

Memorandum

MIAMI-DADE
COUNTY

Date: June 30, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

Agenda Item No. 8(H)(4)

From: Carlos A. Gimenez
Mayor

Subject: Approval of Second Amendment to Amended and Restated Lease Agreement between Miami-Dade County and Haulover Marina, LLC for the Dry Rack Boat Storage Facility at Haulover Marine Center in Haulover Park

Recommendation

It is recommended that the Miami-Dade County Board of County Commissioners (Board) adopt the attached resolution authorizing execution of the Second Amendment (Attachment A) to the Lease Agreement ("Second Amendment") between Miami-Dade County (Lessor) and Haulover Marina, LLC, (Lessee) for the dry rack boat storage operation at Haulover Marine Center in Haulover Park.

Scope

Haulover Park is a Regional Park, located at 10801 Collins Avenue, in Commission District 4, which is represented by Commissioner Sally A. Heyman; however, the Park is an asset of regional significance.

Fiscal Impact/Funding Source

There is no fiscal impact to the County for this Second Amendment.

Track Record/Monitor

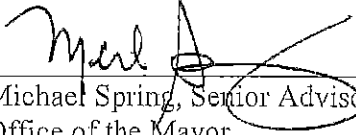
This lease is monitored and managed by the Parks, Recreation and Open Spaces Department's (PROS) Contract Manager Jon Seaman. The construction, development and Second Amendment will be monitored by Lydia Salas, Construction Manager, PROS.

Background

On July 8, 2010, the Board passed Resolution No. R-702-10, the Amended and Restated Lease Agreement between Miami-Dade County and Westrec Equities, Inc., allowing for the development of a new dry rack boat storage facility at Haulover Park and extending the lease agreement for an additional 25 years. On July 2, 2013, the Board passed Resolution No. R-519-13 approving the first amendment to the lease. This amendment provided the Lessee up to one additional year to complete the necessary permitting and development process resulting from extending the public input period leading up to the approval of the Revised General Plan for Haulover Park under Resolution No. R-997-12.

In 2014, an assignment and assumption of lease and consent was executed between Westrec Equities, Inc. and Haulover Marine Center, LLC ("Lessee"), as allowed under the lease. The Second Amendment will allow the Lessee to meet the bond requirements set forth in Section 255.05 of the Florida Statutes for the construction of the new dry rack boat storage facility by utilizing an alternative form of security to be posted by Lessee in addition to the bonds to be posted by its contractors.

The lease currently requires Lessee to post a surety bond for 100percent of the construction costs. In this case, the Lessee is both financing and developing the facility and has requested that an alternative form of security, other than a surety bond, be accepted from the Lessee in addition to the surety bonds of its contractors. PROS has negotiated an alternative form of security in the form of an irrevocable letter of credit in the amount of \$2 million. This provides the necessary protection to the County.



Michael Spring, Senior Advisor
Office of the Mayor




MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: June 30, 2015


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

SUBJECT: Agenda Item No. 8(H)(4)

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 Mayor'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. 8(H)(4)

Veto _____

6-30-15

Override _____

RESOLUTION NO. _____

RESOLUTION APPROVING SECOND AMENDMENT TO AMENDED AND RESTATED LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND HAULOVER MARINA, LLC FOR THE DRY RACK BOAT STORAGE FACILITIES AT HAULOVER PARK MARINE CENTER IN HAULOVER PARK AND AUTHORIZING COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SAME AND TO EXERCISE ALL PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purpose 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 this Board approves the Second Amendment to the Amended and Restated Lease Agreement between Miami-Dade County ("Lessor") and Haulover Marina, LLC ("Lessee") for the development and operation of a dry rack boat storage operation at Haulover Marine Center in Haulover Park, in substantially the form attached hereto and made part hereof as Attachment A; and authorizes the County Mayor or County Mayor's designee to execute the Second Amendment for and on behalf of Miami-Dade County and to exercise any and all rights contained therein.

