OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 11(A)(2)

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

DATE: November 1, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving an Interlocal Lease Agreement between Miami-Dade County and the City of Miami for the provision of a permanent bathroom for the public located at the N.E. corner of the intersection of the Metrorail/Metromover system and W. Flagler Street, for an initial five year term, plus one additional five year renewal option period; authorizing the County Mayor to execute the Agreement; and authorizing the County Mayor to exercise any and all cancellation, termination, renewal and all other rights conferred therein

Resolution No. R-1039-16

This item was amended at the 10-13-16 Transit & Mobility Services Committee to clarify that that attendant would only staff the bathroom facility during hours of operation rather than at all times.

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Bruno A. Barreiro.

Abigail Price-Williams
County Attorney

APW/smm

MEMORANDUM

(Revised)

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

DATE: November 1, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 11(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**

_____ **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. 11(A)(2)
11-1-16

RESOLUTION NO. R-1039-16

RESOLUTION APPROVING AN INTERLOCAL LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI FOR THE PROVISION OF A PERMANENT BATHROOM FOR THE PUBLIC LOCATED AT THE N.E. CORNER OF THE INTERSECTION OF THE METRORAIL/METROMOVER SYSTEM AND W. FLAGLER STREET, FOR AN INITIAL FIVE YEAR TERM, PLUS ONE ADDITIONAL FIVE YEAR RENEWAL OPTION PERIOD; AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL CANCELLATION, TERMINATION, RENEWAL AND ALL OTHER RIGHTS CONFERRED THEREIN

WHEREAS, the Downtown Miami area is continuing to grow and develop and more people are visiting downtown; and

WHEREAS, with the expansion of shops, dining, and other events, people are staying in Downtown Miami later into the day and after traditional businesses have closed; and

WHEREAS, there is a scarcity of public bathrooms in Downtown Miami available to those visiting, working, and living in Downtown Miami; and

WHEREAS, this scarcity of public bathrooms has created a public health concern; and

WHEREAS, to date, this public health concern has been addressed, in part, by the use of port a potties at events such as Ultra Weekend; and

WHEREAS, there is a need for a more permanent solution to the lack of bathroom facilities for the public in Downtown Miami; and

WHEREAS, the City of Miami and the Miami Downtown Development Authority have joined together to address the problem with a plan to install a permanent bathroom in Downtown Miami for the public; and

WHEREAS, the City of Miami will install and fund the fixed cost for installation of the bathroom; and

WHEREAS, the bathroom will be located at the northeast corner of the intersection of the Metrorail/Metromover system and W. Flagler Street, approximately 60 feet west of Southwest 1st Avenue; and

WHEREAS, the bathroom will be manned and staffed [[~~at all times~~]][1] >>during the hours of operation<< by a member of the Downtown Enhancement Team, which includes formerly homeless clients hired by the Downtown Development Authority to keep the streets of Downtown Miami clean; and

WHEREAS, the hours of operation of the bathroom would be between 7:00am and 9:00pm; and

WHEREAS, section 125.38, Florida Statutes, allows the County to convey properties by sale or lease to governmental entities and not-for-profit corporations, provided that such properties will be utilized to promote community interest and welfare,

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

Section 1. This Board adopts the foregoing recitals as if fully set forth herein.

---

[1] Committee amendments are indicated as follows: Words stricken through and/or [[double bracketed]] are deleted, words underscored and/or >>double arrowed<< are added.

Section 2. Approves the Interlocal Lease Agreement between Miami-Dade County and the City of Miami for the provision of a permanent bathroom for the public, located at the northeast corner of the intersection of the Metrorail/Metromover system and W. Flagler Street, for a five year term of the Interlocal Lease Agreement, plus one additional five year renewal option period, in substantially the form attached hereto as Attachment 1 and made a part hereof ("Interlocal Lease Agreement").

Section 3. Authorizes the County Mayor or the County Mayor's designee, to execute the Interlocal Lease Agreement for and on behalf of Miami-Dade.

