Memorandum

MIAMI-DADE COUNTY

Date: March 26, 2013

To: Robert A. Cuevas Jr.

From: Carlos A. Gimenez, Mayor

Subject: Airport City

On June 17, 2011, you provided an opinion that stated that the County's Cuba policy, legislation and administrative orders designed to preclude contracting with firms that directly or indirectly do business with Cuba, could not be enforced against subsidiaries of Odebrecht, S.A., who have existing contracts and bid submittals with the County.

On March 21, 2012, you provided an opinion that HB 959, which requires the County to obtain an affidavit from vendors certifying that they do not engage in business operations in Cuba and prohibits the County from accepting bids or proposals for County contracts for companies that fail to provide such certification, was "inoperative" due to the Savings Clause of Section 287.135 of Florida Statutes until such time as the federal government expressly authorizes states to enact such prohibitions or a Federal court finds that HB 959 is constitutional. You further advised under the Supremacy Clause of the U.S. Constitution, in the case of conflict between state and federal law, the County is obligated to follow federal law and that "if the County were to violate federal law in this area, it would be exposed to liability under federal civil rights laws."

At the time of your March 21, 2012 opinion, HB 959 had not yet been signed into law by the Governor. On May 1, 2012, Governor Scott signed HB 959. Subsequently, on June 4, 2012, Odebrecht Construction, Inc. filed, in federal court, a lawsuit against the Secretary of the Florida Department of Transportation. On June 25, 2012, U.S. District Judge K. Michael Moore issued a preliminary injunction preventing the law from going into effect. As reported in the Miami Herald, on March 21, 2013, the United States Court of Appeals for the Eleventh Circuit heard oral arguments in the case of Odebrecht Construction, Inc. v. Secretary, Florida Department of Transportation (Appellant).

As you are aware, Airport City at MIA is a mixed-use development which will be located on four sites to the immediate north and south of MIA's Central Boulevard. A developer, Odebrecht, was chosen through a competitive process administered by the Aviation Department and the Federal Aviation Administration (FAA) has reviewed the agreements and found they were in compliance with the County's obligations under the Federal grant assurances. Additionally, on February 27, 2013, the Federal Aviation Administration (FAA) issued to the Miami-Dade Aviation Department a Final Environmental Assessment (Final EA), Finding of No Significant Impact (FONSI), and Record of Decision (ROD).

Given that the Aviation Department has received all Federal approvals required to move forward with this project, but a Federal appeal is still pending, we would like request your legal guidance on moving forward with an agenda item for Board consideration that minimizes legal exposure on the part of Miami-Dade County.

c: Jack Osterholt, Deputy Mayor
Jose Abreu, Aviation Director
Emilio Gonzalez, Director-Designate