



# MEMORANDUM

TC  
Agenda Item No. 3(N)

TO: Honorable Chairperson Barbara Carey-Shuler, Ed.D.  
and Members, Board of County Commissioners

DATE: July 22, 2004

FROM: George M. Burgess  
County Manager

SUBJECT: Resolution authorizing the  
County Manager to execute  
Terminal Agreement  
between Miami-Dade  
County and Cimento Tupi  
Americas, Inc.

## RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the County Manager to execute the attached terminal agreement between Miami-Dade County ("County") and Cimento Tupi Florida, LLC, ("CTF") to establish, maintain and operate a bulk cement operation at the Dante B. Fascell Port of Miami-Dade.

## BACKGROUND

The import and export business is an important component of the Miami-Dade County economy as well as a significant source of the Seaport Department's revenue stream. As part of the Port's continuous efforts to develop additional business and diversify its revenue base, the Seaport department has been working with CTF, a Brazilian cement manufacturer and exporter, to use the Port of Miami as its point of entry to the southeast U.S. market and establish, maintain and operate its bulk cement operation at the Port of Miami.

As shown below, this type of operation will not only generate additional revenues to the Seaport Department, but also provide a much needed commodity to the South Florida area. Recent stories in media outlets such as *Miami Today*, *Palm Beach Post* and *First Coast News* have highlighted the shortage of cement in the area and its related impact on the construction industry and real estate prices.

To this effect, the Seaport and CTF have negotiated the proposed terminal agreement. Under its terms, the County grants CTF the right to berth the CTF barge and related equipment at Berth 55; provided however, that the Port shall have the right to request that CTF move such barge and equipment to another location in the event the Port determines, in its sole discretion, that the relocation is necessary. This bulk cement operation will consist of a CTF vessel calling at the Port from time to time (berthing abreast the barge) and discharging the cement into the barge. The cement will subsequently be transferred via two movable silos to trucks for delivery to third party customers of CTF.

The initial term of this agreement shall be for a period of ten (10) years, with two (2) consecutive five (5) year renewal terms at mutual consent of the parties. CTF agrees to guarantee payment to the Port in the amount of \$121,000 per year for dockage of the barge and approximately \$230,000 for dockage of the CTF Vessel; adjusted each year to reflect any increases or decreases in the Consumer Price Index ("CPI"). In addition to such fees, CTF shall pay wharfage fees of \$0.68 for the first 300,000 Short Tons of bulk cement loaded into the barge.

For amounts of bulk cement above 300,000 Short Tons but less than 400,000 Short Tons, CTF shall pay the Port a rate of \$0.54 per Short Ton and above 400,000 a rate of \$0.48 per Short Ton loaded into the barge. CTF shall guarantee to the Port a minimum tonnage throughput of 300,000 Short Tons per year. In the case that CTF does not load 300,000 Short Tons into the barge, CTF shall pay the Port the balance between the loaded bulk cement and 300,000 at the rate of \$0.68 per Short Ton, for a total minimum annual guarantee of \$204,000.

We believe that the proposed terminal agreement will assist the Seaport Department in addressing serious competitive challenges from nearby ports as well as guarantee revenues to the Port of approximately \$555,000 per year. Therefore, it is respectfully requested that the Board approve execution of this agreement.

Implementation of this agreement and any subsequent operations by CTF are subject to CTF obtaining all permits required by local, state and federal agencies to conduct bulk cement operations at the Port of Miami.



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Assistant County Manager



# MEMORANDUM

(Revised)

**TO:** Hon. Chairperson Barbara Carey-Shuler, Ed.D. and Members, Board of County Commissioners **DATE:** September 9, 2004

**FROM:**   
Robert A. Ginsburg  
County Attorney

**SUBJECT:** Agenda Item No.

Please note any items checked.