Section 4. Authorizes the County Mayor or the County Mayor's designee, to exercise any and all cancellation, termination, renewal and all other County rights conferred therein.

The Prime Sponsor of the foregoing resolution is Commissioner Bruno A. Barreiro. It was offered by Commissioner **Esteban L. Bovo, Jr.**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** 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	**aye**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**absent**
Dennis C. Moss	**absent**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**absent**
Juan C. Zapata	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of November, 2016. 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.

Shannon D. Summerset-Williams

CITY OF MIAMI DOWNTOWN BATHROOM
LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter "Lease" or "Agreement"), entered into on this _____ day of _____, 2016, made by and between **MIAMI-DADE COUNTY** a political subdivision of the State of Florida, through the Miami-Dade Department of Transportation and Public Works its instrumentality (hereinafter "Landlord" or "County"), and **CITY OF MIAMI**, a municipal corporation (hereinafter "Tenant" or "Lessee").

RECITALS

WITNESSETH: That the parties, for and in consideration of the mutual covenants and agreements herein contained, hereto agree as follows:

WHEREAS, Landlord is the owner of a certain strip located at the northeast corner of the intersection of the Metrorail/Metromover system and W. Flagler Street, approximately 60 feet west of Southwest 1st Avenue (the "Demised Premises") as more particularly described on **Exhibit "A"** attached hereto and made a part hereof; and

WHEREAS, Tenant desires to construct and maintain a permanent bathroom facility for public use to address the rapidly increasing need for public bathroom facilities in the Downtown Miami area; and

WHEREAS, Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Demised Premises as defined herein,

NOW THEREFORE, in consideration of the foregoing and of the mutual terms, conditions, covenants and payments hereinafter set forth, Landlord and Tenant agree as follows:

TERMS

Article 1
Recitals

The foregoing Recitals are true and correct and are incorporated herein as if fully set forth herein.

Article 2
Term of Lease

The initial term of this Lease shall be for a period of five (5) years, commencing on the date first above written, following approval of the Lease by the Board of County Commissioners and execution of the Lease by both parties.

Article 3

Option to Renew

Provided this Lease is not otherwise in default, it shall automatically renew for one (1) 5-year period unless Landlord or Tenant provides 90-day advance written notice to the other party of its intention NOT to renew the Lease, which renewal shall be on the same terms and conditions set forth herein.

Article 4
RESERVED

Article 5
Rent

In consideration for the Landlord's continued lease of space to Tenant, Tenant agrees to:

A. Pay to Landlord the sum of one dollar ($1.00), payable upon execution of this Lease and on each anniversary of the date first above written throughout the term of this Lease. Checks are to be made payable to Miami-Dade County and remitted to Miami-Dade Department of Transportation and Public Works, c/o Right-of-Way, Utilities & Joint Development Division 701 N.W. 1st Court, Suite 1700, Miami, FL 33136-3922.

B. Maintain the Demised Premises. Refer to Sections 6.2 and 6.3; Articles 8 and 9.

Article 6
Use of Demised Premises

Section 6.1 Land Use

Tenant agrees that its use of the Demised Premises is only for the installation of a permanent public bathroom which is to be free of charge.

Tenant recognizes and acknowledges that the manner in which the Demised Premises is used and operated is a matter of critical importance to the County and the general welfare of the community.

Tenant agrees that at all times during the term of this Lease it shall use diligent efforts to avoid and prevent damage to the Metrorail system resulting from the Tenant's use of the Demised Premises and to avoid any activities which may interfere with transit operations and maintenance.

Section 6.2 Construction

Tenant will construct and install the permanent public bathroom and necessary utilities at no cost to Landlord.

Section 6.3 Maintenance

(a) The bathroom will be manned and staffed during the hours of operation by a member of the Downtown Enhancement Team., which are formerly homeless clients hired by the Downtown Development Authority to keep the streets of Downtown Miami clean.

(b) The hours of operation of the bathroom shall be between 7:00am and 9:00 pm.

(c) Tenant shall fund all costs of maintaining the bathroom.