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:

Jean Monestime, Chairman

Esteban L. Bovo, Jr., Vice Chairman

Bruno A. Barreiro

Jose "Pepe" Diaz

Sally A. Heyman

Dennis C. Moss

Sen. Javier D. Souto

Juan C. Zapata

Daniella Levine Cava

Audrey M. Edmonson

Barbara J. Jordan

Rebeca Sosa

Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 30th day of June, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the 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.

MUR

Monica Rizo Perez

ATTACHMENT A

SECOND AMENDMENT TO AMENDED AND RESTATED LEASE AGREEMENT

THIS SECOND AMENDMENT TO AMENDED AND RESTATED LEASE AGREEMENT (the "Amendment") is made and entered into as of _____, 2015 (the "Amendment Effective Date") by and between MIAMI-DADE COUNTY (the "County" or the "Lessor") and HAULOVER MARINA, LLC (the "Lessee"), each of which may also be referred to as a "Party," and which may be referred to collectively as the "Parties." Capitalized terms which are not separately defined herein shall have the meanings ascribed to them in the Lease.

RECITALS

WHEREAS, Lessor and Lessee's predecessor (Westrec Equities, Inc., a California corporation) entered in to that certain Amended and Restated Lease Agreement (the "A&R Lease") with an effective date of August 5, 2010, with respect to certain portions of Haulover Beach Park a/k/a Haulover Fishing Pier a/k/a Bill Bird Marina (the "Park"), which Lease was amended by that certain Amendment to Amended and Restated Lease Agreement with an effective date of July 26, 2013 (the "1st Amendment" and together with the A&R Lease, the "Lease"); and

WHEREAS, the Parties desire to amend the Lease, on terms and conditions as set forth herein.

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, the adequacy of which is hereby accepted and acknowledged by the parties, the Lessor and Lessee agree that the foregoing recitals are correct, and further agree to amend and restate Section I(H) of the Construction Rider in its entirety to read as follows:

"H. **Construction Bonds.** At least ten (10) days prior to commencement of any construction work on the Premises, or prior to the purchase and delivery to the Premises of any materials, equipment or supplies for construction, the Lessee shall: (1) provide the County with an alternate form of security in the form of a certified check that Lessor may deposit in a Lessor-controlled bank account or an irrevocable letter of credit in a form that is acceptable to the Lessor ("Alternative Security"), in the amount of \$2,000,000.00 to remain in place until evidence reasonably satisfactory to the Lessor is submitted to demonstrate all contractors performing improvements on the Project have been paid and the Project has obtained Final Completion, and such Alternative Security shall meet the specifications set forth below; (2) require that each prime contractor hired by Lessee to perform work and/or make improvements on the Project shall provide a Performance Bond with a surety insurer authorized to do business in the State of Florida as a surety in an amount not less than 100% of his/her/its respective contract in the form provided and attached hereto as part of the Construction Rider to insure that his/her construction work shall be effected by the contractor or, on its default, his/her surety and shall name the County as an additional obligee and shall meet the specifications set forth below; and (3) each prime contractor hired by Lessee to perform work and/or make improvements on the Project shall provide a Payment Bond with a surety insurer authorized to do business in the State of

Florida as a surety in an amount not less than 100% of his/her/its respective contract in the form provided and attached hereto as part of the Construction Rider conditioned to secure the completion of the Project free from all liens and claims of sub-contractors, mechanics, laborers and material men and shall name the County as an additional obligee and payee and shall meet the specifications set forth below.

