

**CITY OF MIAMI
CITY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Miami Sports and Exhibition Authority
FROM: Alejandro Vilarello, City Attorney
DATE: March 25, 2003
RE: **Request for Legal Opinion: Review of Statutory and Contractual Allocation of Convention Development Tax ("CDT") Revenues**
MIA -03-00003

This is in response to a request for a legal opinion encompassing a review of the statutory and contractual framework for the present flow of the City's Convention Development Tax Revenues, in general, and the following queries, in particular:

1. WHAT IS THE PRESENT USE OF THE CITY OF MIAMI'S CONVENTION DEVELOPMENT TAX ("CITY CDT") REVENUES AS REQUIRED BY EXISTING MIAMI SPORTS AND EXHIBITION AUTHORITY (MSEA) BOND DOCUMENTS?
2. WHAT ARE THE LIMITATIONS IMPOSED ON CITY CDT REVENUE BY THE SUBORDINATE LIEN CREATED BY MIAMI-DADE COUNTY BOND DOCUMENTS?
3. WHAT ARE THE POTENTIAL INTERPRETATIONS OF THE CONVENTION DEVELOPMENT TAX ACT AND PERMITTED USES OF CITY CDT REVENUES?
4. WHAT CHANGES TO THE PRESENT USES OF CITY CDT REVENUES ARE POSSIBLE?

I referred this inquiry to an outside law firm which has acted as Special Counsel to the Miami Sports and Exhibition Authority ("MSEA") on several matters. That firm, Hogan and Hartson, rendered its opinion, of which a copy is attached hereto. Said opinion ("Attachment A") has been reviewed by my office and is hereby approved and adopted as my response to your inquiry. Additionally, Special Counsel has prepared an Executive Summary of the Use of City CDT Revenues. Said Summary ("Attachment B") should be referenced during your perusal of the legal opinion.

Attachments

c: Mayor and Members of the City Commission
Joe Arriola, City Manager
Priscilla Thompson, City Clerk
Jim Jenkins, Director, Miami Sports and Exhibition Authority

MEMORANDUM

PRIVILEGED AND CONFIDENTIAL

March 21, 2003

TO: Alejandro Vilarello
FROM: Hogan & Hartson L.L.P.
RE: Use of City CDT Revenues

You have asked us to review the statutory and contractual framework for the present flow of the one-third allocation of convention development tax revenues (the "City CDT revenues") levied and collected by Miami-Dade County, Florida (the "County"). This Memorandum discusses (i) the present use of City CDT revenues as required by existing bond documents of the Miami Sports and Exhibition Authority ("MSEA"), (ii) the limitations imposed by the subordinate lien created by County bond documents on City CDT revenues, (iii) potential interpretations of the Convention Development Tax Act (the "CDT Act") and permitted uses of City CDT revenues, and (iv) an analysis of certain possible changes to the present uses of City CDT revenues.

Convention Development Tax Act

Pursuant to the CDT Act, each county may levy within its boundaries a convention development tax at a rate of 3% on the privilege of leasing or letting transient rental accommodations.¹ Any county levying such a county development tax may collect and administer the tax on a local basis and retain up to 2% of all taxes collected for costs of administration.² Two-thirds of any tax revenues (including accrued interest and net of administration costs) received by a county imposing such a levy must be used to extend, enlarge and improve the largest existing publicly owned convention center in the county.³ The other one-third is required to be used to construct a new convention/coliseum/exhibition center/stadium in the most populous municipality in the county.⁴ After completion of the related construction project contemplated in the CDT Act, the one-third allocation may be used, as determined by the county, for two purposes: "to operate an authority created pursuant to subparagraph 4 or to acquire, construct, extend, enlarge, remodel, repair, improve, operate or maintain one or more convention centers, stadiums, exhibition halls, arenas, coliseums,

¹ See Section 212.0305(4)(b), Florida Statutes.

² See Section 212.0305(5), Florida Statutes.

³ See Section 212.0305(4)(b)(2)(a), Florida Statutes.

⁴ See Section 212.0305(4)(b)(2)(b), Florida Statutes.

auditoriums, golf courses, or related buildings and parking facilities in the most populous municipality in the county."⁵

Any municipality seeking to receive an allocation of CDT revenues from the county under the CDT Act must designate or appoint an authority pursuant to the CDT Act as a condition precedent.⁶ In the above-referenced subparagraph 4, the CDT Act requires that an authority so formed by the municipality must have the *sole power* to approve the concept, location, program and design of the facilities to be built in accordance with the CDT Act, and to administer and disburse "such proceeds"⁷ and any other related source of revenue.⁸ The authority may pledge such CDT revenues and accrued interest to pay bonds issued to finance projects authorized by the CDT Act.⁹

