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

# Memorandum

MIAMI-DADE COUNTY

**Date:** March 2, 2010

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

Agenda Item No. 8(E)(1)(A)

**From:** George M. Burgess
County Manager

**Resolution No. R-215-10**

**Subject:** Termination and/or Termination and Replacement of the Rice-Ambac Interest Rate Swap Associated with the Dade County Resource Recovery Facility Refunding Bonds, Series 1996

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## Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the accompanying Resolution (Resolution) authorizing the County Mayor or County Mayor's designee, within the limitations set forth in this memorandum, to either (i) terminate the swap (Montenay Swap) associated with the Dade County Resource Recovery Facility Refunding Bonds, Series 1996 (Bonds) with Rice Financial Products (Rice) and guaranteed by Ambac Assurance Corporation (Ambac), and receive a termination payment or (ii) terminate the Montenay Swap and enter into a replacement swap with a new counterparty. The County intends to terminate the swap if the County receives a termination payment of $1 million or greater. If the payment due to the County is less that $1 million, the County will have the option to enter into a replacement swap provided the new swap will preserve the current positive cash flow the County receives from the existing swap. Approval of the Resolution will also authorize the County Mayor or County Mayor's designee to execute and deliver all things necessary to terminate and/or replace the Montenay Swap.

## Scope

This proposed agenda item will have a countywide impact.

## Fiscal Impact/Funding Source

Termination or termination and replacement of the Montenay Swap will eliminate the economic risk to the County if Ambac becomes insolvent. The termination value that the County would receive from Rice or Ambac, is expected to be equal to or greater that $1 million and would be used to pay debt service on the Bonds.

In the event the termination value payable to the County is less than $1 million, the County may opt to replace the Montenay Swap with a swap with similar economic terms in order to preserve the current cash flows. The cost to enter into the replacement swap will be paid by Rice or Ambac directly to the new counterparty at no cost to the County. Additionally, all County expenses, including consultant fees, will be paid by Ambac or Rice. Therefore, there will be no upfront cost due from the County in connection with replacing the swap.

## Background

The County entered into seven interest rate swaps with Rice Financial Products (Rice) that were all guaranteed by Ambac. The swap documents for six of the swaps included provisions that gave the County the option to terminate the transactions if Ambac failed to maintain pre-established

credit ratings. Under these agreements, if Standard and Poors Rating Service (S&P) downgraded Ambac's credit rating to below A- and if Moody's Investment Services (Moody's) downgraded Ambac's credit rating below A3, the County had the right to terminate the swap if Rice failed to (i) provide collateral satisfactory to the County or (ii) replace Ambac with a new guarantor within sixty days of the downgrade. Ambac failed to maintain the threshold credit ratings and was severely downgraded by both rating agencies which significantly increased the risks to the County if Ambac declared bankruptcy. As a result of the credit ratings downgrade, on September 15, 2009, the Board passed Resolution R-1096-09 approving the termination and replacement of the six Rice-Ambac interest rate swaps that included the ratings related termination provisions. All six swaps have been terminated and replaced. The seventh Rice-Ambac swap, the Montenay Swap, did not include any ratings related termination options. Therefore the County could not initiate termination for the same reasons as the first six swaps.

Despite the severe credit ratings downgrade, neither Rice nor Ambac are currently in default on the Montenay Swap. In order to eliminate any increased exposure to a probable Ambac insolvency, the County needed to negotiate mutually acceptable terms with Rice and Ambac. Consequently, staff began working with both Rice and Ambac to reach agreement regarding acceptable terms for terminating and/or replacing the swap.

The termination value on the Montenay Swap as of December 18, 2009 was $1,610,157. Adoption of this Resolution is being sought to complete negotiations with Rice and Ambac to terminate the swap. The County will have the option to terminate the swap without replacement if the termination value payable to the County is greater than $1 million. The County will seek to replace the swap if the termination value is less than $1 million, the new counterparty is rated at least AA- by S&P and A3 by Moody's respectively, and the anticipated cash flows and other terms are substantially the same as the existing Montenay Swap. This Resolution also authorizes the County Mayor or the County Mayor's designee to enter into any agreements and certificates necessary to accomplish the termination or the termination and replacement of the Montenay Swap after consultation with the County Attorney and the County's Swap Financial Advisor.

Resolution R-130-06 provides that any County contract with a third party be finalized and executed prior to being placed on a Board agenda. The items contemplated in the above documents will occur after the effective date of this Resolution in order to provide the County the maximum flexibility in the marketplace as the value of these types of transactions are highly dependent on prevailing market conditions. Therefore, a waiver of Resolution R-130-06 is necessary and is also being requested.

