MEMORANDUM

Agenda Item No. 8(H)(1)

TO:	Honorable Chairwoman Rebeca Sosa and Members, Board of County Commissioners	**DATE:**	May 6, 2014
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution authorizing and approving sale of stock of Marine Exhibition Corporation to Festival Fun Parks, LLC

The accompanying resolution was prepared by the Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Prime Sponsor Commissioner Xavier L. Suarez.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

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Memorandum

MIAMI-DADE COUNTY

Date: May 6, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Resolution Authorizing and Approving Sale of Stock of Marine Exhibition Corporation to Festival Fun Parks, LLC, the Merger of Marine Exhibition Corporation into Festival Fun Parks or an Affiliate of Festival Fun Parks and Authorizing the County Mayor or Mayor's Designee to accept stock sale participation payment

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Recommendation

It is recommended that the Board of County Commissioners (Board) approve (1) the attached resolution authorizing and approving the sale of 100% of the stock of Marine Exhibition Corporation (MEC), operator of the Seaquarium marine exhibition facility on Virginia Key, to Festival Fun Parks, LLC (Festival), a Delaware limited liability company; (2) the subsequent merger of MEC into Festival or an affiliate of Festival; and (3) authorize the County Mayor or Mayor's designee to accept up to $1,500,000 as per the stock sale participation payment required under the lease.

Scope

The Seaquarium is located on Virginia Key within Commission District 7, Commissioner Xavier L. Suarez. The impact of this agenda item is countywide, as the Seaquarium is a regional asset and a tourist attraction for residents and visitors throughout Miami-Dade County. In calendar year 2013, some 598,000 persons visited the Seaquarium.

Fiscal Impact/Funding Source

The County will receive a one-time payment of eight percent (8%) of the net book profit realized by MEC's parent company, Wometco Enterprises, Inc. ("Wometco"), from the sale of MEC's stock, not to exceed $1.5 million, from MEC pursuant to MEC's lease agreement with the County. These funds are to be deposited in the Coastal Park and Marina Trust Fund to be used as matching funds for capital improvement grants. MEC has represented to the County (Exhibit B) that the County will be receiving no less than $1,000,000 associated with the sale of its stock.

Track Record/Monitor

There are no known performance issues with MEC. The lease will continue to be managed by the Parks, Recreation and Open Spaces Department's Contract Manager, Jon Seaman.

Background

The original lease between the County and MEC for the construction and operation of the Seaquarium is dated March 9, 1954. The lease documents have been amended and restated, and approved by the Board a number of times since it originated, most recently on July 25, 2000. MEC's corporate office is in Coral Gables. The current lease term is set to expire on October 21, 2031, although the lease contains additional extension provisions if certain conditions are met.

MEC is by far the largest tenant within the Parks, Recreation and Open Spaces Department, with rent payments to the County totaling nearly $2.7 million annually. MEC stock is owned by Wometco Enterprises, Inc. and MVC Capital, Inc. The lease permits the MEC to assign the lease or sell its rights under the lease upon giving notice to the County and affording the County an opportunity to object if the transaction is contrary to the best interests of the County. The sale of stock to Festival is in the best interest of the County, as Festival is a large, well established company that is able to make improvements to the Seaquarium. (The principals of Festival are listed as Exhibit A of the attached resolution.) The Seaquarium has pledged not to add terrestrial animals to its collection in calendar years 2014 and 2015.

Festival Fun Parks, LLC is a subsidiary of Palace Entertainment Holdings, LLC which hosts over 13 million visitors annually at 37 locations across the U.S., including three in Florida. It operates seven theme parks, 10 water parks and 20 family entertainment centers, making it the nation's largest operator of such facilities. Both Festival and Palace are U.S. based companies with headquarters in Newport Beach, California. Palace Entertainment is a subsidiary of international park operator Parques Reunidos, headquartered in Madrid, Spain. Parques Reunidos is owned by Arle Capital Partners, a private equity firm based in London, England.

Attachments

Michael Spring, Senior Advisor
Office of the Mayor

MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: May 6, 2014

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(H)(1)

Please note any items checked.