Section 6.4 REVIEW PROCESS

(a) The Tenant shall submit design and construction documents to DTPW for review, coordination and approval of all the improvements. For each submittal, the Tenant shall submit an electronic copy and three (3) sets of ½ size prints with the date noted on each print.

(b) Upon receipt of each of the above mentioned submittals, DTPW shall review same, and shall, within ten (10) business days after receipt thereof, advise the Tenant in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval. In the event of a disapproval, Tenant shall, within ten (10) business days after the date Tenant receives such disapproval, make those changes necessary to meet DTPW's stated grounds for disapproval or request reconsideration of such comments, and DTPW shall respond to such request for reconsideration with ten (10) business days after receipt of such request.

(c) As-Built drawings shall be submitted to DTPW as soon as reasonably practicable after completion of the improvements. Tenant shall provide to the DTPW an electronic copy and three (3) sets of "as-built".

Section 6.5 Dangerous Liquids and Materials

Storage of any flammable or combustible liquid or dangerous or explosive materials in or on the Demised Premises is prohibited.

Section 6.6 Hazardous Materials

Tenant is responsible for any and all hazardous materials or toxic substances and hazardous waste introduced on/into the Demised Premises and any assessments or clean-up costs associated therewith.

Section 6.7 Safety and Security

Tenant is solely responsible for the personal safety of its employees, invitees or any other persons entering the Demised Premises in connection with this Lease, as well as any equipment and/or personal property brought into the Demised Premises.

Section 6.8 Damages

Tenant agrees to exercise due care to avoid any damage to the Demised Premises and Metrorail improvements. Tenant shall reimburse Landlord for the cost of any necessary repairs to the Metrorail right-of-way resulting from Tenant's activities on the Demised Premises.

Section 6.9 Transit Operations Within the Demised Premises

Tenant agrees that all improvement, alteration, installation, construction, repair, operation and maintenance it undertakes on the Demised Premises shall be done as expeditiously as possible, free of liens, complying with all laws, codes, regulations and requirements of all applicable governmental or quasi-governmental authorities and in such a manner that it will not obstruct, interfere with, or impede ingress or egress of persons or vehicles engaged in maintenance of the Metrorail system, right-of-way and guideway and or otherwise interfere with transit operations or emergency access thereto.

Article 7
Improvements and Alterations

In consideration for the Landlord's continued lease of space to Tenant, Tenant agrees to:

Section 7.1 Other Improvements:

No installation of any other improvement is permitted within the Demised Premises by Tenant without the prior written consent of Landlord. Before commencing any additional installation, replacement or major modification or repair of the Demised Premises, Tenant agrees to submit a detailed description and/or plans to Landlord for review and approval, which shall not be unreasonably withheld.

Article 8
Maintenance

Tenant agrees, at its sole cost and expense, to maintain at all times the Demised Premises and the Land Uses therein in a safe, clean, and fully functional manner and shall not permit any debris or refuse to accumulate.

Article 9
UTILITIES & PAYMENTS

Tenant hereby covenants and agrees to pay, without notice or demand and without abatement, suspension or deduction any and all payments for water, sewer, electric telephone and any other utility charges for the premises and /or and structure and/or any improvements thereon. Tenant further covenants and agrees to pay without notice or demand and without abatement, suspension or deduction, all other costs, general and special, ordinary and extraordinary, foreseen and unforeseen, which are due and payable during the term of this Lease, at any time imposed or levied against the demised premises and/or any structure and/or improvements thereon.

Article 10
Destruction

In the event the Demised Premises should be destroyed or so damaged by fire, windstorm or other casualty to the extent that the Demised Premises are rendered unfit for the Tenant's purpose, either party may cancel this Lease for its convenience by the giving of 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.

If neither party exercises the foregoing right of cancellation, Landlord shall cause the Demised Premises to be repaired and placed in good condition within sixty (60) days following the date of casualty, time being of the essence. If the Demised Premises sustained damages such that repairs cannot be completed within sixty (60) days, Tenant shall be entitled to cancel the Lease by the giving of written notice to Landlord at any time, notwithstanding the commencement of repairs by Landlord.