- "4-Day Rule" ("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
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved \_\_\_\_\_ Mayor

Veto \_\_\_\_\_

Override \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING COUNTY MANAGER TO EXECUTE A TERMINAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND CIMENTO TUPI FLORIDA, INC., ("CTF") TO ESTABLISH, MAINTAIN, AND OPERATE A BULK CEMENT OPERATION AT THE DANTE B. FASCELL PORT OF MIAMI-DADE; AND TO EXERCISE ALL 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 authorizes the County Manager to execute a terminal agreement between Miami-Dade County and Cimento Tupi Florida, LLC., ("CTF") to establish, maintain, and operate a bulk cement operation at the Dante B. Fascell Port of Miami-Dade; in substantially the form attached, after review and approval by the County Attorney's Office; and to exercise all 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:

- |                                       |                  |
|---------------------------------------|------------------|
| Dr. Barbara Carey-Shuler, Chairperson |                  |
| Katy Sorenson, Vice-Chairperson       |                  |
| Bruno A. Barreiro                     | Jose "Pepe" Diaz |
| Betty T. Ferguson                     | Sally A. Heyman  |
| Joe A. Martinez                       | Jimmy L. Morales |
| Dennis C. Moss                        | Dorrin D. Rolle  |
| Natacha Seijas                        | Rebeca Sosa      |
| Sen. Javier D. Souto                  |                  |

The Chairperson thereupon declared the resolution duly passed and adopted this 9th day of September, 2004. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

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

HARVEY RUVIN, CLERK

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

By: \_\_\_\_\_  
Deputy Clerk

**TERMINAL AGREEMENT BETWEEN  
CIMENTO TUPI FLORIDA, LLC AND MIAMI-DADE COUNTY**

THIS TERMINAL AGREEMENT (this "Agreement") is entered this \_\_\_ day of \_\_\_\_\_, 2004, and effective as of the Effective Date (as defined herein), by and between CIMENTO TUPI FLORIDA, LLC, a Florida limited liability company (hereinafter referred to as "CTF"), and MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida, by and through its Seaport Department (hereinafter referred to as the "COUNTY"). The COUNTY and CTF are herein collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the COUNTY owns and operates the Dante B. Fascell Port of Miami-Dade (hereinafter referred to as the "Port") through the Miami-Dade County Seaport Department; and

WHEREAS, CTF is a manufacturer and distributor of Bulk Cement Products (as defined herein); and

WHEREAS, CTF desires to establish, maintain and operate the Bulk Cement Operation (as defined herein) in the Port, calling on the Port with such frequency that CTF has applied to the COUNTY to enter into a terminal agreement; and

WHEREAS, the COUNTY finds it to be in the best interest of the COUNTY to enter into a terminal agreement with CTF.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto do and hereby mutually agree and bind themselves as follows:

**Section 1. RULES OF LEGAL CONSTRUCTION.**

For all purposes of the Agreement, unless otherwise expressly provided:

- (a) A defined term has the meaning assigned to it;
- (b) Words in the singular include the plural, and words in plural include the singular;
- (c) A pronoun in one gender includes and applies to other genders as well;
- (d) The terms “hereunder”, “herein”, “hereof”, “hereto” and such similar terms shall

refer to the instant Agreement in its entirety and not to individual sections or articles; and

(e) The Parties hereto agree that this Agreement shall not be more strictly construed against either the COUNTY or CTF.

**Section 2. DEFINITIONS**

As used herein:

“Affiliate” or “Affiliates” of any person shall mean any other person which, directly or indirectly, controls, is controlled by, or is under common control with, such person.

“Agreement” shall have the meaning ascribed to it in the Preamble hereof.

“Applicable Laws” means those applicable federal, state or local laws, rules, regulations, codes, ordinances, resolutions, administrative orders, schedules, permits, decrees, tariffs (including without limitation Port of Miami Terminal Tariff No. 010), policies and procedures and orders which govern or relate to the respective Parties' obligations and performance under this Agreement, all as they may be amended from time to time. Applicable Laws expressly include, but are not limited to, laws related to security, whether imposed at the U.S. federal, state, or local level.

“Berth Days” means each 24-hour period or fraction thereof during which a vessel occupies an assigned berth.

“Bulk Cement Operation” means the loading, storage, unloading, distribution and sale of Bulk Cement Products (as defined herein) by CTF, its affiliates, and/or its Contractors (as defined herein) that involves the CTF Barge (as defined herein), the CTF Silos (as defined herein), and the CTF Vessel (as defined herein) that shall call at the Port from time to time to load the CTF Barge with Bulk Cement Products, and associated truck traffic as Bulk Cement Products are transferred from the CTF Barge or CTF Silos to trucks.

