OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 8(M)(1)

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

DATE: May 7, 2013

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

SUBJECT: Resolution authorizing the execution of an Access and Indemnification Agreement between Miami-Dade County and the City of Miami to conduct the Virginia Key North Point Coastal Dune and Hammock Restoration Project through the County's Biscayne Bay Restoration and Enhancement Program
Resolution No. R-359-13

The accompanying resolution was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Prime Sponsor Commissioner Xavier L. Suarez.

R. A. Cuevas, Jr.
County Attorney

RAC/smm

Memorandum

MIAMI-DADE COUNTY

Date: May 7, 2013

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

From: Carlos A. Gimenez
Mayor

Subject: Resolution Authorizing the Execution of an Access and Indemnification Agreement between Miami-Dade County and the City of Miami to Conduct the Virginia Key North Point Coastal Dune and Hammock Restoration Project

---

Recommendation

It is recommended that the Board approve the attached resolution authorizing the execution of an Access and Indemnification Agreement between Miami-Dade County and the City of Miami to allow the County's Biscayne Bay Restoration and Enhancement Program to conduct the Virginia Key North Point Coastal Dune and Hammock Restoration Project.

Scope

North Point Park on Virginia Key is located in Commission District 7 (Commissioner Suarez).

Fiscal Impact/Funding Source

The estimated cost of the Virginia Key North Point Coastal Dune and Hammock Restoration Project is $350,000.00. Resolution No. R-422-12 approved a settlement agreement with petitioners of the Miami Harbor Federal Navigation Project Phase III for the transfer of $1,310,000.00 to the Biscayne Bay Environmental Enhancement Trust Fund, of which $350,000.00 is specified for the Virginia Key North Point Project. The project will be phased as funds become available during the Miami Harbor Project.

Track Record/Monitor

The Restoration and Enhancement Section Manager, Stephen Blair, within the Department of Regulatory and Economic Resources, Division of Environmental Resources Management, will monitor the activities performed under this Agreement.

Background

The Department of Regulatory and Economic Resources conducts various environmental restoration activities throughout Biscayne Bay under the County's Biscayne Bay Restoration and Enhancement Program. The attached Access and Indemnification Agreement will allow the County to access and conduct restoration activities on parcels owned by the City of Miami for the Virginia Key North Point Coastal Dune and Hammock Restoration Project.

Project activities consist of topographic surveying, evaluating, planning, permitting, removing exotic vegetation, moving and grading existing fill to create beach dunes and coastal hammocks, planting approximately 40,000 native plants and placing interpretative signage. These activities will be conducted by contractors selected through County-approved procurement processes and conducted by County staff and volunteers, as appropriate.

This restoration project will improve coastal habitat for wildlife and provide recreational and educational activities for residents and visitors.

Jack Osterholt, Deputy Mayor

MEMORANDUM
(Revised)

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

DATE: May 7, 2013

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

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

Please note any items checked.

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

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

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

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

_____ **Budget required**

_____ **Statement of fiscal impact required**

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

_____ **No committee review**

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

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(M)(1)
5-7-13

RESOLUTION NO. R-359-13

RESOLUTION AUTHORIZING THE EXECUTION OF AN ACCESS AND INDEMNIFICATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI TO CONDUCT THE VIRGINIA KEY NORTH POINT COASTAL DUNE AND HAMMOCK RESTORATION PROJECT THROUGH THE COUNTY'S BISCAYNE BAY RESTORATION AND ENHANCEMENT PROGRAM; AND AUTHORIZING THE MAYOR OR MAYOR'S DESIGNEE TO EXERCISE THE PROVISIONS CONTAINED THEREIN

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

WHEREAS, Miami-Dade County has the expertise and resources to conduct the Virginia Key North Point Coastal Dune and Hammock Restoration Project as outlined in the accompanying memo; and

WHEREAS, the City of Miami has agreed to allow Miami-Dade County to pursue the subject coastal resource enhancement activities,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the Mayor or Mayor's designee to execute an Access and Indemnification Agreement between Miami-Dade County and the City of Miami to conduct the Virginia Key North Point Coastal Dune and Hammock Restoration Project through the Miami-Dade County Biscayne Bay Restoration and Enhancement Program, subject to the terms and conditions set forth in the attached Agreement, in substantially the form attached hereto and made part hereof for and on behalf of Miami-Dade County; authorizes the Mayor or Mayor's designee to exercise