1. The Alternative Security and the Bond(s) shall comply with the requirements of Section 255.05.
2. The Alternative Security shall be for the benefit of the County (so as to ensure that the Project is completed) and for all contractors hired by Lessee (so as to ensure that they are paid) and the County (on behalf of all such contractors) shall be entitled to make a claim on the Alternative Security. Any irrevocable letter of credit shall be so worded as to make the Lease a part thereof and shall contain a clause providing the right of suit or action for the County (so as to ensure that the Project is completed), individually and on behalf of all contractors hired by Lessee (so as to ensure that they are paid) to the same extent as if he or they were the obligee or obligees therein specifically mentioned.
3. All Bonds shall be written through surety insurers authorized to do business in the State of Florida as surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

Bond Amount	Best's Rating
\$500,001 to \$1,500,000	B V
\$1,500,001 to \$2,500,000	A VI
\$2,500,001 to \$5,000,000	A VII
\$5,000,001 to \$10,000,000	A VIII
Over \$10,000,000	A IX

On bonds in the amount of \$500,000 or less, the provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

- A. Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued,
- B. Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and

- C. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury under ss. 31 U.S.C. 9304-9308.
4. Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The Bond amount shall not exceed the underwriting limitations as shown in this circular.
5. The attorney-in-fact or other officer who signs a contract Bond for a surety company must file with such Bond a certified copy of his power of attorney authorizing him to do so. The contract Bond must be countersigned by the surety's resident Florida Agent.
6. Florida Statutes Section 255.05 provides for the following conditions to be made in all Performance and Payment Bonds relating to public projects, and such conditions shall also apply to the Alternative Security:
- A. "A claimant, except a laborer, who is not in privity with the Principal and who has not received payment for his labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish the Principal with a notice that he intends to look to the bond for protection."
- B. "A claimant who is not in privity with the Principal and who has not received payment for his labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to the Principal and to the Surety written notice of the performance of the labor or delivery of the materials or supplies and of the non-payment."
- C. "No action for the labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. No action shall be instituted against the Principal or the Surety on the bond after one (1) year from the performance of the labor or completion of delivery of the materials or supplies."
7. That the surety will defend and indemnify Miami-Dade County and Lessee against all loss, cost, damage, expense and liability arising out of or connected with the construction of the Project, up to the maximum bond requirement amount.
8. Lessee shall comply with the additional following obligations:

- A. Lessee shall obtain a Conditional Release of Lien from each of its prime contractor(s) at the time each progress payment is made. A copy of such release shall be transmitted to Lessor's representatives no later than seven (7) business days after payment was made.
- B. Lessee shall obtain an Unconditional Release of Lien from each of its prime contractor(s) within five (5) business days after payment is made. A copy of such release shall be transmitted to Lessor's representatives no later than seven (7) business days after payment was made.
- C. In the event Lessee's contractor(s) claim non-payment(s), and/or, fail to timely provide Unconditional Releases of Lien within the timeframe stipulated under these terms, Lessor reserves the right but not the obligation to:
 - (i) Reduce the amount(s) in question from the cash deposit(s) or security posted until the claim(s) is/are liquidated; or
 - (ii) Appropriate funds for such payment(s) from any cash deposit(s) or security posted and make payment(s) directly to the claimant(s).

In either case, Lessee shall within ten (10) business days of Lessor's notification to deposit an amount equal to the reduced/disbursed amount in Lessor's escrow account or increase the irrevocable letter of credit so as to replenish the original amount of the cash deposit(s) or security posted. Failure to deposit the identified amount within the aforementioned time period shall result in the issuance of a Stop Work Order by the Lessor. Lessee shall immediately abide by such notice and hereby waives any rights against Lessor from any damages/delays (direct or indirect) resulting from such work stoppage.

Once all construction is satisfactorily completed by the Lessee in strict accordance with the Lease, the construction contract(s), the approved plans and specifications, and the completion of the same is demonstrated free from all liens and within the time limit specified, the said cash deposit(s) or irrevocable letter of credit posted shall be released by the Lessor to the Lessee. In the event the amount of the cash deposit(s) or other security posted shall not cover any and all costs and expenses incurred by the Lessor in implementing these conditions and making sure all contractor(s) in privity with Lessee who are performing improvements to the property ultimately get paid, the Lessee shall be liable to the Lessor and shall immediately pay for such difference upon notice from the Lessor."

