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OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 11(A)(26)

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

DATE: February 3, 2015

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

SUBJECT: Resolution approving Second Amendment to Lease Agreement for premises located at 8000 S.W. 123 Avenue, Miami, Florida with Creative Children Therapy, Inc., a Florida non-profit corporation, in accordance with Florida Statutes Section 125.38; waiving Resolution No. R-256-13 regarding conveyances to non-profit corporations

Resolution No. R-146-15

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Senator Javier D. Souto.

for

R. A. Cuevas, Jr.
County Attorney

RAC/cp

/

MEMORANDUM
(Revised)

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

DATE: February 3, 2015

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

SUBJECT: Agenda Item No. 11(A)(26)

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
Veto _____
Override _____

Agenda Item No. 11(A)(26)
2-3-15

RESOLUTION NO. R-146-15

RESOLUTION APPROVING SECOND AMENDMENT TO LEASE AGREEMENT FOR PREMISES LOCATED AT 8000 S.W. 123 AVENUE, MIAMI, FLORIDA WITH CREATIVE CHILDREN THERAPY, INC., A FLORIDA NON-PROFIT CORPORATION, IN ACCORDANCE WITH FLORIDA STATUTES SECTION 125.38; WAIVING RESOLUTION NO. R-256-13 REGARDING CONVEYANCES TO NON-PROFIT CORPORATIONS; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

WHEREAS, Creative Children Therapy, Inc. ("Tenant"), is a Florida non-profit corporation organized for the purpose of providing health and behavioral health and prevention services inclusive of quality pediatric therapy services for special-needs children, adolescents and their families; and

WHEREAS, the County owns five (5) acres of vacant land for property located at 8000 S.W. 123 Avenue, Miami, Florida, ("Property"); and

WHEREAS, the Tenant previously applied to the County for use of the Property for the purpose of constructing a facility providing health and behavioral health and prevention services inclusive of quality pediatric therapy services for special-needs children, adolescents and their families, and in support of the community interests and welfare purposes for which it is organized; and

WHEREAS, by Resolution No. R-1319-08, adopted by the Board of County Commissioners on December 2, 2008, the Board authorized a Lease Agreement for the Property with the Tenant ("Lease"); and

WHEREAS, the effective date of the Lease was January 12, 2009 ("Effective Date") and the Lease will expire on January 11, 2039, which amounts to a thirty (30) year term; and

WHEREAS, the Lease also contains one additional ten-year renewal option; and

WHEREAS, the Tenant is to construct and operate a facility which will provide a continuum of health and behavioral health and prevention services inclusive of quality pediatric therapy services for special-needs children, adolescents and their families; and

WHEREAS, the Lease originally required a building permit to be issued within the first two (2) years of the Effective Date, and that the aforementioned facility be completed within five (5) years of the Effective Date; and

WHEREAS, the County and the Tenant subsequently entered into a First Amendment to the Lease, approved by Resolution No. R-1168-10, adopted by this Board on December 7, 2010 ("First Amendment"); and

WHEREAS, the First Amendment extended the deadlines contained in the Lease, and required a building permit to be issued within the first five (5) years of the Effective Date, and that the aforementioned facility be completed within eight (8) years of the Effective Date; and

WHEREAS, the Tenant wishes to further extend the deadlines in the Lease to allow that (1) the building permit be issued within ten (10) years of the Effective Date; and, (2) that the facility be completed within thirteen (13) years of the Effective Date, as set forth in the Second Lease Amendment attached hereto as Exhibit A ("Second Amendment"); and

WHEREAS, the Board finds that, pursuant to Section 125.38 of the Florida Statutes, that Tenant does continue to require the Property for such use, that approving the Second Amendment for that use would promote community interest and welfare, and that the Property is not otherwise needed for County purposes; and

WHEREAS, in consideration of the extension, the Tenant has also agreed to amend the Lease in accordance with the provisions of Resolution No. R-1000-14, adopted by this Board on November 5, 2014, to provide that the County shall not be required to pay any compensation to

the Tenant in connection with the cancellation of the Lease, if any, and any such cancellation of the Lease shall be at no cost or expense to the County; and

WHEREAS, the Board waives the provisions of Resolution No. R-256-13, as the policy requiring a payment in lieu of taxes was instituted well after the Lease was originally approved in 2009, and thus should not apply retroactively to the Lease,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The Board ratifies and adopts the matters set forth in the foregoing recitals.

Section 2. The Board finds that the Property is not needed for County purposes, approves the terms of the Second Amendment to the Lease between Miami-Dade County and Creative Children Therapy, Inc., in substantially the form attached hereto as Exhibit A, waives the provisions of Resolution No. R-256-13, and authorizes the County Mayor or County Mayor's designee to execute same and exercise any and all other rights conferred therein.

Section 3. The County Mayor or County Mayor's designee is hereby directed to provide to the Property Appraiser's Office an executed copy of the Second Amendment within 30 days of its execution.