The foregoing resolution was offered by Commissioner **Lynda Bell**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman			**aye**
Lynda Bell, Vice Chair			**aye**
Bruno A. Barreiro	**aye**	Esteban L. Bovo, Jr.	**aye**
Jose "Pepe" Diaz	**absent**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Jean Monestime	**absent**	Dennis C. Moss	**aye**
Sen. Javier D. Souto	**absent**	Xavier L. Suarez	**aye**
Juan C. Zapata	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of May, 2013. 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: ***Christopher Agrippa***
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Thomas H. Robertson

ATTACHMENT A

ACCESS AND INDEMNIFICATION AGREEMENT BETWEEN THE CITY OF MIAMI AND MIAMI-DADE COUNTY

This Access and Indemnification Agreement (the "Agreement") is made and entered into this ____ day of _____, 2013, by and between the City of Miami ("City"), a municipal corporation of the State of Florida and Miami-Dade County ("County"), a political subdivision of the State of Florida.

WITNESSETH

WHEREAS, the City is the fee simple owner of certain real property known as Virginia Key North Point and depicted in Exhibit A, attached hereto and made a part hereof ("Property"); and

WHEREAS, the County is undertaking a coastal/environmental project entitled "Virginia Key North Point Coastal Dune and Hammock Restoration" ("Project"); and

WHEREAS, the City and the County have determined that the Project is in the best interest of the parties and it is of a mutual benefit to the residents of the City of Miami and Miami-Dade County; and

WHEREAS, the City grants to the County, its agents, representatives, employees or contractors herein after collectively referred to as "the County," a non-exclusive permit, to enter and remain upon the Property, for the sole and limited purpose of performing up to 17 acres of habitat restoration work within the scope of the Project (areas 6, 7, and 13 reference in Exhibit A) relating to the clearing and grubbing of exotic vegetation, creation of beach dune and coastal hammock topography by moving and grading existing fill, planting of native plant species, and the creation of interpretive trails on the North Point of Virginia Key (see Exhibit A), and for no other purpose whatsoever without permission of the City Commission, which permission may be withheld in the Commission's sole discretion; and

WHEREAS, the City grants the County access to perform the work specified herein, limited to the North Point of Virginia Key. All work performed by the County under this Agreement is limited to the referenced areas (6, 7, and 13) depicted in the approved North Point Virginia Key Master Plan (Exhibit A).

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants herein set forth, the parties hereto agree as follows

1. **EFFECTIVE DATE AND TERM:**

This Agreement shall take effect upon its execution, following approval by the City Commission and Board of County Commissioners and shall continue for a period of twenty-four (24) months from the date of notice by the County. If the County requires additional time to complete the Project, the County shall notify the City, in writing, at least ten (10) days prior to the commencement of the work.

2. **FUNDING:**

THE COUNTY SHALL FIND AND EXPEND THE FUNDS NECESSARY TO CONSTRUCT THE PROJECT.

3. **PERMITS AND APPROVALS:**

The County shall acquire at its sole expense, all necessary or applicable permits (local, state, and federal) and all necessary or applicable approvals (local, state, and federal) to implement the construction of the Project.

4. **SELF- INSURANCE:**

The County is self-insured in accordance with and subject to the limitations of Section 768.28, Florida Statutes, and shall provide written evidence of acceptable self-insurance under the laws of the State of Florida to the City's Department of Risk Management Director, 444 SW 2nd Av. 9th Floor, Miami, Fl. 33130 prior to execution of this Agreement. The County represents that its self-insurance program covers actions to recover for injury or loss of property, personal injury, or death caused by the negligent or wrongful acts or omission of its officers and employees.

5. **INDEMNIFICATION/CONTRACTOR'S INSURANCE:**

A. COUNTY & CITY INDEMNIFICATION

To the extent authorized by Florida law, the County hereby agrees to indemnify, defend, save and hold harmless the City and its respective officers, and employees, to the extent of all the limitations included with Section 768.28, Florida Statutes, from all claims, demands, liabilities, damages, losses, and suits of any nature whatsoever resulting from the County's actions under this Agreement, or arising out of, because of, or due to the breach of this Agreement by the County, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the City for its sole negligence or breach of contract.

