



## MEMORANDUM

Agenda Item No. 7(M)(1)(A)

TO: Honorable Chairperson and Members  
Board of County Commissioners

DATE: July 8, 2003

FROM: George M. Burgess  
County Manager

SUBJECT: Resolution Approving  
Subordination of up to \$5  
Million in Lease Payments  
From Miami Seaquarium

### RECOMMENDATION

It is recommended that the Board adopt the accompanying resolution approving the subordination of all or a portion of up to \$5 million in lease payments due to the County from Marine Exhibition Corporation, a Florida corporation, d/b/a The Miami Seaquarium ("Corporation") if cash flow from the operation of the Miami Seaquarium ("Seaquarium") is insufficient to make debt service on a loan by the Corporation in connection with the financing of a new Marine Mammal Habitat at the Seaquarium and authorizing the Finance Director and other County officials and employees to deliver such documents and do all things necessary in connection with the subordination of the lease payments.

### BACKGROUND

The County and the Corporation have entered into a Lease Agreement dated March 9, 1954 ("Lease Agreement") regarding the development and operations of the Miami Seaquarium. The County owns the site and all of the improvements. The Corporation improves, operates and manages the Miami Seaquarium pursuant to the Lease Agreement.

The Seaquarium is a tourist attraction that has grown in size and reputation since its inception in 1955. Currently, it is open to the public for 365 days a year and is visited regularly by residents from the South Florida area as well as domestic and foreign visitors who are in the area on vacation. Altogether, the Seaquarium attracts over 600,000 guests per year.

The Lease Agreement was amended and restated in 2000. The Lease Agreement now contemplates that the Corporation would improve the Seaquarium from time to time at its expense. Each time the improvements are completed the Lease term may be extended for additional years in relation to the cost of the improvements at the option of the Corporation. The Corporation has completed plans and received a firm bid on the construction of a new "Marine Exhibition Habitat" (whale bowl) that includes seating for 2000 guests and three state of the art pools including a medical pool with a total capacity of over 2.5 million gallons of chilled salt water ("Project"). Upon the completion of the Project, the Lease term shall be extended from its current term of 2008 through 2035.

The cost of the Project is approximately \$21 million. The Corporation will contribute approximately \$3 million toward the cost of the project and will finance the balance. The Corporation has received a letter of intent from a lender for a loan in the amount of \$21 million which will be used to finance the remaining cost of the Project (\$18 million) and to retire an outstanding leasehold mortgage for \$3 million ("Loan"). The lender is requiring that the Corporation's parent corporation, Wometco Enterprises, Inc., guaranty \$10 million of the Loan and that the Corporation obtain an additional \$5 million letter of credit. To assist it in securing the letter of credit, the Corporation is requesting that the County agree to subordinate its lease payments due under the Lease Agreement whenever cash flow is insufficient to make debt service payments on the Loan. In the event the County does defer a lease payment, it will be paid from surplus cash flow as soon as it is available prior to any distributions to Wometco or the Corporation other than for ordinary operating expenses.

The Miami Seaquarium has a long history of providing a significant attraction to the Miami-Dade community and the visitors to South Florida. The Park and Recreation Department, as landlord, receives substantial revenues that support its general fund operation, with the Seaquarium being the largest lease revenue resource to the Park and Recreation Department. It is anticipated that with the renovation and upgrading of the facility that this revenue stream will further increase. Although there may be some deferred income during the renovation period, over the term of the Lease Agreement the County stands to see substantial revenues while further improving the recreational opportunities for the community.

The resolution also authorizes the Finance Director and other County officials and employees to deliver such documents and do all things necessary in connection with the deferral of the lease payments subject to review by the County Attorney's Office.



# MEMORANDUM

(Revised)

**TO:** Honorable Chairperson and Members  
Board of County Commissioners

**DATE:** July 8, 2003

**FROM:** Robert A. Ginsburg  
County Attorney

**SUBJECT:** Agenda Item No. 7(M)(1)(A)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 7(M)(1)(A)  
7-8-03

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING SUBORDINATION OF ALL OR PORTION OF LEASE PAYMENTS FROM THE MIAMI SEAQUARIUM UP TO AGGREGATE AMOUNT OF \$5 MILLION IF CASH FLOW FROM OPERATION OF MIAMI SEAQUARIUM IS INSUFFICIENT TO PAY DEBT SERVICE PAYMENTS ON LOAN IN CONNECTION WITH FINANCING OF NEW MARINE MAMMAL HABITAT; AND AUTHORIZING FINANCE DIRECTOR TO EXECUTE AND DELIVER DOCUMENTS AND OTHER COUNTY OFFICIALS TO DO ALL THINGS NECESSARY IN CONNECTION WITH SUCH ASSISTANCE

WHEREAS, the County and Marine Exhibition Corporation, a Florida Corporation, d/b/a The Miami Seaquarium (the "Corporation"), have entered into a Lease Agreement dated March 9, 1954 regarding the Miami Seaquarium site which the County owns and the Corporation leases from the County; and

WHEREAS, the Seaquarium is a well known marine attraction that is open to the general public for 365 days a year and is visited regularly by residents from the South Florida area as well as domestic and foreign tourists; and

WHEREAS, the Lease Agreement contemplates that the Corporation would improve the Seaquarium from time to time at its expense; and

WHEREAS, title to the improvements to the Seaquarium vests in the County when they are completed and installed at the site; and

WHEREAS, each time improvements are completed the Lease term may be extended for additional years in relation to the cost of the improvements at the option of the Corporation; and

WHEREAS, the Corporation has finished the design and plans for a new Marine Mammal Habitat (the "Project") that will cost approximately twenty million dollars (\$21,000,000); and

WHEREAS, the Corporation has requested that the County agree to subordinate the receipt of its lease payments, if necessary, in connection with the financing of the Project (the "Loan") for the reasons and on the terms set forth in the accompanying memorandum, a copy of which is incorporated in this resolution by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that :

Section 1. The preceding recitals are incorporated in this section by reference.

Section 2. The County agrees to subordinate all or a portion of any lease payments due from the Corporation under the Lease Agreement up to an aggregate amount of \$5 million if cash flow from the operation of the Miami Seaquarium is insufficient to make debt service payments on the Loan. The Corporation shall pay any deferred lease payment from the next available cash flow before making any distributions to the Corporation or Wometco other than for ordinary operating expenses.

Section 3. The Finance Director is authorized to execute and deliver any documents and certificates after consultation with the County Attorney's Office necessary to satisfy the requirements of this resolution. All other County officials and employees are authorized to do all things necessary in connection with the County's financial assistance to Corporation with respect to the Project and the Loan.

The foregoing resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

- |                                       |                  |
|---------------------------------------|------------------|
| Dr. Barbara Carey-Shuler, Chairperson |                  |
| Katy Sorenson, Vice-Chairperson       |                  |
| Bruno A. Barreiro                     | Jose "Pepe" Diaz |
| Betty T. Ferguson                     | Sally A. Heyman  |
| Joe A. Martinez                       | Jimmy L. Morales |
| Dennis C. Moss                        | Dorrin D. Rolle  |
| Natacha Seijas                        | Rebeca Sosa      |
| Sen. Javier D. Souto                  |                  |

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of July, 2003. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

Approved by County Attorney as  
to form and legal sufficiency.

Gerald T. Heffernan

By: \_\_\_\_\_  
Deputy Clerk