“Bulk Cement Products” means any type of “Portland Cement” product and/or ground blast furnace slag, slag cement and/or any other type of cementitious product.

“Contractors” means the companies or entities, consultants and other independent contractors retained by CTF (as defined herein) to perform specific services in connection with the Bulk Cement Operations.

“COUNTY” shall have the meaning ascribed to it in the Preamble hereof

“CPI” means the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, and Bureau of Labor Statistics of the United States Department of Labor.

“CTF” shall have the meaning ascribed to it in the Preamble hereof.

“CTF Barge” means the barge that shall be berthed at Terminal 55 owned and/or operated by CTF, its Affiliates, and/or its Contractors, subject to the provisions of Section 4.

“CTF Barge Dockage Fee” shall have the meaning assigned to it in Section 4 hereof.

“CTF Barge Dockage Rate” means for the CTF Barge a base rate that, as of the date hereof, shall be equal to \$0.79 per linear foot.

“CTF Silos” means the two movable silos owned and/or operated by CTF, its Affiliates, and/or its Contractors, as more fully described in Attachment A, a copy of which is attached and incorporated by reference herein.

“CTF Facility” means, collectively, the CTF Barge and the CTF Silos.

“CTF Vessel or CTF Vessels” means the vessel(s) that shall be berthed parallel to the CTF barge.

“CTF Vessel Dockage Fee” shall have the meaning assigned to it under Section 4 hereof.

“CTF Vessel Dockage Rate” means a base rate that, as of the date hereof, shall be equal to \$0.22 per GRT.

“Dockage Fees” means, collectively, the CTF Barge Dockage Fee and the CTF Vessel Dockage Fee.

“Duration of Dockage” means the period of time commencing on the date and time when (i) the CTF Vessel is made fast to a wharf, pier, bulkhead structure or bank or parallel to the CTF Barge, or (ii) the CTF Barge is made fast to a wharf, pier, bulkhead, structure or bank, and shall constitute one day’s dockage for the ensuing 24-hour period or any part thereof. Any part of a subsequent 24-hour period shall be construed as an additional day until the CTF Vessel has vacated the berth.

“Effective Date” shall have the meaning set forth in Section 3 hereof.

“Fiscal Year” means the COUNTY’s fiscal year, which begins October 1 and ends September 30.

“GRT” means a vessel’s Gross Registry Tonnage as shown in Lloyd’s Register of Shipping.

“Port” shall have the meaning ascribed to it in the Recitals hereof.

“Port Director” means the Director of the Port or his designee.

“Tariff” means Port of Miami Terminal Tariff No. 010, as it may be amended from time to time.

“Wharfage” shall have the meaning as set forth in Section 5 hereof and, to the extent not inconsistent with Section 5, as defined in the Tariff.

“Wharfage Fee” shall have the meaning assigned to it under Section 5 hereof.

“Year” means each one calendar year anniversary of the Effective Date.

**Section 3. AGREEMENT TERM AND EFFECTIVE DATE; RENEWAL**

Subject to the terms and conditions contained herein, this Agreement between the COUNTY and CTF shall be effective (the “Effective Date”) on the first day immediately following the occurrence of all of the following events:

- (a) Execution by CTF of this Agreement and related Miami-Dade County affidavit packet;
- (b) Approval of this Agreement by the Miami-Dade Board of County Commissioners;
- (c) Execution of this Agreement by the County Manager; and
- (d) Issuance by Local, State, and/or Federal agencies of all permits required to be held by CTF, its Affiliates, and/or its Contractors and/or the Port to conduct the Bulk Cement Operations.

This Agreement shall commence as of the Effective Date and shall expire on the tenth (10<sup>th</sup>) anniversary thereof (the “Initial Term”), unless sooner terminated in accordance with Section 8 hereof. The parties shall have the right to renew this Agreement for two (2) consecutive five-year renewal terms (each a “Renewal Term” and collectively, the “Renewal Terms”) pursuant to the mutual written consent of the parties hereto and on the same terms and conditions as set forth herein, which consent shall be entered into between the parties herein within six (6) months of the expiration date of the Initial Term or Renewal Term, as the case may be.