The County hereby voluntarily and knowingly waives any and all claims against the City for personal injury or property damage sustained by the County, arising out of or related to the activities undertaken by the County, its agents, employees, contractors, sub-contractors, or consultants upon the Property or in connection with the work, and releases the City for any claims in connection therewith. The County, its agents, representatives, or contractors cannot, under Florida law, place any type of lien or encumbrance on the Property.

Notwithstanding any other term or provision herein, it is expressly understood and agreed by the County that the City is not responsible, liable, or otherwise answerable to pay any fee, cost, expense, reimbursement or other monetary compensation to the County, its agents, representatives, employees or contractors for the County's work or the County's services under this Agreement or in completion of the Project.

To the extent authorized by Florida law, the City hereby agrees to indemnify, defend, save and hold harmless the County and its respective officers, and employees, to the extent of all the limitations included with Section 768.28, Florida Statutes, from all claims, demands,

liabilities, damages, losses, and suits of any nature whatsoever resulting from the City's actions under this Agreement, or arising out of, because of, or due to the breach of this Agreement by the City, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the County for its sole negligence or breach of contract.

The City hereby voluntarily and knowingly waives any and all claims against the County for personal injury or property damage sustained by the City, arising out of or related to the activities undertaken by the City, its agents, employees, contractors, sub-contractors, or consultants upon the Property or in connection with the work, and releases the County for any claims in connection therewith. The City, its agents, representatives, or contractors cannot, under Florida law, place any type of lien or encumbrance on the Property.

Notwithstanding any other term or provision herein, it is expressly understood and agreed by the City that the County is not responsible, liable, or otherwise answerable to pay any fee, cost, expense, reimbursement or other monetary compensation to the City, its agents, representatives, employees or contractors for the City's work or services under this Agreement or in completion of the Project.

B. INSURANCE & CONTRACTOR'S INDEMNIFICATION

It is hereby agreed and understood that the City and the County operate an ongoing self insured program for general liability, automobile liability, and workers' compensation in accordance and subject to the limitations and provisions in Section 768.28 of the Florida Statutes.

The following insurance requirements will apply. Should the County retain the services of a contractor in the completion of the Project, within ten (10) days from Notice of Award, the contractor shall purchase and maintain such insurance as required in Exhibit B, Insurance Requirements , in order to safeguard from claims set forth below which may arise out of or result from the contractor's operations , whether such operations be by himself or by any sub-contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

In addition, the County shall require all contractors to indemnify, defend, save and hold harmless the city and its respective officers, and employees, from all claims, demands, liabilities, damages, losses, and suits of any nature whatsoever resulting from the contractor's actions under this agreement, or arising out of, because of, or due to the contractor's breach of this agreement. The County shall require all contractors to waive any and all claims against the City and release the City for personal injury or property damage the contractors may sustain, arising out of or related to the activities the contractors may undertaken upon the Property or in connection with the Project.

C. CERTIFICATE OF INSURANCE:

The contractor must provide the City and the County with the required certificate of insurance, which must be timely submitted, updated and transmitted to the City Risk Manager, whom shall review and comment upon or approver all required insurance.

All policies of insurance must provide the City and the County with written notice of cancellation, or material change within (30) days of such cancellation or change, or in accordance to policy provisions. All certificates or policies or insurance must be issued by companies authorized to do business under the laws of the State of Florida. All carriers affording

coverage must be rated at least (A-) as to management and no less than (V) as to its financial strength in accordance to the latest edition of Best's Key Rating Guide, published by A.M. Best Company.

6. THIRD PARTY BENEFICIARY:

This Agreement is solely for the benefit of the parties hereto and no third party shall be entitled to claim or enforce any rights hereunder.

7. COMPLIANCE WITH LAWS:

The parties shall comply with applicable federal, state and local laws, codes, ordinances, rules and regulations in performing their respective duties, responsibilities, and obligations pursuant to this Agreement and with all applicable laws relating to the Project. The parties shall not unlawfully discriminate in the performance of their respective duties under this Agreement.

8. NO PARTNERSHIP:

Nothing contained herein shall make, or be construed to make any party a principal, agent, partner or joint venture of the other.

9. HEADINGS:

Title and paragraph headings are for convenient reference and are not a part of this Agreement.

10. AUTHORITY:

Each of the parties hereto acknowledges it is duly authorized to enter into this Agreement and that the signatories below are duly authorized to execute this Agreement in their respective behalf.

