

Memorandum



Date: December 7, 2022

Agenda Item No. 2(B)(4)
January 17, 2023

To: Honorable Chairman Oliver G. Gilbert III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Report on Feasibility of Ownership Transfer of the Assets of the Friends of the Military Museum of South Florida at NAS Richmond, Inc. d/b/a Miami Military Museum and Memorial ("Museum") to the County, Directive No. 221180 (Originally No. 220747)

Executive Summary

On April 19, 2022, the Board of County Commissioners (Board) approved Resolution No. R-374-22 (Resolution) co-prime sponsored by Chairman Jose "Pepe" Diaz and Commissioner Kionne L. McGhee. The Resolution directed the County Mayor or County Mayor's designee to prepare a report within 60 days detailing: a) the steps necessary to transfer ownership of the Museum's assets to the County; b) the costs to the County of such transfer, including estimates of future operating and maintenance (O&M) expenses as compared to the Maintenance Payment; c) options for the structure of the Museum's ongoing O&M that contemplate both County ownership and Museum's continued ownership; and d) a recommendation regarding transference of Museum ownership to the County.

The Miami-Dade Parks, Recreation and Open Spaces Department (PROS) has prepared this report in response to the Resolution and has determined that based on initial assessments of the Museum's infrastructure and operating plans, further evaluation and assessments will need to be conducted in the areas of infrastructure remediation needs, strategic operating, staffing, and funding plans, and further evaluation of how the Museum can maximize private funding opportunities.

Therefore, it is recommended that before a transfer can occur, further assessments and evaluations of the items described above be conducted to properly evaluate the operational and maintenance needs of the Museum.

Background

The Museum currently operates under the terms and conditions of the Amended and Restated License Agreement (License Agreement) entered into between the County and the Museum effective February 18, 2015. The License Agreement provides for the ongoing operation of the Museum on County land for public park and recreational purposes in perpetuity, in accordance with the Quitclaim Deed from the United States of America conveying the land to the County as recorded on July 15, 1987. The Museum serves a repository and venue dedicated to the preservation and display of South Florida's rich military history across all branches of service. The thirty (30) year term of the Agreement expires February 18, 2045, with two (2) options to renew of ten (10) years each which may be exercised consecutively by the Museum provided there are no defaults by the Museum under the License Agreement.

Funding

Pursuant to the Board's direction, the Transition Agreement was executed between the County and the Museum on July 26, 2022, allowing for the immediate disbursement of the interim funding allocated in the FY 21-22 budget for the Museum's operations in the amount of \$800,000, as well as subsequently providing for future maintenance payments in the amount of \$750,000 annually beginning in FY 23-24, and continuing until the expiration of the license agreement or until the date when the Museum's assets are transferred to the County, whichever is earlier. The above-referenced initial \$800,000 allocation has been disbursed to and received by the Museum.

Evaluation and Inspections

The Transition Agreement calls for prioritizing the use of County funding to address necessary repairs or capital improvements to the Museum Building. Additionally, PROS staff initiated steps to evaluate and analyze the current status of the Museum's operational activities, assets, and physical infrastructure in accordance with the Resolution. Departmental staff has conducted multiple preliminary on-site inspections and evaluations of the Museum's physical infrastructure and operational expenses and projections. Based on the preliminary inspections of the physical infrastructure, it was found that capital restorations, remediations, inspections, and the 40-year recertification are required for the Museum Building before the Museum can operate as a properly functioning Museum enterprise facility and before any contemplated ownership transfer to the County can be recommended by PROS, including but not limited to the following:

1. Remediation of observed termite infestation, with associated physical infrastructure replacement as may be correspondingly required;
2. Repair of buckled flooring, including the associated ascertainment and repair of the causes of such buckling;
3. Repair of identified roof leaks, including the associated comprehensive inspection required to fully identify any additional roof structural issues, potentially including roof replacement;
4. Identification and remediation of potential HVAC (heating, ventilation and air conditioning) issues, including full inspection, repair, and potential replacement, as needed.; and
5. Completion of the required 40-year recertification process mandated by County law to analyze the structural soundness of the Museum building.

With respect to the electrical and mechanical systems currently in place at the Museum, PROS noted that there were no deficiencies reported for either system.

The scope and potential cost of addressing the foregoing items is yet to be determined. Further detailed inspections are ongoing by PROS and, based on these inspections, the Department will work to develop detailed cost estimates to determine the extent of the associated time and expenses that will be required to repair and restore the Museum Building. It is recommended that the Museum complete such remediation utilizing the County funding allocated by the Transition Agreement. In addition to completing an ongoing title search to determine liens and other

encumbrances, one key factor in assessing any proposed County assumption of the Museum Building is completion of the necessary improvements which will assist in determining true cost for the regular annual maintenance of the facility.