**Section 4. CTF FACILITIES AND DOCKAGE FEES**

(a) Bulk Cement Operation. CTF shall have the right to berth the CTF Facility at Berth 55 and conduct the Bulk Cement Operation. The Port shall have the right to request that CTF move the CTF Facility within the Port in the event the Port determines, in its sole discretion, that the relocation of the CTF Facility is necessary for the protection of other vessels or property or to facilitate common navigation or commerce, as required pursuant to Item 244 of the Tariff; provided, further, that (a) in the event the Port has prior knowledge of the need to relocate the CTF Facility, the Port shall give to CTF written notice of the relocation of the CTF Facility as soon as practicable, but in no event later than five (5) business days prior to the intended date of relocation or (b) in the event of an emergency requiring the relocation of the CTF Facility, the COUNTY shall give CTF prompt notice of such relocation. Upon such a request, the CTF Facility shall be relocated within the Port where CTF, its Affiliates, and/or Contractors can continue to conduct the Bulk Cement Operation. CTF agrees that, upon such request, CTF shall exercise commercially reasonable efforts to promptly move the CTF Facility to the new location designated by the COUNTY; provided, further, that (i) CTF shall not be deemed in default hereunder if CTF exercises its good faith, reasonable commercial efforts to effect such relocation promptly, or commences efforts to effect such relocation, but it is unable to effect such relocation in a timely manner because of circumstances beyond its control and (ii) the COUNTY shall not be in default hereunder if it uses reasonable efforts to provide the notices required from it under this Section 4(a). In addition, CTF shall have the right to berth the CTF Vessel parallel to the CTF Barge for the purpose of loading Bulk Cement Products onto the CTF Facility.

(b) CTF Barge Dockage Fees. Effective as of the Effective Date, and as consideration for the docking the CTF Barge alongside Berth 55 and the ability to conduct the Bulk Cement

Operation therein, the Port shall send to CTF an invoice representing the CTF Barge Dockage Fee (as defined herein) for the immediately preceding calendar month, and CTF shall pay to the Port the CTF Barge Dockage Fee pursuant to Item 218 of the Tariff.

The CTF Barge Dockage Fee (the “CTF Barge Dockage Fee”) shall be equal to the CTF Barge Rate multiplied by the Duration of Dockage multiplied by the linear footage of the CTF Barge. The CTF Dockage Rate shall be adjusted each Year to reflect any increase or decrease in the CPI during the immediately preceding 12-month period. CTF guarantees to the Port that the length of the CTF Barge shall be at least 420 linear feet and that the minimum Duration of Dockage of the CTF Barge shall be 365 Berth Days.

(c) CTF Vessel Dockage Fee. Effective as of the Effective Date, and as consideration for docking the CTF Vessel parallel to the CTF Barge, the Port shall send to CTF an invoice representing the CTF Vessel Dockage Fee (as defined herein) per CTF Vessel call, and CTF shall pay to the Port the CTF Vessel Dockage Fee pursuant to Item 218 of the Tariff.

The CTF Vessel Dockage Fee (the “CTF Vessel Dockage Fee”) shall be equal to the CTF Vessel Dockage Rate multiplied by the GRT of the CTF Vessel calling at the Port multiplied by the Duration of Dockage. The CTF Vessel Dockage Rate shall be adjusted each Year to reflect any increase or decrease in the CPI during the immediately preceding 12-month period.

**Section 5. WHARFAGE, DOCKAGE AND OTHER TARIFF CHARGES**

As of the Effective Date, and in addition to the Dockage Fees, the Port shall send to CTF an invoice representing the wharfage fee (the “Wharfage Fee”) per CTF Vessel call, and CTF shall pay to the Port the Wharfage Fee pursuant to Item 218 of the Tariff. The Wharfage Fee shall be calculated based on the number of Short Tons of Bulk Cement Products moved from CTF

Vessels into or onto the CTF Barge during each month and calculated based on the following rates:

(i) for the first 300,000 Short Tons of Bulk Cement Products moved from CTF Vessels into or onto the CTF Barge in any given Year, CTF shall pay to the Port a Wharfage Fee calculated based on the rate of \$0.68 per Short Ton moved into or onto the CTF Barge;