11. ENTIRE AGREEMENT, AMENDMENTS:

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree 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 no modification, amendment or alteration in the terms contained herein shall be effective unless set forth in writing in accordance with this section. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties.

12. NOTICES:

Any and all notices required to be given under this Agreement shall be sent by first class mail, addressed to the following:

To the City:
Attention: Alice Bravo, P.E.
Assistant City Manager/Chief of Infrastructure
City of Miami
444 SW 2nd Avenue, 10th Floor
Miami, Florida 33130
(305) 416-1025

With a Copy to:
Attention: Director of Public Facilities
City of Miami
444 SW 2nd Avenue, 3rd Floor
Miami, Florida 33130
(305) 416-1458

City Attorney
City of Miami
444 SW 2nd Avenue, Suite 945
Miami, Florida 33130
(305) 416-1800

To the County:
Attention: Josh Mahoney, Biologist 2
Miami-Dade County Regulatory and Economic Resources (RER)
701 NW 1st Court 4th Floor
Miami, Florida 33136
(305) 372-6849

13. FLORIDA GOVERNMENTAL CONFLICT RESOLUTION ACT.

The City and the County shall attempt to resolve any disputes, controversies or claims that may arise between them under the provisions of this Agreement under the provisions of the Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes.

IN WITNESS WHEREOF, the parties hereto caused this Access and Indemnification Agreement to be executed this ___ day of _____, 2013.

ATTEST:

By:_____
Todd B. Hannon
City Clerk

APPROVED AS TO INSURANCE REQUIREMENTS

By:_____
Calvin Ellis, Director
Risk Management Department

CITY OF MIAMI, a municipal corporation of the State of Florida

By:_____
Johnny Martinez, P.E.
City Manager

APPROVED AS TO LEGAL FORM AND CORRECTNESS

By:_____
Julie O. Bru
City Attorney

ATTEST:

HARVEY RUVIN
CLERK OF THE BOARD

By: _____
Deputy Clerk

Approved by County Attorney
as to form and legal sufficiency

By:_____
County Attorney

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

By: _____
County Mayor or County Mayor's Designee

EXHIBIT A

"PROPERTY"