Based on the initial evaluation and review of the financial information submitted of the Museum's actual and forecasted operating expenses and based on the significant infrastructure issues identified above, the FY 21-22 \$800,000 allocation in addition to the first \$750,000 maintenance payment will likely target the remediation of those items, with small margins for skeleton staff operations and basic overhead and maintenance. Detailed estimates to determine annual O&M expenses can more accurately be calculated once these immediate needs have been addressed. With any remaining balance, it is recommended that the County work with the newly established Military Museum Board to recruit for an industry professional consultant to assist in the evaluation and development of the following:

- 5-year strategic plan;
- Museum staffing, operating, and maintenance plans;
- Operating pro-forma to include projected expenses for public programming required to attract and engage Museum patrons and costs for the buildout of the Museum as a destination location with associated marketing and exhibit development and management;
- Recommendations regarding Museum board governance and structure;
- Recommendations for new partnership opportunities with other military museums across the country and/or other local partners (e.g., HistoryMiami); and
- Recommendations for a robust fundraising outreach effort to secure additional public and private funding for on-going operations and capital improvements.

Based on the identified capital needs and the need to secure a consultant to assist with the development of a plan for the future operations of the Museum, it is critical that the Museum position itself to pursue outside funding opportunities. In general, statistics show that only 23% of operating expenses for museums comes from earned revenue, with the remaining 77% supported by private grants, government support, and philanthropic donations. Given the reluctance of private funders (including individuals, corporations and foundations) to make contributions to local government-owned and operated facilities, it is highly recommended that the Museum retain ownership of its assets to position itself for the successful pursuit and award of outside private and public grant funding. This approach of having a nonprofit organization responsible for operating and programming County property was determined to be the most optimal in the early years of what is now the Pérez Art Museum Miami and is currently utilized for HistoryMiami and Vizcaya Museum and Gardens. These museums operate successfully through a nonprofit organization with an annual County subsidy that is complemented by significant private fundraising.

Recommendation

Therefore, based on the Museum Building's infrastructure concerns in need of immediate remediation as identified above, insufficient information at this time to determine the true annual O&M expenses, and the difficulty of local governments to secure private funding, the decision to transfer the Museum's assets to the County should not occur until further assessments and evaluations of the Museum's infrastructure has been completed and until the development of the

necessary future operating plans (strategic, staffing, operating pro-forma) have been developed and evaluated. As noted above, however, and in accordance with the Resolution, the County will continue to subsidize the Museum through Annual Maintenance Payments of \$750,000 until the end of the License Agreement or the County's takeover of the Museum Building. The County will also continue to work in partnership with the Museum to conduct evaluation and inspection services and service costs to include the development of cost estimates, as necessary. A follow-up report will be submitted to this Board promptly upon the availability of the title search, capital infrastructure remediation, additional results as identified from ongoing inspections, and funding availability for this work and for museum consulting services.

This memorandum will be placed on the next available Board meeting agenda, without committee review, in accordance with Ordinance No. 14-65. If additional information is needed, please contact Maria I. Nardi, Director, Miami-Dade County Parks, Recreation and Open Spaces Department at 305-755-7903.

- c: Geri Bonzon-Keenan, County Attorney
- Gerald K. Sanchez, First Assistant County Attorney
- Jess M. McCarty, Executive Assistant County Attorney
- Office of the Mayor Senior Staff
- Maria I. Nardi, Director, Parks, Recreation and Open Spaces Department
- Yinka Majekodunmi, CPA, Commission Auditor
- Jennifer Moon, Chief, Office of Policy & Budgetary Affairs
- Basia Pruna, Director, Clerk of the Board
- Eugene Love, Agenda Coordinator

MEMORANDUM

Amended
Agenda Item No. 11(A)(6)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: April 19, 2022

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving and directing the County Mayor to execute the Transition Agreement between the County and the Friends of the Military Museum of South Florida at NAS Richmond, Inc. d/b/a Miami Military Museum and Memorial ("Museum") with a fiscal impact of \$800,000.00 in Fiscal Year 2021-22 and a fiscal impact of up to \$750,000.00 commencing in Fiscal Year 2023-24 recurring until the earlier of the transfer of ownership of the Museum's assets to the County or the expiration of the associated license agreement; directing the County Mayor to prepare a written report to the Board with information and recommendations regarding the transfer of ownership of the Museum's assets to the County and to place such report on an agenda of the Board in accordance with Ordinance No. 14-65; directing the County Mayor, if transfer of ownership is recommended, to commence certain steps required to effectuate the transfer of ownership of the Museum's assets to the County, provided that any agreements shall require the further approval of the Board; and directing the County Mayor to appoint staff to oversee the implementation of the Transition Agreement and the directives set forth herein; directing the County Mayor to collaborate with the museum on the preparation of a 5-year strategic plan, review and provide approvals thereof, and place such strategic plans on an agenda of the Board in accordance with Ordinance No. 14-65

Resolution No. R-374-22

The accompanying resolution was prepared and placed on the agenda at the request of Co-Prime Sponsors Chairman Jose "Pepe" Diaz and Commissioner Kionne L. McGhee.