In 1983, the County provided for a levy of the 3% convention development tax pursuant to the CDT Act.¹⁰ Two-thirds of the CDT revenues in the County¹¹ was allocated to the City of Miami Beach for the Miami Beach Convention Center. One-third of such CDT revenues¹² (the "City CDT revenues") was allocated for use in the City of Miami (the "City"), as the most populous municipality in the County. In accordance with the requirements of the CDT Act, the City established MSEA¹³ on July 28, 1983 as a condition precedent to receiving the City CDT revenues. As required by the CDT Act, MSEA was created with supervisory control over and responsibility for the construction, operation, maintenance and governance of a variety of sports, convention and exhibition facilities¹⁴ and with the power to administer and disburse the City CDT revenues it receives.¹⁵

⁵ See Section 212.0305(4)(b)(2)(d), Florida Statutes. The reference to "subparagraph 4" is a reference to Section 212.0305(4)(b)(4), Florida Statutes. While this provision speaks to uses for which the one-third allocation of CDT revenues "may" be applied, there is no discussion about the application of such revenues if not for one of these two uses. It can therefore be reasonably assumed that this provision is intended to require the county to direct the one-third allocation to either or both of these two uses within the municipality.

⁶ See Section 212.0305(4)(b)(4)(a), Florida Statutes.

⁷ This reference to "such proceeds" is most likely intended to mean CDT revenues to the extent received by such authority. See 1998 WL 655676 (Fla. A.G.).

⁸ See Section 212.0305(4)(b)(4)(a)(I), Florida Statutes.

⁹ See Section 212.0305(4)(c), Florida Statutes.

¹⁰ See County Ordinance No. 83-91 (October 4, 1983).

¹¹ Such revenues are net of the administration costs retained by the County (up to 2%) as permitted by Section 212.0305(5), Florida Statutes.

¹² See Footnote 11.

¹³ See City Ordinance No. 9662 (codified as Chapter 52.6 of the Miami Code). Amended by City Ordinance No. 11155.

¹⁴ See Section 2-1014(a), Miami Code.

¹⁵ See Section 2-1023(b), Miami Code. The legislation creating MSEA also provides for a broader range of powers to be exercised by MSEA for the purpose of promoting sports, conventions and exhibitions to the greatest extent feasible, to generate and further community support to achieve this purpose and to endeavor to attract professional sports franchises to utilize facilities within the City. See Section 2-1012(a), Miami Code.

Present Use of City CDT revenues under MSEA bond documents

In 1985, MSEA issued senior bonds (the "Series 1985 Bonds") to finance construction of the Miami Arena and, as permitted by the CDT Act, pledged the City CDT revenues for repayment of the Series 1985 Bonds.¹⁶ Under the bond resolution adopted by MSEA in connection with the issuance of the Series 1985 Bonds (the "1985 Bond Resolution"), MSEA assigned to the bond trustee its right to receive the City CDT revenues. The 1985 Bond Resolution established the Miami Sports and Exhibition Authority Tax Trust Fund (the "Tax Trust Fund") into which the bond trustee was required to deposit the City CDT revenues. Amounts in the Tax Trust Fund were to be used by the bond trustee to pay principal and interest on the Series 1985 Bonds and on any subordinate obligations and for required debt service reserves. Remaining amounts in the Tax Trust Fund were required by the 1985 Bond Resolution to be transferred to a General Fund (the "1985 General Fund") and applied to make up debt service deficiencies. Any balance in the 1985 General Fund thereafter was permitted to be applied by MSEA "for any of its lawful corporate purposes."¹⁷

Construction of the Miami Arena was completed in 1988. MSEA decided to redeem the Series 1985 Bonds in full using proceeds of bonds issued by MSEA in 1991 (the "Series 1991 Bonds") pursuant to a bond resolution approved by MSEA (the "1991 Bond Resolution"). In 1990, as part of discussions with the City relating to issuance of the Series 1991 Bonds, the County adopted a resolution¹⁸ authorizing a revised flow of City CDT revenues, as set forth by the 1991 Bond Resolution. The Tax Trust Fund established under the 1985 Bond Resolution was transferred to be held and administered by the bond trustee under the 1991 Bond Resolution. City CDT revenues were deposited in the Tax Trust Fund and transferred under the 1991 Bond Resolution to pay debt service on the Series 1991 Bonds and debt service reserve deficiencies. Remaining amounts in the Tax Trust Fund were to be deposited to a General Fund (the "1991 General Fund"), and used for the following purposes:

- (a) to fund any debt service and debt service reserve deficiencies;
- (b) as a payment to MSEA "to fund its operations and any other lawful corporate purposes," in equal monthly installments and in a total amount per Fiscal Year not to exceed the lesser of (i) MSEA's actual budget for the then current Fiscal Year as certified by the Executive Director in an Officer's Certificate or (ii) \$421,000, as increased on an annual basis at a rate of 3% per Fiscal Year;
- (c) to pay subordinate obligations, fees to a provider of a reserve fund surety and other fees and expenses of fiduciaries;

¹⁶ MSEA also issued, in 1985, a subordinate note (the "1985 Note") to fund renovations to the James L. Knight International Convention Center and expansion of the Coconut Grove Exhibition Center. In 1989, MSEA issued its subordinate bonds (the "Series 1989A Bonds") to redeem in full the 1985 Note. The Series 1989A Bonds were refunded in full by proceeds of the Series 1992 Bonds.

