notice the Grantee commences diligently and thereafter continues to cure.

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

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

(c) Remedies:

(1) Upon the occurrence of a default as provided in Section 15(a)(1) and such default is not cured within the applicable grace period, in addition to all other remedies conferred by this Agreement, the Grantee shall reimburse the County, in whole or in part as the County shall determine, all funds provided by the County hereunder.

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

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

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

(d) Termination:

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

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

(3) Upon termination of this Agreement pursuant to Section 15(d)(1) above, no party shall have any further liability or obligation to the other party except as expressly set forth in this Agreement; provided that no party shall be relieved of any liability for breach of this Agreement for events or obligations arising prior to such termination.

(4) In the event that the Grantee fails to execute the Master Development Agreement and the Environmental Remediation Agreement with the City of Miami within the time specified in the Grantee's lease agreement with the City of Miami, then either party shall have the right to terminate this Agreement by giving written notice of termination to the other party. In the event this Agreement is terminated pursuant to this Section 15(d)(4), the Grantee shall return to the County any funds that have been advanced to the Grantee but not yet spent, and the County shall have no further obligations to Grantee under this Agreement.

In the event this grant is canceled or the Grantee is requested to repay Funding Cycle Allocation funds because of a breach of this Agreement, the Grantee will not be eligible to apply to the County for another grant for a period of one (1) year, commencing on the date the Grantee receives the notice in writing of the breach of this Agreement. Further, the Grantee will be liable to reimburse Miami-Dade County for all unauthorized expenditures discovered after the expiration or termination of this Agreement. The Grantee will also be liable to reimburse the County for all lost or stolen Funding Cycle Allocation funds.

Funding Cycle Allocation funds which are to be repaid to the County pursuant to this Section or other sections in this Agreement, are to be repaid by delivering to the County Manager a certified check for the total amount due payable to Miami-Dade County Board of County Commissioners.

These provisions do not waive or preclude the County from pursuing any other remedy, which may be available to it under the law.

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

Section 17. **Written Notices:** Any notice, consent or other communication required to be given under this Agreement shall be in writing, and shall be considered given when delivered in person or sent by facsimile or electronic mail (provided that any notice sent by facsimile or electronic mail shall simultaneously be sent personal delivery, overnight courier or certified mail as provided herein), one business day after being sent by reputable overnight carrier or 3 business day after being mailed by certified mail, return receipt requested, to the parties at the addresses set forth below

(or at such other address as a party may specify by notice given pursuant to this Section to the other party):

The County:
George M. Burgess, County Manager
Miami-Dade County
111 N.W. 1st Street, Suite 2910
Miami, Fl. 33128

Grantee:
Miami Art Museum of Dade County
Association, Inc.
101 W Flagler Street
Miami, Fl. 33130

Section 18. **Captions:** Captions as used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

Section 19. **Contract Represents Total Agreement:** This Agreement, and the attachments thereto, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives. In the event a conflict between this Agreement and any of its attachments or exhibits, this Agreement shall prevail.

Section 20. **Litigation Costs/Venue:** In the event that the Grantee or the County institutes any action or suit to enforce the provisions of this Agreement, the prevailing party in such litigation shall be entitled to reasonable costs and attorney's fees at the trial, appellate and post-judgment levels. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The County and the Grantee agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court for the Southern District of Florida, in Miami-Dade County, Florida.

Section 21. **Representation of the Grantee:** The Grantee represents that this Agreement has been duly authorized, executed and delivered by the governing body of the Grantee and it has granted Director of Miami Art Museum of Dade County Association, Inc., or his designee, the required power and authority to execute this Agreement. The Grantee agrees to a) maintain the Project for a minimum of twenty-five (25) years and use the facility and/or equipment acquired and/or improved under the Project for activities benefiting the public, and for no other purposes, b) agrees to govern itself, in regards to the subject Project, in accordance with Article 6 of the County Charter, c) keep the Project open safely and properly maintained for all Miami-Dade County residents, and d) allow all Miami-Dade County residents equal access and use

of the project and not discriminate when charging facility admission fees. The Grantee also agrees to accept and comply with the Administrative Rules as stated in Attachment 1. The Grantee shall be solely responsible for submitting all documentation required by the Administrative Rules to the County Manager or his designee.

Section 22. **Representation of the County:** The County represents that this Agreement has been duly approved, executed and delivered by the Board, as the governing body of the County, and it has granted the Miami-Dade County Manager the required power and authority to execute this Agreement. The County agrees to provide the Funding Cycle Allocation to the Grantee for the purpose of developing and improving the Project in accordance with each of the attached Exhibit Forms, incorporated herein as Exhibits A-J of Attachment 1 (Administrative Rules). Miami-Dade County shall only be obligated to reimburse the Grantee provided the Grantee is not in breach of this Agreement and the Grantee has demonstrated that it has adequate funds to complete the Project. The County shall administer, in accordance with the appropriate regulations, the funds available from the BBC GOB Program as authorized by Board Resolutions. Any and all reimbursement obligations of the County shall be fully subject to and contingent upon the availability of funding from the County for the specific purpose contained herein.

Section 23. **Invalidity of Provisions, Severability:** Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

Section 24. **Insurance:** The Grantee must maintain and shall furnish upon request to the County Manager, certificates of insurance indicating that insurance has been obtained which meets the requirements as outlined below:

1. Workmen's Compensation Insurance for all employees of the Grantee as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive policy in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage.

The insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

1. The Company must be rated no less than "B" as to the management, and no less than "Class V" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division; or,
2. The 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 Insurance, and is a member of the Florida Guaranty Fund.