(ii) for amounts above 300,000 Short Tons but less than 400,000 Short Tons of Bulk Cement Products moved from CTF Vessels into or onto the CTF Barge in any given Year, CTF shall pay to the Port a Wharfage Fee calculated based on the rate of \$0.54 per Short Ton moved into or onto the CTF Barge; and

(iii) for any additional amounts of Bulk Cement Products moved from CTF Vessels into or onto the CTF Barge above 400,000 Short Tons in any given Year, CTF shall pay to the Port a Wharfage Fee calculated based on a rate a rate of \$0.48 per Short Ton moved into or onto the CTF Barge.

CTF shall guarantee to the Port a minimum tonnage of 300,000 Short Tons per Year. At the end of each Year, in case that CTF does not move 300,000 Short Tons or more from CTF Vessels into or onto the CTF Barge, the Port shall furnish to CTF an invoice representing the difference between the number of Short Tons of Bulk Cement Products actually moved from the CTF Vessel into the CTF Barge and 300,000 Short Tons. CTF shall pay to the Port the balance between the loaded Bulk Cement Products and 300,000 Short Tons at the rate of \$0.68 per Short Ton within 30 days from CTF's actual receipt of such invoice.

The Dockage Fees and the Wharfage Fee shall constitute all compensation due and payable by CTF, its Affiliates and/or Contractors to the Port in connection with the Bulk Cement Operation under this Agreement; provided, however, that CTF shall pay standard Tariff rates for any other services requested by CTF including, but not limited to, water and electric charges.

**Section 6. PERMITS**

CTF agrees to take all commercially reasonable steps to apply for and acquire all permits required by Applicable Laws that are necessary to establish, maintain and conduct the Bulk Cement Operation governed by this Agreement including, but not limited to, any federal, state or local permits that are required of any nature whatsoever. CTF shall indemnify and hold harmless the COUNTY in the event any fines or penalties are imposed on the COUNTY as a result of any applicable permits not being acquired.

**Section 7. TAXES AND DUTIES**

CTF shall pay all taxes and duties of any kind imposed on CTF by any governmental entity related to every aspect of the Bulk Cement Operation of CTF governed by this Agreement, except for any taxes, fees, charges, levies or assessments that would be otherwise applicable to the Port or a third-party including, without limitation, any income or franchise taxes of the Port or such third-party service provider. CTF agrees to indemnify and hold harmless the COUNTY in the event taxes or duties and any related fines, penalties, or interest are so imposed on the COUNTY.

**Section 8. TERMINATION**

CTF or the COUNTY may terminate this agreement in the event of any Event of Default (as defined herein) of CTF or the COUNTY as set forth in Section 19 hereof (and after the expiration of any applicable cure period) or by mutual written agreement signed by the parties,



**Section 10. AGREEMENT NOT A LEASE**

It is agreed that this Agreement is not a lease, and that no interest or estate in real property or improvements is created by this Agreement.

**Section 11. COMMITMENT ON INDEMNITY AND INSURANCE**

(a) Indemnification by CTF. CTF agrees to indemnify, protect and hold harmless the COUNTY, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, reasonable attorneys' fees and costs of every kind or description to which the COUNTY, its agents or employees may be subjected which are caused by or arise out of, in whole or in part, the negligent acts or intentional misconduct of CTF or its agents, employees, officers or contractors which arise from, grow out of, or are connected with this Agreement; except to the extent that such damage, loss or liability is caused by the negligence of, or intentional misconduct of the COUNTY or its employees, agents or contractors or other tenants or independent contractors. This indemnity obligation shall apply regardless of whether such suits, actions, claims, damages, losses, penalties, or expenses and costs are against or sustained by others to whom CTF or its agents or employees may become liable. Upon request of the COUNTY, CTF shall undertake to defend, at its sole cost and expense, any and all suits brought against the COUNTY in connection with the matters specified in this Section, in the event such suit is solely caused by the negligence by CTF or its agents, employees, officers or contractors.

