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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 14(A)(3)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: February 17, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving a Grant Agreement between Miami-Dade County and The Friends of the Miami Military Museum of South Florida at NAS Richmond, Inc. in the amount of up to $133,336.10; authorizing the County Mayor to execute the Grant Agreement for and on behalf of Miami-Dade County; and further authorizing the County Mayor exercise all rights conferred in the Grant Agreement

Resolution No. R-172-16

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Dennis C. Moss and Co-Sponsor Commissioner Jose "Pepe" Diaz.

Abigail Price-Williams
County Attorney

APW/lmp

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

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SUBJECT: Agenda Item No. 14(A)(3)

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 ____, 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. 14(A)(3)
2-17-16

RESOLUTION NO. R-172-16

RESOLUTION APPROVING A GRANT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE FRIENDS OF THE MIAMI MILITARY MUSEUM OF SOUTH FLORIDA AT NAS RICHMOND, INC. IN THE AMOUNT OF UP TO $133,336.10; AUTHORIZING THE COUNTY MAYOR OR DESIGNEE TO EXECUTE THE GRANT AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY; AND FURTHER AUTHORIZING THE COUNTY MAYOR OR DESIGNEE TO EXERCISE ALL RIGHTS CONFERRED IN THE GRANT AGREEMENT

WHEREAS, the Miami Military Museum of South Florida at NAS Richmond, Inc. (the "Military Museum") is a non-profit Florida corporation that is dedicated to the preservation, exhibition, and operation of a military museum serving South Florida; and

WHEREAS, in furtherance of its mission, the Military Museum operates and maintains a historic building on County property adjacent to Zoo Miami and the Gold Coast Railroad Museum, which historic building will one day house the Military Museum's exhibits (the "Museum Building"); and

WHEREAS, as part of the development of the future museum, the Museum Building was moved from another location and placed at its present location at the direction of the Parks, Recreation and Open Spaces Department (the "Parks Department"); and

WHEREAS, when it was relocated, the Museum Building was placed on an existing force main sewer line, requiring the Military Museum to reroute the sewer line; and

WHEREAS, the Military Museum has already completed the majority of the work necessary to relocate the force main sewer line, and the total cost of the work (including the work that has already been performed) is expected to be $133,336.10; and

WHEREAS, the County desires to reimburse the Military Museum for the up to $133,336.10 expense it has or will incur as a result of the County's direction to place the Museum Building at its existing location; and

WHEREAS, the Parks Department has identified funding for the force main sewer line relocation project, from the Parks Department's departmental funds budget in FY 2015-16 specifically within Budget Index Code PREUNF0003,

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

Section 1. The foregoing recitals are adopted and approved as true and correct.

Section 2. This Board approves the "Grant Agreement Between Miami-Dade County and The Friends of the Miami Military Museum of South Florida at NAS Richmond, Inc." in the amount of up to $133,336.10, to be paid from funds budgeted within Budget Index Code PREUNF0003, and in substantially the form attached hereto.

Section 3. This Board authorizes the County Mayor or designee to execute the grant agreement identified in Section 2 for and on behalf of Miami-Dade County and to exercise all rights conferred in that grant agreement.

The Prime Sponsor of the foregoing resolution is Commissioner Dennis C. Moss, and the Co-Sponsor is Commissioner Jose "Pepe" Diaz. It was offered by Commissioner **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman	**aye**		
Esteban L. Bovo, Jr., Vice Chairman	**aye**		
Bruno A. Barreiro	**aye**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**absent**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**absent**
Juan C. Zapata	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of February, 2016. 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

By: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. MAG

Miguel A. Gonzalez

GRANT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE FRIENDS OF THE MIAMI MILITARY MUSEUM OF SOUTH FLORIDA AT NAS RICHMOND, INC.

This Grant Agreement (the "Agreement") is made on this ___ day of _____ 2016, by and between Miami-Dade County, hereinafter referred to as the "County," a political subdivision of the State of Florida, by and through its Parks, Recreation and Open Spaces Department, hereinafter referred to as the "Department," and Friends of the Miami Military Museum of South Florida at NAS Richmond, Inc., a Florida non-profit membership organization ("4M").

