

Memorandum



Date: March 7, 2017

To: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

Agenda Item No. 8(J)(3)

From: Carlos A. Gimenez
Mayor

Subject: Resolution Approving and Authorizing the Execution of a Lease Agreement between Miami-Dade County and Bayview at Fisher Island Condominium Association No. Two

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the accompanying resolution approving and authorizing the County Mayor to execute a lease agreement between Miami-Dade County and Bayview at Fisher Island Condominium Association No. Two (Bayview) for the purpose of maintaining the installed Homeland Security Surveillance Equipment located on the rooftop of the condominium.

Scope

PortMiami is located within District 5, which is represented by Commissioner Bruno A. Barreiro; however, the impact of this agenda item is countywide, as PortMiami is a regional asset and generates employment for residents throughout Miami-Dade County.

Fiscal Impact/Funding Source

The rental cost will be \$1,320.00 per month for a total fiscal impact of \$31,680.00 over the two-year term of the lease and \$95,040.00 if all renewal terms are exercised, which will be paid from seaport operating revenues. The rental cost is based on the estimated electrical consumption resulting from the operation of the equipment.

Delegation of Authority

In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond that specified in the resolution which include the authority for the County Mayor or the County Mayor's designee to execute the agreement, exercise the additional four (4), one-year options to renew, to exercise the cancellation and termination provisions, and to exercise all other County rights in the lease.

Track Record/Monitor

The Seaport Department staff members responsible for monitoring the Waterside Surveillance Program are Elizabeth Ogden, Assistant Director of Capital Development, and Michelle Thames, Chief of Seaport Information Systems.

Background

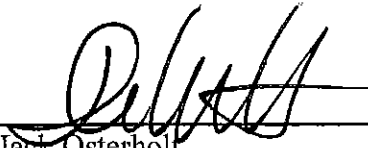
In October of 2006, PortMiami received a Port Security Grant of \$2,250,000.00 from the Office for Domestic Preparedness for the second phase of a Waterside Surveillance System.

The Waterside Surveillance System provides real-time situational awareness of the waterside enabling the detection of unauthorized watercraft and/or intruders accessing restricted areas of the Port's perimeter or approaching docked vessels. The system consists of five (5) sites, one of which is hosted on the rooftop of Bayview. The lease agreement provides access to the rooftop space for the installation and maintenance of the surveillance equipment.

For a period of time, the roof on the building at Bayview at Fisher Island Condominium was under construction resulting in the removal of the security equipment. During the construction period, the lease was not in effect and no payments were issued to Bayview at Fisher Island Condominium Association. The construction is complete and the security equipment has been upgraded and reinstalled at the site.

The lease agreement will allow PortMiami to resume using the Bayview at Fisher Island Point Building as a base for the security equipment needed for the Waterside Surveillance System. The term of this lease agreement shall be for two (2) years commencing on the effective date with four (4) additional one-year options to renew.

The County has the right to cancel this lease agreement any time by giving Bayview at least 30 days written notice prior to its effective date. It is important to note that the County negotiated this lease agreement with Bayview because this building is strategically located in the surveillance area that can best provide the proper coverage for the southwest portion of the island.



Jack Osterholt
Deputy Mayor

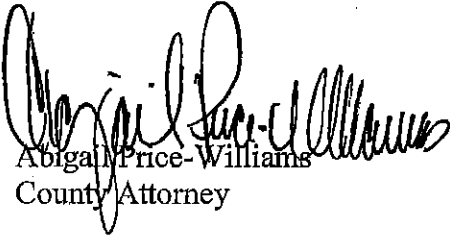


MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: March 7, 2017

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(J)(3)

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
- Statement of social equity 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
Veto _____
Override _____

Agenda Item No. 8(J)(3)
3-7-17

RESOLUTION NO. _____

RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND BAYVIEW AT FISHER ISLAND CONDOMINIUM ASSOCIATION NO. TWO, FOR A TERM OF TWO YEARS WITH FOUR ONE YEAR RENEWAL OPTIONS FOR A RENT IN THE AMOUNT OF \$1,320.00 PER MONTH AND A TOTAL RENTAL OF \$95,040.00 IF ALL FOUR RENEWAL PERIODS ARE EXERCISED FOR THE PURPOSES OF INSTALLING AND MAINTAINING HOMELAND SECURITY SURVEILLANCE EQUIPMENT; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE THE LEASE AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY, AND TO EXERCISE THE CANCELLATION, TERMINATION AND RENEWAL PROVISIONS AND ALL OTHER COUNTY RIGHTS CONFERRED THEREIN

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 this Board:

Section 1. Approves the Lease Agreement between Miami-Dade County and Bayview at Fisher Island Condominium Association No. Two ("Lease Agreement") for a term of two years with four one year renewal options for a rent in the amount of \$1,320.00 per month and a total rental of \$95,040.00 if all four renewal periods are exercised for the purposes of installing and maintaining Homeland Security surveillance equipment, in substantially the form attached hereto and made a part hereof.