Geri Bonzon-Keenan
County Attorney

GBK/jp

MDC005



MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: April 19, 2022

FROM: 
Gen. Bonzon-Keenan
County Attorney

SUBJECT: Amended
Agenda Item No. 11(A)(6)

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
- Statement of social equity 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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Amended
Agenda Item No. 11(A)(6)

RESOLUTION NO. R-374-22

RESOLUTION APPROVING AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO EXECUTE THE TRANSITION AGREEMENT BETWEEN THE COUNTY AND THE FRIENDS OF THE MILITARY MUSEUM OF SOUTH FLORIDA AT NAS RICHMOND, INC. D/B/A MIAMI MILITARY MUSEUM AND MEMORIAL (“MUSEUM”) WITH A FISCAL IMPACT OF \$800,000.00 IN FISCAL YEAR 2021-22 AND A FISCAL IMPACT OF UP TO \$750,000.00 COMMENCING IN FISCAL YEAR 2023-24 RECURRING UNTIL THE EARLIER OF THE TRANSFER OF OWNERSHIP OF THE MUSEUM’S ASSETS TO THE COUNTY OR THE EXPIRATION OF THE ASSOCIATED LICENSE AGREEMENT; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO PREPARE A WRITTEN REPORT TO THE BOARD WITH INFORMATION AND RECOMMENDATIONS REGARDING THE TRANSFER OF OWNERSHIP OF THE MUSEUM’S ASSETS TO THE COUNTY AND TO PLACE SUCH REPORT ON AN AGENDA OF THE BOARD IN ACCORDANCE WITH ORDINANCE NO. 14-65; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE, IF TRANSFER OF OWNERSHIP IS RECOMMENDED, TO COMMENCE CERTAIN STEPS REQUIRED TO EFFECTUATE THE TRANSFER OF OWNERSHIP OF THE MUSEUM’S ASSETS TO THE COUNTY, PROVIDED THAT ANY AGREEMENTS SHALL REQUIRE THE FURTHER APPROVAL OF THE BOARD; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO APPOINT STAFF TO OVERSEE THE IMPLEMENTATION OF THE TRANSITION AGREEMENT AND THE DIRECTIVES SET FORTH HEREIN; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO COLLABORATE WITH THE MUSEUM ON THE PREPARATION OF A 5-YEAR STRATEGIC PLAN, REVIEW AND PROVIDE APPROVALS THEREOF, AND PLACE SUCH STRATEGIC PLANS ON AN AGENDA OF THE BOARD IN ACCORDANCE WITH ORDINANCE NO. 14-65

WHEREAS, on February 3, 2015, the Board approved Resolution No. R-158-15, authorizing the County Mayor or County Mayor’s designee to execute an Amended and Restated

Miami Military Museum and Memorial License Agreement (the “License Agreement”) between the County and the Friends of the Military Museum of South Florida at NAS Richmond, Inc. d/b/a Miami Military Museum and Memorial (the “Museum”); and

WHEREAS, under the License Agreement, the Museum constructed, operates, and maintains Richmond Building #25 (the “Museum Building”), which was relocated from federally owned lands to the County property on which the Museum Building now rests; and

WHEREAS, in accordance with the License Agreement, the Museum exists for the public purpose of preserving, exhibiting, and operating a military museum serving South Florida in accordance with a County-approved operating plan addressing the Museum’s mission, finances, administration, capital development, and operational parameters; and

WHEREAS, the License Agreement is for a term of 30 years—running from January 24, 2012—and allows the Museum to request up to two additional extensions, each of 10 years; and

WHEREAS, under the License Agreement, the County owns the land on which the Museum Building rests, and the Museum is required to operate the Museum Building for the aforementioned purposes; staff it with adequately trained personnel; provide for the construction, upgrade, repair, improvement, and code compliance of the Museum Building; and otherwise maintain the grounds and Museum Building; and

WHEREAS, the License Agreement provides that the Museum Building, which was restored and relocated utilizing County funds, and the Museum Building’s contents (e.g., furniture, fixtures, and equipment) shall remain the property and responsibility of the Museum, unless conveyed by the Museum and accepted by the County in the County’s sole discretion; and

WHEREAS, the License Agreement further provides that improvements constructed outside of the Museum Building (other than military artifacts), regardless of how funded, shall immediately vest in the County; and

WHEREAS, in addition, the License Agreement provides that after the Museum has completed all building restoration to the Museum Building and made it fully operational, the Museum may request that the County assume ownership of the Museum Building on terms and conditions acceptable to the County and subject to the approval of the Board; and

WHEREAS, to fund its improvements to the Museum Building, the Museum has pursued and obtained funding from various sources, including the State of Florida, which has required that the Museum record restrictive covenants providing that the Museum shall own all improvements to the Museum Building (*see, e.g.*, Resolution No. R-160-21); and

WHEREAS, the Board has also long provided financial support to the Museum, including by approving a \$2 million allocation of Building Better Communities General Obligation Bond Program funding, among other contributions; and

WHEREAS, in furtherance of the County's commitment to the Museum Building, in connection with the approval of the Fiscal Year 2021-22 budget, the County approved an allocation of \$800,000.00 of general fund revenues in the Enhanced County and District Program fund to be used for the operation of the Museum Building, subject to the transition of the Museum Building to the County; and