Nothing herein shall prohibit or prevent or inhibit Lessee from contesting by any and all legal means any claim for payment made by any of Lessee's contractors, or any subcontractor or materialman. Upon receipt by the County of any claim from any contractor, materialman, and/or supplier for payment for his/her/its labor, materials, or supplies, the County shall immediately provide notice of same to the Lessee and to the Surety(s). If the Surety and/or the Lessee fail to

negotiate and settle any such claim within thirty (30) days of the County's notice, then the County shall have the right to draw down or make a claim on the Alternative Security to pay the claimant(s). Further, and although the Alternative Security may ultimately be for the benefit of Lessee's contractors, or any subcontractor or materialman, none of Lessee's contractors, or any subcontractor or materialman shall be permitted directly to draw upon the Alternative Security.

In all other respects the Lease remains unmodified and in full force and effect.

SIGNATURE PAGES FOLLOW:

IN WITNESS WHEREOF, Lessor and Lessee have caused their appropriate officials to execute this Amendment as of the Amendment Effective Date.

LESSOR

ATTEST: Harvey Ruvin
Clerk of the Board

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

By: _____
Deputy Clerk

By: _____
Carlos A. Gimenez
County Mayor

Date: _____

Date: _____

Approved by County Attorney as to form and legal sufficiency. _____

LESSEE'S SIGNATURE PAGE FOLLOWS

WITNESSES:

Ruth A. Black
Witness Signature

Ruth A. Black
Witness Printed Name

Rosie Morales
Witness Signature

Rosie Morales
Witness Printed Name

LESSEE

HAULOVER MARINA, LLC, a
Delaware limited liability company

By: *Jeffrey K. Ellis*
Name: Jeffrey K. Ellis
Title: Vice President

(seal)

Date: 6/4/2015

EXHIBIT "A"
FORM OF BOND

EXHIBIT A

SURETY PERFORMANCE AND PAYMENT BOND

By this Bond, We _____, as Principal, whose principal business address is _____, as Contractor under the contract dated _____, 2010, between Principal and Miami-Dade County for the construction of _____ Project No _____ (herein after referred to as "Contract") the terms of which Contract are incorporated by reference in its entirety into this Bond and _____, a corporation, whose principal business address is _____ as Surety, are bound to Miami-Dade County (hereinafter referred to as "County") in the sum of _____ (U.S. dollars) \$_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs all the work under the Contract, including but not limited to guarantees, warranties and the curing of latent defects, said Contract being made a part of this bond by reference, and in the times and in the manner prescribed in the Contract, including any and all damages for delay; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays County all losses, damages, including damages for delay, expenses, costs and attorney's fees, including appellate proceedings, that County sustains because of a default by Principal under the Contract, including but not limited to a failure to honor all guarantees and warranties or to cure latent defects in its work or materials within 5 years after completion of the work under the Contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the Contract, including all warranties and curing all latent defects within 5 years after completion of the work under the Contract;

then this bond is void; otherwise it remains in full force.

If no specific periods of warranty are stated in the Contract for any particular item or work, material or equipment, the warranty shall be deemed to be a period of one (1) year from the date of final acceptance by the County. This Bond does not limit the County's ability to pursue suits directly with the Principal seeking damages for latent defects in materials or workmanship, such actions being subject to the limitations found in Section 95.11(3)(c), Florida Statutes.

Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this Bond.

EXHIBIT A

SURETY PERFORMANCE BOND (Cont'd)

IN WITNESS WHEREOF, the above bounden parties have caused this Bond to be executed by their appropriate officials as of the _____ day of _____, 20 ____.

CONTRACTOR:

(Contractor Name)

BY:

(President) (Managing Partner or Joint Venturer)

(SEAL)

COUNTERSIGNED BY RESIDENT
FLORIDA AGENT OF SURETY:

SURETY:

(Copy of Agent's current
Identification Card as issued by

State of Florida Insurance Commissioner must be attached) By: _____

Attorney-in-Fact

(CORPORATE SEAL)

(Power of Attorney must be attached)