(b) Indemnification by COUNTY. Subject to the provisions of, and limitations set forth in, Section 768.28, Florida Statutes, the COUNTY agrees to indemnify, protect and hold harmless CTF, and each of its subsidiaries, divisions, Affiliates, officers, managers, directors, members, shareholders agents and employees from and against all suits, actions, claims, demands,

damages, judgments, losses, penalties or fines, expenses, attorneys' fees, and costs of every kind or description to which CTF or its subsidiaries, divisions, affiliates, officers, directors, agents or employees may be subjected which are caused by or arise out of, in whole or in part, any negligent acts or intentional misconduct by the COUNTY, its employees, agents or contractors which arise from, grow out of, or are connected with this Agreement; except to the extent that such damage, loss or liability is caused by the negligence of or intentional misconduct of CTF or its employees, agents, or contractors. This indemnity obligation shall apply regardless of whether such suits, actions, claims, damages, losses, penalties, or expenses and costs are against or sustained by others to whom CTF or its agents or employees may become liable. Upon request of CTF, the COUNTY shall undertake to defend, at its sole cost and expense, any and all suits brought against CTF, its subsidiaries, divisions, Affiliates, officers, managers, directors, shareholders, members, agents, employees and contractors in connection with the matters specified in this Section, in the event such suit is solely caused by the negligence or intentional misconduct by, the COUNTY, its agents, employees or contractors. For purposes of this Section, neither CTF nor its subsidiaries, divisions, Affiliates, officers, directors, agents, employees and contractors shall be deemed agents, contractors, employees or affiliates of the COUNTY.

(c) Environmental. CTF shall comply with all federal, state and local environmental laws and regulations applicable to the use, storage and handling of hazardous substances, hazardous materials, industrial wastes and hazardous wastes in, on, or near the Port.

(d) Insurance Coverage Required. CTF shall carry all insurance as set forth below (to be provided by Miami-Dade Risk Management Department) and as otherwise required by the Tariff.

(i) Worker's Compensation Insurance for all employees of CTF as required by Florida Statute 440. Coverage to include USL&H coverage where applicable.

(ii) Public Liability Insurance on a comprehensive basis in an amount not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage. The COUNTY must be shown as an additional insured with respect to this coverage.

(iii) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage.

(iv) Marine General Liability Insurance on a comprehensive basis in an amount not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage. Policy must be endorsed to include terminal operator's legal liability and stevedore's legal liability. The COUNTY must be shown as an additional insured with respect to this coverage.

(v) Protection and Indemnity Insurance in an amount not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage.

(vi) Hull Insurance to include collision and fixed and floating objects.

**Section 12. EXCLUSIVE VENUE AND CHOICE OF LAW**

It is mutually understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable U.S. federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue for any such actions shall lie exclusively in a court of competent jurisdiction in Miami, Miami-Dade County, Florida. This provision shall

not apply to matters in regard to which exclusive jurisdiction is conferred upon by law upon the Federal Maritime Commission.

**Section 13. NO ORAL CHANGE OR TERMINATION**

This Agreement and the exhibits and appendices appended hereto and incorporated herein by reference, if any, constitute the entire Agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof, and no change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or discharge is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Agreement cannot be changed or terminated orally.

**Section 14. COMPLIANCE WITH SECURITY REQUIREMENTS AND OTHER APPLICABLE LAWS**

Throughout the Term of this Agreement, CTF and the COUNTY shall comply with all Applicable Laws. In the event CTF decides to act as its own agent, CTF shall additionally comply with all Applicable Laws (including the Tariff) related to agents and shall apply for and receive a permit to act as agent and meet all requirements for receiving a permit to act as an agent including but not limited to providing the required payment guarantee. CTF acknowledges that it shall file all vessel and maritime security plans it is required to file as required by all Applicable Laws.

**Section 15. NUISANCE**

CTF shall not commit any nuisance or do or permit to be done anything that may result in the creation or commission of a nuisance in or around the Port.

**Section 16. REPRESENTATIONS**

Each party represents to the other that this Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding obligation of such party, enforceable in accordance with its terms.

**Section 17. NO EXCLUSIVE REMEDIES**

No remedy or election given by any provision in this Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon an Event of Default of the other party shall be cumulative and in addition to all other remedies at law or equity arising from such Event of Default, except where otherwise expressly provided.

