Memorandum

MIAMI-DADE COUNTY

Date: July 20, 2010

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

Agenda Item No. 14(A)(2)

From: George M. Burgess
County Manager

Subject: Resolution Authorizing Termination of the Lease/Leaseback Agreement with PNC Leasing, LLC for the Metromover Control and Passenger Information System

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RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) adopt the accompanying resolution authorizing termination of lease number MDC 2002-1 PNC (PNC Lease) dated August 13, 2002, provided termination costs less any funds received from the termination do not exceed $1.5 million plus $200,000 in legal and other advisory fees. If the amount required to terminate the lease is greater than $1.5 million, the County and PNC will delay termination proceedings until market interest rates are such that the termination value falls below $1.5 million. MDT will pay all costs associated with the termination using MDT operating funds.

The PNC Lease is a lease/leaseback agreement with PNC Leasing, LLC (PNC) for the Metromover Control and Passenger Information System. The lease is in technical default because the credit ratings of the guarantor, AIG Matched Funding Corporation (AIG), have been downgraded below the required stipulated minimum ratings, and termination is the most cost effective method of curing the default. The Resolution also authorizes the County Mayor or the Finance Director, as the County Mayor's designee, to execute all agreements and documents necessary to effectuate the termination.

SCOPE

The Metromover Control and Passenger Information System (the Leased Asset) is operated by the Miami-Dade Transit Department (MDT) and has a countywide impact. However, the cost of terminating the agreement will be borne by MDT.

FISCAL IMPACT/FUNDING SOURCE

Termination of the transaction will allow the County to own the Leased Asset outright and cease lease payments to PNC. Termination of the arrangement will cost a maximum of $1.5 million plus legal and professional fees estimated to be no greater that $200,000.

The County and PNC entered into the lease/leaseback arrangement on August 13, 2002 and the County received an upfront benefit of $1.97 million. In turn, the County was obligated to make lease payments to PNC over the term of the lease and to repurchase the assets from PNC on January 1, 2018. When the agreement was executed, PNC paid the County $54.3 million that was used to establish two deposits; $37.8 million was deposited into a loan repayment account (Loan Deposit) to pay off the loan and $13.7 million into a Lease Buy-out Deposit to purchase the Leased Asset from PNC on January 1, 2018. The amount in the Lease Buy-out Deposit was scheduled to earn interest at a fixed rate from August 2002 through

January 1, 2018 such that upon termination of the lease in 2018, the balance would be sufficient to repurchase the Leased Asset at no extra cost to the County.

Termination on the 2018 termination date requires the County to do the following:

a. Pay off the loan with the balance from the Loan Deposit account, $37.8 million
b. Use the balance in the Lease Buy-out Deposit to repurchase the Leased Asset. As of April 27, 2010, the balance in the Lease Buy-out Deposit was $15.7 million

If the County terminates the agreement prior to the 2018 scheduled termination date, the County will pay additional expenses associated with early termination to compensate PNC for lost revenues and other financial benefits resulting from early termination.

Payments made to PNC were guaranteed by AIG Matched Funding Corporation (AIG) who was required to maintain certain credit rating. However, AIG's credit ratings were severely downgraded to a level below the minimum required in the PNC Lease. As a consequence, the lease/leaseback agreement is in technical default and the County could be required to replace AIG or provide PNC with acceptable additional security. On April 27, 2010, PNC offered to terminate the agreement which would require the County to pay PNC $16.75 million based on the remaining term of the PNC Lease.

In order to terminate the agreement, the County will satisfy the loan obligation by using the balance from the Loan Deposit. The balance from the Lease Buy-out Deposit ($15.7 million) will be used to pay a portion of the $16.75 million termination value, therefore requiring the County to make up the remaining $1.05 million plus any additional transaction fees to complete the termination. However, since both the balance in the Lease Buy-out Deposit and termination values change daily based on interest rates, this Resolution requests an amount not to exceed $1.5 million for termination costs plus transaction fees of $200,000.

If the amount required to terminate is greater than $1.5 million, the County and PNC will delay termination proceedings until the interest rate market is such that the termination value falls below $1.5 million. The expected transaction cost to terminate the PNC Lease is not to exceed $200,000. MDT will pay all costs associated with the termination using MDT operating funds.

