

**FIFTH AMENDMENT TO
THE INTERLOCAL COOPERATION AGREEMENT**

This Fifth Amendment to the Interlocal Cooperation Agreement (the “Fifth Amendment”), made this 5th day of April, 2022 (the “Effective Date”), by and among Miami-Dade County, a political subdivision of the State of Florida (the “County”), the City of Miami Beach, a municipal corporation under the laws of the State of Florida (the “City”), and the Miami Beach Redevelopment Agency, a public agency and body corporate created pursuant to Section 163.356, Florida Statutes (the “Agency”).

WHEREAS, the Miami-Dade County Board of County Commissioners (the “Board”) adopted Resolution No. R-317-93 on March 30, 1993, approving, among other things, the City Center/Historic Convention Village Redevelopment and Revitalization Plan (the “Plan”), and delegated certain powers conferred on the Board by Part III, Chapter 163, Florida Statutes (the “Act”), to implement the Plan to the Mayor and City Commission of the City of Miami Beach (the “City Commission”), all for the project area commonly called “City Center/Historic Convention Village Redevelopment and Revitalization Area” (the “Area”), and such Area previously referred to in the Interlocal Agreement described below as the “Project”, and herein referred to as the “Redevelopment Area”; and

WHEREAS, the Board also enacted Ordinance No. 93-28 on April 27, 1993, which among other things, established a trust fund (the “Fund” or “Trust Fund”) to fund improvements in the Redevelopment Area; and

WHEREAS, the County and the City also approved and entered into the Interlocal Cooperation Agreement, executed on November 16, 1993 (the “Interlocal Agreement), as amended by the First Amendment (defined below), by the Second Amendment (defined below),

by the Third Amendment (defined below), and by the Fourth Amendment (defined below), by which the County delegated to the City certain redevelopment powers granted by the Act, including but not limited to the creation of the Redevelopment Area and implementation of the Plan; and

WHEREAS, the County and the City adopted Resolution No. R-889-03 and Resolution No. 2003-2537, respectively, approving an amendment to the Plan to incorporate the development and implementation of community policing initiatives; and

WHEREAS, the Board, through Resolution No. R-889-03, and the City Commission, through Resolution No. 2003-25241, also approved an amendment to the Interlocal Agreement (the “First Amendment”) to delegate to the City the power to implement the community policing initiatives; and

WHEREAS, the Board, through Resolution No. R-958-05, and the City Commission, through Resolution No. 2004-25560, also approved a second amendment to the Interlocal Agreement (“Second Amendment”) whereby (i) the County, City, and Agency agreed that the Agency would remit one and one-half percent (1.5%) of the Tax Increment Revenue paid to the Agency for said fiscal year to the County to defray administrative costs for oversight and processing Agency related items, after debt service and all other obligations related to the bonds or future indebtedness issued by the Agency and approved by the County was satisfied for the fiscal year, and (ii) the County approved the Agency’s issuance of refunding bonds in an amount not to exceed a principal amount of \$101,090,000.00 to refinance all or a portion of the outstanding principal amount of bonds issued with respect to the Redevelopment Area; and

WHEREAS, the Board, through Resolution No. R-1110-14, and the City Commission, through Resolution No. 2014-28835, also approved a third amendment to the Interlocal Agreement

(the “Third Amendment”), which, among other terms, extended the life of the Agency to March 31, 2044, authorized the issuance of tax increment revenue bonds (the “RDA Bonds”) to support the Convention Center Renovation and Expansion Project (the “Convention Center Project”), and further provided for related payment terms, with the intent that all available excess Trust Fund revenues remaining on deposit in the Trust Fund be used for the prepayment or redemption of debt prior to maturity of the RDA Bonds, with such prepayment or redemption of debt commencing in FY 2023-2024; and