RECITALS

WHEREAS, 4M is a non-profit Florida corporation dedicated to the preservation, exhibition, and operation of a military museum serving South Florida; and,

WHEREAS, 4M operates and maintains the Richmond Building #25 (the "Museum Building") at the Gold Coast Railroad Museum Park, located on County Park Property adjacent to Zoo Miami, under a License Agreement executed January 24, 2012; and,

WHEREAS, the Department owns Gold Coast Railroad Museum Park, located at 12450 SW 152nd Street, Miami, Florida.

WHEREAS, at the direction of the Department, the Museum Building was relocated and placed over an existing force main sewer line on property owned and operated by the Department, requiring 4M to incur expenditures associated with the relocation of the existing force main sewer line at a cost of $133,336.10 (the "Pipe Project"); and,

WHEREAS, to compensate 4M for the unplanned expenditure associated with the Pipe Project, the Department has identified and committed an amount not to exceed $133,336.10 to be used from its budget to be allocated to reimburse 4M for the Pipe Project;

NOW, THEREFORE, in consideration of the mutual covenants recorded herein, the parties hereto agree as follows:

TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The recitals set forth above, all of which the parties acknowledge are true and correct, are incorporated into this agreement and made a part of this Agreement.

2. **Payment Terms.**

a. **Amount.** Subject to the terms and conditions of this Agreement, including the preconditions to payment in § 2(b) of this Agreement, the County agrees to pay 4M the amount of One Hundred Thirty Three Thousand Three Hundred Thirty Six Dollars and Ten Cents ($133,336.10) (the "County Payment") to be delivered in any commercially reasonable form of payment.

b. **Preconditions to County Payment.** The County shall not be required to disburse any funds to 4M pursuant to this Agreement until (1) the Effective Date has passed and (2) 4M has supplied evidence to the County, in the form reasonably required by the County, which shall include, at a minimum, invoices, bills, receipts, and cancelled checks, evidencing that 4M has expended funds in connection with the Pipe Project.

The only expenses eligible for reimbursement under this § 2(b) shall be those expenses incurred by 4M in relation to the Pipe Project on the design work and all labor and materials purchased in furtherance of the Pipe Project. In no event shall the County be required to reimburse 4M for work performed by unlicensed contractors.

c. **Limitations on County Payment.** In no event shall the County be required to pay more than $133,336.10 to 4M under this Agreement. Further, to the extent 4M realizes costs savings in connection with the Pipe Project, such that 4M expends less than $133,336.10 on the Pipe Project, the County shall only be required to pay 4M the actual amount expended on the Pipe Project.

3. **Effective Date.** This Agreement shall be effective upon the effective date of the Resolution of the Board of County Commissioners approving the Agreement.

4. **County's Right to Inspect.** The County shall have the right to enter the construction site at all times, upon reasonable notice to 4M and/or any contractor performing work at the construction site.

5. **Resolution Without Admission of Liability; Release; Indemnification.**

a. **No Admission of Liability.** It is understood that the terms of this Agreement, the payment of any moneys, or any other action taken pursuant to this Agreement in no way constitutes an admission of liability by the Military Museum and Memorial or the County.

b. **4M's Release of the County.** For the consideration and promises made herein, 4M releases and forever discharges the County from any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, known or unknown, past or future, that 4M has or claims to have against County, and its employees, officers, agents, successors and assigns, attorneys, or otherwise, with the exception of claims and obligations arising out of this Agreement. Such release and discharge is made by 4M in its respective right and for its successors, executors, agents, employees, assigns, subcontractors, sureties, suppliers, and any and all other persons, firms, corporations, or other entities who may claim by or through 4M.

c. **Indemnification.** 4M 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 4M or its employees, agents, servants, partners principals or subcontractors. 4M 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 attorneys' fees which may issue

thereon.

6. **Records, Reports, Audits, Monitoring, and Review.** 4M shall keep accounting records which conform with generally accepted accounting principles. All such records will be retained by 4M for not less than five (5) years beyond the term of this Agreement. 4M understands that it may be subject to an audit by the Department or any other department. 4M shall provide access to the County of all of its records which relate to this Agreement at its place of business during regular business hours. 4M agrees to facilitate its review or audit by the County to insure compliance with applicable accounting and financial standards. 4M shall include any written agreement with subcontractors or major suppliers that such subcontractors or major suppliers agree to submit to a County audit in accordance with this subsection. The County may monitor compliance with the terms and conditions of this Agreement. 4M shall permit the Department to conduct site visits and other techniques deemed reasonably necessary to fulfill the monitoring function. A report of the Department's findings will be delivered to 4M, and 4M will rectify all deficiencies cited within the period of time specified in the report. If such deficiencies are not rectified, the County may terminate this Agreement.