Section 2. Authorizes the County Mayor or the County Mayor's designee to execute the Lease Agreement after review and approval by the County Attorney's Office; and to exercise the cancellation, termination and renewal provisions in the Lease Agreement, and all other rights conferred 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:

- | | |
|-------------------------------------|----------------------|
| Esteban L. Bovo, Jr., Chairman | |
| Audrey M. Edmonson, Vice Chairwoman | |
| Bruno A. Barreiro | Daniella Levine Cava |
| Jose "Pepe" Diaz | Sally A. Heyman |
| Barbara J. Jordan | Joe A. Martinez |
| Jean Monestime | Dennis C. Moss |
| Rebeca Sosa | Sen. Javier D. Souto |
| Xavier L. Suarez | |

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of March, 2017. 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.



Richard Seavey

LEASE AGREEMENT

THIS LEASE AGREEMENT is made on the day of _____, 2016 by and between Bayview at Fisher Island Condominium Association No. Two., a Florida not-for-profit corporation, hereinafter called the "LANDLORD," and MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter called the "TENANT," for the purpose of installing Homeland Security Surveillance Equipment on the roof of the Bayview at Fisher Island Condominium Association No. Two

WITNESSETH:

That LANDLORD, for and in consideration of the restrictions and covenants herein contained, hereby leases to TENANT and TENANT hereby agrees to lease from LANDLORD the demised premises described as follows:

1. Access to and rooftop space by TENANT and TENANT's contractors for installation and maintenance of the following: 6 foot pole, electrical enclosure, wireless radio and tracking security camera(s);
2. Access to cooling tower area on the roof by TENANT and TENANT's contractors for installation and maintenance of additional equipment;

All located at Bayview at Fisher Island Condominium Association No. Two; 5300 Fisher Island Drive; Fisher Island, Florida 33109

TO HAVE AND TO HOLD unto the said TENANT for a term of two (2) years commencing on the effective date of the resolution of the Board of County Commissioners approving this lease agreement (the "Commencement Date"), subject to the renewal terms contained herein and solely for the purposes described herein, TENANT shall pay rent to LANDLORD in the amount of \$1,320.00 per month. Rent shall be paid monthly, due on the first of the month, and payment shall be made payable to the LANDLORD. IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED BY THE RESPECTIVE PARTIES HERETO:

6

3 Extent of Operation. TENANT recognizes that the demised premises are located within the boundaries of a residential condominium known as Bayview at Fisher Island Condominium Association No. Two (the "Condominium"), and that the unit owners and residents of the Condominium, and their guests and invitees, as well as the LANDLORD's employees are entitled to use the demised premises. TENANT will at all times keep the demised premises in good, neat and clean condition and will conduct its operation and use thereof in a manner which will not result in an interference, annoyance or hindrance to such unit owners, residents and their guests and invitees, as well as LANDLORD's employees, knowing that the proper operation of the facilities within the demised premises is an essential and integral consideration without which the LANDLORD would not have entered into this Lease; and the TENANT covenants and agrees with the LANDLORD that the TENANT will exercise due diligence and the utmost good faith to do all things to operate its Equipment. TENANT further acknowledges, agrees and warrants that its Equipment and its use of the demised premises will not interfere with the Condominium or any component thereof, including the roof systems, fire alarm system, security alarm or access systems, and that the operation and use of the Equipment and the demised premises by TENANT in accordance with this Lease will not result in a violation of any warranties regarding such Condominium building components. Should TENANT's use and operation of the Equipment and the demised premises result in an interference of the use of the Condominium by the LANDLORD's employees or Condominium unit owners, tenants, residents, or their families and guests, or should same result in the interference of the proper function of a Condominium building

comply with the provisions of this section, this Lease shall automatically terminate upon ten (10) days written notice from LANDLORD and TENANT shall vacate the demised Premises and remove TENANT'S Equipment within thirty (30) days the date of termination. TENANT's failure to comply with all provisions of this paragraph shall be deemed a default of this Lease by TENANT.