WHEREAS, to meet the condition set forth in the budget, the accompanying County Transition Agreement (the “Transition Agreement”) provides for the County’s appointment of the majority of the membership of the Museum’s board of directors, ensuring that County-appointed members will have oversight and control of the Museum’s annual budget, operating plan, and upcoming major expenditures; and

WHEREAS, in addition to meeting the condition set forth in the Fiscal Year 2021-22 budget for the release of \$800,000.00 in funding to the Museum to be used by the Museum for capital expenditures for the Museum Building and for operations of the Museum Building, the Transition Agreement serves as the Museum’s notice for the County to take ownership of the Museum’s assets under the License Agreement and, until ownership is transferred to the County or the expiration of the License Agreement, whichever is earlier, provides for ongoing support to the Museum in the amount of \$750,000.00 per year (the “Maintenance Payment”); and

WHEREAS, to account for the issuance of the \$800,000.00 payment this fiscal year, the Maintenance Payment is not payable until the first County fiscal year beginning 1 year after the effective date of the Transition Agreement (i.e., Fiscal Year 2023-24); and

WHEREAS, the Maintenance Payment is only payable until the transfer of the Museum’s assets to the County; and

WHEREAS, in addition, the Transition Agreement provides that the Maintenance Payment is intended as a secondary source of payment for the Museum, such that the Museum will be required to continue to seek state and federal funding and, if such funding is received, the Maintenance Payment will be reduced commensurately, except that the Maintenance Payment shall not be reduced by the amount of funding received from state or federal sources for specific events or exhibits; and

WHEREAS, in recognition of the County’s financial support of the Museum, the Transition Agreement provides for the renaming of the Museum Building as the “Miami-Dade County Military Museum”; and

WHEREAS, the Board desires for the County Mayor or County Mayor’s designee to take all actions necessary to effectuate the Transition Agreement and, thereafter, to facilitate the transfer of the Museum’s assets to the County,

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

Section 1. Adopts as true and correct and incorporates herein the foregoing recitals.

Section 2. Approves the Transition Agreement between the County and Museum, in substantially the form attached hereto, with a fiscal impact of \$800,000.00 in Fiscal Year 2021-22 funded from general fund revenues in the Enhanced County and District Program fund and a fiscal impact of up to \$750,000.00 commencing in Fiscal Year 2023-24, recurring in each subsequent fiscal year until the County assumes ownership of the Museum’s assets or the expiration of the License Agreement, whichever is earlier. The Board further directs the County Mayor or County Mayor’s designee to execute the Transition Agreement for and on behalf of the County and exercise all rights contained therein.

Section 3. Directs the County Mayor or County Mayor’s designee to prepare a written report setting forth, at a minimum, (a) the steps necessary to transfer ownership of the Museum’s assets to the County, including any consents required from third parties with encumbrances on the Museum’s assets; (b) the costs to the County of such transfer, including estimates of the County’s future maintenance and operating expenses for the Museum, as compared to the Maintenance Payment; (c) options for the structure of the ongoing operation and maintenance of the Museum,

including options that contemplate both the County's ownership and, alternatively, the Museum's continued ownership of its assets; and (d) a recommendation as to whether ownership of the Museum's assets should be transferred to the County. The written report described in this section shall be placed on an agenda of the Board in accordance with Ordinance No. 14-65, without committee review, and within 60 days of the effective date of this resolution.

Section 4. To the extent the County Mayor or County Mayor's designee recommends that ownership of the Museum's assets should be transferred to the County, as soon as such determination is made (including if such determination is made before the presentation to the Board of the report required under section 3), directs the County Mayor or County Mayor's designee to commence (a) any due diligence required to effectuate the transfer of such assets to the County; (b) negotiations with any third parties with encumbrances for the purpose of releasing, amending, or transferring such encumbrances to permit the County's ownership of the Museum's assets; and (c) the preparation of any agreements necessary to transfer the ownership of the Museum's assets to the County, utilizing the structure recommended by the County Mayor or County Mayor's designee. Any agreements prepared in accordance with the directive set forth in this section shall be subject to the Board's further approval and shall be presented to the Board for its consideration and approval within 120 days of the effective date of this resolution. The tasks required in this directive shall be accomplished within budgeted and legally available funds; if there is insufficient funding available to accomplish these tasks, the County Mayor or County Mayor's designee shall set forth in the report required under section 3 how much additional funding is necessary to accomplish the tasks set forth in this section.

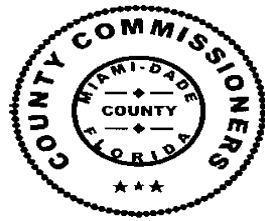
Section 5. Directs the County Mayor or County Mayor’s designee to appoint staff to oversee the implementation of the Transition Agreement, the enforcement of the County’s rights under the Transition Agreement, and the completion of the directives set forth in this resolution and to notify the Board of the name, position and department of each assigned staff member in the report required under section 3.