¹⁷ See 1985 Bond Resolution, Section 507(c).

¹⁸ See County Resolution No. R-1366-90 (December 18, 1990). There was no explanation in the County Resolution as to the basis for establishing the amount of the aggregate MSEA payments under the 1991 Bond Resolution although the 1991 Bond Resolution does reference the MSEA actual budget, perhaps implying that the amount related in some way to MSEA's budget at the time.

- (d) to make an annual payment to MSEA "to fund its operations and other lawful corporate purposes," in equal monthly installments payable on October 1 through July 1 (and in August and September if not fully funded) in an amount which, together with the amount paid under paragraph (b) above, does not exceed \$650,000 as increased on an annual basis at a rate of 3% per Fiscal Year; and
- (e) to make an annual deposit to a capital reserve and operating deficit account established to meet certain costs relating to the Miami Arena (and set forth on a schedule attached to the 1991 Bond Resolution).

Any balance in the 1991 General Fund was required to be transferred by the 1991 bond trustee on a monthly basis in accordance with the written direction of the County.¹⁹

In 1992, MSEA issued its Special Obligation and Refunding Bonds, Series 1992 (the "Series 1992 Bonds") to refund in full the outstanding Series 1991 Bonds. The Series 1992 Bonds presently remain outstanding, secured by a pledge of the City CDT revenues, and are payable under the terms of the 1992 Bond Resolution. The County by resolution approved the use of the City CDT revenues as provided by the flow of funds set forth in the 1992 Bond Resolution.²⁰ The 1992 Bond Resolution requires the bond trustee to deposit all City CDT revenues to the credit of the Tax Trust Fund (transferred from the 1991 Bond Resolution to be held and administered under the 1992 Bond Resolution). Under the 1992 Bond Resolution, the bond trustee is to transfer City CDT revenues first, to pay interest and principal on the Series 1992 Bonds; next, to fund any deficiencies in the 1992 debt service reserve account; and then, to the credit of the General Fund (the "1992 General Fund").

Amounts in the 1992 General Fund are to be applied as follows:

- (i) to fund debt service deficiencies;
- (ii) to make an annual payment²¹ to MSEA in equal monthly installments to fund MSEA's operations and any other lawful corporate purposes (the "MSEA Operating Payment"); and

¹⁹ See 1991 Bond Resolution, Section 506. According to the County staff memorandum dated December 18, 1990, this revised flow of funds in the 1991 Bond Resolution was desirable for the County since it would free up portions of the City CDT to be used by the County in the future to pledge in connection with bonds for the Performing Arts Center.

²⁰ See County Resolution No. R-821-92 (July 7, 1992). According to the County staff memorandum dated July 7, 1992, the refunding of the Series 1991 Bonds using the Series 1992 Bonds was intended to be "revenue neutral" to the County, and MSEA was to recognize the debt service savings resulting from the refunding.

²¹ The 1992 Bond Resolution deleted the reference to MSEA's budget which had been in the 1991 Bond Resolution and made payments to MSEA the second priority for application of amounts from the 1992 General Fund. The 1992 Bond Resolution provided for a MSEA Operating Payment not to exceed \$669,500 per Fiscal Year, increased by 3% annually. As so increased, the MSEA Operating Payment for 2003 is \$926,745.

- (iii) to make annual deposits to the Capital Reserve and Operating Deficit Account (the "Capital Reserve Account") in amounts as set forth on a schedule to the 1992 Bond Resolution.²²

Amounts in the 1992 General Fund are also permitted to be used to pay any insurance and letter of credit fees and expenses and fees of fiduciaries relating to the Series 1992 Bonds or any subordinate obligations. Additionally, prior to the transfer of any balance in the 1992 General Fund to or at the direction of the County, the 1992 bond trustee is to transfer to MSEA an amount equal to the net present value savings ("Net Present Value Savings") resulting from the refunding of the Series 1991 Bonds, as calculated in accordance with the 1992 Bond Resolution.²³ The MSEA Operating Payment and the Net Present Value Savings are referred to in this Memorandum as the "MSEA Payments."