5. TENANT shall have the privilege of determining its own mode of operation, provided such is not inconsistent with any of the provisions of this Lease nor a violation of any applicable law, order, ordinance, governmental regulation or Condominium document; subject to the following provisos: TENANT will ensure that its employees and any contractors, subcontractors, and agents entering and working at the demised premises will comply with all applicable State of Florida or Federal laws with respect to such employment, including but not limited to, carrying adequate Worker's Compensation Insurance, if required.

6. Licenses. TENANT warrants and represents that it shall obtain at its sole cost and expense all necessary licenses, permits and approvals from all relevant federal, state, county and municipal authorities, in order for it to conduct its operation and use of the demised premises and the Equipment thereon in accordance with the terms of the Lease. The failure to obtain any necessary permits, licenses and approvals which may be required by any governing authority in order for TENANT to use the demised premises and conduct its operation from the demised premises, shall operate to nullify this

rent. In the event LANDLORD elects for TENANT to pay for all charges for electricity used by TENANT, then TENANT shall have the right to request evidence of electricity charges incurred by LANDLORD. In addition to the foregoing, the TENANT shall be required to pay as additional rent, any sale or use tax, occupancy tax, excise tax or any similar tax assessed or levied with respect to any rental received by LANDLORD, or with other service or services provided by LANDLORD under this Lease or otherwise, as may now or hereafter be authorized by the laws of any governmental authority having jurisdiction in the matter. Failure to pay such taxes as provided herein shall be deemed a default of this Lease by TENANT. Additionally, TENANT shall be required to pay as additional rent, all tangible property taxes which may be levied on the personal property situated on the demised premises; the amount of such taxes to be paid by TENANT shall be determined by prorating the entire tax bill so that TENANT is responsible for 100% of the applicable taxes attributable to all of the personal property on the demised premises used or owned by TENANT on the demised premises. TENANT, upon receiving an invoice therefore, shall pay the amount of such taxes to LANDLORD within ten (10) days following delivery to TENANT of such invoice. Failure to pay such taxes as provided herein shall be deemed a default of this Lease by TENANT.

ARTICLE IV
MAINTENANCE

LANDLORD agrees to provide, repair or replace, as necessary, and maintain and keep in good repair, condition, and appearance, during the term of this Lease Agreement or any extension or renewal thereof, the exterior of the building, to the extent required by the Declaration of Condominium Bayview at Fisher Island Condominium Association No. Two, as recorded in Official Records Book 15029 at Page 2966, of the Public Records of Miami-Dade County, Florida ("Declaration"). TENANT agrees to keep and maintain the demised

ARTICLE V
ALTERATIONS BY TENANT

This Lease envisions TENANT making certain construction, alterations, upgrades, modifications, additions, or improvements in or to the demised premises (hereinafter collectively the "Alterations"). TENANT shall attain the prior written consent of LANDLORD and comply with applicable building codes in making such Alterations. If LANDLORD does not approve the necessary Alterations *and/or* such Alterations do not receive approval under applicable building codes, then this Lease Agreement immediately shall be terminated upon written request of the TENANT. Any personal property, Equipment, apparatus, fittings, fixtures, trade fixtures, or other improvements installed or stored by TENANT on the demised premises shall remain TENANT's property and must be removed by TENANT upon the expiration, or earlier termination of the Lease Agreement or any renewal or cancellation thereof, within thirty (30) days from the expiration of the Lease, and at TENANT's sole cost and expense. In the event TENANT should fail to remove such personal property, Equipment, apparatus, fittings, fixtures, trade fixtures or other improvements installed or stored by TENANT within the prescribed period of time, then the LANDLORD may have such personal property, Equipment, apparatus, fittings, fixtures, trade fixtures or other improvements installed or stored by TENANT, removed from the demised premises, and the costs and expenses incurred as a result thereof, including attorneys' fees and costs, shall be paid by TENANT within ten (10) days from LANDLORD's written request for payment. Additionally, LANDLORD shall have the right and option to repair or correct defects to TENANT's personal property, Equipment, apparatus, fittings, fixtures, trade fixtures, or other improvements installed or stored by TENANT (which right and option shall include the right of removal) if TENANT should fail to repair or correct any defect with the personal property, Equipment, apparatus, fittings, fixtures, trade fixtures or other improvements installed or stored

level, losses, claims, expenses or damages resulting from a violation of the terms of this paragraph. As consideration to ensure TENANT's compliance with the provisions of this Article, TENANT shall furnish to LANDLORD a deposit in the amount of \$5,000.00 which deposit shall be applied to offset damages or expenses incurred as a result of TENANT's failure to comply with the obligations arising pursuant to this Article. In no event shall LANDLORD's application of proceeds from the aforementioned deposit be construed as a waiver or disclaimer of all other remedies available to LANDLORD as a result of a violation of this Article or this Lease as a Whole. This Section shall survive the expiration or earlier termination of this Lease.