Article 11
Landlord's Right of Entry

County, or any of its agents, shall have the right to enter upon said Demised Premises at any time to examine, inspect, repair, maintain or make improvements to any part of the Metrorail system and/or the Demised Premises. It is hereby agreed and understood that operation, safety and maintenance of the Metrorail system is paramount and will take precedence over any other activity in the Demised Premises.

Article 12
Quiet Enjoyment

Subject to the terms, conditions and covenants of this Lease, Landlord agrees that Tenant shall and may peaceably have, hold and enjoy the Demised Premises during the term of this Lease without hindrance by Landlord.

Article 13
Surrender of Premises

Tenant agrees to surrender to Landlord, at the end of the term of this Lease, or any extension thereof, said Demised Premises in as good condition as said premises were at the beginning of the term of this Lease, with ordinary wear and tear and damage by fire and windstorm or other Acts of God, excepted.

Article 14
Indemnification

Lessee shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Lessee or its employees, agents, servants, partners, principals or subcontractors. Lessee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Lessee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Lessee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

It is expressly understood that the Lessee shall indemnify and save the County harmless from all claims, liabilities, losses and causes of action, costs and damages to persons or vehicles including Lessee and Lessee's employees, agents and invitees from particles or sediments caused by the operation of the Metrorail train.

Article 15
Insurance

Prior to execution of this Agreement, Lessee shall furnish to DTPW, c/o Right-of-Way, Utilities and Joint Development Division, 701 N.W. 1st Court, Suite 1700, Miami, Florida 33136-3922 the Certificates of Insurance which indicate that insurance coverage has been obtained which meet the requirements as outlined below:

A. Worker's Compensation Insurance for all employees of the Lessee as required by Florida Statute 440.

B. Commercial General Liability Insurance on a comprehensive basis in amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an Additional Insured with respect to this coverage.**

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

All insurance policies required above shall be issued through Lessee's self-insurance program or by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

> The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Miami-Dade County Risk Management Division.
>
> or
>
> The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

CERTIFICATE HOLDER MUST READ:

MIAMI-DADE COUNTY
111 N.W. 1st STREET
SUITE 2340
MIAMI, FL 33128

Compliance with the foregoing requirements shall not relieve the Lessee of its liability and obligation under this section or under any other section of this Agreement. The required insurance shall be maintained and apply throughout the entire term of this Agreement.

Article 16
Assignment

Tenant shall not assign, transfer, mortgage, pledge, dispose or otherwise encumber this Lease without Landlord's prior written approval, which shall not be unreasonably withheld or delayed.

Article 17
Cancellation/Termination

Either party may cancel this Lease by giving six (6) months written notice to the other of its intention to do so. Upon termination of this Lease for whatever reason, Tenant will restore the Demised Premises to the condition it was in prior to any modifications made under this Lease Agreement. In the event Landlord determines that termination of this bathroom is required for reasons of public safety, traffic operations or maintenance or construction of the Metrorail guideway, columns or right-of-way, Landlord may act immediately to effect a temporary or permanent termination of this Lease and use of the Demised Premises.

Pursuant to Resolution No. R-461-13 adopted by the Miami-Dade County Board of County Commissioners (Board), Florida Statute 125.38 allows the County to convey real property by lease to not-for-profit corporations provided that such properties will be utilized to promote community interest and welfare. Landlord may effect a termination of this Lease to assist it in regaining control and ownership of property in the event that the public use is not maintained.

Consistent with Board Resolution No. R-1000-14, the County shall not be required to pay any compensation to Tenant for the termination of this Lease or the restoration of the property to the condition in which it was in prior to the commencement of this Agreement.

Article 18
Continuing Control (FTA)

It is specifically understood and agreed that the Landlord reserves such access rights to the Demised Premises as are necessary to enable the County to comply with the obligation to maintain "Continuing Control" requirements/regulations of the Federal Transit Administration (FTA) and the Florida Department of Transportation (FDOT) as it relates to the property and operation of the Metrorail Rapid Transit System.

