

Memorandum



Date: September 21, 2010

Agenda Item No. 14(A)(1)

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

From: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "Burgess", written over the printed name of the County Manager.

Subject: Resolution Authorizing Termination of the Lease/Leaseback Agreement with Bank of Hawaii Leasing, Inc. for the Metrorail Control and Passenger Information System

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) adopt the accompanying resolution authorizing:

- Termination of lease number MDC 2002-2 PC, the Bank of Hawaii Lease (BOHL Lease) dated August 13, 2002 with Pacific Century Leasing, Inc., now known as Bank of Hawaii Leasing, Inc. (Bank of Hawaii), provided termination costs inclusive of legal and other advisory fees, less any funds received from the termination, do not exceed \$500,000.
- The County Mayor or the Finance Director, as the County Mayor's designee, to execute all agreements and documents necessary to effectuate the termination.
- A waiver of Resolution R-130-06, which requires 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; therefore a waiver of R-130-06 is necessary to provide the County the maximum flexibility in the marketplace.

The BOHL Lease is a lease/leaseback agreement for the Metrorail Control and Passenger Information System (Leased Asset). The BOHL Lease is now in technical default because the credit rating of the guarantor, AIG Matched Funding Corporation (AIG), has been downgraded below the required stipulated ratings. Consequently, termination of the agreement is the most cost effective manner of curing the technical default.

SCOPE

The Metrorail Control and Passenger Information System (the Leased Asset) is operated by the Miami-Dade Transit Department (MDT) and has a countywide impact.

FISCAL IMPACT/FUNDING SOURCE

Termination of the transaction will allow the County to own the Leased Asset and cease lease payments to Bank of Hawaii.

The County will use funds from the Lease Buy-out Deposit (\$15.85 million) set up under the agreement and Miami-Dade Transit (MDT) operating revenues (\$234,000) to pay the \$16.084 million termination cost. In addition, the County is required to pay \$150,000 in transaction fees to complete the termination. This amount will be paid from MDT operating revenues. Because the funds in the Lease Buy-out Deposit and transaction fees change with daily fluctuations in interest rates, the County is capping its termination arrangement at no more than \$500,000 inclusive of legal and professional fees.

If the amount required to terminate the BOHL Lease is greater than \$500,000, the County and Bank of Hawaii will delay the termination proceedings until the market interest rates are such that the termination value is below \$500,000.

The County received an upfront payment of \$1.94 million from the Bank of Hawaii when it entered into the BOHL Lease in 2002. With the payment of the termination fees of no more than \$500,000, the net benefit of the transaction to the County should not be less than \$1.44 million.

TRACK RECORD/MONITOR

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

BACKGROUND ON BOHL LEASE

On August 13, 2002, the County entered into the BOHL Lease for the Metrorail 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 LIFO transactions.

As part of the arrangement, the County is obligated to make lease payments to the Bank of Hawaii over the term of the loan and to repurchase the assets from the Bank of Hawaii on January 1, 2018, the early buy-out date. When the agreement was executed, the Bank of Hawaii paid the County \$53.95 million that was used to establish two deposits:

- a) A loan repayment account (Loan Deposit) in the amount of \$39 million that was invested at a guaranteed rate so that it would be sufficient to make the loan payments during the term of the lease.
- b) A Lease Buy-out Deposit in the amount of \$12.3 million in a guaranteed investment contract (GIC) to purchase the Leased Asset from the Bank of Hawaii on January 1, 2018. The amount in the Lease Buy-out Deposit was scheduled to earn interest at a fixed rate (4.66836 percent) from August 2002 through January 1, 2018, so that the balance would be sufficient to repurchase the Leased Asset at no extra cost to the County upon termination of the lease in 2018. The Lease Buy-out Deposit has grown to approximately \$15.85 million as a result of interest earnings on the Lease Buy-out Deposit.
- c) The remaining \$2.65 million from the initial Bank of Hawaii payment to the County were used as a net benefit to the County (\$1.94 million) and to pay the transaction fees, advisor's fees, insurer's fees, and other professional's fees (totaling \$710,000) associated with the BOHL Lease.