Section 6. Directs the County Mayor or County Mayor’s designee to collaborate with the Museum on the Museum’s preparation of a written 5-year strategic plan (“Strategic Plan”) setting forth a strategy for the Museum’s achievement of financial self-sufficiency. The Strategic Plan shall be prepared before the County’s issuance of the first Maintenance Payment and shall be updated by the Museum every 5 years during the period in which the County is required to issue Maintenance Payments under the Transition Agreement. The County Mayor or County Mayor’s designee shall review, comment, and provide approvals of the Strategic Plan. The County Mayor or County Mayor’s designee is further directed to place each Strategic Plan on an agenda of the Board in accordance with Ordinance No. 14-65.

The Co-Prime Sponsors of the foregoing resolution are Chairman Jose “Pepe” Diaz and Commissioner Kionne L. McGhee. It was offered by Commissioner **Kionne L. McGhee** , who moved its adoption. The motion was seconded by Commissioner **Danielle Cohen Higgins** and upon being put to a vote, the vote was as follows:

	Jose “Pepe” Diaz, Chairman	aye	
	Oliver G. Gilbert, III, Vice-Chairman	aye	
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Joe A. Martinez	aye
Kionne L. McGhee	aye	Jean Monestime	absent
Raquel A. Regalado	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 19th day of April, 2022. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



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

HARVEY RUVIN, CLERK

Basia Pruna

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MAG

Miguel A. Gonzalez

COUNTY TRANSITION AGREEMENT

This County Transition Agreement (the “Agreement”) is entered into this ___ day of ___, 2022, by and between Miami-Dade County (the “County”), a political subdivision of the State of Florida with its principal offices at 111 Northwest 1st Street, Miami, Florida 33128, and Friends of the Military Museum of South Florida at NAS Richmond, Inc. d/b/a Miami Military Museum and Memorial (the “Museum”), a non-profit corporation organized and existing under the laws of the State of Florida with its principal offices at 12450 Southwest 152 Street, Miami, Florida 33176.

RECITALS

WHEREAS, on February 3, 2015, the Board of County Commissioners (“County Board”) approved Resolution No. R-158-15, authorizing the County Mayor or County Mayor’s designee to execute an Amended and Restated Miami Military Museum and Memorial License Agreement (the “License Agreement”) between the County and Museum; and

WHEREAS, under the License Agreement, the Museum constructed, operates, and maintains Richmond Building #25 (the “Museum Building”), which was relocated from federally owned lands to the County property on which the Museum Building now rests; and

WHEREAS, in accordance with the License Agreement, the Museum operates for the public purpose of the preservation, exhibition, and operation of a military museum serving South Florida, all of which is required to be accomplished in accordance with an operating plan that is subject to County approval and must address the Museum’s mission, finance, administration, museum capital development, and operational parameters; and

WHEREAS, the License Agreement entails a term of 30 years, running from January 24, 2012, and grants the Museum the right to request up to 2 additional extensions, each of 10 years; and

WHEREAS, under the License Agreement, the County owns the land on which the Museum Building rests, and the Museum is required to operate the Museum Building for the aforementioned purpose; staff it with adequately trained personnel; provide for the construction, upgrade, repair, improvement, and code compliance of the Museum Building; and otherwise maintain the grounds and Museum Building; and

WHEREAS, the License Agreement provides that the Museum Building, which was restored and relocated utilizing County funds, and the Museum Building’s contents (e.g., furniture, fixtures, and equipment) shall remain the property and responsibility of the Museum, unless conveyed by the Museum and accepted by the County in the County’s sole discretion; and

WHEREAS, the License Agreement further provides that improvements constructed outside of the Museum Building (other than military artifacts), regardless of how funded, shall immediately vest in the County; and

WHEREAS, in addition, the License Agreement provides that after the Museum has completed all building restoration to the Museum Building and made it fully operational, the Museum may request that the County assume ownership of the Museum Building on terms and conditions acceptable to the County and subject to the approval of the County Board; and

WHEREAS, in an effort to fund its improvements to the Museum Building, the Museum has pursued and obtained funding from various sources, including the State of Florida, which has required

that the Museum record restrictive covenants providing that the Museum shall own all improvements to the Museum Building (see, e.g., County Board Resolution No. R-160-21); and

WHEREAS, in connection with the approval of the Fiscal Year 2021-22 budget, the County approved an allocation of \$800,000.00 to the Museum, subject to the transition of the Museum to the County; and

WHEREAS, the Parties desire to provide for the transition of the Museum to the County as provided in this Agreement;

NOW, THEREFORE, in exchange of good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties hereby agree as follows:

TERMS AND CONDITIONS

ARTICLE I GENERAL PROVISIONS

1.1 Incorporation of Recitals. The Parties agree that each of the foregoing recitals is true and correct and that such recitals are incorporated into this Agreement.

1.2 Effective Date. This Agreement shall become effective on the date that it is executed by all Parties which, in the County's case, shall not be sooner than the date on which the County Board's resolution approving this Agreement and authorizing the County Mayor or County Mayor's designee to execute the Agreement becomes effective and any conditions precedent contained in such resolution have been fulfilled.

1.3 Effect on License Agreement. Nothing in this Agreement shall be construed to amend the License Agreement, except that if there is a conflict between this Agreement and the License Agreement the provisions contained herein shall control.

