

**AMENDMENT NO. 2 TO INTERLOCAL AGREEMENTS BETWEEN
THE CITY OF CORAL GABLES, FLORIDA AND MIAMI-DADE COUNTY**

GOB Project Number 88-70653/ENHANCEMENTS-EXPANSION OF PARKS AND
PUBLIC PLAZAS Land Acquisition for Parks

GOB Project Number 88-72236/ENHANCEMENTS-EXPANSION OF PARKS AND
PUBLIC PLAZAS Sunrise Harbor Park

GOB Project Number 88-72235/ ENHANCEMENTS-EXPANSION OF PARKS AND
PUBLIC PLAZAS Biltmore Tennis Center

THIS AMENDMENT NO. 2 (the "Amendment") 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 City of Coral Gables, Florida, a municipal corporation organized under the laws of the State of Florida, through its governing body, the Mayor and Commissioners of the City of Coral Gables, Florida (the "Municipality") is entered into this 27th day of December, 2011.

WITNESSETH

WHEREAS, the County and the Municipality executed three (3) separate Interlocal Agreements for GOB Project Number 88/ENHANCEMENTS-EXPANSION OF PARKS AND PUBLIC PLAZAS. Land Acquisition for Parks/70653 executed on July 27, 2006 (the "Land Acquisition Agreement"), Sunrise Harbor Park/72236 executed on May 23, 2006 (the "Sunrise Harbor"), and Biltmore Tennis Center/72235 executed May 23, 2006 (the "Biltmore Tennis Agreement") (jointly referred to as the "Interlocal Agreements") in order to expend and utilize Building Better Communities General Obligation Bond ("BBC GOB") funds in accordance with the terms of the Interlocal Agreements and the BBC GOB Program Administrative Rules; and

WHEREAS, the Land Acquisition Agreement, the Sunrise Harbor Agreement and the Biltmore Tennis Agreement are attached hereto as Exhibits "A", "B", and "C", respectively, and incorporated herein by reference; and

WHEREAS, the Land Acquisition for Parks project and the Sunrise Harbor Park project have been completed with less BBC GOB funds than that which were allocated pursuant to the Land Acquisition Agreement and the Sunrise Harbor Agreement; and

WHEREAS, the Biltmore Tennis Center project has not yet been completed and is underfunded; and

WHEREAS, the County and the Municipality desire to utilize the unspent BBC GOB funds from the Land Acquisition for Parks project and the Sunrise Harbor project to complete the Biltmore Tennis Park project,

NOW THEREFORE, pursuant to Section 18 of the Interlocal Agreements which authorize the County Manager to modify and amend the Interlocal Agreements in accordance with the authority granted to the County Manager under Resolution No. R-595-05, to expend BBC GOB funds received for the purpose described in the funding request attached hereto as Exhibit "D", 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:¹

Section 1. The Land Acquisition Agreement is hereby amended as follows:

- a. The 5th WHEREAS clause shall state: "the Project as a whole is estimated to cost \$5,000,000 (the "Total Project Cost"). Project 88-70653 is estimated to cost ~~[\$2,222,000]~~ >>\$2,083,017<< and will be funded from the sources listed in Exhibit 1-A";
- b. The 6th WHEREAS clause shall state: "pursuant to the terms of this Agreement the County has agreed to allocate ~~[\$2,222,000]~~ >>\$2,083,017<< from the Series A 2005 Bonds for the Project 88-70653 (the "Funding Cycle Allocation")";
- c. Section 2(c) shall state: "The County agrees to provide solely from the BBC GOB Program proceeds for the Funding Cycle Allocation in an amount equal to ~~[\$2,222,000]~~ >>\$2,083,017<<."
- d. Exhibit 1 to the Land Acquisition Agreement shall be amended in the manner reflected in the document attached hereto as Exhibit "1-A" to this Amendment.