Assistant County Manager

# MEMORANDUM
(Revised)

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

**DATE:** March 2, 2010

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

**SUBJECT:** Agenda Item No. 8(E)(1)(A)

**Please note any items checked.**

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

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

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

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

_____ **Budget required**

_____ **Statement of fiscal impact required**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____ ) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(E)(1)(A)
3-2-10

RESOLUTION NO. R- **215-10**

RESOLUTION AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO NEGOTIATE WITH RICE FINANCIAL PRODUCTS COMPANY REGARDING INTEREST RATE SWAP INSURED BY AMBAC INDEMNITY CORPORATION RELATED TO CERTAIN SOLID WASTE BONDS IN ORDER TO MINIMIZE POTENTIAL ECONOMIC LOSS TO COUNTY; DELEGATING AUTHORITY WITHIN CERTAIN PARAMETERS TO COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO TERMINATE SAID SWAP OR TERMINATE IT AND ENTER INTO REPLACEMENT SWAP AND TO EXECUTE AND DELIVER ANY RELATED AGREEMENTS; AND AUTHORIZING COUNTY OFFICIALS TO TAKE ALL ACTIONS NECESSARY TO ACCOMPLISH SUCH PURPOSES

WHEREAS, the County entered into a floating rate basis swap on October 22, 1997 with Rice Financial Products Company ("Rice") that is insured by Ambac Indemnity Corporation ("Ambac") pursuant to Resolution No. R-1213-97 adopted by this Board on October 7, 1997 with respect to the $182,695,000 Dade County Resource Recovery Facility Refunding Bonds, Series 1996 ("Bonds") with a maturity date of October 1, 2013 ("Swap"); and

WHEREAS, Ambac has been downgraded by the rating agencies to a rating that is well below investment grade and is in jeopardy of having to file for insolvency ("Ambac Risk"); and

WHEREAS, it is in the best interest of the County, as fully described in the accompanying County Manager's memorandum ("Memorandum"), to negotiate with Rice to eliminate the Ambac Risk by terminating the Swap; and

WHEREAS, this Board wishes to delegate to the County Mayor or County Mayor's designee, the authority, within the parameters described in the Memorandum, with the approval of Rice and Ambac, to (i) terminate the Swap and receive a termination payment if the such payment is in excess of $1,000,000 or terminate it and enter into a new interest rate swap related

to the Bonds that would preserve the positive current cash flow to the County if the termination payment would be less than $1,000,000 ("Replacement Swap"); and (ii) to execute and deliver any and all related agreements,

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

**Section 1.** The foregoing recital clauses are incorporated in this resolution.

**Section 2.** The Board delegates to the County Mayor or County Mayor's designee the authority in accordance with the terms and parameters described in the Memorandum and after consultation with the Office of the Miami-Dade County Attorney ("County Attorney") and the County's Swap Financial Advisor, to (i) terminate the Swap and receive a termination payment if such payment is in excess of $1,000,000; or (ii) terminate the Swap and enter into a Replacement Swap, if the termination payment is less than $1,000,000, provided the Replacement Swap would preserve the current positive cash flow to the County, and to execute and deliver all documents that are necessary to terminate the Swap and enter into a Replacement Swap. The execution and delivery of any such documents by the County Mayor or County Mayor's designee shall be conclusive evidence of their approval by this Board.

**Section 3.** The County Mayor or County Mayor's designee, the Finance Director, the Clerk of the Board and other officers, employees and agents of the County are authorized and directed to do all acts and things and to execute and deliver any and all documents and certificates which they deem necessary or advisable in order to effectuate the termination of the Swap and the entering into a Replacement Swap, if necessary.

**Section 4.** The provisions of Resolution No. R-130-06, as amended, requiring that any contracts of the County with third parties be executed and finalized prior to their placement on the committee agenda is waived at the request of the County Manager for the reasons set forth in the Memorandum.

The foregoing resolution was offered by Commissioner **Joe A. Martinez**, who moved its adoption. The motion was seconded by Commissioner **Dorrin D. Rolle** and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman **aye**
Jose "Pepe" Diaz, Vice-Chairman **aye**

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|---|---|---|---|
| Bruno A. Barreiro | **aye** | Audrey M. Edmonson | **aye** |
| Carlos A. Gimenez | **nay** | Sally A. Heyman | **nay** |
| Barbara J. Jordan | **absent** | Joe A. Martinez | **aye** |
| Dorrin D. Rolle | **aye** | Natacha Seijas | **aye** |
| Katy Sorenson | **aye** | Rebeca Sosa | **absent** |
| Sen. Javier D. Souto | **aye** | | |

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of March, 2010. 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: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Gerald T. Heffernan