ARTICLE II COUNTY TRANSITION

2.1 Governance of Museum. The composition of the Museum's board of directors, which shall be the governing body of the Museum, shall be set forth in the Museum's articles of incorporation or by-laws. Such articles of incorporation or by-laws shall provide that the County-appointed representatives set forth in § 2.1(a) shall comprise the majority of the voting membership of the Museum's board of directors and that no vote greater than a simple majority vote shall be required for action by the Museum's board of directors or, if the article of incorporation or by-laws alternatively provide that a greater vote is required, that a majority of the County-appointed directors shall be required to assent to the proposed action. The revisions to the articles of incorporation and by-laws shall be subject to the review and approval of the County for consistency with the terms of this Agreement.

(a) County Appointees. The County Mayor or designee shall have voting representation on the Museum's board of directors, the Parties agreeing that the County's representation, in addition to the County Mayor or designee, shall consist of at least one representative from the Parks, Recreation and Open Spaces Department (or its successor department), one representative from the Department of Cultural Affairs (or its successor department), and the County's Military Affairs Liaison or designee. In addition to the foregoing, there shall be an at-large member of

the Museum's board of directors who, after the term(s) served by the initial at-large member, shall be a person elected by both the majority vote of the Museum's board of directors and the majority vote of the County-appointed members of the Museum's board of directors, and who shall serve a renewable term of the longer of (i) the term of the remaining members of the Museum's board of directors or (ii) five (5) years. The initial at-large member shall be the Chairperson of the County Board, in office at the time of the approval of this Agreement; after expiration of the initial term, the initial at-large member's appointment shall be subject to renewal in accordance with the previous sentence. The at-large member of the Museum's board of directors shall be treated as a County-appointed director, for all purposes of this Agreement.

(b) Removal of County Appointees; Dilution. Notwithstanding any provision in the Museum's articles of incorporation or by-laws to the contrary, County-appointed directors shall be subject to removal only by the County official who made the appointment or that official's successor. The at-large member of the Museum's board of directors shall be subject to removal by the Museum's board of directors for malfeasance relating to the performance of his/her duties as a member of the Museum's board of directors. Any amendment to the articles of incorporation or by-laws having the effect, directly or indirectly, of depriving the County of representation on the Museum's board of directors or of imposing any requirements on the County or its representatives shall be subject to the approval of the County by a two-thirds vote of the membership of the Board of County Commissioners acting with its full legislative discretion.

(c) No Admissions; Ethics Compliance. Any votes and/or statements by County-appointed directors shall not bind or constitute an admission by the County with respect to any matter or action taken by the County concerning this Agreement or the Museum; where the License Agreement requires County consent or approval, the votes of the County-appointed directors shall not constitute such consent or approval. Membership of County-appointed directors shall not require such directors to participate in fundraising for the Museum or any Museum-affiliated entity, or to otherwise engage in any activity that the Executive Director of the Miami-Dade Commission on Ethics and Public Trust determines is inconsistent with the County's Code of Ethics, or any opinions or regulations issued pursuant to the County's Code of Ethics.

2.2 Minimum Responsibilities of the Board of Directors; Quarterly Meetings. In addition to any other responsibility that may be imposed on the Museum's board of directors by the articles of incorporation, by-laws, or otherwise, the Museum's board of directors shall be responsible for the review and approval of the Museum's annual budget and Operating Plan (as defined in License Agreement). The Museum's board of directors, at a minimum, shall meet on a quarterly basis, and at each meeting, the Museum's director (or such person as is charged with the day-to-day administration of the Museum) shall provide the board of directors with a report on the fiscal condition of the Museum, anticipated major expenditures, fundraising efforts, and such other matters (financial or otherwise) as may be requested by the Museum's board of directors.

2.3 Potential Future County Ownership. The Parties acknowledge § 4.8 of the License Agreement, which provides that (i) after the Museum has completed all building restoration to the Museum Building and made it fully operational, the Museum may request that the County assume ownership of the Museum Building and (ii) if the County agrees to accept the conveyance of the Museum Building pursuant to terms and conditions acceptable to the County (which conveyance shall be subject to the approval of the County Board), the Museum shall convey the Museum Building by deed or bill of sale, as solely determined by the County.

(a) Museum's Request Given. The Museum's execution of this Agreement shall serve as evidence of the Museum's request under § 4.8 of the License Agreement for the County to assume ownership of the Museum Building.

(b) No Evidence of Acceptance; Museum's Cooperation. Nothing in this Agreement shall be construed as evidence of the County's agreement to accept the conveyance of the Museum Building as provided in § 4.8 of the License Agreement, and the County retains all discretion to accept or reject the Museum's requested conveyance of the Museum Building. Without the expectation of additional compensation from the County, the Museum shall be required to cooperate with the County's requests for documents and information and shall grant access to the Museum Building and the License Area (as defined in the License Agreement) upon the County's request. Further, to the extent the County decides to accept the conveyance of the Museum Building, the Museum shall be required to obtain and execute any required third-party consents and modifications to existing agreements (e.g., restrictive covenants between the Museum and State of Florida) for the conveyance of the Museum Building to the County.