WHEREAS, the Board, through Resolution No. R-644-18, the City Commission, through Resolution No. 2018-30288, and the Agency, through Resolution No. 629-2018, also approved a fourth amendment to the Interlocal Agreement (the “Fourth Amendment”), which, among other terms, recognized that the available revenues remaining on deposit in the Trust Fund, as of the Agency’s year-end for FY 2016-17 were estimated to be at approximately \$34,000,000 and (a) in recognition of additional costs incurred by the City in connection with the Convention Center Project, including expenses resulting from Hurricane Irma and other unforeseen circumstances, authorized the allocation of excess Trust Fund revenues in the amount of \$6,914,221.00 to the Convention Center Project, and (b) in recognition of the joinder by the City, the County and the City of Miami to the Rockefeller Foundation’s 100 Resilient Cities network as Greater Miami and the Beaches and commitment to developing a resilience strategy that, among other things, aggressively combats the risks of rising sea levels, coastal erosion, and hurricanes, provides protection from storm surges associated with hurricanes and other storm events, maintains and protects our coastal beaches, which provide direct benefits and protection to the people, property and infrastructure developed on the barrier islands and which are a major feature of the Greater Miami and the Beaches tourism industry attracting visitors from all over the world to our

community, authorized the distribution of excess Trust Fund Revenues to the County and the City beginning FY 2017-18 and continuing until FY 2022-23, with the County and City each setting aside \$1.5 million per year from the foregoing distribution of excess Trust Fund revenues to fund beach renourishment efforts, which can be used to leverage State or Federal funding for beach renourishment purposes, and (c) in recognition of the continuing need to refurbish the Lincoln Road pedestrian mall from Collins Avenue to West Avenue and adjacent corridors, authorized the distribution of an amount up to \$20,000,000 to fund the Lincoln Road Project previously authorized as part of the Third Amendment, for a total project amount of up to \$40,000,000 for the Lincoln Road Project; and

WHEREAS, after distribution of Tax Increment Revenues in the order, priority, and amounts required by this Interlocal Agreement, the available revenues remaining on deposit in the Trust Fund, as of the Agency's year-end for FY 2020-21, are projected at approximately \$31,900,000.00 and

WHEREAS, the County is requesting to expand the use of the excess Trust Fund revenues set aside by the County for the purpose of funding beach renourishment to be used for any beaches within Miami-Dade County in the County's sole discretion; and

WHEREAS, the County and the City recognize the importance to both the County and the City of renourishing all beaches within Miami-Dade County; and

WHEREAS, the Agency has served as a prominent funding mechanism for the transformative renovation of the Convention Center Project, which is the only convention center in Miami-Dade County and is an important economic asset of the County and the City, hosting major recurring events such as Art Basel and periodic sports tourism events like the NFL Superbowl Experience; and

WHEREAS, the City was engaged in complex litigation relating to the work performed on the Convention Center Project and the City Commission, through Resolution No. 2021-31870, approved a final settlement agreement dated as of September 30, 2021 by and among the City, Clark Construction Group, LLC (the “Contractor”) and Hill International Inc. (the “Final Settlement Agreement”) pursuant to which the parties settled all claims among them in connection with the Convention Center Project; and

WHEREAS, pursuant to the Final Settlement Agreement, the City is responsible for generating \$33,500,000.00 payable for the remaining project costs in connection with the Convention Center Project, including payments to the Contractor, of which amount the City has already appropriated approximately \$6,400,000.00, which was part of the Convention Center Project budget contingency, and \$27,100,000.00 remains unfunded; and

WHEREAS, the Convention Center Project budget had included a contingency of \$35,000,000.00, which represents only approximately six percent (6%) of the total Convention Center Project budget; and

WHEREAS, the remaining unfunded Convention Center Project costs are \$27,100,000.00, which represents approximately four percent (4%) of the total Convention Center Project budget, and when combined with the original contingency amount, effectively brings the total Convention Center Project contingency to approximately ten percent (10%) of the budget, which is well within industry standards; and