Subordinate lien imposed by County bond documents

In 1997, the County issued its Subordinate Special Obligation Bonds, Series 1997 (the "Series 1997 County Bonds") to finance a performing arts center and a sports arena in the City as well as certain other cultural facilities and projects located in the County. The Series 1997 County Bonds are payable from and secured by an irrevocable pledge by the County of certain tax revenues and other funds (the "Pledged Funds") as provided in the Dade County Ordinance No. 97-210 (the "1997 County Ordinance") adopted by the County in connection with its issuance of the Series 1997 County Bonds. The Pledged Funds include the City CDT revenues less payments to be made under the 1992 Bond Resolution for debt service, the "annual operating subsidy" to MSEA and the "arena asset replacement requirement" established in the 1992 Resolution (the net amount referred to herein as the "Excess City CDT revenues"). The 1997 County Ordinance requires the County to apply the Excess City CDT revenues monthly to the payment of debt service on the Series 1997 County Bonds and to fund a debt service reserve fund.²⁴ After making these subordinate lien payments, the County is permitted by the 1997 County Ordinance to use remaining Excess City CDT revenues for any lawful purpose.²⁵

Permitted Uses of City CDT revenues under CDT Act

We understand that MSEA may wish to seek adjustments to the present flow and/or use of City CDT revenues. Any new uses must be permitted by the CDT Act, approved by the County and consistent with the terms of the 1992 Bond Resolution (so long as it remains

²² According to the terms of the 1992 Bond Resolution, amounts deposited to the Capital Reserve Account (ranging from \$1 million to \$5.5 million) may only be used for capital improvements, operating deficits and other lawful purposes *relating to* the Miami Arena, as directed by MSEA. The amounts on the 1992 schedule were the same as on the 1991 Schedule.

²³ The 1992 Bond Resolution permits MSEA to use the City CDT revenues to be received as a result of this provision "for any lawful purpose." A portion of the Net Present Value Savings relating to the Series 1992A was transferred to MSEA at the time of issuance of the Series 1992 Bonds.

²⁴ Excess City CDT revenues are to be used for these purposes after taking into account certain revenues (up to \$1,430,000 each year) to be transferred from the Omni Redevelopment Trust Fund, created for the deposit of tax increment revenues received in the Omni Redevelopment Area.

²⁵ See 1997 County Ordinance, Section 504.

in effect) and the 1997 County Ordinance. We have reviewed the CDT Act and the following is a description of the uses permitted (or arguably permitted) by the CDT Act for City CDT revenues, now that construction of the Miami Arena is completed.

Capital Projects

Given that construction of the Miami Arena has been completed, Section 212.0305(4)(b)(2)(d) of the CDT Act ("subparagraph 2.d.") governs the use of the City CDT revenues. Subparagraph 2.d. as originally enacted (the "original subparagraph 2.d.") permitted the County to approve the use of the City CDT for one purpose – to acquire, construct, extend, enlarge, remodel, repair, improve, operate or maintain one or more of the capital facilities in the City included on a specific list. By an amendment to subparagraph 2.d. in 1994 (the "1994 amendment"),²⁶ the list of capital facilities was expanded to the following current list (the "Capital Projects"):

- convention centers;
- stadiums;
- exhibition halls;
- arenas;
- coliseums;
- auditoriums;
- golf courses; and
- related buildings and parking facilities.

To Operate MSEA

The original subparagraph 2.d. was also amended by the 1994 amendment with the addition of the phrase "to operate an authority created pursuant to subparagraph 4, or."²⁷ According to the legislative discussion in connection with the 1994 amendment, this language was added with an intent "to expand the use of convention development tax remaining after completion" of the initial statutory project.²⁸

It might be argued that the 1994 amendment was adopted only for the purpose of clarifying that the single permitted use of CDT revenues as articulated in the original subparagraph 2.d. – that is, to fund Capital Projects – was also intended to permit the funding of

²⁶ See Laws 1994, c. 94-351, § 3, eff. July 1, 1994.

²⁷ See footnote 5. It does not appear that the Code of Metropolitan Dade County which codified the County's action to levy the CDT has ever been amended to incorporate the 1994 amendment. See Dade County Code, Section 29-63. Even MSEA's audited financial statements for the fiscal year ended September 30, 2002, references the CDT Act in footnote IV.B and does not include the language added to subparagraph 2.d. by the 1994 amendment. Amendment to the Dade County Code would probably be useful in connection with any formal determination by the County that the CDT Act permits the broader uses for the City CDT revenues as discussed in this Memorandum.

²⁸ See "House of Representative's Committee on Finance and Taxation Final Bill Analysis & Economic Impact Statement" relating to HB 2509 (April 15, 1994).

an authority's operating expenses relating to its oversight of a Capital Project.²⁹ This interpretation would be supported by the fact that the principal focus of the CDT Act is capital projects. However, it is generally accepted as a matter of statutory construction that new statutory language must be given some independent meaning. It is worth noting that the County exercised its power under the original subparagraph 2.d. to approve the flow of funds set forth by the 1992 Bond Resolution. The MSEA Payments permitted in the 1992 Bond Resolution could only lawfully have been approved by the County in 1992 based on an interpretation that the language of the original subparagraph 2.d. implicitly permitted payment of an authority's operating expenses related to its oversight of a Capital Project. An argument that the new words of the 1994 amendment were necessary for clarification is contradicted by the County's interpretation of the original language as a sufficient legal basis for its actions.