(c) Encumbrances. The Museum agrees that, from the Effective Date of this Agreement, it shall not encumber the Museum Building without the prior written consent of the County.

2.4 Name of Museum. Upon the Effective Date of this Agreement, the Museum Building shall be known as the "Miami-Dade County Military Museum," and the Museum shall undertake all necessary steps to display this name on the Museum Building, on and about the License Area, and on any printed materials and public events concerning the Museum and the Museum Building.

ARTICLE III **COUNTY CONTRIBUTION**

3.1 County Transition Payment. In exchange for the agreements contained in Article II of this Agreement, and as contemplated with the approval of the Fiscal Year 2021-22 budget, within fifteen (15) days of the later of the (i) Effective Date of this Agreement and (ii) the fulfillment of the conditions contained in § 2.1(a), the County shall make a one-time payment to the Museum in the amount Eight Hundred Thousand Dollars (\$800,000.00), which shall be utilized as first priority for any necessary repairs or capital improvements to the Museum Building and, if such repairs or improvements have been satisfactorily completed, for such other operational purposes as the Museum's board of directors may direct.

3.2 County Maintenance Payment.

(a) Commencement of Maintenance Payment. Commencing on the first day of the first County fiscal year beginning one (1) year after the Effective Date, the County shall make an annual maintenance payment of Seven Hundred Fifty Thousand Dollars (\$750,000.00) (the "Maintenance Payment"), subject to reduction or discontinuation in accordance with § 3.2(b) or (c), which shall be utilized as first priority for any necessary repairs or capital improvements to the Museum Building and, if such repairs or improvements have been satisfactorily completed, for such other purposes as the Museum's board of directors may direct. The Maintenance Payment shall be due within sixty (60) days of the commencement of the fiscal year for which the Maintenance Payment is due.

(b) Strategic Plan as Condition Precedent to Maintenance Payment. As a condition precedent to the issuance of the Maintenance Payment under § 3.2(a), not fewer than 120

days before the date on which the first Maintenance Payment would be due, the Museum shall prepare and present to the County a written report setting forth a 5-year strategic plan with a strategy for the Museum's achievement financial self-sufficiency (the "Strategic Plan"). The Strategic Plan shall be updated every 5 years and shall be presented to the County, in writing, at least 120 days before the date on which the Maintenance Payment would be due. Any Strategic Plan prepared by the Museum under this section shall be subject to the review, comments, and approval of the County as a further condition to the issuance or continuation of the Maintenance Payment, and which approval may include the reduction or modification of such Maintenance Payment.

(c) Maintenance Payment as Secondary Payment; Administration of Payment.

The Maintenance Payment shall be reduced by the amount of funding that the Museum receives from state or federal sources. Any setoff required under the foregoing sentence shall be applied in the fiscal year following the fiscal year in which the state or federal funding was received by the Museum, provided that the foregoing setoff shall not be applied in a manner that would require the Museum to refund money to the County, unless the County overpays the Maintenance Payment as a result of incomplete or inaccurate information received by the County from the Museum concerning the amount of state or federal funding received by the Museum. To the extent the state or federal funding received by the Museum exceeds the Maintenance Payment that was subject to offset as provided in the preceding sentence, the balance shall be rolled over into the following fiscal year(s) and applied to any Maintenance Payment that would then be due. The Museum shall undertake best efforts to seek and obtain funding from state and federal sources. Without limiting the County's rights to obtain information under the License Agreement, within fifteen (15) days of the conclusion of the County's fiscal year, the Museum shall provide the County with an accounting of the funding that it received from state and federal sources to facilitate the County's calculation of the Maintenance Payment. Notwithstanding any of the foregoing, the Maintenance Payment shall not be reduced by the amount of funding provided from state or federal sources for specific events or exhibits.

(d) Conclusion of Maintenance Payment. The Maintenance Payment, as may be modified or reduced pursuant to sections 3.2(b), shall continue throughout the Term, including any duly exercised Extension Options, as such terms are defined in the License Agreement until the Museum Building is conveyed to the County as provided in § 4.8 of the License Agreement or until the County determines, following receipt of a Strategic Plan required under § 3.2(b), that the Museum has achieved financial self-sufficiency. Notwithstanding the foregoing, upon fifteen (15) days' written notice and opportunity to cure given by the County to the Museum notifying the Museum of a breach of any obligation under the License Agreement or this Agreement, the County shall have the right to issue a written termination of its obligation to make the Maintenance Payment.

ARTICLE IV
MISCELLANEOUS

4.1 Audits; Financial Records. The Museum shall maintain accurate and complete books and records for all receipts and expenditures of the County Transition Payment and Maintenance Payment in conformance with reasonable general accounting standards. These books and records and any documents relating to payments received and made in conjunction with the County Transition Payment and Maintenance Payment, such as vouchers, bills, invoices, receipts and canceled checks, shall be retained in a secure place and in an orderly fashion in a location within Miami-Dade County by the Museum for at least five (5) years from the County's issuance of the payment. The Museum shall provide the County with an annual accounting of how it has expended the County Transition Payment and any Maintenance Payment, which accounting shall be due within sixty (60) days of the commencement of the County's fiscal year.

