MEMORANDUM

Agenda Item No. 11(A)(15)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: February 18, 2010

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution authorizing the execution of amendments to the Lease Agreement and the Concession and License Agreement between Miami-Dade County and the Miami Parking Authority

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Bruno A. Barreiro.

R. A. Cuevas, Jr.
County Attorney

RAC/up

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: February 18, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 11(A)(15)

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**

_____ **Ordinance creating a new board requires detailed County Manager'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. 11(A)(15)
2-18-10

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AMENDMENTS TO THE LEASE AGREEMENT AND THE CONCESSION AND LICENSE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE DEPARTMENT OF OFF-STREET PARKING OF THE CITY OF MIAMI FOR THE PROPERTIES NOW KNOWN AS LOT 18 FOLIO NUMBER 01-3135-037-0020, LOT 26 FOLIO NUMBER 01-3135-037-0080 AND LOT 27 FOLIO NUMBER 01-3135-037-0010 ALL LOCATED IN THE CITY OF MIAMI, MIAMI-DADE COUNTY FLORIDA AND AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE SAME AND EXERCISE ANY AND ALL RIGHTS CONFERRED THEREIN

WHEREAS, by Resolution No. 8940 and as amended by Resolution No. 542-66, Resolution No. 473-68 and Resolution No. 1414-68, the Board of County Commissioners authorized a Lease between Miami-Dade County and the Miami Parking Authority also known as the Department of Off-Street Parking of the City of Miami, for the property now known as Lot 18, Folio Number 01-3135-037-0020 in the City of Miami, Miami-Dade County Florida; and

WHEREAS, by Resolution No. 43-68 the Board of County Commissioners authorized a Concession and License Agreement between Miami-Dade County and the Miami Parking Authority also known as the Department of Off-Street Parking of the City of Miami for the property now known as Lot 26, Folio Number 01-3135-037-0080 and for the property now known as Lot 27, Folio Number 01-3135-037-0010, in the City of Miami, Miami-Dade County, Florida; and

WHEREAS, the Lease and the License currently limit the use of such properties to off-street parking purposes; and

WHEREAS, such properties could accommodate an additional temporary use as an open-air flea market during weekend hours; and

WHEREAS, such additional use would increase rental income to the County, would generate additional jobs for the citizens of Miami-Dade County and would assist in stimulating the economy, thus promoting community interest and welfare; and

WHEREAS, both the County and the Miami Parking Authority desire to expand the existing use set forth in the Lease and License; and

WHEREAS, the Board is satisfied that the properties can be used for said expanded use, which will serve the best interests of the County; and

WHEREAS, the Board desires to authorize the County Mayor or his designee to take all actions necessary to accomplish the amendment of the Lease and the License, as set forth in the attached Amendments, the terms of which are incorporated herein,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Amendment to Lease Agreement and Amendment to Concession and License Agreement between Miami-Dade County and the Miami Parking Authority, also known as the Department of Off-Street Parking, in substantially the form attached hereto, and authorizes the Mayor or his designee to execute same and to exercise any and all rights conferred therein.

The Prime Sponsor of the foregoing resolution is Commissioner Bruno A. Barreiro. It was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro
Carlos A. Gimenez
Barbara J. Jordan
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto
Audrey M. Edmonson
Sally A. Heyman
Joe A. Martinez
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 18th day of February, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Debra Herman

AMENDMENT TO CONCESSION AND LICENSE AGREEMENT

THIS AGREEMENT is made this day of , 2010, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, herein called the "COUNTY," and the MIAMI PARKING AUTHORITY A/K/A DEPARTMENT OF OFF-STREET PARKING OF THE CITY OF MIAMI, herein called the "TENANT."