Section 2. The Sunrise Harbor Agreement is hereby amended as follows:

- a. The 5th WHEREAS clause shall state: "the Project as a whole is estimated to cost \$5,000,000 (the "Total Project Cost"). Project 88-72236 is estimated to cost ~~[\$170,000]~~ >>\$130,624<< and will be funded from the sources listed in Exhibit 1-B";
- b. The 6th WHEREAS clause shall state: "pursuant to the terms of this Agreement the County has agreed to allocate ~~[\$170,000]~~ >>\$130,624<< from the Series A 2005 Bonds for the Project 88-72236 (the "Funding Cycle Allocation")";
- c. Section 2(c) shall state: "The County agrees to provide solely from the BBC GOB Program proceeds for the Funding Cycle Allocation in an amount equal to ~~[\$170,000]~~ >>\$130,624<<."
- d. Exhibit 1 to the Sunrise Harbor Agreement shall be amended in the manner reflected in the document attached hereto as Exhibit "1-B" to this Amendment.

¹ Words stricken through and/or ~~[[double bracketed]]~~ shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment. Remaining provisions are now in effect and remain unchanged.

Section 3. The Biltmore Tennis Agreement is hereby amended as follows:

- a. The 5th WHEREAS clause shall state: “the Project as a whole is estimated to cost \$5,000,000 (the “Total Project Cost”). Project 88-72235 is estimated to cost ~~[[\$400,000]]~~ >> \$578,359 << and will be funded from the sources listed in Exhibit 1-C”;
- b. The 6th WHEREAS clause shall state: “pursuant to the terms of this Agreement the County has agreed to allocate ~~[[\$400,000]]~~ >> \$578,359 << from the Series A 2005 Bonds for the Project 88-72235 (the “Funding Cycle Allocation”)”;
- c. Section 2(c) shall state: “The County agrees to provide solely from the BBC GOB Program proceeds for the Funding Cycle Allocation in an amount equal to ~~[[\$400,000]]~~ >> \$578,359 <<.”
- d. Exhibit 1 to the Biltmore Tennis Agreement shall be amended in the manner reflected in the document attached hereto as Exhibit “1-C” to this Amendment.



IN WITNESS THEREOF, the parties through their duly authorized representatives hereby execute this AGREEMENT with an effective date of _____, 2011.

City of Coral Gables, Florida

By: [Signature] Date 12/1/11
Public Works Director

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
[Signature]
LOURDES ALFONSIN RUIZ
ASSISTANT CITY ATTORNEY

For the Board of Commissioners,
City of Coral Gables, Florida

, CLERK

Attest:

By: _____
Clerk Date

MIAMI-DADE COUNTY, FLORIDA

By: [Signature]
Deputy County Mayor

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

Stephen P. Clark Center
111 NW 1 Street
Miami, Florida 33128

HARVEY RUVIN, CLERK

Attest:

By: [Signature] Date 12/27/11
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

[Signature]

[Signature]

Initials: *DK* Date: *4/1/10*

**Miami-Dade County
Building Better Communities
General Obligation Bonds (GOB)**

<u>City of Coral Gables</u>					Enhancements/Expansion of Public Parks and Plazas GOB Project Number 88-70653 Land Acquisition for Parks				
REVENUES					Milestones		EXPENSES		
2005 GOB Allocation Original	2005 GOB Allocation Revised	Future GOB Allocations	Other Funding Allocations	Total Revenues Revised		Project Schedule Start Date	Project Schedule End Date	Total Expenses To Date	
				0	0	Project Administration			0
				0	0	Project Administration (Non-GOB)			0
2,222,000	2,083,017			2,083,017		Land Acquisition	12/1/07	11/1/10	2,083,017
				0	0	Land Acquisition (Non-GOB)			0
				0	0	Pre-design, Planning, including preliminary engineering			0
				0	0	Pre-design, Planning, including preliminary (Non-GOB)			0
				0	0	A&E Selection			0
				0	0	A&E Selection (Non-GOB)			0
				0	0	Design			0
				0	0	Design (Non-GOB)			0
				0	0	Dry run/permit			0
				0	0	Dry run/permit (Non-GOB)			0
				0	0	Contractor Selection			0
				0	0	Contractor Selection (Non-GOB)			0
				0	0	Construction On Going			0
				0	0	Construction On Going (Non-GOB)			0
				0	0	Construction Substantially Complete			0
				0	0	Construction Substantially Complete (Non-GOB)			0

DK

Initial *[Signature]* Date 1/14/11

REVENUES					EXPENSES			
2005 GOB Allocation Original	2005 GOB Allocation Revised	Future GOB Allocations	Other Funding Allocations	Total Revenues Revised	Milestones	Projected Schedule Start Date	Projected Schedule End Date	Total Expenses To Date
				0	Other			0
				0	Other (Non-GOB)			0
2,222,000	2,083,017	0	0	2,083,017	TOTALS			2,083,017

* Other Funding (List sources and amounts)

Funding Source	Amount
Total	0

Project Narrative/Description

Project consists of land acquisition to expand the city's parks.