ARTICLE VI
DESTRUCTION OR CONDEMNATION OF DEMISED PREMISES

In the event the demised premises should be destroyed or so damaged by fire, windstorm, or other casualty, either party may cancel this Lease Agreement for its convenience by giving written notice to the other at any time after the occurrence of the fire, windstorm, or other casualty. In the event of cancellation under this Article, neither party shall be responsible to the other party for any expense associated with the cancellation, and TENANT shall only be liable to LANDLORD for such rents as may be due as of the date of such fire, windstorm, or other casualty.

If neither party shall exercise the foregoing right of cancellation, LANDLORD shall cause the building and demised premises to be repaired and placed in good condition within one hundred twenty (120) days following the date of casualty, provided such repairs may be accomplished within such time period through the use of commercially reasonable means. If repairs of the damages sustained by the demised premises cannot be repaired within the above-established one hundred twenty (120) day period, then LANDLORD shall be permitted to complete such repairs during whatever period of time it may take for LANDLORD to have such repairs accomplished by use of diligent and commercially reasonable means. If the demised premises sustained damages

ARTICLE VII
ACCESS

TENANT shall have access to the Premises at all hours of the day and night, subject to reasonable rules and regulations as LANDLORD may impose.

ARTICLE VIII
NO LIABILITY FOR PERSONAL PROPERTY

All personal property placed or moved in the demised premises above described shall be at the risk of TENANT or the owner thereof. LANDLORD shall not be liable to TENANT for any damage to said personal property unless caused by or due to negligence or willful misconduct of LANDLORD, LANDLORD's agents or employees.

ARTICLE IX
SUBLEASING

TENANT shall not sublet the Premises or any portion thereof.

ARTICLE X
LANDLORD'S RIGHT OF ENTRY

LANDLORD or any of its agents shall have the right to enter said demised premises during all reasonable working hours, upon the giving of twenty-four (24) hours' prior notice, unless an emergency exists, to examine the same or to make such repairs, additions, or alterations as may be deemed necessary for the safety, comfort, or preservation thereof of said building.

ARTICLE XI
LIABILITY FOR DAMAGE OR INJURY

TENANT shall not be liable for any damage or injury which may be sustained by any party or person on the demised premises other than the damage or injury caused solely or partially by the negligence of TENANT, subject to all limitations of Section 768.28, Florida Statutes.

ARTICLE XV
SUCCESSORS IN INTEREST

It is hereby covenanted and agreed between the parties that all covenants, conditions, agreements, and undertakings contained in this Lease Agreement shall extend to and be binding on the respective successors and assigns of the respective parties hereto, the same as if they were in every case named and expressed.

ARTICLE XVI
ASSIGNMENT BY LANDLORD

If the interests of LANDLORD under this Lease Agreement shall be transferred voluntarily or by reason of foreclosure or other proceedings for enforcement of any mortgage on the demised premises, TENANT shall be bound to such transferee (herein sometimes called the "Purchaser") for the balance of the term hereof remaining, and any extension or renewals thereof which may be effected in accordance with the terms and provisions hereof, with the same force and effect as if the Purchaser were the LANDLORD under this Lease Agreement, and TENANT does hereby agree to attorn to the Purchaser, including the Mortgagee under any such mortgage if it be the Purchaser, as its LANDLORD, said attornment to be effective and self-operative without the execution of any further instruments upon the Purchaser succeeding to the interest of the LANDLORD under this Lease Agreement. The respective rights and obligations of TENANT and the Purchaser upon such attornment, to the extent of the then remaining balance of the term of this Lease Agreement and any such extensions and renewals, shall be and are the same as those set forth herein. In the event of such transfer of LANDLORD's interests, LANDLORD shall be released and relieved from all liabilities and responsibility to TENANT thereafter accruing under this Lease Agreement or otherwise and LANDLORD's successor by acceptance of rent from TENANT hereunder shall become liable and responsible to TENANT in

ARTICLE XVIII
OPTION TO RENEW

Provided this Lease Agreement is not otherwise in default, TENANT through its County Manager or his designee, is hereby granted the option to extend this Lease Agreement for four (4) additional one-year renewal option periods, upon the same terms and conditions, by giving LANDLORD notice in writing at least thirty (30) days prior to the expiration of this Lease Agreement or any extension thereof. Should TENANT neglect to exercise any extension option by the date specified above, TENANT's right to exercise shall not expire until thirty (30) business days after notice from LANDLORD of TENANT's failure to exercise the option.