_____ **"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**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

✓ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved_____ Mayor
Veto _____
Override _____

Agenda Item No. 8(H)(1)
5-6-14

RESOLUTION NO. _____

RESOLUTION AUTHORIZING AND APPROVING SALE OF STOCK OF MARINE EXHIBITION CORPORATION (MEC) TO FESTIVAL FUN PARKS, LLC; AUTHORIZING AND APPROVING SUBSEQUENT MERGER BETWEEN MEC AND FESTIVAL FUN PARKS, LLC OR AN AFFILIATE OF FESTIVAL FUN PARKS, LLC; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE ANY AND ALL DOCUMENTS REQUIRED IN CONNECTION THEREWITH, TO ACCEPT A PAYMENT FROM MEC IN AN AMOUNT NOT TO EXCEED $1,500,000, AND TO UNDERTAKE ANY NECESSARY AUDIT AND DUE DILIGENCE TO CONFIRM AMOUNT DUE TO THE COUNTY

WHEREAS, the County as Lessor and Marine Exhibition Corporation d/b/a The Miami Seaquarium as Lessee ("MEC") entered into an Amended and Restated Lease on July 25, 2000, as subsequently amended, for the lease of certain parcels of land along the Rickenbacker Causeway across Biscayne Bay on Virginia Key for the continued operation of the Miami Seaquarium ("Lease"); and

WHEREAS, the Lease permits MEC to assign the Lease or sell its rights under the Lease upon giving notice to the County and affording the County an opportunity to object if the transaction is contrary to the best interests of the County; and

WHEREAS, the stockholders of MEC are contemplating a sale of all of their stock in MEC to Festival Fun Parks, LLC and Festival Fun Parks, LLC is contemplating the merger of MEC into Festival Fun Parks, LLC or with another related, affiliate entity that has the same principals as Festival Fun Parks, LLC; and

WHEREAS, MEC has provided disclosure of the names and business addresses of all proposed transferees of MEC's interests as set forth in the accompanying

memorandum and in accordance with Section 2-8.1(d)(1) of the Code of Miami-Dade County, Florida; and

WHEREAS, the Lease provides that in the event MEC sells or assigns its rights pursuant to the Lease and/or if MEC's stock is sold, assigned or transferred by its parent corporation, Wometco Enterprises, Inc. ("Wometco") (other than for an initial public offering or for the purpose of reductions in debt or construction of capital improvements), then MEC must pay the County 8% of any net book profit realized by Wometco, which amount shall not exceed $1,500,000; and

WHEREAS, MEC has represented to the County that it shall pay the County no less than $1,000,000 associated with this transaction at the time of the closing of the sale of all of the stock in MEC owned by Wometco ; and

WHEREAS, further, MEC has represented to the County that it will hold another $500,000 in escrow with its attorney pending the final determination of the net book profit realized by Wometco and shall pay the County any such additional amounts owed to the County, up to $500,000, within 90 days following the closing of the sale of all of the stock in MEC owned by Wometco; and

WHEREAS, this Board desires to accomplish the purpose outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

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

1. Authorizes and approves the sale of all of the stock of MEC owned by Wometco and MVC Capital, Inc. to Festival Fun Parks, LLC.

2. Authorizes and approves the subsequent merger of MEC with and into Festival Fun Parks, LLC or an affiliate of Festival Fun Parks, LLC, provided said affiliate has the same principals as those disclosed in accordance with Section 2-8.1(d)(1) of the Code of Miami-Dade County. Further, this Board finds that Exhibit "A" attached hereto satisfies the disclosure requirements of Section 2-8.1(d)(1) of the Code of Miami-Dade County and hereby authorizes and approves said Exhibit.

3. Authorizes the County Mayor or Mayor's designee to accept a payment due to the County from MEC as a result of the sale and merger in an amount not to exceed a total of $1,500,000 as satisfaction of all amounts due to the County by MEC pursuant to Section 23 of the Lease which provides that MEC shall pay the County eight percent (8%) of any net book profit realized by Wometco not to exceed $1,500,000. The initial $1,000,000 shall be paid to the County at the time of the closing of the sale of all of the stock in MEC owned by Wometco, with the total payment due to the County to be delivered by MEC within 90 days following the closing.

4. Finds that the proposed sale of stock and subsequent merger will not be contrary to the best interests of the County and that Festival Fun Parks, LLC, is a competent, experienced operator comparable to MEC.