GOB Total Funding Allocation Narrative/Description

GOB funding will provide all funding at this time.

GOB 2005 Funding Allocation Narrative/Description

GOB allocation will pay for 100 % of project.

[Handwritten mark]

Initial *[Signature]* Date *12/1/14*

**Miami-Dade County
Building Better Communities
General Obligation Bonds (GOB)**

City of Coral Gables		Enhancements/Expansion of Public Parks and Plazas GOB Project Number 88-72236 Sunrise Harbor Park						
		REVENUES		EXPENSES				
2005 GOB Allocation Original	2005 GOB Allocation Revised	Future GOB Allocations	Other Funding Allocations	Total Revenues Revised	Milestones	Project Schedule Start Date	Project Schedule End Date	Total Expenses To Date
				0	Project Administration			0
				0	Project Administration (Non-GOB)			0
				0	Land Acquisition			0
				0	Land Acquisition (Non-GOB)			0
				0	Pre-design, Planning, including preliminary engineering			0
				0	Pre-design, Planning, including preliminary (Non-GOB)			0
				0	A&E Selection			0
				0	A&E Selection (Non-GOB)			0
17,000	17,000			17,000	Design	3/1/08	7/30/09	17,000
				0	Design (Non-GOB)			0
				0	Dry run/permit			0
				0	Dry run/permit (Non-GOB)			0
				0	Contractor Selection			0
				0	Contractor Selection (Non-GOB)			0
140,000	113,624			113,624	Construction On Going	8/1/09	7/1/10	113,624
				0	Construction On Going (Non-GOB)			0
				0	Construction Substantially Complete			0
13,000				0	Construction Substantially Complete (Non-GOB)			0

[Handwritten mark]

Initial DK Date 12/1/11

REVENUES				EXPENSES				
2005 GOB Allocation Original	2005 GOB Allocation Revised	Future GOB Allocations	Other Funding Allocations	Total Revenues Revised	Milestones	Projected Schedule Start Date	Projected Schedule End Date	Total Expenses To Date
				0	Other			0
				0	Other (Non-GOB)			0
170,000	130,624	0	0	130,624	TOTALS			130,624

* Other Funding (List sources and amounts)

Funding Source	Amount
Total	0

Project Narrative/Description

Replacement of drinking fountains, bury utility lines crossing park, resurface basketball court and construct a new pavilion.

GOB Total Funding Allocation Narrative/Description

GOB funding will provide all funding at this time.

GOB 2005 Funding Allocation Narrative/Description

GOB allocation will pay for 100 % of project.

Initial *DK* Date *12/11*

**Miami-Dade County
Building Better Communities
General Obligation Bonds (GOB)**

<u>City of Coral Gables</u>					Enhancements/Expansion of Public Parks and Plazas GOB Project Number 88-72235 Biltmore Tennis Center					
REVENUES			Milestones	EXPENSES		Total Expenses To Date				
2005 GOB Allocation Original	2005 GOB Allocation Revised	Future GOB Allocations		Other Funding Allocations	Total Revenues Revised		Project Schedule Start Date	Project Schedule End Date		
				0	0	0	0	0	0	0
				0	0	0	0	0	0	0
				0	0	0	0	0	0	0
				0	0	0	0	0	0	0
				0	0	0	0	0	0	0
10,000	10,000			10,000		8/1/07	2/10/09	10,000		
				0	0			0		
				0	0			0		
40,000	40,000			40,000		2/11/09	2/17/10	40,000		
				0	0			0		
				0	0			0		
				0	0			0		
				0	0			0		
				0	0			0		
300,000	528,359			528,359		2/18/10	12/31/13	528,359		
				0	0			0		
50,000				0				0		
				0	0			0		

FB

Initial Date 2/21/14

REVENUES				EXPENSES				
2005 GOB Allocation Original	2005 GOB Allocation Revised	Future GOB Allocations	Other Funding Allocations	Total Revenues Revised	Milestones	Projected Schedule Start Date	Projected Schedule End Date	Total Expenses To Date
				0	Other			0
				0	Other (Non-GOB)			0
400,000	578,359	0	0	578,359	TOTALS			578,359

* Other Funding (List sources and amounts)

Funding Source	Amount
Total	0

Project Narrative/Description

Construct permanent bleachers with storage, install speed bumps in the driveway, design and build 3/4 wall racquetball court near practice wall, upgrade lighting on all wall courts to the industry standard of 80 foot candles, re-size or eliminate service window, landscape along access road to separate access area tennis complex, and remodel restrooms.