TRACK RECORD/MONITOR

Termination of the PNC Lease will be monitored by the Carter Hammer, Finance Director and Harpal Kapoor, MDT Director.

BACKGROUND

Between 1997 and 2002, the County entered into 15 lease/leaseback transactions (LILOs) of which three have since been terminated. Each of these leases is guaranteed by an insurance company that is required to maintain certain minimum credit ratings. Failure to maintain the minimum ratings may subject the County to a technical default of the agreement. As a result of the market upheavals in the past 18 months, collapse of the housing market and the ensuing recession, among other factors, some insurance companies have experienced reduced ability to maintain adequate reserves. Several insurers guaranteeing the County's LILOs have seen their credit ratings downgraded below the acceptable ratings stipulated in seven of the remaining twelve LILOs. Consequently, these seven agreements (listed below) are in technical default. The five remaining leases that are not in default are for Qualified Technological Equipment held

by Bank of America Leasing and guaranteed by FSA Global Funding Limited (FSA). These LILOs will terminate in January 2018.

As shown in the table, the Rabo Bank LILO is secured by a deposit of $6.9 million in additional collateral per Resolution No. R-1247-09 approved by the Board on November 11, 2009. Staff is currently working with Bank of America and Bank of Hawaii to develop a mutually acceptable solution regarding the LILOs that are in default. Upon completing negotiations with the banks, they will be presented to the Board for consideration and approval.

Lease/Leaseback (LILO) Agreements that are Currently in Technical Default

Leased Asset	Equity Investor	Lender	Lease Buy-out Deposit Account	Lease Buy-out Deposit Guarantor	Early Buy-out Date
Stephen P. Clark Center	Mirasol Business Trust – Rabo Bank (1 LILO)	AMBAC	Guaranteed Investment Contract (GIC)	AMBAC	January 2015 *Additional collateral posted February 2010*
MDT Maintenance and Parking Facilities	Bank of America Leasing (4 LILOs)	AIG	GIC	AIG	January 2018
Qualified Technological Equipment	PNC Leasing (1 LILO)	AIG	GIC	AIG	January 2018
Qualified Technological Equipment	Bank of Hawaii (1 LILO)	AIG	GIC	AIG	January 2018

The PNC Lease

In August 2002, the County entered into the PNC Lease for the Metromover Control and Passenger Information System. This system is defined by the Internal Revenue Service (IRS) as Qualified Technological Equipment which allows the owner to accelerate depreciation of the asset which in turn makes it attractive to investors for LILO transactions.

When the County entered into the PNC Lease, PNC paid the County $54.3 million in cash and loans (Loan). Of the $54.3 million, $37.8 million funded the Loan Deposit that was invested at a guaranteed rate so that it would be sufficient to repay the Loan whenever the lease terminates. A total of $13.7 million of the $54.3 million was deposited to a guaranteed investment contract (GIC). The guaranteed interest rate was such that on the scheduled termination date in January 2018 (the early buy-out date) the account balance would equal the purchase option price upon termination of the LILO. The remaining $2.8 million from the initial PNC payments to the County were to pay a net benefit to the County ($1.97 million) and to also pay the transaction fees, advisor's fees, insurer's fees, and other professional's fees (totaling $830,000) associated with the PNC Lease.

The GIC or Lease Buy-out Deposit, pledged solely to terminate the PNC Lease and to be used to buy back the Leased Asset from PNC, was guaranteed by AIG earning interest at an annual

rate of 4.66836%. Additionally, if the County were to break the GIC prior to the early buy-out date, AIG can deduct a 30% breakage fee from the amount of the Lease Buy-out Deposit payable to the County.

The AIG guarantee included the stipulation that if at any time prior to the early buyout date, AIG's credit ratings were AA- and Aa3 or above as rated by Standard and Poor's Rating Service (S&P) and Moody's Investor Services (Moody's) respectively, AIG would not be required to post additional collateral. If AIG was rated below these threshold credit ratings, AIG would have to post collateral equal to 104% of the accreted value of the GIC, and the County would be required to replace AIG, at the County's expense, with an AAA rated guarantor.