7. **Independent Private Sector Inspector General Reviews.** Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, 4M shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall 4M charge the County for any costs incurred in connection with IPSIG services. The terms of this provision apply to 4M, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of 4M in connection with this Agreement. The terms of this Article shall not impose any liability on the County by 4M or any third party.

8. **Miami-Dade County Inspector General Review.** According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said 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 shall have the power 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 4M, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

9. **Cooperation with Inspector General Reviews.** Upon written notice to 4M from the Inspector General or IPSIG retained by the Inspector General, 4M shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in 4M's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

10. **Notices.** It is understood and agreed between the parties that written notice addressed to the following parties and addresses shall constitute sufficient notice under this Agreement:

To the County:

County Mayor
Miami-Dade County
111 NW 1st Street, 29th Floor
Miami, FL 33128

Copy to:

Department Director
Miami-Dade Parks, Recreation and Open Spaces Department
275 NW 2nd Street, 5th Floor
Miami, Florida 33128

Contract Manager
Miami-Dade Parks, Recreation and Open Spaces Department
275 NW 2nd Street, 5th Floor
Miami, Florida 33128

Assistant Director for Planning and Development
Miami-Dade Parks, Recreation and Open Spaces Department
275 NW 2nd Street, 5th Floor
Miami, Florida 33128

To 4M:

Executive Director
Miami Military Museum of South Florida
12450 SW 152nd Street
Miami, FL 33155

11. **Autonomy.** Both parties agree that this Agreement recognizes the autonomy of, and stipulates or implies no affiliation between, the contracting parties. It is expressly understood and intended that 4M is only a recipient of funding support and not an instrumentality of the

County. Furthermore, 4M agents and employees are not agents or employees of the County as a result of this Agreement.

12. **Miscellaneous.**

a. **Florida Law Governs; Venue.** This Agreement shall be construed under the laws of the State of Florida, proper venue for any dispute arising out of this Agreement shall be in Miami-Dade County, Florida in any court with jurisdiction.

b. **Entire Agreement; Modification.** This Agreement together with all documents required to be executed hereunder constitutes the entire agreement and understanding between the parties to this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless it is executed in writing by the parties.

c. **Rule of Construction; Opportunity to Review.** The Parties represent and agree that they have participated equally in the negotiation of the terms and provisions set forth in this Agreement and that no presumptions or inference shall apply against any party hereto to its construction. The Parties declare that they have completely read the terms of this Agreement, that they have discussed the terms of the Agreement with legal counsel of their choice, and that they fully understand and voluntarily accept the terms for the purpose of making a full and final compromise, adjustment and settlement of claims.

d. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, representatives, agents, attorneys, employees, officers, directors, predecessors, affiliates, successors or assigns in connection with any legal action arising out of the agreement.

e. **Authority to Execute.** By executing this Agreement the undersigned warrant and represent that they are authorized to enter into this Agreement and empowered to bind their respective parties to its terms. Further, the parties represent that they have not assigned their rights or claims subject of this Agreement to any third party.

f. **Severability.** The Parties have attempted to create an Agreement that is lawful and enforceable in all respects. The validity of this Agreement shall not be affected by any subsequent changes in federal, state, or county law, whether through legislation or judicial interpretation, which create, eliminate or change the rights and obligations of the parties. However, if any provision of this Agreement is held to be invalid, void or unenforceable, the balance of the provisions shall, nevertheless, remain in full force and effect and shall in no way be affected, impaired or invalidated.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective and duly authorized officers the day and year noted below.

4M		**Miami-Dade County**	
By:	Anthony D. Atwood	By:	
Name:	Anthony Atwood	Name:	
Title:	Executive Director	Title:	
Date:	JAN 19, 2016	Date:	
Attest:	Corporate Secretary/Notary Public	Attest:	Clerk of the Board

Corporate Seal/Notary Seal

Assistant County Attorney
(As to Form and Legal Sufficiency)

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