GOB Total Funding Allocation Narrative/Description

GOB funding will provide all funding at this time.

GOB 2005 Funding Allocation Narrative/Description

GOB allocation will pay for 100 % of project.

**AGREEMENT
BETWEEN
THE CITY OF CORAL GABLES FLORIDA
AND
MIAMI-DADE COUNTY**

**GOB Project Number 88-70653/ENHANCEMENTS-EXPANSION OF PARKS
AND PUBLIC PLAZAS
Land Acquisition for Parks**

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 City of Coral Gables, Florida, a municipal corporation organized under the laws of the State of Florida, through its governing body, the Mayor and Commissioners of the City of Coral Gables, Florida (the "Municipality") is entered into this 27th day of July, 2006.

WITNESSETH

WHEREAS, on July 20, 2004, the Board enacted 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 countywide projects, neighborhood projects for the Unincorporated Municipal Service Area and municipalities and associated allocations for activities such as but not limited to development, improvement, rehabilitation, restoration or acquisition of real property; and

WHEREAS, GOB Project Number 88/Enhancements-Expansion of Public Parks and Plazas, (the "Project") is eligible for funding from the BBC GOB Program in a total amount not to exceed \$5,000,000 (the "Funding Allocation"); and

WHEREAS, the Municipality is undertaking completion of enhancements to Salvadore Park (the "Project 88-70651"), Coral Bay Park (the "Project 88-70652"), Phillips Park (the "Project 88-72231"), Youth Center (the "Project 88-72232"), Riviera Park (the "Project 88-72234"), Biltmore Tennis Center (the "Project 88-72235"), Sunrise Harbor Park (the "Project 88-72236"), Venetian Pool (the "Project 88-72237"), addition of Signage and Historical Markers (the "Project 88-72230"), and expansion of public parks through Land Acquisition (the "Project 88-70653") 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

WHEREAS, the Project as a whole is estimated to cost \$5,000,000 (the "Total Project Cost"). Project 88-70653 is estimated to cost \$2,222,000 and will be funded from the sources listed in Exhibit 1; and

WHEREAS, pursuant to the terms of this Agreement the County has agreed to allocate \$2,222,000 from the Series A 2005 Bonds for the Project 88-70653 (the "Funding Cycle Allocation"); and

WHEREAS, the Commissioners of both the County and the Municipality have authorized, by resolution, their respective managers to enter into this Agreement 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, sub-agreements and other required contracts and documents, to expend Building Better Communities bond funds received for the purpose described in the funding request, 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. Purpose: The purpose of this Agreement is to clarify the parties' roles and obligations regarding the funding being provided with respect to Project 88-70653.

Section 2. Funding Responsibilities:

- a. **Project Funding Plan:** A Project 88-70653 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 Municipality through a local funding plan or 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.
- b. **Representations of the Municipality:** The Municipality covenants and warrants that it has, in combination with the Funding Allocation, the amount of funding necessary for the completion of the acquisition of Project 88-70653. The additional sources of funding are listed in Exhibit 1.
- c. **Responsibilities of the County:** The County agrees to provide solely from BBC GOB Program proceeds for the Funding Cycle Allocation in an amount equal to \$2,222,000. This amount represents a portion of the amount necessary to complete the acquisition of Project 88-70653. This sum shall be provided in accordance with the reimbursement procedures contained in the County's GOB Administrative Rules attached as Attachment 1. In the event that the Project Milestones, as defined and set forth in Exhibit 1 of this Agreement are not within 10% of completion, the dollars to be funded for subsequent Milestones may be delayed for one calendar year in

accordance with the Administrative Rules, see Section 18 of this Agreement.

Section 3. Effective Date and Term: This Agreement shall take effect upon execution and shall terminate upon the completion of the acquisition of Project 88-70653, including the completion of all final closeout documentation.