Alternatively, the addition by the 1994 amendment of an entirely separate prong from the then existing language (separated by the word "or") may be interpreted as an expansion of the permitted uses of CDT revenues to provide a distinct new use which a county may choose to approve for such CDT revenues. This interpretation is supported by the limited legislative history which we have been able to find explaining the intent of the 1994 amendment.³⁰

Assuming that this interpretation of subparagraph 2.d is accepted, we must then consider the intended limits of the new language added by the 1994 amendment. It might be suggested that the new permitted use – "to operate an authority created pursuant to subparagraph 4" – was intended to encompass only certain operating expenses rather than all amounts budgeted to support an authority's activities as permitted by the enabling act which created the authority. Although we could not find any statutory or caselaw guidance discussing the use of the term "operate," we note that the language added by the 1994 amendment authorized the use of City CDT revenues "to operate" an authority, not just to pay operating or other expenses of an authority.³¹ It could be argued that this language suggests a broader permitted use.

Another question is whether the language in subparagraph 2.d. limits the scope of permitted operations of the authority (or at least the operations which may be funded by City CDT revenues) as a result of its reference to subparagraph 4. First, it should be observed that subparagraph 2.d. references an authority "created" pursuant to subparagraph 4, but does not limit the authority's operations to the powers set forth in subparagraph 4 or by any other provision. Second, even if the reference by subparagraph 2.d. to subparagraph 4 is found to be a limitation on the manner in which an authority may operate, subparagraph 4 does not prescribe

²⁹ It could be argued that such a mere clarification would more logically have been made by adding a phrase – such as "including the operating expenses of an authority relating to such capital projects" – to the end of the existing language in original subparagraph 2.d.

³⁰ See footnote 28.

³¹ The Summary Judgment Order in the case of Decoma Miami Associates, Ltd. vs. City of Miami, issued on December 28, 1998, held that the reference to "operating expenses" in the Miami Arena Contract permitted MSEA to spend the CDT revenues that it receives on "staff expenses and the like," but not operate facilities other than the Miami Arena. It is unclear what meaning should be given to this Order and its interpretation of the Miami Arena Contract in light of existing subparagraph 2.d. and the fact that the 1994 amendment which added the broader language was adopted after the Miami Arena Contract had been entered. It should also be noted that the Miami Arena Contract has since been terminated.

limitations or set forth guidelines on powers which may be given to an authority, but only requires that an authority formed thereunder have the sole power to take certain actions.³² Consequently, it does not seem that this reference to subparagraph 4 limits the permitted operations of an authority which can be funded with CDT revenues.

It might also be argued that an interpretation of subparagraph 2.d. which expands the uses for CDT revenues to operate an authority without any limitation as to the activities in which such authority may be engaged could not have been intended by the CDT Act since the effect of this interpretation could be an unacceptable use of CDT revenues, beyond the general purposes and intent of the CDT Act. In response, it can be pointed out that MSEA's powers and purpose are consistent with the broader purpose of promoting tourism articulated by the CDT Act.

Lawful Use of MSEA Payments

MSEA presently receives the MSEA Payments which the County has determined may be used by MSEA in accordance with the 1992 Bond Resolution to fund its operations and for other lawful corporate purposes. Now that construction of the Miami Arena is completed, one lawful purpose for the City CDT revenues under the CDT Act, as discussed above, is to operate MSEA. The arguments set forth in this Memorandum and others may be made that the CDT Act authorizes a broader use of the MSEA Payments by MSEA, to fund its activities and operations beyond the payment of operating expenses. Based on such an interpretation, MSEA could use the MSEA Payments for these broader lawful purposes without obtaining approval of the County or consent of the 1992 bond trustee. However, there is little guidance on the intent or scope of this language in the CDT Act and arguments may be made to support alternative interpretations. In the event that MSEA decides to refinance the Series 1992 Bonds, MSEA should consider seeking agreement from the County that the CDT Act permits this broader use as a lawful purpose.

Changes to Present Uses of City CDT revenues

As mentioned above, any new uses of City CDT revenues must be permitted by the CDT Act and approved by the County. Additionally, so long as the 1992 Bond Resolution remains in place, the deposits and payments to be made thereunder may only be adjusted by a supplemental resolution approved by FGIC (the bond insurer) to make a change that, in the opinion of the 1992 bond trustee, would not materially adversely affect the security for the Series 1992 Bonds. Of course, whether or not the 1992 Bond Resolution is in place or has become ineffective as a result of a refinancing of the outstanding Series 1992 Bonds, any revised allocation of the City CDT revenues must also be consistent with the terms of the 1997 County

³² The relevant portion of subparagraph 4 reads as follows: "As a condition precedent to receiving funding, the governing bodies of such municipalities shall designate or appoint an authority that shall have the sole power to: (I) Approve the concept, location, program, and design of facilities or improvements to be built in accordance with this paragraph and to administer and disburse such proceeds and any other related source of revenue." See Footnote 9. "Sole power" could imply that these are the only powers which may be given to the authority, or more likely could be intended to require that these powers (but not only these powers) must be given exclusively to the authority.