Certificates shall indicate no modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.

Modification or waiver of any of the aforementioned insurance requirements is subject to the approval of the County's Risk Management Division. The Grantee shall notify the County of any intended changes in insurance coverage, including any renewals of existing policies.

Section 25. **Special Conditions:** The grant is awarded to this Grantee with the understanding that the Grantee is performing a public purpose through the programs, projects, and services recommended for support. Use of these funds for any program component not meeting this condition will be considered a material breach of the terms of this Agreement and will allow Miami-Dade County to seek remedies including, but not limited to those outlined in the Sections and Exhibits of this Grant Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

ATTEST:

MIAMI-DADE COUNTY, FLORIDA
By Its BOARD OF
COUNTY COMMISSIONERS on the

HARVEY RUVIN, CLERK

____ day of _____, 2009

By: _____
Deputy Clerk

By:

_____
County Mayor

GRANTEE:_____

on the ____day of _____, 2009

(Grantee's Corporate Seal)

Federal Identification
#_____

By_____
Chairman or President

_____
Type or Print Above Signature

By_____
Treasurer/ Chief Fiscal Officer

_____
Type or Print Above Signature

By_____
Executive Director

_____
Type or Print Above Signature

Approved by County Attorney as
to form and legal sufficiency. _____

Miami-Dade County
Building Better Communities

The Miami Art Museum Inc.

New Miami Art Museum Facility (Contract #2)

GOB Project Number 296-70428

REVENUES					Milestones	EXPENSES		
FY 2007-08 GOB Allocation (000's)	FY 2008-09 GOB Allocation (000's)	Future GOB Allocations (000's)	Other Funding Allocations (000's) *	Total Estimated Revenues (000's)		Projected Schedule Start Date	End Date	Total Estimated Expenses (000's)
	1,300	1,200		2,500	Project Administration	1/1/2005	1/22/2012	2,500
			1,706	1,706	Project Administration (Non-GOB)	1/1/2005	9/30/2012	1,706
				0	Land Acquisition			0
				0	Land Acquisition (Non-GOB)			0
235	7,100			7,335	Pre-design, Planning, including preliminary engineering	10/1/2006	7/31/2009	7,335
			1,091	1,091	Pre-design, Planning, including preliminary (Non-GOB)	10/1/2006	7/31/2009	1,091
				0	A&E Selection			0
				0	A&E Selection (Non-GOB)			0
		7,165		7,165	Design	7/1/2009	7/1/2010	7,165
			3,052	3,052	Design (Non-GOB)	7/1/2009	7/1/2010	3,052
				0	Dry run/permit			0
				0	Dry run/permit (Non-GOB)			0
				0	Contractor Selection			0
				0	Contractor Selection (Non-GOB)			0
		83,000		83,000	Construction On Going	4/1/2010	9/30/2012	83,000
			19,076	19,076	Construction On Going (Non-GOB)	4/1/2010	9/30/2012	19,076
				0	Construction Substantially Complete			0
				0	Construction Substantially Complete (Non-GOB)			0

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REVENUES					New Miami Art Museum Facility/GOB Project Number 296 70428 (Contract 2)	EXPENSES		
FY 2007-08 GOB Allocation (000's)	FY 2008-09 GOB Allocation (000's)	Future GOB Allocations (000's)	Other Funding Allocations (000's) *	Total Estimated Revenues (000's)	Milestones	Projected Schedule Start Date	End Date	Total Estimated Expenses (000's)
				0	Other			0
			6075	6075	FF&E (Non-GOB)			6075
235	8,400	91,365	31,000	131,000	TOTALS			131,000

* Other Funding (List sources and amounts)

Funding Source	Amount (000's)
Museum Funding	31,000
Total	31,000

Project Narrative/Description

Construct a new art museum for presenting exhibitions, expanding art collections, offer educational programs and will include a sculpture garden as part of the Museum Park project. The design for the MAM Project provides approximately 196,000 square feet of interior and exterior program space. As called for by the functional building program, the 118,000 square foot interior spaces are programmed for galleries, back of house, mechanical and amenities on four levels and the 78,000 square foot covered exterior spaces are programmed for exhibiting large-scale works of art, video and film projections, educational events, special events and a restaurant. The design also allows for an additional 25,000 square feet of interior program space in the future. Free of charge outdoor art components are also planned.

The design also includes under-building parking of approximately 78,000 square feet which will be contiguous with the parking for the Miami Science Museum (MSM). The total number of parking spaces beneath the two museums is estimated at approximately 480. The current overall project budget for the new museum is $220 million ($131 million for the building, $70 million for an operating endowment and $19 million for transitional expenses).

The $100 million from the BBC/GOB will be used for the design and construction of the building

GOB Total Funding Allocation Narrative/Description

$100 million of the $131 million capital project budget is from GOB funds.

GOB 2008-09 Funding Allocation Narrative/Description

The first GOB grant agreement to MAM was for $235,000 (less than ¼ of 1% of their total GOB allocation). These funds have been expended for eligible project costs. The 2008-2009 GOB funding allocation will be utilized for expenses in Pre-design, Planning, including preliminary engineering and Project management. In addition, MAM has spent $10,000,000 in privately raised funds on the development of the project to date. It is essential to provide the next allocation of GOB funds necessary to sustain work on the completion of the planning and design phase of the new building and to maintain this project's tight timetable.

**For municipalities and public agencies, this exhibit, along with the entity's resolution, conforms with Article III, Section I, 2Ae of the Building Better Communities Bond Program (GOB) Administrative Rules.