

Memorandum



Date: March 7, 2017

Supplement to
Agenda Item No. 8(L)1

To: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Supplemental Information to Item 8L1 - Resolution Relating to Grant Agreement between AA Acquisitions, LLC and Miami-Dade County and Authorizing its Execution for a Building Better Communities Economic Development Grant to Fund Public Infrastructure Improvements Related to the Construction of Orion Jet Center Development

This supplement serves to provide the Board of County Commissioners (Board) with suggested language for consideration that would amend the Grant Agreement (Agreement) with AA Acquisitions, LLC, which is before the Board as item 8L1 (Legistar 170447).

Staff recommends that the Board adopt the proposed amendments to the Agreement as reflected in the attached pages. The Grantee has also agreed to the proposed amendments. These amendments would revise Sections 2, 3, 5 and 6 of the Agreement to clarify that the Certified Jobs must have been created and maintained for a minimum of 365 days in order for the Grantee to obtain reimbursement.

All proposed amendments are underlined and/or stricken through as well as highlighted for the Board's reference.

Attachment

Jack Osterholt
Deputy Mayor

NOW THEREFORE, pursuant to resolution of the Board which specifically authorizes the County Mayor or County Mayor's designee to execute this Grant Agreement and any other related agreements and certificates and in consideration of the mutual promises and covenants contained in this Grant Agreement and the mutual benefits to be derived from this Agreement, the County and the Grantee agree as follows:

Section 1. Parties; Effective Date; and Term. The parties to this Agreement are the Grantee and the County. The Board has delegated the responsibility of administering this Grant Agreement to the County Mayor or the County Mayor's designee, who shall be referred to as the "County Mayor." The County Mayor has assigned the responsibility for monitoring this Agreement to the Department of Regulatory and Economic Resources ("RER").

This Agreement shall take effect as of the date written above upon its execution by the County and the Grantee. Subject to Section 2 and Section 16 below, this Agreement shall have a term commencing on the Effective Date and expiring twenty-five (25) years from the Reimbursement Date (as such term is defined in Section 2 herein). Notwithstanding the foregoing, to the extent that the GOB Project is on land owned by Miami-Dade County, this Agreement shall expire concurrently with the expiration of the Security (as such term is defined in Section 6 of this Agreement).

Section 2. Job Creation. Exhibit A sets forth the projected economic impact that the Development shall have on the community, including the number of new jobs to be created and the new business or expanded businesses that will result from the completion of the Development. The Grantee has agreed to create or cause to be created 31 direct New Jobs with annual average salaries of \$41,432 (including benefits) or higher as described in Exhibit A and 126 indirect jobs with average annual salaries of \$60,051 (including benefits) ("Certified Jobs"). The Grantee agrees to maintain or caused to be maintained the number of Certified Jobs for four (4) years from the date the County disburses the Grant proceeds to the Grantee (such date to be referred to herein as the "Reimbursement Date"). The County shall determine, as set forth in this Agreement, the number of Certified Jobs created and maintained on the one year anniversary date of each year following the Reimbursement Date ("Anniversary Date"). The County and the Grantee agree that "New Jobs" are defined as permanent full-time equivalent positions (36hrs/week) from: (i) new businesses located in the Development, (ii) existing businesses relocating to Miami-Dade County as a result of the Development, and/or (iii) business expansions of businesses already located in Miami-Dade County, and excludes construction jobs and jobs existing as of the commencement date of the construction of the Development, unless such jobs are permanent jobs created in connection with, and in anticipation of, the operation and management of the Development after the Development is completed, provided, however, such new permanent full time jobs shall be net of any permanent jobs eliminated as a result of the Development.