5. Authorizes the Mayor or Mayor's designee to execute any and all documents that may be required in connection with the transactions authorized and approved by this Resolution and to undertake any necessary audit and due diligence to confirm amount due to the County.

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:

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro	Esteban L. Bovo, Jr.
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of May, 2014. 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.

By:_____
Deputy Clerk

Monica Rizo

EXHIBIT "A"

Disclosure of Interests Pursuant to Section 2-8.1(d)(1)

Festival Fun Parks, LLC (a Delaware entity)
Festival is 100% owned by Palace Entertainment Holdings, LLC (also a Delaware entity).

Festival Fun Parks, LLC and Palace Entertainment Holdings, LLC have the same officers and managers, as follows:

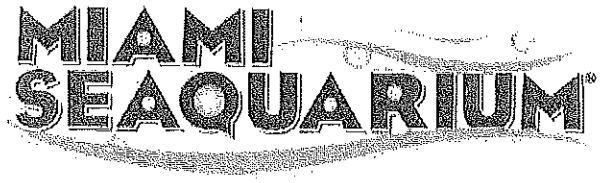
Officers:
-Fernando Eiroa – President & CEO
-Russell D. Owens – CFO
-Michael L. Baroni – General Counsel & Secretary
-Rolf Paegert - COO
-Gregg Borman – SVP, Family Entertainment Centers
-Bill Lentz - VP, Water Parks
-James Judy - VP, Water Parks
-Albert Cabuco – VP, Food & Beverage
-Michele Wischmeyer – VP, Marketing

Managers:
Board of Managers:
-Francisco Javier Abad Marturet
-Fernando Eiroa

The business address for all persons and entities disclosed herein is:

4590 MacArthur Blvd., Suite 400
Newport Beach, CA 92660

EXHIBIT B



April 25, 2014

Jack Kardys
Director
Parks, Recreation and Open Space
Miami-Dade County
275 N.W. 2nd Street
Miami, FL 33128

Re: MEC Lease - Payment Due the County

Dear Jack:

This is to confirm, as we previously advised Assistant County Attorneys Monica Rizo and Miguel Gonzalez, (a) the minimum payment due to the County under the MEC Lease as a result of Wometco's sale of its MEC common stock to Festival Fun Parks, LLC and the contemplated merger of MEC into Festival Fun Parks, LLC or another related, Festival Fun Parks, LLC affiliate entity, will be $1 million, which sum would be paid to the County at the time of the Closing, and (b) an additional $500,000 will be deposited in escrow with Holland & Knight at the Closing, subject to the determination of Wometco's Net Book Profit from the sale of the stock by Wometco's auditors.

Very truly yours,

Wometco Enterprises, Inc.

By: _____
Michael S. Brown
Chief Operating Officer

cc: Monica Rizo, Esq.
Miguel Gonzalez, Esq.
Eileen Mehta, Esq.
Bruce Jay Colan, Esq.

4400 Rickenbacker Causeway · Miami, Florida 33149-1095
305-361-5705 · Fax 305-361-6077
www.miamiseaquarium.com

MIAMI 4150274.1 74338/13663

EXHIBIT C

Wednesday, April 02, 2014

Jack Kardys
Miami-Dade County Parks, Recreation and Open Spaces

Dear Jack,

Miami Seaquarium traditionally has not incorporated marquee terrestrial animals as part of its animal collection. Out of respect for the Miami-Dade County Parks, Recreation and Open Spaces (PROS) Department's desire to include language in our lease defining which marquee terrestrial animals it wishes to be prohibited from our collection, we pledge not to add any new terrestrial animals during calendar years 2014 and 2015, on the condition that the acquisition of Miami Seaquarium by Palace Entertainment is approved and consummated.

Miami Seaquarium will continue to have the ability to add marine mammals/animals to its park facility during this 2014 and 2015 period. Also, during this 2014 and 2015 period, we will work with the PROS Department to open negotiations of the Miami Seaquarium lease with respect to this issue, as well as other matters of concern to Miami Seaquarium.

Sincerely,

Andrew Hertz,
President
General Manager

Accepted and Agreed:

_____ _____

Jack Kardys Date

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