On September 16, 2008, AIG's credit ratings were downgraded to A2 by Moody's and A- by S&P. These events caused a technical default under the PNC Lease agreement and on September 27, 2008, PNC requested the County require AIG to post additional collateral and also replace AIG as the guarantor for the Lease Buy-out Deposit. Failure to have AIG post additional collateral or to replace AIG would enable PNC to declare a default thereby requiring the County to pay PNC a Lease termination value based on a schedule of stipulated loss values that would compensate PNC for lost benefits. Currently, the stipulated loss value is approximately $32.4 million which is the remaining value of scheduled PNC Lease payments and the present value of the lost tax benefits that would have been realized by PNC. As provided in the PNC Lease, the County had 60 days to replace AIG.

Since AIG's downgrade in September 2008, the County has been negotiating with PNC to resolve the issues surrounding the technical default and to agree on a method of addressing the risks associated with AIG ratings downgrade. In October 2008, AIG posted the necessary collateral as required.

The County has canvassed the market and held discussions with other entities in its continued effort to replace AIG. However, because of the market upheaval, the economic decline, and the shrinking insurance market, it has not been economically feasible to replace AIG as the guarantor on the PNC Lease. Subsequently, in May 2010, the County proposed the following arrangement to PNC:

1) PNC provide the County with a termination value to terminate the PNC Lease,
2) AIG agrees to pay PNC the accreted value of the Lease Buy-out Deposit on the date of termination,
3) The County pays the difference between the requested termination value and the Lease Buy-out Deposit received from AIG on the termination date over a period not to exceed three (3) years, and
4) PNC allows the County to terminate the PNC Lease and all associated agreements including the liquidation of the Loan Deposit and the Loan.

PNC has determined they no longer want exposure to an AIG potential bankruptcy and has requested that the County act as quickly as possible to eliminate their exposure, which will also eliminate the County's should PNC declare a default and seek its full stipulated losses. AIG has also currently agreed to waive the breakage fee associated with the GIC and to pay the full value of the Lease Buy-out Deposit. AIG reserves the right to rescind this offer at any time.

In summary, approval of the Resolution to terminate the agreement allows the County to eliminate: (a) the Loan and the Loan Deposit and any exposure to the lender, Loan Deposit's guarantor and any other PNC Lease participant; and (b) the technical default that exists with AIG's downgrade, provided the cost to terminate the PNC Lease does not exceed $1.5 million plus $200,000 of transaction fees.

Resolution No. R-130-06 provides that any County contract with a third party be finalized and executed prior to being placed on a Board agenda. The items contemplated in the above documents will occur after the effective date of this Resolution in order to provide the County the maximum flexibility in the marketplace. Therefore, a waiver of Resolution No. R-130-06 is also requested.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: July 20, 2010

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

SUBJECT: Agenda Item No. 14(A)(2)

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. 14(A)(2)
7-20-10

RESOLUTION NO. _____

RESOLUTION AUTHORIZING TERMINATION OF METROMOVER CONTROL AND PASSENGER INFORMATION SYSTEM LEVERAGED LEASE; AUTHORIZING TERMINATION PAYMENT OF NOT TO EXCEED $1.5 MILLION TO PNC LEASING, LLC, PLUS TRANSACTION FEES NOT TO EXCEED $200,000; AND AUTHORIZING THE COUNTY MAYOR OR FINANCE DIRECTOR AS THE COUNTY MAYOR'S DESIGNEE TO EXECUTE ALL AGREEMENTS AND DOCUMENTS EFFECTUATING SAID TERMINATION

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and documents, copies of which are incorporated in this resolution by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Board hereby authorizes: (i) the termination of the Metromover Control and Passenger Information System leveraged lease and a termination payment of not to exceed $1,500,000 to PNC Leasing, LLC, plus transaction fees for legal and advisory services not to exceed $200,000, as more particularly set forth in the accompanying memorandum and associated documents; and (ii) the County Mayor or the Finance Director as the County Mayor's designee to execute all agreements and documents necessary to effectuate said termination.

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The foregoing resolution 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

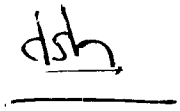
Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of July, 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

Approved by County Attorney as
to form and legal sufficiency.



David Stephen Hope

By:_____
Deputy Clerk