(a) Examination of Books and Records. The County may examine the books, records, and documents maintained under this § 4.1 at the Museum's offices or other approved site under the direct control and supervision of the Museum during regular business hours and upon reasonable notice. Furthermore, the County may, upon reasonable notice and at the County's expense, audit or have audited all of the financial records of the Museum.

(b) Independent Private Sector Inspector General. Under Section 2-1076 of the Miami-Dade County Code, the County shall have the right to engage the services of an independent private-sector inspector general ("IPSIG") to monitor and investigate compliance with the terms of this Agreement.

(c) Miami-Dade County Inspector General. The Inspector General has the power and authority to perform audits on all County contracts. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Agreement. The Inspector General is empowered to retain the services of an IPSIG to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Museum, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption. Upon written notice to the Museum from the Inspector General or an IPSIG retained by the Inspector General or the County, the Museum shall make all requested records and documents available to the Inspector General or the IPSIG for inspection and copying. The Inspector General and the IPSIG shall have the right to inspect and copy all documents and records in the Museum's possession, custody or control which, in the Inspector General's or the IPSIG's sole judgment, pertain to performance of the License Agreement or this Agreement.

4.2 Publicity and Credits. The Museum shall include the following credit line in all promotional marketing materials including websites, news and press releases, public service announcements, broadcast media, programs, and publications: "With the support of the Miami-Dade County Mayor and Board of County Commissioners." The Museum must also use the County's logo in marketing and publicity materials whenever possible. Notwithstanding the foregoing, the Museum shall not include such acknowledgment of the County in circumstances that would embarrass or discredit the County, and the County shall have the right to direct the Museum to remove any acknowledgment of the County or the use of the County logo from material that the County, in its sole and exclusive discretion, determines to be embarrassing or discrediting of the County.

4.3 Independent Contractor Relationship. The Museum is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed under this Agreement shall at all times, and in all places, be subject to the Museum's sole direction, supervision, and control. The Museum shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Museum's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

4.4 Indemnification. The Museum shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses, or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Museum or its employees, agents, servants, partners principals or subcontractors. The Museum shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Museum expressly understands and agrees that any insurance protection obtained by the Museum shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

4.5 Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The Museum and the County agree that Miami-Dade County, Florida is the appropriate venue in connection with any litigation between the Parties with respect to this Agreement.

4.6 Public Records. The Museum shall comply with Florida's public records law, including Fla. Stat. § 119.0701. The Museum shall specifically: (1) keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (2) provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Museum upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. If the Museum does not comply with a public records request, and notwithstanding any of the alternative dispute resolution provisions set forth in Article 15 of this Agreement, the County may pursue seek a Court order compelling the Museum to comply with the public records request and/or issue notices of default and/or termination under this Agreement.

IF THE MUSEUM HAS QUESTIONS CONCERNING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE MUSEUM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**PARKS, RECREATION AND OPEN SPACES
DEPARTMENT
275 NORTHWEST 2ND STREET, MIAMI, FLORIDA 33128
(305) 755-7800
MDPROSCOM@MIAMIDADE.GOV**

4.7 Controlling Agreement. This Agreement sets forth the entire agreement and understanding between the Parties relating in any way to the subject matter contained in this Agreement and merges all prior discussions between the Museum and the County. Neither party shall be bound by any agreement, condition, warranty or representation other than as expressly stated in this Agreement and this Agreement may not be amended or modified except by written instrument signed by both Parties.

4.8 County's Sovereign Rights. The County retains all of its sovereign prerogatives and rights as a county under State law with respect to the planning, design, construction, development and operation of the Museum. It is expressly understood that notwithstanding any provisions of this Agreement and any development agreement subsequently entered for the development of any of improvements to the Museum and the County's status under this Agreement or any other agreement: (1) the County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county under State law and shall in no way be stopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations whatever nature of general applicability which is applicable to the planning, design, construction and development of the Museum, or the operation thereof, or be liable for the same, including any approvals needed under a Government Facilities hearing; (2) the County shall not by virtue of this Agreement or any development agreement be obligated to grant any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature of general applicability which is applicable to the planning, design, construction, development and/or operation of the Museum, including any necessary Governmental Facilities hearing; and (3) notwithstanding and prevailing over any contrary provision in this Agreement, any County covenant or obligation that may be contained in this Agreement shall not bind the Board of County Commissioners, the County's Planning and Zoning Department, RER, or any other County, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by appropriate officials of each of them, as of the date first above written.

“COUNTY”

MIAMI-DADE COUNTY BOARD OF COUNTY
COMMISSIONERS

By: _____
Daniella Levine Cava, Mayor

By: _____
Clerk

By: _____
County Attorney
(As to Form and Legal Sufficiency)

“MUSEUM”

FRIENDS OF THE MILITARY MUSEUM OF
SOUTH FLORIDA AT NAS RICHMOND, INC.

By: _____