WITNESSETH:

WHEREAS, by Resolution No. R-43-68, adopted by the Board of County Commissioners on January 8, 1968, the Board authorized the attached Concession and License Agreement between the above named parties for that certain real property now described as Lot 26, Folio Number 01-3135-037-0080 and Lot 27, Folio Number 01-3135-037-0010 (collectively the "Leased Property"); and

WHEREAS, the Concession and License Agreement has been successively administered and is currently in effect and not in default and operational under the same terms and conditions; and

WHEREAS, both COUNTY and TENANT are desirous of executing this Amendment to Concession and License Agreement to allow the operation of an open-air market for inexpensive or secondhand articles most commonly referred to as a flea market as set forth below; and

WHEREAS, both COUNTY and TENANT are desirous of amending said Concession and License Agreement as set forth below; and

WHEREAS, by Resolution No. , adopted , 2010, the Board of County Commissioners has authorized the amending of said Concession and License Agreement; and

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

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AGREEMENT

1. The foregoing recitals and provisions are hereby adopted and incorporated herein to the Concession and License Agreement.
2. The following paragraphs shall modify, add to, or replace the referenced Articles in the Concession and License Agreement as of the effective date:
3. Addition to Article I, **"USE AND MAINTENANCE"** Along with the use of providing off-street parking facilities and uses directly related and incidental thereto, an additional use of the Leased Property will be allowed for the operation of a flea market on Saturdays, Sundays, and legal holidays, which may include, but is not limited to, allowing the sale of goods, food and beverages, but excluding alcoholic beverages, along with parking incidental thereto. No other use or business is permitted hereunder, and any unauthorized use would constitute cause for immediate termination of this Amendment upon written notice thereof.
4. Addition to Article II, **"PAYMENT TO THE COUNTY"** In addition to the rent set forth in the Concession and License Agreement, within thirty days of receipt, TENANT shall pay rent to the COUNTY in the amount of 50% of the total gross revenue received by TENANT in connection with or arising from the flea market and incidental parking use hereunder. Such rent includes income from both the flea market operation and any parking income received during such operation.
5. Insert Article XIII, **"TERM"** No permittee of TENANT hereunder shall be granted a permit which exceeds one year in duration, and no permanent structures or fixtures shall be allowed to be constructed on the property. Any entity or individual, other than TENANT, who is allowed to operate the flea market for any duration of time exceeding a one year period from the effective date of this Amendment shall be selected by TENANT only pursuant to competitive bidding procedures and in accordance with the applicable law. Any violation of this provision shall constitute cause for immediate termination of this Amendment upon written notice thereof.
6. Insert Article XIV, **"CANCELLATION OF THIS AMENDMENT"** In addition to the

other rights of cancellation set forth herein, either the County, through its Mayor or Mayor's designee, or the TENANT, may cancel this Amendment for any or no reason upon thirty (30) days prior written notice of its effective date. Upon cancellation of this Amendment, the terms of the attached Concession and License Agreement will become operative in its original form without further action of either party.

7. Insert Article XV, **"SUSPENSION OF FLEA MARKET USE"** Upon 48 hours notice, either party hereto may agree to suspend the flea market use set forth herein for any amount of time, if such property is needed for the use of either party under the terms of the original lease, as determined in the sole and absolute discretion of the party who wishes to suspend such use.
8. Insert Article XVI, "**INSURANCE"** Any insurance obtained by any non-party operator of the flea market shall name the County as a third party beneficiary.
9. Insert Article XVII – **"CONSTRUCTION"** In the event of any inconsistency between this Amendment and the Concession and License Agreement, the terms of this Amendment shall supercede the Concession and License Agreement terms.
10. Insert Article XVIII – **"FORCE AND EFFECT"** All other terms of the Concession and License Agreement which have not been modified herein remain in full force and effect. The effective date of this Amendment shall be the date that it is executed and approved by all parties hereto.

IN WITNESS WHEREOF, the COUNTY and TENANT have caused this Amendment to Concession and License Agreement to be executed by their respective and duly authorized officers the day and year first above written.

(CORPORATE SEAL)

MIAMI PARKING AUTHORITY A/K/A
DEPARTMENT OF OFF-STREET PARKING
OF THE CITY OF MIAMI

_____

WITNESS

_____
WITNESS

By:_____
(TENANT)

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

DADE COUNTY FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By:_____
Carlos Alvarez
Mayor (LANDLORD)

Approved by County Attorney as to
form and legal sufficiency: _____
Debra Herman

AMENDMENT TO LEASE AGREEMENT

THIS AGREEMENT is made this day of , 2010, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, herein called the "COUNTY," and the MIAMI PARKING AUTHORITY A/K/A DEPARTMENT OF OFF-STREET PARKING OF THE CITY OF MIAMI, herein called the "TENANT."