WHEREAS, completion of the Conventional Center Project is essential to the success of the Redevelopment Area and implementation of the Plan, and accordingly, the City is requesting to access \$27,100,000.00 of the projected \$31,900,000.00 in excess Trust Fund revenues for purposes of funding the balance of, and reimbursing the City for, the remaining project costs in

connection with the Convention Center Project, including payments to the Contractor pursuant to the Final Settlement Agreement; and

WHEREAS, the County and City recognize the importance of the Convention Center Project to the economic vitality of both the County and the City and the benefits to both the County and the City of resolving all claims pursuant to the Final Settlement Agreement and achieving completion of the Convention Center Project.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants recorded herein, the County, the City and the Agency agree as follows:

A. The recitations set forth above are true and correct and adopted as part of this Fifth Amendment.

B. Paragraph XII, “Distribution of Trust Fund Revenues,” sub-paragraphs “E and H” of the Interlocal Agreement, are hereby amended to read as follows:

E. The Agency agrees to:

1. Beginning FY 2017-18, and until the earlier of March 31, 2044, or the termination or expiration of the taxing authorities’ obligation to appropriate the Tax Increment Revenues to the Fund, grant to the County an amount equal to the County’s proportionate share of the total payments expended by the Agency in the prior fiscal year for Administration, Community Policing, and Capital Project Maintenance (defined below). Such grant shall be paid to the County by March 31 of each year and shall be based on the previous year’s expenses for Administration, Community Policing, and Capital Project Maintenance. The amount granted annually shall be calculated as follows:

The County’s share of total Tax Increment Revenues deposited into the Trust Fund for that particular year divided by the total Tax Increment Revenues collected from all taxing authorities and deposited in the Trust Fund for that particular year, multiplied by the amount of expenses paid by the Agency in the previous fiscal year for Administration, Community Policing and Capital Project Maintenance.

Beginning FY 2017-18, and until FY 2022-23, the County shall set aside \$1.5 million per year of the payments received from the Agency for the purpose of funding beach renourishment for any¹ beaches within ~~or adjacent to the City of Miami Beach~~ Miami-Dade County in the County's sole discretion. This funding can be used to leverage State or Federal funding for beach renourishment purposes. Such funding shall be set aside in a separate account established by the County to be used for the purposes described herein.

2. Beginning FY 2017-18, until FY 2022-23, grant to the City an amount equal to the City's proportionate share of the total payments expended by the Agency in the prior fiscal year for Administration, Community Policing, and Capital Project Maintenance (defined below). Such grant shall be paid to the City by March 31 of each year and shall be based on the previous year's expenses for Administration, Community Policing, and Capital Project Maintenance. The amount granted annually shall be calculated as follows:

The City's share of total Tax Increment Revenues deposited into the Trust Fund for that particular year divided by the total Tax Increment Revenues collected from all taxing authorities and deposited in the Trust Fund for that particular year, multiplied by the amount of expenses paid by the Agency in the previous fiscal year for Administration, Community Policing and Capital Project Maintenance.

Beginning FY 2017-18, and until FY 2022-23, the City shall set aside \$1.5 million per year of the grant received from the Agency for the purpose of funding beach renourishment for beaches within the City of Miami Beach. This funding can be used to leverage State or Federal funding for beach renourishment purposes. Such funding shall be set aside in a separate account established by the City to be used for the purposes described herein.

* * *

- H. Beginning FY 2014-15 and ending on the earlier of March 31, 2023, or the termination or expiration of the taxing authorities' obligation to appropriate Tax Increment Revenue to the Trust Fund, the Agency shall, within ninety (90) days from the conclusion of each fiscal year, deposit any

¹ Words stricken through shall be deleted. Words underscored constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

unencumbered amounts on deposit in the Trust Fund and all available revenues remaining after distribution of Tax Increment Revenues in the order, priority and amounts set forth in Sections A through G above, into a fund to be used for the purposes of financing any shortfalls associated with the payment of the expenses as listed in Section F above. Such deposits to such fund shall only be made if it will not negatively affect the exclusion from gross income, for federal income tax purposes, of interest on any tax-exempt Agency Indebtedness. After the above application, the excess funds in the Trust Fund:

1. as of the end of FY 2016-17 shall be distributed as follows: of the approximately \$34 million in revenues remaining on deposit in the Trust Fund as of the Agency's year-end for FY 2016-17, the Agency shall distribute \$6,914,221.00 to the City, for the limited purpose of funding a portion of the construction costs for the Convention Center Project; and

2. after disbursement to the City pursuant to Section H.1 above, the Agency may distribute an amount up to \$20,000,000 to the City, for the limited purpose of funding a portion of the design and construction costs for the Lincoln Road / Collins Avenue to West Avenue Project, for the refurbishment of the Lincoln Road pedestrian mall from Collins Avenue to West Avenue, and adjacent corridors (the "Lincoln Road Project"), which distribution pursuant to this Section H.2, together with the \$20 million previously authorized for the Lincoln Road Project, provides for total funding from excess Tax Increment Revenues of up to \$40,000,000 for the Lincoln Road Project; and

3. as of the end of FY 2020-21 shall be distributed as follows: of the approximately \$31,900,000.00 in excess Trust Fund revenues remaining on deposit in the Trust Fund as of the Agency's year-end for FY 2020-21, the Agency shall distribute \$27,100,000.00 to the City, for the limited purpose of funding, and reimbursing the City for, the remaining project costs in connection with the Convention Center Project, including payments to the Contractor pursuant to the Final Settlement Agreement.

All other remaining revenues in the Trust Fund (including, without limitation, any remaining excess revenues at the end of FY 2020-21) will be used to extinguish Agency Indebtedness early, but not prior to FY 2023-24, to the extent such Agency Indebtedness is subject to prepayment or redemption prior to maturity at such time or, if such Agency Indebtedness is not then subject to prepayment or redemption prior to maturity, to establish an escrow for the prepayment or redemption prior to maturity of such Agency Indebtedness at such time as the Agency Indebtedness is

subject to prepayment or redemption prior to maturity; provided, however, that such escrow shall only be established if it will not negatively affect the exclusion from gross income, for federal tax purposes, of interest on any such tax-exempt Agency Indebtedness. The City and the Agency agree not to issue Capital Appreciation Bonds or similar debt that does not pay interest on a current basis. The City and the Agency also agree that any Agency Indebtedness pledging Tax Increment Revenues issued for the purposes set forth herein shall include a call provision allowing such Agency Indebtedness to be called no later than ten (10) years after initial issuance. If the Agency Indebtedness is not subject to repayment or redemption prior to maturity, and an escrow cannot be established, then the Agency shall distribute annually any revenues remaining on deposit in the Fund after distribution as set forth in Sections A through H of this Paragraph XII, to the taxing authorities in the proportionate manner as it was deposited.


C. All provisions of the Interlocal Agreement, other than the provisions specifically amended herein, remain in full force and effect.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Fifth Amendment as of the date first written above.

CITY OF MIAMI BEACH

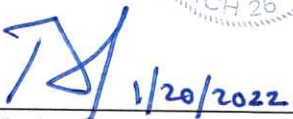
MIAMI-DADE COUNTY

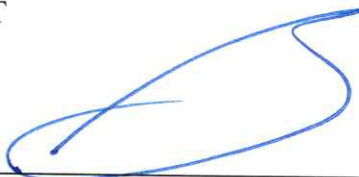
By: 
Dan Gelber
Mayor

By: 
For: Daniella Levine Cava
Mayor

ATTEST

ATTEST


By:  1/20/2022
City Clerk

By: 
Deputy Clerk





MIAMI BEACH REDEVELOPMENT AGENCY

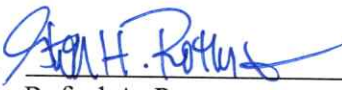
Approved for form and legal sufficiency

By: 
Dan Gelber
Chairman

By: 
Assistant County Attorney

Attest: 
By: 
Secretary

Approved for form and legal sufficiency

By:  12/27/21
for Rafael A. Paz
City Attorney