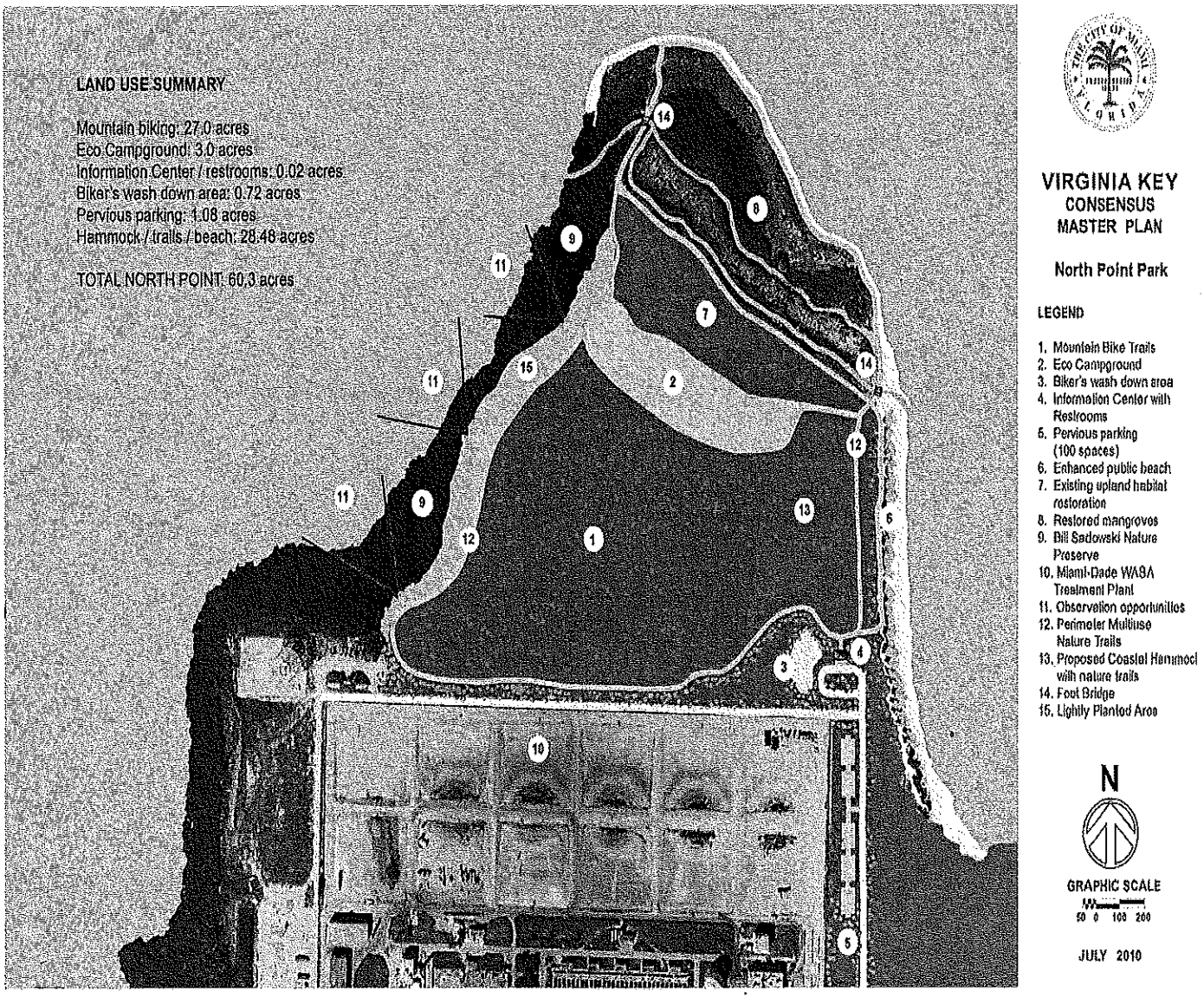

EXHIBIT B

INSURANCE REQUIREMENTS
FROM GENERAL CONTRACTOR –
VIRGINIA KEY NORTH POINT
COASTAL DUNE AND HAMMOCK RESTORATION PROJECT

I. Commercial General Liability *(Primary & Non Contributory)*

Limits of Liability

Bodily Injury and Property Damage Liability	
Each Occurrence	$1,000,000
General Aggregate Limit	$2,000,000
Products/Completed Operations	$1,000,000
Personal and Advertising Injury	$1,000,000

Endorsements Required

City of Miami & Miami-Dade County listed as an additional insured
Contingent & Contractual Liability
Primary Insurance Clause
Premises & Operations Liability
Explosion, Collapse and Underground Hazard
Loading and Unloading

II. Business Automobile Liability

Limits of Liability

Bodily Injury and Property Damage Liability
Combined Single Limit
Any Auto/Owned Autos/Scheduled
Including Hired, Borrowed or Non-Owned Autos
Any One Accident $1,000,000

Endorsements Required

City of Miami & Miami-Dade County listed as an additional insured

III. **Worker's Compensation**

Limits of Liability
Statutory - State of Florida
Waiver of subrogation

USL&H IF APPLICABLE

Employer's Liability

Limits of Liability

$1,000,000 for bodily injury caused by an accident, each accident.
$1,000,000 for bodily injury caused by disease, each employee
$1,000,000 for bodily injury caused by disease, policy limit

IV. **Umbrella Policy/Excess Liability (Excess Follow Form)**

A. Limits of Liability

Bodily Injury and Property Damage Liability	
Each Occurrence	$2,000,000
Aggregate	$2,000,000

B. Endorsements Required

City of Miami & Miami Dade County listed as an additional insured.

V. **Payment and Performance Bond** **$ TBD**
City of Miami and Miami-Dade County listed as Obligees

VI. **Protection and Indemnity (If Applicable)** $1,000,000
Jones Act Included

VII. **Owners & Contractors Protective**

Limits of Liability

Each Occurrence	$1,000,000
Policy Aggregate	$1,000,000

City of Miami and Miami-Dade County listed as named insured.

VIII. **Installation Floater (IF APPLICABLE)**

Causes of Loss: All Risk-Specific Coverage Project Location
Valuation: Replacement Cost
Deductible: $2,500 All other Perils
5% maximum on Wind

Limit/Value at Location or Site $_____

IX. **Professional/Pollution Liability (IF APPLICABLE)**

Each Claim	$1,000,000
Policy Aggregate	$1,000,000
Retro Date Coverage Included	

The above policies shall provide the City of Miami with written notice of cancellation or material change from the insurer in accordance to policy provisions.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than "A-" as to 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. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.