

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #08-010

TO: Honorable Mayor and Members of the City Commission
FROM: Julie O. Bru, City Attorney 
DATE: October 7, 2008
RE: Legal Opinion - Interpretation of Miami Charter Section 29-B; specifically conveyance of property to implement projects of any government agency or instrumentality.

LEGAL OPINION OF THE CITY ATTORNEY ON THE INTERPRETATION OF THE COMPETITIVE BID EXEMPTION PERTAINING TO CONVEYANCES OF REAL PROPERTY TO IMPLEMENT PROJECTS OF ANY GOVERNMENTAL AGENCY FOUND IN MIAMI CHARTER SECTION 29-B AND ITS APPLICABILITY TO THE MUSEUM PARK PROJECT.

Charter Section 29-B and 29-B(c), generally:

Section 29-B, which governs the disposition of City of Miami ("City") owned properties, prohibits the City Commission from favorably considering any sale or lease of City owned property unless:

1. There is a return to the City of fair market value under such proposed sale or lease;
2. There has been, prior to the date of the City Commission's consideration of such sale or lease, an advertisement soliciting proposals for said sale or lease published in a daily newspaper of general paid circulation in the City, allowing not less than ninety (90) days for the City's receipt of proposals from prospective purchasers or lessees;
3. The City has received at least three (3) written proposals from prospective purchasers or lessees.
4. If there are less than three (3) proposals received, and if the guaranteed return under the proposal whose acceptance is being considered is equal to fair market value, the City Commission may, if it finds it to be in the City's best interest, conduct a referendum which, if approved by the voters, will allow the sale or lease to be consummated.

The foregoing prohibitions, however, do not apply to conveyances implementing projects of governmental entities. Miami Charter Section 29-B(c) specifically provides that "*[T]he above*

provisions and any other city requirements for competitive bidding shall not apply when . . . (c) conveying property to implement projects of any governmental agency or instrumentality."

Applicability of the exemption from competitive bidding authorized in Miami Charter Section 29-B(c) specifically to the leasing of land for the purpose of developing the Museum Park Project:

The City is contemplating a development to be known as Museum Park Miami (the "Museum Park Project") which will allow for both active and passive recreation comprised of two museums: the Miami Museum of Science & Planetarium (MSM) - including an exhibition space for the Historical Museum of Southern Florida – and the Miami Art Museum (MAM) in the setting of City lawns, public gardens, and water features, all fronting Biscayne Bay. The MAM and MSM (collectively "Museums") would occupy approximately eight (8) acres of City-owned land and the Park Component twenty-one (21) acres.

The Museum Park Project is one of the projects included in the Interlocal Agreement entered into in 2007, by the City, Miami-Dade County ("County"), Southeast Overtown Park West Community Redevelopment Agency ("SEOPW CRA") and the Omni Community Redevelopment Agency ("OMNI CRA"). The Interlocal Agreement describes the public purpose of Museum Park to be:

Museum Park is the City of Miami's urban redesign vision for the park now known as Bicentennial Park, a 29-acre property on Biscayne Bay which serves and will serve the residents of the OMNI CRA, the SEOPW CRA and well as the entire region. This project includes a premiere public park anchored by landmark new facilities for the Miami Art Museum (MAM) and the Miami Museum of Science and Planetarium (MMSP), which will include a branch of the Historical Museum of Southern Florida. The building will be designed around energy-saving, sustainable materials and techniques. The goals of Museum Park include the restoration of the park's waterfront land to public use, revitalization of the OMNI CRA, the SEOPW CRA and surrounding neighborhoods, the building of a first-class educational and cultural resource for the region's residents and visitors, and will strengthen the economy by contributing to tourism, the region's number one industry. Studies indicate that over the course of their first decade, MAM and the MMSP at Museum Park will have a \$2 billion economic impact and will create 1,700 jobs in the community annually.

Negotiations for the development of the project were authorized by the Memorandum of Understanding (MOU) between the City, the County, the Museums and Miami Sports and Exhibition Authority ("MSEA"), approved by all applicable boards earlier this year. The MOU provides:

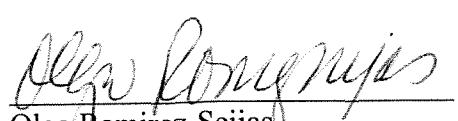
The purpose and intent of this Memorandum of Understanding is to provide for the general terms and conditions among Miami-Dade County . . . the City . . . the Miami Sports and Exhibition Authority, the Miami Art Museum . . . and the

Museum of Science, . . . with respect to their joint efforts to design, develop, construct and operate museums and park facilities to be located in Bicentennial Park. . . it is also the Parties' intent that the planning, design, development, construction and operation of the Museum Park Project be a cooperative, mutual endeavor and that the Parties actively participate in and work together in good faith to negotiate all necessary agreements.

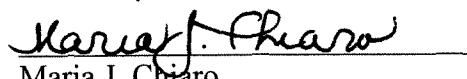
Additionally, the MOU provides for the construction of the Museums with significant financial contributions from governmental agencies. The County will provide \$100 Million to MAM and \$175 Million to MSM, all to be funded from the Building Better Communities General Obligation Bond Program already approved by the voters. The land, which is owned by the City, will be made available to the Museums, free of charge, pursuant to long term leases. The MOU further contemplates the construction of the Park Component, to be built on approximately twenty-one (21) acres of land, in general conformance with the Museum Park Design Development documents prepared by Cooper Robertson and Partners. The MOU expresses the intent of the parties that the cost of the Park Component be funded from the tax increment revenues from the Omni CRA, subject to expansion of the CRA boundaries.

Based on the foregoing legislative findings we determine that the Museum Park Project is a project of the City, the County and potentially the Omni CRA. Therefore, applying the explicit language of Section 29-B(c), the leasing of the four (4) acres of land, within Bicentennial Park, to each the MAM and the MSM, for the purpose of implementing the Museum Park Project, is exempt from all City competitive bidding requirements including those found in Charter Section 29-B.

PREPARED BY:


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c: Pedro G. Hernandez, City Manager