Article 19
Notices

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

To Tenant: The City of Miami.
_____.
_____
_____
Miami, FL _____

The City of Miami.
_____.
_____
_____
Miami, FL _____

To Landlord: Miami-Dade County
c/o Miami-Dade Transportation and Public Works
ROW, Utilities and Joint Development
Attention: Froilan I. Baez
701 N.W. 1st Court, Suite 1700
Miami, FL 33136-3922

shall constitute sufficient notice to either party. Either party may by notice given as aforesaid change its address for all subsequent notices.

Article 20
Default

If Tenant or Landlord shall violate or fail to perform any of the conditions, covenants or agreements herein, and if such violation or failure continues for a period of thirty (30) days after written notice thereof, then Tenant or Landlord may elect to terminate this Lease at its sole option. All rights and remedies under this Lease shall be cumulative and shall not be exclusive of any other rights and remedies under applicable law.

Article 21
Compliance with Laws, Ordinances and Regulations

Tenant shall provide proof of compliance with all applicable required licenses, permits and other legal requirements prior to or following execution of this Lease, upon Landlord's request.

Throughout the term of this Lease, Tenant covenants and agrees to comply with all statutes, laws, ordinances, regulations, codes, orders, requirements and rules of all Federal, State, County and Municipal governments, which may be applicable to its operation under this Lease, including, but not limited to, the following:

1. 49 Code of Federal Regulations (CFR), 26.7 binding the Tenant not to discriminate based on race, color, national origin or sex.

2. 49 CFR, Part 27.7, 27.9(b) and 37 binding the Tenant not to discriminate based on disability and binding the same to compliance with the Americans with Disabilities Act (ADA) with regard to any improvements constructed.

3. FTA Master Agreement, updated in October 2015, particularly relating to conflicts of interest, debarment and suspension.

4. Miami-Dade County Code, Chapter 33 Zoning, Article VI Signs, Division 6, Commercial Signs on Rapid Transit System Right-of-way prohibiting the erection, permitting or maintenance of any sign, other than traffic signs, in protected areas including the rapid transit right-of-way referred to as the Demised Premises.

5. Compliance with the Transit Adjacent Construction Manual latest version.

6. Prohibition Against Liens. Tenant for itself and its agents are prohibited from placing a lien on the Landlord's property, the Demised Premises.

In the event of breach of any of the above nondiscrimination covenants, Miami-Dade County, Florida shall have the right to terminate the Lease, re-enter and repossess the Demised Premises and hold the same as if said Lease had never been made or issued.

Article 22
Entire Agreement

This Lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto. This Lease may be modified only by an amendment in writing approved by Resolution of the Board of County Commissioners.

IN WITNESS WHEREOF, Landlord has caused this Lease to be executed in its name by the County Mayor, as authorized by the Board of County Commissioners, and Tenant has caused this Lease to be executed by its duly authorized officer all on the day and year first herein above written.

MIAMI-DADE COUNTY, a
political subdivision of
the State of Florida

LANDLORD

ATTEST:
HARVEY RUVIN, CLERK

BY ITS **BOARD OF COUNTY COMMISSIONERS**

By: _____

By: _____
Carlos A. Gimenez
County Mayor

Approved as to form and legal
sufficiency:

By: _____

Assistant County Attorney

Signed in the presence of:

TENANT

CITY OF MIAMI.,
a municipal corporation

_____

Print Name _____

By: _____

_____

Name: _____
As its: _____

Print Name _____

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____ 201___, by _____, as _____ of the **CITY OF MIAMI.,** a Florida municipal corporation.

Personally Known _____ OR Produced Identification_____

Type of Identification Produced _____

_____
Print or Stamp Name:
Notary Public, State of Florida at Large
Commission No.:
My Commission Expires:

EXHIBITS

Exhibit A:
Sketch of the Demised Premises