Section 4. Compliance with Codes and Laws: Each party agrees to abide 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, Section 2-11.15 of the Code (Art in Public Places), and all other applicable requirements contained in this Agreement and Attachment 1, which exhibit is hereby incorporated in this Agreement by this reference.

Section 5. Contractual obligation to comply with certain County requirements:

All records of the Municipality 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 Municipality shall cause each contract to include a provision that contractor shall comply with all requirements of Section 2-1076, 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 Municipality shall comply with the requirements of Florida Statutes related to retainage of funds due a contractor and shall include appropriate language in its construction contracts and shall require the contractor to include such language in its subcontracts.

All applicable County Rules, Regulations, Ordinances, Resolutions, Administrative Orders, and the County Charter referenced in this agreement are posted on the County's website: "miamidade.gov".

Section 6. **Access and Audits:** The Municipality shall maintain adequate records to justify all charges, expenses, and costs incurred which represent the funded portion of Project 88-70653 for at least three (3) years after completion of the the acquisition of the Project. The County shall have access to all books, records, and documents as required in this section for the purpose of inspection or auditing during normal business hours.

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 **Independent Private Sector Inspector General (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 Municipality 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 Municipality (and any affected contractor and materialman) from IG, the Municipality (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 Municipality, its contractors and their respective officers, agents and employees. The Municipality 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 Municipality, 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 Municipality.

Section 7. Relationship of the Parties: The parties agree that the Municipality is an independent entity responsible solely for Project 88-70653 and not an agent or servant of the County. 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.

Section 8. Liability: The parties to this Agreement shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party. Nothing contained herein shall be construed as a waiver, by either party, of the liability limits established in Section 768.28 of the Florida Statutes. The Municipality acknowledges that the County, its employees, commissioners and agents are solely providing funding assistance for Project 88-70653 and are not involved in the design, construction, operation or maintenance of Project 88-70653.

Section 9. Breach, Opportunity to Cure and Termination:

- (a) Each of the following shall constitute a default by the Municipality:
- (1) If the Municipality uses the Funding Cycle Allocation for costs not associated with Project 88-70653 (i.e. ineligible costs), and the Municipality fails to cure its default within thirty (30) days after written notice of the default is given to the Municipality 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 Municipality commences diligently and thereafter continues to cure.
 - (2) If the Municipality shall breach any of the other covenants or provisions in this Agreement other than as referred to in Section 9(a)(1) and the Municipality fails to cure its default within thirty (30) days after written notice of the default is given to the Municipality 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 Municipality 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 Municipality; 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 9(a)(1) and such default is not cured within the applicable grace period, the County, in addition to all other remedies conferred by this Agreement, the Municipality 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 9(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.

Section 10. Litigation Costs/Venue: In the event that the Municipality 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 Municipality 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 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 not less than once and equal to half the number of times the most frequent sponsor or advertiser is named, whichever is greater. 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 unless waived by the Board. The Municipality 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 12. Notice: 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, Stephen P. Clark Center
111 NW 1 Street, Suite 2910
Miami, Florida 33128

The Municipality:
David L. Brown, City Manager
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Section 13. Modification and Amendment: Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.

Section 14. Joint Preparation: The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

Section 15. Headings: Captions and headings in this Agreement are for ease 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 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. Representation of the Municipality: The Municipality represents that this Agreement has been duly authorized, executed and delivered by Mayor and Commissioners, as the governing body of the City of Coral Gables, Florida and it has granted the City Manager, or his designee, the required power and authority to execute this Agreement. The Municipality agrees to a) maintain Project 88-70653 for a minimum of 25 years, b) agrees to govern itself, in regards to the subject Project, in accordance with Article 6 of the County Charter, c) keep Project 88-70653 open safely and properly maintained for all Miami-Dade County residents, and d) allow all Miami-Dade County residents equal access and use of Project 88-70653 and not discriminate when charging facility admission fees based on where a resident resides in the County. The Municipality also agrees to accept and comply with the Administrative Rules as stated in Attachment 1 and as may hereafter be amended.

Section 18. 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 Municipality for the purpose of acquiring Project 88-70653 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 Municipality provided the Municipality is not in breach of this agreement and the Municipality has demonstrated that it has adequate funds to complete the acquisition of Project 88-70653. 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. The Municipality shall be solely responsible for submitting all documentation, as required by the specific Administrative Rules incorporated herein as Attachment 1, to the County Manager or his designee for this purpose.