Ordinance. The following is a discussion of three possible changes, the limitations which exist on these changes and the approvals required to accomplish these changes.

Increase in MSEA Payments

MSEA may wish to request the County to allocate a greater portion of the City CDT revenues to MSEA Payments as funding for its operations and capital projects within the City. As mentioned above, all City CDT revenues must be deposited with the 1992 bond trustee and, after making the payments and deposits required by the 1992 Bond Resolution, the 1992 bond trustee must transfer remaining City CDT revenues at the direction of the County. However, the County has pledged the City CDT revenues on a subordinate basis to pay the Series 1997 County Bonds. The County could only direct the remaining City CDT revenues to MSEA as an increase in the MSEA Payments if the 1997 bond trustee could conclude that this use did not adversely affect the subordinate pledge to the 1997 bondholders. This conclusion could possibly be reached if there were a reduction in another payment within the senior lien on City CDT revenues recognized by the 1997 County Ordinance, corresponding to the increase in MSEA Payments. See "Reallocation of Capital Reserve Account deposits" below. Otherwise, so long as the Series 1997 County Bonds are outstanding, the County has no power to increase the amount of City CDT revenues allocated for such MSEA Payments prior to the 1997 subordinate lien, even upon a refinancing of the Series 1992 Bonds. In the event that there are City CDT revenues remaining after payment or deposit of amounts to satisfy the 1997 subordinate lien, and assuming that the County does not further pledge such revenues, MSEA could request and the County would have the power to approve the allocation of any such excess City CDT revenues to MSEA for lawful purposes permitted by the CDT Act. Any such increase in the payments to MSEA would have a lien on City CDT revenues subordinate to the payments due under the 1997 County Ordinance.

Reallocation of Capital Reserve Account deposits

It may be determined that all of the amounts now required by the 1992 Bond Resolution to be deposited to the Capital Reserve Account are not needed for the narrow uses permitted by the 1992 Bond Resolution for amounts in that Account. MSEA may desire that amounts scheduled for deposit to the Capital Reserve Account instead be paid to MSEA for funding operations or other lawful purposes permitted by the CDT Act. Any amendment to the 1992 Bond Resolution reflecting this reallocation would require approval by the County. It is likely that the County would not approve such an amendment until it has confirmed with the 1997 bond trustee that this change is within the senior lien recognized by the 1997 County Ordinance and does not adversely affect the subordinate pledge to the 1997 bondholders. Since such an allocation of amounts scheduled for one purpose to another use would not increase the overall amount payable as the senior lien, the 1997 bond trustee may be able to reach such a conclusion. In addition, if there were no refinancing of the Series 1992 Bonds, the 1992 bond trustee would need to approve such an amendment based on its conclusion that the proposed reallocation would not materially adversely affect the security for the Series 1992 Bonds. While such a reallocation would have the effect of reducing capital improvements to the Miami Arena, the Series 1992 Bonds are payable with City CDT revenues which are generated whether or not the Miami Arena continues to operate, and for this reason the 1992 bond trustee may be able to reach such a conclusion.

Retain net savings from refinancing

Upon any refinancing of the Series 1992 Bonds, the 1992 Bond Resolution would no longer be effective, and a bond resolution setting forth a new flow of funds would be adopted by MSEA in connection with issuance of the refunding bonds. As part of a new flow of funds, MSEA may wish to retain the net present value savings which will result from reduced debt service payments achieved by the refinancing. Any new flow of City CDT revenues adopted by MSEA must be approved by the County in connection with the issuance of the refunding bonds. It is likely that the County would not approve such a new senior lien on City CDT revenues without confirming that the 1997 bond trustee believes this senior lien is consistent with the senior lien recognized by the 1997 County Ordinance. The 1997 County Ordinance permits debt service payments to the Series 1992 Bonds as a part of the senior lien, and the 1997 bond trustee would have to conclude that debt service payments on the refunding bonds together with payment of net present value savings to MSEA would qualify as the debt service payments contemplated as a part of the senior lien under the 1997 County Ordinance. Since this new flow of City CDT revenues would not increase the overall amount payable as the senior lien, the 1997 bond trustee may be able to reach this conclusion. If the 1997 bond trustee cannot reach this conclusion, any refinancing of the Series 1992 Bonds (whether or not MSEA retains any present value savings) could have the effect of extinguishing the senior lien, thereby placing any new refunding bonds in a subordinate lien position to the outstanding Series 1997 County Bonds

EXECUTIVE SUMMARY – USE OF CITY CDT REVENUES

The following is a summary of a Memorandum delivered by Hogan & Hartson L.L.P. to Alejandro Vilarello dated March 21, 2003. The Memorandum should be referenced for further detail and analysis concerning the items described in this Executive Summary.