The determination of the number of direct new jobs created and maintained shall be certified in the form of an annual report attached as Exhibit

E, based upon the RT-6 filings with the State of Florida, to evidence the number of Certified Jobs during the previous year and the average salary paid, prepared and certified by: (1) the Grantee's Certified Public Accountant (CPA) (2) the Grantee's Tenant(s)' CPA or (3) an agent of the Grantee's Tenant who has been duly authorized to sign on behalf of the Tenant company, by a corporate manager or officer. In conjunction with such annual report, the Grantee shall submit an affidavit or other written affirmation attesting that the new jobs certifications in said report are true and correct to the best of the Grantee's knowledge and belief.

The Grantee agrees to comply with Section 2-1701 of the Code of Miami-Dade County, Florida ("County Code"), known as the Community Workforce Program, with a goal of having a minimum of 10% of the persons performing the construction trades and labor work for the Development be residents of Designated Target Areas (as such term is defined in Section 2-1701 of the County Code) and will aspire to have no less than seventy percent (70%) of the Certified Jobs shall be offered first to residents of Miami-Dade County as set forth in the hiring plan prepared by the Grantee and attached as Exhibit B to this Agreement.

Section 3. Conditions Precedent. The County shall have no obligation to fund the Grant pursuant to Section 5, and this Agreement shall be terminated and the parties shall no longer have any obligation to each other pursuant to this Agreement if any one or more of the following conditions are not met:

(a) Construction of the GOB Project is commenced by the date set forth in the Construction Schedule attached as Exhibit C ("Construction Schedule") or any other date approved by the County Mayor after written request from the Grantee;

(b) Construction of the GOB Project is completed by Phase 1 by December 12, 2013 and Phase 2 by March 30, 2016; pursuant to the Construction Schedule or any other date approved by the County Mayor after written request from the Grantee;

(c) The Certified Jobs have been created On or before the date that is three hundred and sixty-five (365) days from the date of the Certificate of Occupancy ("CO") and have thereafter been maintained in full for three hundred and sixty-five (365) days, as demonstrated by the County is in receipt of written evidence supplied from the Grantee to the County and acceptable to the County Mayor that Certified Jobs have been created;

(d) On or before the date that is three hundred and sixty-five (365) days from the date of completion of both the Development and the GOB Project, the County is in receipt of collateral from the Grantee and acceptable to the County Mayor as required by Section 5 of this Agreement; or

(e) The Grantee agrees to submit written evidence to the County within sixty (60) days of the date of this Agreement (or such additional period as is approved by the Board of County Commissioners) that it has secured financing

acceptable to the County sufficient to complete the Development or that the Development has been completed.

If any one or more of (a)-(e) above are not met, the County shall send written notice to the Grantee of the termination of this Agreement within fifteen (15) days following the date on which any one of the conditions are not met. Failure by the County to send notice timely shall not affect the termination of this Agreement which shall be effective thirty (30) days following the date on which any one of the conditions in (a)-(e) above are not met.

Section 4. Development. The Grantee shall construct a 19,305 square foot class "A" Terminal Building, 13,540 square feet of office space, and 75,000 square feet of aircraft hangars, over 750,000 square feet of aircraft ramp and related site improvements including a 90,000 square foot car parking lot.

The GOB Project completed by Grantee will consist of a drainage system, a new electrical distribution system, roadways, a parking lot, LED site lighting and new sidewalks ("Eligible Capital Costs"). The Grantee expressly represents and agrees that the GOB Project serves a public purpose, is public infrastructure as required by the ballot question and Appendix A and will be used to fund capital costs as required by the Constitution and the Laws of the State of Florida ("State").

The budget for the Development, which includes the projected GOB Project costs and funding sources, is attached as Exhibit D. If the Grantee wishes to revise the GOB Project or amend the GOB Budget for the purpose of completing the GOB Project and such revisions do not materially alter the original GOB Project or reduce the cost of the GOB Project in the budget by fifteen percent (15%) or less, the Grantee shall request in writing that the County Mayor review and approve such revisions. The County Mayor shall have thirty (30) days from the date the request was received to make a final determination. If the Grantee disagrees with the County Mayor's decision to reject the revision, the County Mayor shall present the revision to the Board if requested by the Grantee. Any material change in the GOB Project or change to the costs in the budget of more than fifteen percent (15%) shall require Board approval and shall result in a corresponding reduction in the amount of the Grant.