ARTICLE XIX
CANCELLATION

TENANT, through its County Mayor or his designee, shall have the right to cancel this Lease Agreement at any time by giving LANDLORD at least thirty (30) days' written notice prior to its effective date.

ARTICLE XX
INSURANCE

TENANT hereby represents that it is self-insured as to Workers Compensation, Public Liability and Automobile Liability coverage, protecting employees and officials of TENANT, in compliance with and subject to the limitations of Section 768.28, Florida Statutes.

ARTICLE XXI
NOTICES

It is understood and agreed between the parties hereto that written notice addressed and sent by certified or registered mail, return receipt requested, first class, postage, prepaid and addressed as follows:

ARTICLE XXIII
WAIVER OF LANDLORD'S LIEN

LANDLORD, for itself and its successors and assigns, does hereby waive all rights to levy liens and all lien rights accrued and accruing as to all personal property, machinery, fixtures, and equipment, affixed or otherwise, now or hereafter belonging to or in the possession of TENANT. Further, TENANT may at its discretion remove from time to time all or part of its personal property, machinery, trade fixtures, and equipment.

ARTICLE XXIV
FORCE MAJEURE

TENANT and LANDLORD shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants, and conditions of the Lease Agreement when prevented from so doing by cause or causes beyond TENANT's or LANDLORD's control, excluding filing of bankruptcy, but which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of TENANT or LANDLORD.

ARTICLE XXV
LANDLORD'S DEFAULT

It shall constitute a default of this Lease Agreement by LANDLORD if, except as otherwise provided in this Lease Agreement, LANDLORD fails to observe or perform any of the covenants, conditions, or provisions of this Lease Agreement to be observed or performed by LANDLORD, where such failure shall continue for a period of thirty (30) days after written notice thereof from TENANT to LANDLORD; provided, however, that if the nature of LANDLORD's non-compliance is such that more than thirty (30) days are reasonably required for its cure, then LANDLORD shall not be deemed to be in default if LANDLORD commenced

accept such check or payment without prejudice to or waiver of LANDLORD's right to recover the balance of such rent or other amount owed or to pursue any other remedy provided in this Lease Agreement, without regard to representations made or included onto or with the form of such payment. No reentry by LANDLORD and no acceptance by LANDLORD of keys from TENANT shall be considered an acceptance of a surrender of this Lease Agreement.

ARTICLE XXVII
DEFAULT OF TENANT



(1) If (a) TENANT defaults in the payment of any rent or other additional sums which may be due under this Lease and such default continues for three (3) days from the date of service of notice, or (b) TENANT defaults in fulfilling any of the covenants or agreements of this Lease on its part to be kept or performed, and such default is not corrected to LANDLORD's satisfaction within thirty (30) days after written notice from LANDLORD or its agent, or within such additional time as TENANT may be prevented from correcting the default as is caused by delays attributed to strikes, labor trouble, acts of God, governmental prohibitions and similar causes beyond TENANT's control, or (c) if this Lease be transferred to any person or corporation other than TENANT, then and in any such events, LANDLORD, at its option, may terminate this Lease, and TENANT shall then quit and surrender the demised premises to LANDLORD and TENANT shall remain liable as herein provided.


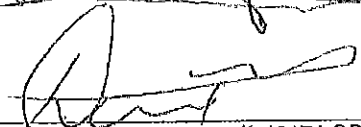
(2) If TENANT shall default in the performance of any provisions, covenants or condition on its part to be performed under this Lease, LANDLORD may, at its option, automatically terminate this Lease upon ten (10) days written notice to TENANT, in which case TENANT shall vacate the demised Premises and remove the Equipment within thirty (30) days the date of termination.

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

(CORPORATE SEAL)

Bayview at Fisher Island
Condominium Association No. Two., a
Florida not-for-profit Corporation


WITNESS _____

WITNESS _____
Rene Ortiz

X  SEC. / TREAS.
By:  (LANDLORD)

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

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

By: _____
Deputy Clerk

By: _____
(TENANT)

Approved by the County Attorney as
To form and legal sufficiency. _____