I. The CDT Act provides the statutory framework for permitted uses of City CDT revenues.

The County levies a 3% convention development tax pursuant to the Convention Development Tax Act (the "CDT Act"). One-third of the revenues generated by this tax (the "City CDT revenues") is to be used in the City, but only for purposes approved by the County. The Miami Arena having been constructed, the County is permitted under the CDT Act to authorize use of City CDT revenues for two purposes: (1) to operate the Miami Sports and Exhibition Authority ("MSEA"); and (2) to acquire, construct, extend, enlarge, remodel, repair, improve, operate or maintain one or more convention centers, stadiums, exhibition halls, arenas, coliseums, auditoriums, golf courses, or related buildings and parking facilities in Miami.

II. The MSEA 1992 Bond Resolution dictates the present use of City CDT revenues.

Tax Trust Fund. In 1992, MSEA issued its Special Obligation and Refunding Bonds, Series 1992 (the "Series 1992 Bonds") which are secured by a pledge of the City CDT revenues under the terms of the bond resolution adopted by MSEA in connection with the Series 1992 Bonds (the "1992 Bond Resolution"). The County adopted a resolution to approve the use of the City CDT revenues as provided by the 1992 Bond Resolution, which requires the 1992 bond trustee to deposit all City CDT revenues to the credit of the **Tax Trust Fund** held thereunder. The 1992 bond trustee is to transfer City CDT revenues from the Tax Trust Fund: (1) first, to pay debt service on the Series 1992 Bonds; (2) next, to pay debt service reserve deficiencies; and (3) then, to the credit of the **General Fund**.

General Fund. Under the 1992 Bond Resolution, amounts in the General Fund are to be applied by the 1992 bond trustee: (a) first, to fund debt service deficiencies; (b) next, to make an annual payment to MSEA in equal monthly installments (the 2003 MSEA payment, which has been increased by 3% annually since 1992 in accordance with the 1992 Bond Resolution, is an amount not to exceed \$926,745); (c) next, to make an annual deposit to a **Capital Reserve Account** in the amount set forth for each year on a schedule to the 1992 Bond Resolution; and (d) then, to pay to MSEA an amount equal to certain of the net present value savings resulting from the refunding with proceeds of the Series 1992 Bonds (a portion of the savings having been paid at the time of issuance of the Series 1992 Bonds). Amounts paid to MSEA under paragraphs (b) and (d) are referred to as the "**MSEA Payments**."

MSEA Payments. The 1992 Bond Resolution provides for the payment of certain City CDT revenues to MSEA as the MSEA Payments, which may be used by MSEA to fund its operations and for other lawful corporate purposes. Now that construction of the Miami Arena is completed, one lawful purpose for the City CDT revenues under the CDT Act is "to operate MSEA." It can be argued that the CDT Act authorizes MSEA to use the MSEA Payments to

fund its activities and operations generally, beyond the payment of operating expenses. Based on this interpretation, MSEA could use the MSEA Payments for these broader lawful purposes without obtaining further approval of the County or consent of the 1992 bond trustee. However, there is little guidance on the intent or scope of this language in the CDT Act and arguments may be made to support alternative interpretations. In the event of refinancing of the Series 1992 Bonds, MSEA should consider seeking the County's agreement that the CDT Act permits this broader use as a lawful purpose.

Capital Reserve Account. Pursuant to the 1992 Bond Resolution, amounts deposited to the Capital Reserve Account under paragraph (c) of the prior paragraph may only be used for capital improvements, operating deficits and other lawful purposes relating to the Miami Arena, as directed by MSEA. These authorized purposes include improvements to the Miami Arena itself as well as improvements *relating to* the Miami Arena, such as improvements to adjacent parking facilities. MSEA may direct the use of amounts in the Capital Reserve Account for these authorized purposes without further approval of the County or consent of the 1992 bond trustee.

Remaining City CDT Revenues. The 1992 Bond Resolution provides that any City CDT revenues remaining in the General Fund after payment of debt service deficiencies, the MSEA Payments and deposits to the Capital Reserve Account must be transferred by the 1992 bond trustee to or at the direction of the County. As described below in Part III, the County is currently limited in how it may choose to direct the use of these remaining City CDT revenues.

III. County bond documents establish a subordinate lien on City CDT revenues.

In 1997, the County issued its Subordinate Special Obligation Bonds, Series 1997 (the "Series 1997 County Bonds") to finance the Performing Arts Center and the American Airlines sports arena. The Series 1997 County Bonds are secured by a subordinate pledge of the City CDT revenues. The 1997 County Ordinance recognizes a senior lien on City CDT revenues for amounts payable under the 1992 Bond Resolution – specifically, for payment of debt service on the Series 1992 Bonds, the “annual operating subsidy” to MSEA and the “arena asset replacement requirement” established by the 1992 Bond Resolution. Any City CDT revenues not used for these senior lien payments under the 1992 Bond Resolution must first be applied to payments required by the 1997 County Ordinance. Any City CDT revenues remaining after the required 1997 County Ordinance payments may be used by the County for a lawful purpose.