Section 5. Payment of Grant. The County has no obligation to pay the Grant to the Grantee except in accordance with the terms and conditions set forth in this Agreement and in particular, this Section 5. The County shall reimburse the Grantee for Eligible Capital Costs incurred in connection with the GOB Project solely from legally available GOB bond and/or note proceeds. Eligible Capital Costs shall not include any costs incurred by the Grantee prior to May 16, 2012. The County shall not reimburse the Grantee for any Soft Costs that exceed seventeen percent (17%) of the Grant. Soft Costs are defined in the Administrative Rules of the County pertaining to the BBC GOB Program ("Administrative Rules"). The County assumes no obligation to provide financial support of any type to the Grantee for the GOB Project in excess of the Grant amount. Cost overruns are the responsibility of the Grantee.

The County shall only be obligated to reimburse the Grantee provided the Grantee is not in breach of this Agreement, the Certified Jobs have been created and maintained for at least three hundred and sixty-five (365) days, and collateral is delivered to the County pursuant to Section 6 below. The County's reimbursement obligation is subject to and contingent upon the availability of funding solely from BBC GOB Program funds. The Grantee shall be solely responsible for submitting all documentation required by this Agreement and the Administrative Rules to the Department of RER for reimbursement of all Eligible Capital Costs. Provided this Agreement has not been terminated pursuant to Section 3 or Section 16 of this Agreement and all the conditions set forth in this Section 5 are met by the Grantee, the Grant shall be remitted by the County to the Grantee as a onetime reimbursement on date that is no earlier than three hundred and sixty-five (365) days from the date the Development is put into service and no earlier than the date at which the Certified Jobs have been maintained for at least three hundred and sixty-five (365) days. An administrative fee no more than one percent (1%) of the awarded Grant shall be deducted as defined in the Administrative Rules of the County pertaining to the BBC GOB Program ("Administrative Rules").

Section 6. Clawback. Prior to the disbursement of the Grant pursuant to Section 5, the Grantee shall provide an irrevocable letter of credit (or other similar collateral acceptable to the County) to the County in a form acceptable to the County in the amount of \$5,000,000.00 ("Security") and the Security shall remain in place and available to be drawn upon by the County until such date as all of the obligations set forth in Section 2 of this Agreement have been satisfied. Failure by the Grantee to provide collateral by such date shall terminate this Agreement pursuant to Section 3 of this Agreement. ~~On the first Anniversary Date, the Grantee shall certify that the Certified Jobs to be created as of the first Anniversary Date are in place as a condition to the County funding the Grant. On~~ and each subsequent Anniversary Date for the four (4) additional years period following the Reimbursement Date, the Grantee shall certify to the County that the number of Certified Jobs that are in place and have been maintained during the prior three hundred and sixty-five (365) days. The Grantee's obligation to maintain each of the Certified Jobs and to maintain the collateral shall terminate five years after Grantee has created the Certified Jobs.

Section 7. Reports. The Grantee shall also submit a written report to the County Mayor on or prior to September 30th of each year subsequent to the date the Grant is funded and on each September 30th thereafter through the termination date of this Agreement, demonstrating that the Grantee is fulfilling, or has fulfilled, its purpose, is in compliance with this Agreement and is in compliance with all applicable municipal, County, State and federal requirements. The County Mayor may also request that a compilation statement or independent financial audit and/or accounting for the expenditure of the Grant funds be prepared by an independent certified public accountant selected by, and at the expense of, the Grantee.

If the Grantee fails to submit the required reports to the County on the dates as required above, the County Mayor may terminate this Agreement in accordance with Section 16. The County Mayor shall approve or reject all reports received from the Grantee within forty-five (45) days of receipt. Grantee shall