


COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Alina T. Hudak, City Manager 
DATE: September 27, 2023

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND MIAMI-DADE COUNTY ("COUNTY AGREEMENT") FOR THE INSTALLATION OF AN ARTIFICIAL REEF WITHIN THE BOUNDARIES OF CERTAIN PREVIOUSLY APPROVED LOCAL, STATE AND FEDERAL REGULATORY PERMITS PURSUANT TO WHICH THE COUNTY IS THE PERMITTEE; AND FURTHER, AUTHORIZING THE ADMINISTRATION TO FINALIZE THE EXHIBITS TO THE COUNTY AGREEMENT; AND FURTHER, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE THE FINALIZED COUNTY AGREEMENT.**

BACKGROUND

At the July 20, 2022 Commission meeting, the Mayor and Commission approved Resolution 2022-32261, authorizing a special election, submitting to the electorate of the City of Miami Beach the question asking whether the City shall be authorized to issue General Obligation Bonds (GOB), not exceeding \$159,000,000, to improve facilities for resiliency of arts and cultural institutions throughout the City, including museums, performance venues, artistic playgrounds, senior/cultural centers, botanical garden, aquatic sculpture park, and related artist/workforce housing.

On November 8, 2022, the voters of the City of Miami Beach approved the issuance of a General Obligation Bond for Arts & Culture in the not to exceed amount of \$159 million.

At the November 16, 2022 Commission meeting, the Mayor and Commission approved Resolution No. 2022-32405 directing the Administration and City Attorney's Office to negotiate and secure public benefits for residents of the City as part of the grant agreements with cultural arts organizations that will receive G.O. Bond for Arts & Culture funds.

On March 27, 2023, the City Commission adopted Resolution No. 2023-32523 approving the Grant Agreement Template.

On April 28, 2023, the City Commission adopted the following Resolutions related to the Arts & Culture G.O. Bond:

- Resolution No. 2023-32592 accepting the recommendations of the Finance and Economic Resiliency Committee (F.E.R.C.) for Tranche 1 in the not-to-exceed amount of \$101,700,000 (including grant amounts for the following projects: Workforce Housing, New World Symphony, Holocaust Memorial, Miami Beach Hispanic Community Center, The Wolfsonian and the Jewish Museum of Florida).
- Resolution No. 2023-32593 approving revisions to the Grant Agreement Template.
- Resolution No. 2023-32594 approving the additional public benefits proffered by each of the cultural arts organizations or entities that will receive Arts & Culture G.O. Bond funds or that will directly benefit from capital projects paid for with bond funding.

On May 17 and June 28, 2023, the first and second public readings of the bond issuance resolution were held.

On July 26, 2023, the City Commission adopted the following resolutions related to the Arts & Culture Bond:

- Resolution No. 2023-32691 approving a First Amendment to the Grant Agreement template which allow for the advancing of Grant award funds.
- Resolution No. 2023-32714 adopting the Eight Amendment to the capital budget for the Appropriation of funds for Tranche 1 of the G.O. Bond for Arts & Culture in the amount of \$101,700,000.

ANALYSIS

The final list of projects approved as part of the General Obligation Bond for Arts & Culture included a \$5 million allocation for the Aquatic Sculpture Park Project (the Project).

Miami-Dade County (the "County"), through its Department of Regulatory and Economic Resources, Division of Environmental Resources Management ("DERM"), manages artificial reef activities and is the permittee for various local, state, and federal regulatory permits for artificial reefs in Miami-Dade County outside of Biscayne National Park and Florida Keys National Marine Sanctuary (the "County Permits"). The Project's first phase entails deploying an artificial reef within the boundaries of the area covered by the County Permits. One or more of the County Permits was originally issued in 2011 and has recently been extended through July 15, 2024. The City has requested that the County allow the City to conduct the installation of the artificial reef that is contemplated by the Project's first phase under the County Permits. All permits are attached as Attachment A for reference.

Subject to the approval by the County's Board of County Commissioners, DERM has agreed to allow the City to work under the County's permits subject to satisfaction by the City of the terms and conditions set forth in a proposed agreement between the County and the City, a copy of which is attached hereto as Attachment B.

Key provisions in the Agreement include the following:

- The Agreement authorizes the City to perform the artificial reef installation under the County's permits, in accordance with previously approved plans.
- The City is directly responsible for ensuring all work is done in compliance with County's permits.
- Submittals to be made to the various regulatory agencies will be done through the County (unless instructed by the County otherwise). If modification to previously approved plans is required, the City must cover the cost of County's staff time.
- Any corrective actions required due to failure to comply with County permit conditions or other requirements of any federal, state or local agency having jurisdiction is entirely the City's responsibility, including cost of County staff time involved.
- The County has customary audit rights, including the right to audit contracts between the City and third parties for work or materials associated with the artificial reef installation.
- The City must indemnify the County and include indemnity in favor of the County in agreements with parties involved in the installation.
- The County has no obligation to maintain, protect or preserve the artificial reef and can move or remove any reef material. However, after construction is complete, the County will perform routine inspections that are required by the County Permits and prepare the corresponding reports required by the County Permits.
- The City has an ongoing obligation to coordinate with County on all artificial reef and other coastal structures, etc. whether these are proposed under County's permits or another permittee's permits.
- The City cannot assign its obligations to another party but may enter into agreements with third parties to fulfill its obligations under the Agreement. The County acknowledges that Blue Lab Preservation Society Inc. and its contractors will execute the work in furtherance of the City's obligations.

The County Agreement will be presented for approval to the Board of County Commissioners at its October meeting.

The Project will be executed by Blue Lab Preservation Society Inc. ("Blue Lab" or "ReefLine") via a Grant Agreement (the "ReefLine Grant Agreement") to be funded out of a portion of the proceeds of the General Obligation Bond for Arts & Culture. The ReefLine Grant Agreement will include an addendum requiring Blue Lab to fulfill the City's obligations pursuant to the County Agreement, as well as indemnity provisions in favor of the City and the County consistent with those set forth in the County Agreement. These indemnity provisions will be supplemental to the standard indemnity provisions already included in the Grant Agreement Template approved by the Commission pursuant to Resolution Nos. 2023-32423, 2023-32593 and 2023-32691. The approval by the Mayor and City Commission for the execution of said Grant Agreement is being requested via a companion item (item C7 B) included in the September 27, 2023 Commission Agenda.

CONCLUSION

The Administration recommends the adoption of this Resolution approving an Agreement between the City of Miami Beach and Miami-Dade County for the installation of an artificial

reef within the boundaries of certain previously approved local, state and federal regulatory permits pursuant to which the County is the permittee; and further, authorizing the administration to finalize the exhibits to the Agreement; and further authorizing the City Manager and City Clerk to execute the finalized County Agreement.

Attachments:

A. Permits:

- Miami-Dade County (DERM) Class I Permit 2011-CLI-PER-00185
- Florida Department of Environmental Protection File No. 13-0402095-002-EG: Reefline Artificial Reef
- Department of the Army Jacksonville District Corps of Engineers File No. SAJ-2010-01270

B. Artificial Reef Agreement between the County and the City (Subject to final approval by Miami-Dade County Board of County Commissioners).