WITNESSETH:

WHEREAS, by Resolution No. 8940, adopted by the Board of County Commissioners on August 27, 1963, the Board authorized the attached ninety-nine year Lease between the above named parties for that certain real property now described as Lot 18, Folio Number 01-3135-037-0020 (the "Leased Property"); and

WHEREAS, the Lease has been successively administered and is currently in effect and not in default and operational under the same terms and conditions; and

WHEREAS, both COUNTY and TENANT are desirous of executing this Amendment to Lease Agreement to allow the operation of an open-air market for inexpensive or secondhand articles most commonly referred to as a flea market as set forth below; and

WHEREAS, both COUNTY and TENANT are desirous of amending said Lease as set forth below; and

WHEREAS, by Resolution No. , adopted , 2010, the Board of County Commissioners has authorized the amending of said Lease; and

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. The foregoing recitals and provisions are hereby adopted and incorporated herein to the Lease.
2. The following paragraphs shall modify, add to, or replace the referenced Articles in the Lease as of the effective date.
3. Addition to Article II, **"RENTAL"** In addition to the rent set forth in the Lease, within thirty (30) days of receipt, TENANT shall pay rent to the COUNTY in the amount of 50% of the total gross revenue received by TENANT in connection with the use hereunder, including but not limited to flea market income and any incidental parking income.
4. Addition to Article III, **"USE OF LEASED PROPERTY"** Along with the use of providing off-street parking facilities and uses directly related and incidental thereto, an additional use of the Leased Property will be allowed for the operation of a flea market on Saturdays, Sundays, and legal holidays, which may include, but is not limited to, allowing the sale of goods, food, and beverages, but excluding alcoholic beverages. No other use or business is permitted hereunder, and any unauthorized use would constitute cause for immediate termination of this Amendment upon written notice thereof.
5. Insert Article X, **"TERM"** No permittee of TENANT hereunder shall be granted a permit which exceeds one year in duration, and no permanent structures or fixtures shall be allowed to be constructed on the property. Any entity or individual, other than TENANT, who is allowed to operate the flea market for any duration of time exceeding a one year period from the effective date of this Amendment shall be selected by TENANT only pursuant to competitive bidding procedures and in accordance with the applicable law. Any violation of this provision shall constitute cause for immediate termination of this Amendment upon written notice thereof.
6. Insert Article XI, **"CANCELLATION OF THIS AMENDMENT"** In addition to the other rights of cancellation set forth herein, either the County, through its Mayor or

Mayor's designee, or the TENANT, may cancel this Amendment for any or no reason upon thirty (30) days prior written notice of its effective date. Upon cancellation of this Amendment, the terms of the attached Lease will become operative in its original form as amended, without further action of either party.

7. Insert Article XII, **"SUSPENSION OF FLEA MARKET USE"** Upon 48 hours notice, either party hereto may agree to suspend the flea market use set forth herein for any amount of time, if such property is needed for the use of either party under the terms of the original lease, as determined in the sole and absolute discretion of the party who wishes to suspend such use.
8. Insert Article XIII, "**INSURANCE"** Any insurance obtained by any non-party operator of the flea market shall name the County as a third party beneficiary.
9. Insert Article XIV – **"CONSTRUCTION"** In the event of any inconsistency between this Amendment and the Lease, the terms of this Amendment shall supercede the Lease terms.
10. Insert Article XV – **"FORCE AND EFFECT"** All other terms of the Lease which have not been modified herein remain in full force and effect. The effective date of this Amendment shall be the date that it is executed and approved by the parties hereto.

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IN WITNESS WHEREOF, the COUNTY and TENANT have caused this Amendment to Lease to be executed by their respective and duly authorized officers the day and year first above written.

(CORPORATE SEAL)

MIAMI PARKING AUTHORITY A/K/A
DEPARTMENT OF OFF-STREET PARKING
OF THE CITY OF MIAMI

_____

WITNESS

_____

WITNESS

By:_____

(TENANT)

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

DADE COUNTY FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By:_____
Carlos Alvarez
Mayor (LANDLORD)

Approved by County Attorney as to
form and legal sufficiency:

_____
Debra Herman