The Prime Sponsor of the foregoing resolution is Senator Javier D. Souto. It was offered by Commissioner **Sen Javier D. Souto**, who moved its adoption. The motion was seconded by Commissioner **Audrey Edmonson** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman			**aye**
Esteban L. Bovo, Jr., Vice Chairman			**aye**
Bruno A. Barreiro	**absent**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**absent**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**absent**	Barbara J. Jordan	**aye**
Dennis C. Moss	**absent**	Rebeca Sosa	**absent**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**absent**
Juan C. Zapata	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of February, 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: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Jorge Martinez-Esteve

EXHIBIT A

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT to Lease Agreement made this day of , 2015, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, herein sometimes designated or referred to as the "LANDLORD," and CREATIVE CHILDREN THERAPY, INC., a Florida Not-for-Profit Corporation, hereinafter referred to as the "TENANT,"

WITNESSETH:

WHEREAS, by Resolution No. R-1319-08, adopted by the Board of County Commissioners on December 2, 2008, the Board authorized the Lease Agreement between the above named parties for five (5) acres of vacant land for property located at 8000 S.W. 123 Avenue, Miami, Florida ("Lease"); and

WHEREAS, the effective date of the Lease was January 12, 2009 ("Effective Date") and the Lease will expire on January 11, 2039, which amounts to a thirty (30) year term; and

WHEREAS, the Lease also contains one additional ten-year renewal option; and

WHEREAS, the TENANT is to construct and operate a facility which will provide a continuum of health and behavioral health and prevention services inclusive of quality pediatric therapy services for special-needs children, adolescents and their families; and

WHEREAS, the Lease originally required a building permit to be issued within the first two (2) years of the Effective Date, and that the aforementioned facility be completed within five (5) years of the Effective Date; and

WHEREAS, the LANDLORD AND TENANT subsequently entered into a First Amendment to the Lease, approved by Resolution No. R-1168-10, adopted by the Board of County Commissioners on December 7, 2010 ("First Amendment"); and

WHEREAS, the First Amendment extended the deadlines contained in the Lease, and required a building permit to be issued within the first five (5) years of the Effective Date, and that the aforementioned facility be completed within eight (8) years of the Effective Date; and

WHEREAS, both LANDLORD and TENANT are desirous of further amending Lease Agreement to require that (1) the building permit be issued within ten (10) years of the Effective Date; and, (2) that the facility be completed within thirteen (13) years of the Effective Date, as set forth below; and

WHEREAS, in consideration of the extension, TENANT has also agreed to amend the Lease in accordance with the provisions of Resolution No. R-1000-14, adopted by the Board of County Commissioners on November 5, 2014, to provide that the LANDLORD shall not be required to pay any compensation to the TENANT in connection with the cancellation of the Lease, if any, and any such cancellation of the Lease shall be at no cost or expense to the LANDLORD; and

NOW, THEREFORE, in consideration of the restrictions and covenants herein contained, it is agreed that the Lease is hereby amended as follows:

1. Article XV of the Lease shall be amended to read as follows:

ARTICLE XV
CANCELLATION

The LANDLORD, through its County Mayor or the County Mayor's designee, shall have the right to cancel this Lease Agreement for cause at any time by giving the TENANT at least ninety (90) days' written notice prior to its effective date should any of the following occur:

1. A building permit is not issued within the first ten (10) years of the Effective Date of the Lease Agreement.
2. Construction of the facility has not been completed within thirteen (13) years of the Effective Date of the Lease Agreement.
3. A certificate of occupancy or temporary certificate of occupancy has not been obtained within six months of the building being completed.
4. Assignment by TENANT of this Lease Agreement for the benefit of creditors.
5. Non-performance of any material covenant of this Lease Agreement and failure of the TENANT to remedy such breach. TENANT shall have one hundred and eighty (180) days to cure any default after receiving written notice of same from LANDLORD.
6. In the event the TENANT shall willfully abandon or vacate the leased premises or any improvements made thereto before the end of the term of this Lease

Agreement, or any extension or renewal thereof, or willfully discontinue operations hereunder for a period of thirty (30) days or more.

7. If the leased premises shall be used by TENANT for any other purpose than as described in Article I, or if TENANT shall fail to maintain any required State of Florida licensing.
8. The conducting of any business or merchandising of any product or service not specifically authorized herein.
9. A final judgment in favor of LANDLORD as a result of any litigation between the parties.

In the event of a cancellation of the Lease pursuant to any of the provisions of this Article, LANDLORD shall not be required to pay any compensation to TENANT in connection with such cancellation, and such cancellation shall occur at no cost or expense to LANDLORD.

2. In all other respects said Lease shall remain in full force and effect in accordance with the terms and conditions specified therein.

IN WITNESS WHEREOF, the 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)

WITNESS

WITNESS

CREATIVE CHILDREN THERAPY, INC.
A Florida Not-for-Profit Corporation

By: Maria Regina Orfila
Maria Regina Orfila
Executive Director

(TENANT)

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

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

By:_____
Carlos Gimenez
County Mayor

(LANDLORD)

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

Jorge Martinez-Esteve

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