Section 19. 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 20. Indemnity: The Municipality does hereby agree to indemnify and hold harmless the County to the extent and within the limitations of Section 768.28 Florida Statutes, subject to the provisions of that statute, whereby the Municipality shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$100,000, or any claim or


judgments or portions thereof, which when totaled with all other occurrences, exceeds the sum of \$200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the Municipality. However, nothing herein shall be deemed to indemnify the County from any liability or claim arising out of the negligent performance or failure of performance of the County or any unrelated third party.

The County does hereby agree to indemnify and hold harmless the Municipality to the extent and within the limitations of Section 768.28 Florida Statutes, subject to the provisions of that statute, whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$100,000, or any claim or judgments or portions thereof, which when totaled with all other occurrences, exceeds the sum of \$200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the County. However, nothing herein shall be deemed to indemnify the Municipality from any liability or claim arising out of the negligent performance or failure of performance of the Municipality or any unrelated third party.

Section 21. Assignment: The Municipality may not assign all or any portion of this Agreement without the prior written consent of the County.

Section 22. Entirety of 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 WITNESS THEREOF, the parties through their/duly authorized representatives hereby execute this AGREEMENT with an effective date of _____, 2006.


City Clerk
7/5/06
Walter J. Foeman

City of Coral Gables, Florida

By: 
City Manager Date

APPROVED AS TO FORM


ELIZABETH M. HERNANDEZ
CITY ATTORNEY


For the Board of Commissioners,
City of Coral Gables, Florida

, CLERK

Attest:

By: _____
Clerk Date

MIAMI-DADE COUNTY, FLORIDA

By: 
County Manager

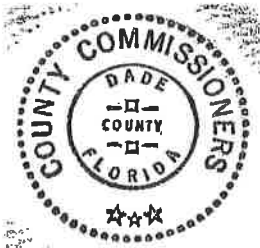
MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

Stephen P. Clark Center
111 NW 1 Street
Miami, Florida 33128

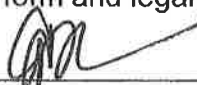
HARVEY RUVIN, CLERK

Attest:

By:  7/27/06
Deputy Clerk Date



Approved by County Attorney as
to form and legal sufficiency.



**Miami-Dade County
Building Better Communities**

<u>City of Coral Gables</u>				Enhancements/Expansion of Public Parks and Plazas GOB Project Number 88-70653 Land Acquisition			
REVENUES			Milestones	EXPENSES		Total Estimated Expenses (000's)	
2005 GOB Allocation (000's)	Future GOB Allocations (000's)	Other Funding Allocations (000's) *		Projected Start Date	Projected End Date		
		0	Project Administration			0	
		0	Project Administration (Non-GOB)			0	
2,212		2,212	Land Acquisition	1/1/06	1/1/07	2,212	
		0	Land Acquisition (Non-GOB)			0	
		0	Pre-design, Planning, including preliminary engineering			0	
		0	Pre-design, Planning, including preliminary (Non-GOB)			0	
		0	A&E Selection			0	
		0	A&E Selection (Non-GOB)			0	
		0	Design			0	
		0	Design (Non-GOB)			0	
		0	Dry run/permit			0	
		0	Dry run/permit (Non-GOB)			0	
		0	Contractor Selection			0	
		0	Contractor Selection (Non-GOB)			0	
		0	Construction On Going			0	
		0	Construction On Going (Non-GOB)			0	
		0	Construction Substantially Complete			0	
		0	Construction Substantially Complete (Non-GOB)			0	

**AGREEMENT
BETWEEN
THE CITY OF CORAL GABLES FLORIDA
AND
MIAMI-DADE COUNTY**

**GOB Project Number 88-72236/ENHANCEMENTS-EXPANSION OF PARKS
AND PUBLIC PLAZAS
Sunrise Harbor Park**

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 City of Coral Gables, Florida, a municipal corporation organized under the laws of the State of Florida, through its governing body, the Mayor and Commissioners of the City of Coral Gables, Florida (the "Municipality") is entered into this 23 day of May, 2006.