IV. Future uses of City CDT revenues must be permitted by the CDT Act, approved by the County and consistent with the existing bond documents.

MSEA may wish to seek an adjustment to the present uses of City CDT revenues. Any future use must be permitted by the CDT Act, approved by the County and consistent with the terms of the 1992 Bond Resolution (so long as it remains in effect) and the 1997 County Ordinance. The following is a discussion of three possible future uses:

Increase in Amount of MSEA Payments. The MSEA Payments were established in a fixed amount under the 1992 Bond Resolution. MSEA may wish to request the County to allocate a greater portion of the City CDT revenues to increase the MSEA Payments available to

MSEA for its operations and capital projects within the City. As mentioned above, all City CDT revenues must be deposited with the 1992 bond trustee and, after making the payments and deposits required by the 1992 Bond Resolution, the 1992 bond trustee must transfer remaining City CDT revenues to or at the direction of the County. However, the County has pledged the City CDT revenues on a subordinate basis to pay the Series 1997 County Bonds. The County could only direct the remaining City CDT revenues to MSEA as an increase in the MSEA Payments if the 1997 bond trustee could conclude that this use did not adversely affect the subordinate pledge to the 1997 bondholders. This conclusion could possibly be reached if there were a reduction in another payment within the senior lien on City CDT revenues recognized by the 1997 County Ordinance, corresponding to the increase in MSEA Payments. See "Reallocation of Capital Reserve Account deposits" below. Otherwise, so long as the Series 1997 County Bonds are outstanding, the County has no power to increase the amount of City CDT revenues allocated for purposes prior to the 1997 subordinate lien, even upon a refinancing of the Series 1992 Bonds. In the event that there are City CDT revenues remaining after payment or deposit of amounts to satisfy the 1997 subordinate lien, and assuming that the County does not further pledge such revenues, MSEA could request and the County would have the power to approve the allocation of any such excess City CDT revenues to MSEA for lawful purposes permitted by the CDT Act. Any such increase in the payments to MSEA would have a lien on City CDT revenues subordinate to the payments due under the 1997 County Ordinance.

Reallocation of Capital Reserve Account deposits. It may be determined that all of the amounts now required by the 1992 Bond Resolution to be deposited to the Capital Reserve Account (which range from \$1 million to \$5.5 million per year) are not needed for the narrow uses permitted by the 1992 Bond Resolution for amounts in that Account. MSEA may desire that amounts scheduled for deposit to the Capital Reserve Account instead be paid to MSEA for funding operations, capital projects or other lawful purposes permitted by the CDT Act. Any amendment to the 1992 Bond Resolution reflecting this reallocation would require approval by the County. It is likely that the County would not approve such an amendment until it has confirmed with the 1997 bond trustee that this change is within the senior lien recognized by the 1997 County Ordinance and does not adversely affect the subordinate pledge to the 1997 bondholders. Since such a reallocation of amounts scheduled for one purpose to another use would not increase the overall amount payable as the senior lien, the 1997 bond trustee may be able to reach such a conclusion. In addition, if there were no refinancing of the Series 1992 Bonds, the 1992 bond trustee would need to approve such an amendment based on its conclusion that the proposed reallocation would not materially adversely affect the security for the Series 1992 Bonds. While such a reallocation would have the effect of reducing the level of capital improvements to the Miami Arena, the Series 1992 Bonds are payable from City CDT revenues rather than revenues generated by operations of the Miami Arena, and for this reason the 1992 bond trustee may be able to reach such a conclusion.

Retain net savings from refinancing. Upon any refinancing of the Series 1992 Bonds, the 1992 Bond Resolution would no longer be effective, and a bond resolution setting forth a flow of funds would be adopted by MSEA in connection with issuance of the refunding bonds. As part of a new flow of funds, MSEA may wish to retain the net present value savings which will result from reduced debt service payments achieved by the refinancing. Any new flow of City CDT revenues adopted by MSEA must be approved by the County in connection with the issuance of the refunding bonds. It is likely that the County would only approve a new

flow of CDT revenues in connection with the refinancing after confirmation by the 1997 bond trustee that such flow is consistent with the senior lien recognized by the 1997 County Ordinance. The 1997 County Ordinance permits debt service payments to the Series 1992 Bonds as a part of the senior lien, and the 1997 bond trustee would have to conclude that debt service payments on the refunding bonds together with payment of net present value savings to MSEA would qualify as the debt service payments contemplated as a part of the senior lien under the 1997 County Ordinance. Since this new flow of City CDT revenues would not increase the overall amount payable as the senior lien, the 1997 bond trustee may be able to conclude that such a change does not adversely affect the security for the 1997 bondholders. If the 1997 bond trustee cannot reach this conclusion, any refinancing of the Series 1992 Bonds (whether or not MSEA retains any net present value savings) could have the effect of extinguishing the senior lien, thereby placing any new refunding bonds in a subordinate lien position to the outstanding Series 1997 County Bonds.

March 21, 2003