**Section 18. FAILURE TO EXERCISE RIGHTS NOT A WAIVER**

The failure by either party to promptly exercise any right arising hereunder shall not constitute a waiver of such right unless otherwise expressly provided herein.

**Section 19. EVENTS OF DEFAULT**

(a) CTF shall be in default under this Agreement if any of the following events occur and continue beyond the applicable grace period:

(i) CTF fails to timely comply with any payment obligation which is not cured within thirty (30) days from CTF's receipt of written notice from the COUNTY of failure to meet such payment obligation.

(ii) CTF fails to perform or breaches any material term, covenant, or condition of this Agreement which is not cured within sixty (60) days after receipt of written notice from the COUNTY specifying the nature of such breach; provided, however, that if such breach cannot

reasonably be cured within sixty (60) days, CTF shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently prosecutes such cure to completion.

(iii) If CTF shall be adjudicated bankrupt, or if CTF shall make a general assignment for the benefit of creditors, or if in any proceeding based upon the insolvency of CTF are commenced and not dismissed within 60 days of filing or a receiver is appointed for all the property of CTF which is not dismissed within 60 days of such appointment.

(b) The COUNTY shall be in default under this Agreement if the COUNTY fails to perform or breaches any term, covenant, or condition of this Agreement and such failure is not cured within sixty (60) days after receipt of written notice from CTF specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within sixty (60) days and such breach does not interfere with the operations of CTF at the Port, the COUNTY shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently prosecutes such cure to completion.

**Section 20. REMEDIES UPON DEFAULT**

Upon the occurrence of an Event of Default under this Agreement not cured within the applicable grace period, the non-defaulting party may terminate this Agreement and pursue all remedies available at law or in equity.

**Section 21. SEVERABILITY**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

**Section 22. COLLATERAL SECURITY.**

As security for the obligations of CTF hereunder, CTF shall apply for an irrevocable Letter of Credit, to be issued by a financial institution selected by CTF, in favor of the COUNTY in the aggregate amount of \$325,107 effective as of the Effective Date and continuing through the Initial Term of this agreement.

**Section 23. ASSIGNMENT**

The term of this Agreement shall inure to the exclusive benefit of CTF and is binding upon CTF. CTF may not assign or transfer this Agreement, or any rights hereunder, without the prior written consent of the COUNTY (which consent shall not be unreasonably withheld); provided; however, that CTF may assign any of its rights, and delegate its duties, hereunder to any of its Affiliates with prior written notice by CTF to the COUNTY.

**Section 24. OBLIGATIONS SURVIVING TERMINATION HEREOF**

Notwithstanding and prevailing over any contrary term or provision contained herein, in the event any party hereto exercises any lawful termination rights herein, the following obligations shall survive such termination and continue in full force and effect until the expiration of a one year term following the earlier of the effective date of such termination or the expiration of the Term: (i) any and all outstanding payment obligations hereunder of any party hereto arising prior to termination; (ii) any and all indemnity obligations hereunder of any party hereto which shall survive termination only to the date of expiration of the applicable statute of limitations; (iii) the exclusive venue and choice of law provisions contained herein, and (iv) any other term or provision herein which expressly indicates either that it survives the termination or expiration hereof or is or may be applicable or effective beyond the expiration or permitted early termination hereof.

**Section 25. LACK OF AGENCY RELATIONSHIP**

Nothing contained herein shall be construed as establishing an agency relationship between the COUNTY and CTF and neither CTF nor its employees, agents, contractors, subsidiaries, divisions, affiliates or guests shall be deemed agents, instrumentalities, employees, or contractors of the COUNTY for any purpose hereunder, and the COUNTY, its contractors, agents, and employees shall not be deemed contractors, agents, or employees of CTF or its subsidiaries, divisions or affiliates.

IN WITNESS WHEREOF, the COUNTY and CTF have caused this Agreement to be duly executed.

CIMENTO TUPI FLORIDA, LLC  
a Florida limited liability company,

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

By: \_\_\_\_\_

By: \_\_\_\_\_

County Manager

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form and legal sufficiency. \_\_\_\_

ATTEST:

ATTEST:

Name: \_\_\_\_\_

CLERK OF THE BOARD

By: \_\_\_\_\_

By: \_\_\_\_\_

Deputy Clerk

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_