WITNESSETH

WHEREAS, on July 20, 2004, the Board enacted 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 countywide projects, neighborhood projects for the Unincorporated Municipal Service Area and municipalities and associated allocations for activities such as but not limited to development, improvement, rehabilitation, restoration or acquisition of real property; and

WHEREAS, GOB Project Number 88/Enhancements-Expansion of Public Parks and Plazas, (the "Project") is eligible for funding from the BBC GOB Program in a total amount not to exceed \$5,000,000 (the "Funding Allocation"); and

WHEREAS, the Municipality is undertaking completion of enhancements to Salvadore Park (the "Project 88-70651"), Coral Bay Park (the "Project 88-70652"), Phillips Park (the "Project 88-72231"), Youth Center (the "Project 88-72232"), Riviera Park (the "Project 88-72234"), Biltmore Tennis Center (the "Project 88-72235"), Sunrise Harbor Park (the "Project 88-72236"), Venetian Pool (the "Project 88-72237"), addition of Signage and Historical Markers (the "Project 88-72230"), and expansion of public parks through Land Acquisition (the "Project 88-70653") 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

FB

WHEREAS, the Project as a whole is estimated to cost \$5,000,000 (the "Total Project Cost"). Project 88-72236 is estimated to cost \$170,000 and will be funded from the sources listed in Exhibit 1; and

WHEREAS, pursuant to the terms of this Agreement the County has agreed to allocate \$170,000 from the Series A 2005 Bonds for the Project 88-72236 (the "Funding Cycle Allocation"); and

WHEREAS, the Commissioners of both the County and the Municipality have authorized, by resolution, their respective managers to enter into this Agreement 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, sub-agreements and other required contracts and documents, to expend Building Better Communities bond funds received for the purpose described in the funding request, 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. Purpose: The purpose of this Agreement is to clarify the parties' roles and obligations regarding the funding being provided with respect to Project 88-72236.

Section 2. Funding Responsibilities:

- a. **Project Funding Plan:** A Project 88-72236 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 Municipality through a local funding plan or 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.
- b. **Representations of the Municipality:** The Municipality covenants and warrants that it has, in combination with the Funding Allocation, the amount of funding necessary for the completion of Project 88-72236. The additional sources of funding are listed in Exhibit 1.
- c. **Responsibilities of the County:** The County agrees to provide solely from BBC GOB Program proceeds for the Funding Cycle Allocation in an amount equal to \$170,000. This amount represents a portion of the amount necessary to complete Project 7-70560. This sum shall be provided in accordance with the reimbursement procedures contained in the County's GOB Administrative Rules attached as Attachment 1. In the event that the Project Milestones, as defined and set forth in Exhibit 1 of this Agreement are not within 10% of completion, the dollars to be funded for subsequent Milestones may be delayed for one calendar year in accordance with the Administrative Rules, see Section 18 of this Agreement.

Section 3. Effective Date and Term: This Agreement shall take effect upon execution and shall terminate upon the completion of Project 88-72236, including the completion of all final closeout documentation.

Section 4. Compliance with Codes and Laws: Each party agrees to abide by all Applicable Laws necessary for the development and completion of Project 88-72236. "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 and Attachment 1, which exhibit is hereby incorporated in this Agreement by this reference.

Section 5. Contractual obligation to comply with certain County requirements:

The Municipality shall comply and shall cause its contractors to 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 provide Developer, on an annual basis, and execute a Miami-Dade County Disability Non-Discrimination Affidavit confirming such compliance.

The Municipality 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), Resolution No. R-385-95 (Policy prohibiting contracts with firms violating the ADA and other laws prohibiting discrimination on the basis of disability), Resolution No. R.-185-00 (Domestic Leave Ordinance).

Except where State or federal laws or regulations mandate to the contrary, the Municipality shall comply and shall cause its contractors to comply with the requirements of Section 2-1701 of the Code of Miami-Dade County and

Administrative Order 3-27 and the Community Workforce Program Provisions to the same extent as if this Agreement were a County capital construction contract.

Except where State or federal laws or regulations mandate to the contrary, the Municipality shall comply and shall cause its contractors to comply with the requirements of Section 10-33.02 of the Code of Miami-Dade County and the Community Small Business Enterprise Program Provisions to the same extent as if this Agreement were a County capital construction contract.