Payments made to the Bank of Hawaii for the Leased Asset from the Loan Deposit were guaranteed by AIG Matched Funding Corporation (AIG) which was required to maintain a certain credit rating. The GIC or Lease Buy-out Deposit, pledged solely to terminate the BOHL Lease and to be used to buy back the Leased Asset from the Bank of Hawaii, was also guaranteed by AIG earning interest at an annual rate of 4.66836 percent. Additionally, if the County were to break the GIC prior to the early buy-out date, AIG can deduct a 30 percent breakage fee from the amount of the Lease Buy-out Deposit payable to the County.

As mentioned previously, AIG is required to maintain a certain credit rating during the term of the lease. 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 percent 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 BOHL Lease agreement and on September 27,

2008, the Bank of Hawaii requested the County require that AIG 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 Bank of Hawaii to declare a default, thereby requiring the County to pay the Bank of Hawaii a lease termination value based on a schedule of stipulated loss values that would compensate the Bank of Hawaii for lost benefits.

Currently, the stipulated loss value is approximately \$36.8 million which is the remaining value of scheduled BOHL Lease payments (\$15.85 million) and the present value of the lost tax benefits (\$20.95 million) that would have been realized by Bank of Hawaii. Pursuant to the BOHL Lease, the County had 60 days to replace AIG.

Since AIG's downgrade in September 2008, the County has been negotiating with Bank of Hawaii 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 economic decline and the shrinking insurance market, it has not been economically feasible to replace AIG as the guarantor on the BOHL Lease.

Subsequently, in May 2010, the County proposed the following arrangement to the Bank of Hawaii:

- Bank of Hawaii would provide the County with a termination cost to terminate the BOHL Lease,
- AIG agrees to pay the Bank of Hawaii the accreted value of the Lease Buy-out Deposit on the date of termination,
- The County would pay the difference between the requested termination cost and the Lease Buy-out Deposit received from AIG on the termination date, and
- Bank of Hawaii allows the County to terminate the BOHL Lease and all associated agreements including the liquidation of the Loan Deposit and the Loan.

On August 3, 2010, Bank of Hawaii offered to terminate the agreement which would require the County to pay Bank of Hawaii \$16.084 million based on the remaining term of the BOHL Lease. In order to terminate the agreement, the County will satisfy the loan obligation by using the balance from the Loan Deposit (\$37 million). The balance from the Lease Buy-out Deposit (\$15.85 million) will be used to pay a portion of the \$16.084 million termination value, therefore requiring the County to make up the remaining \$234,000 plus \$150,000 of transaction fees to complete the termination. However, since both the balance in the Lease Buy-out Deposit and Bank of Hawaii's termination cost change daily based on interest rates, the Resolution request termination costs plus estimated transaction fees in an aggregate amount not to exceed \$500,000.

This termination is being presented because Bank of Hawaii has requested that the County eliminate their exposure to an AIG potential bankruptcy which will also eliminate the County's exposure should Bank of Hawaii 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.

BACKGROUND ON LILOs

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 had 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 \$8.2 million in additional collateral per Resolution R-1247-09 approved by the Board on November 11, 2009. On July 20, 2010, the Board authorized the termination of the lease with PNC Leasing, Inc. (PNC Lease). Staff is currently working to terminate the PNC Lease and with the Bank of America to develop a mutually acceptable solution regarding the LILOs that are in default. Upon completing negotiations with the Bank of America, 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 <i>Additional collateral posted February 2010</i>
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

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 BOHL Lease participant; and (b) the technical default that exists with AIG's downgrade, provided the termination value of the BOHL Lease does not exceed \$500,000 inclusive of transaction fees. Given that the County received an upfront payment of \$1.94 million from the Bank of Hawaii when it entered into the BOHL Lease in 2002, the net benefit of this transaction to the County should not be less than \$1.44 million after the \$500,000 termination cost.



 Assistant County Manager



MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners **DATE:** September 21, 2010

FROM: R. A. Cuevas, Jr. County Attorney **SUBJECT:** Agenda Item No. 14(A)(1)

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

Agenda Item No. 14(A)(1)

Veto _____

9-21-10

Override _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING TERMINATION OF METRORAIL CONTROL AND PASSENGER INFORMATION SYSTEM LEVERAGED LEASE; AUTHORIZING TERMINATION PAYMENT OF NOT TO EXCEED \$500,000 TO BANK OF HAWAII LEASING, INC. INCLUDING TRANSACTION FEES; AND AUTHORIZING COUNTY MAYOR OR 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, a copy of which is incorporated herein by reference,

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

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 21st day of September, 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.

dsh

David Stephen Hope