The Municipality shall cooperate and shall cause its contractors and consultants to cooperate with the County's Department of Business Development ("DBD") to identify and establish appropriate Community Business Enterprise goals for architecture and engineering services ("CBE-A/E"), and to identify and establish appropriate Community Small Business Enterprise ("CSBE") subcontractor and local workforce (CWP) goals for construction trade and labor work associated with the Project. The Municipality shall cause its contractors to comply with all CBE-A/E, CSBE subcontractor and local workforce goals established by DBD for the Project and shall cause its contractors to comply with all other requirements of the CBE-A/E Participation Provisions, CSBE Participation Provisions and Community Workforce Program Provisions.

The Municipality shall, and shall require all contractors and consultants to, (a) comply with all periodic monitoring and other compliance documentation required by DBD in connection with the CBE-A/E Participation Provisions, the CSBE Participation Provisions, and the CWP, (b) grant to DBD all rights of access to records of contractors and subcontractors for monitoring and compliance with the foregoing, and (c) comply with all enforcement actions and pay any sanctions imposed by DBD for non-compliance with the foregoing. The Municipality shall include the foregoing requirements in each contract.

All records of the Municipality and its contractors pertaining to Project 88-72236 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 Municipality shall cause each contract to include a provision that contractor shall comply with all requirements of the CWP, the CBE-A/E Participation Provisions and the CSBE Participation Provisions (including prompt payment), and Section 2-1076, and that contractor will maintain all files, records, accounts of expenditures for contractor's portion of the Work and that such records shall be maintained within Miami-Dade County and County shall have access thereto as provided in this Agreement.

The Municipality shall comply with the requirements of Florida Statutes related to retainage of funds due a contractor and shall include appropriate language in its construction contracts and shall require the contractor to include such language in its subcontracts.

All applicable County Rules, Regulations, Ordinances, Resolutions, Administrative Orders, and the County Charter referenced in this agreement are posted on the County's website: "miamidade.gov".

Section 6. Access and Audits: The Municipality shall maintain adequate records to justify all charges, expenses, and costs incurred which represent the funded portion of Project 88-72236 for at least three (3) years after completion of the Project. The County shall have access to all books, records, and documents as required in this section for the purpose of inspection or auditing during normal business hours.

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 **Independent Private Sector Inspector General (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 Municipality 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 Municipality (and any affected contractor and materialman) from IG, the Municipality (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 Municipality, its contractors and their respective officers, agents and employees. The Municipality 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 Municipality, 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 Municipality.

Section 7. Relationship of the Parties: The parties agree that the Municipality is an independent entity responsible solely for Project 88-72236 and not an agent or servant of the County. 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.

Section 8. Liability: The parties to this Agreement shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party. Nothing contained herein shall be construed as a waiver, by either party, of the liability limits established in Section 768.28 of the Florida Statutes. The Municipality acknowledges that the County, its employees, commissioners and agents are solely providing funding assistance for Project 88-72236 and are not involved in the design, construction, operation or maintenance of Project 88-72236.

Section 9. Breach, Opportunity to Cure and Termination:

- (a) Each of the following shall constitute a default by the Municipality:
- (1) If the Municipality uses the Funding Cycle Allocation for costs not associated with Project 88-72236 (i.e. ineligible costs), and the Municipality fails to cure its default within thirty (30) days after written notice of the default is given to the Municipality 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 Municipality commences diligently and thereafter continues to cure.
 - (2) If the Municipality shall breach any of the other covenants or provisions in this Agreement other than as referred to in Section 9(a)(1) and the Municipality fails to cure its default within thirty (30) days after written notice of the default is given to the Municipality 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 Municipality 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 Municipality; 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 9(a)(1) and such default is not cured within the applicable grace period, the County, in addition to all other remedies conferred by this Agreement, the Municipality 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 9(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.

Section 10. Litigation Costs/Venue: In the event that the Municipality 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 Municipality 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 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 not less than once and equal to half the number of times the most frequent sponsor or advertiser is named, whichever is greater. 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 unless waived by the Board. The Municipality 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 12. Notice: 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, Stephen P. Clark Center
111 NW 1 Street, Suite 2910
Miami, Florida 33128

The Municipality:
David L. Brown, City Manager
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Section 13. Modification and Amendment: Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.

Section 14. Joint Preparation: The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

Section 15. Headings: Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.