

Memorandum



Date: **March 12, 2008**

To: Honorable Chairman Bruno A. Barreiro and Members,
Board of County Commissioners

From: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "Burgess", written over the printed name of George M. Burgess.

Subject: Resolution Authorizing Execution of Amendment No. 1 to Terminal Operating Agreement between Miami-Dade County and Port of Miami Terminal Operating Company, LLC

TC
Agenda Item No.
3(J)

RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing execution of Amendment No. 1 ("Amendment") to the Terminal Operating Agreement ("Agreement") between Miami-Dade County ("County") and Port of Miami Terminal Operating Company, LLC, ("POMTOC") providing for the return of 14.16 acres of land within POMTOC's existing terminal area to the Port of Miami.

SCOPE

The Port of Miami is located within District 5 – Chairman Bruno A. Barreiro. The impact of this agenda item is countywide as the Port of Miami is a regional asset and generates employment for residents throughout all of Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

This Amendment will generate approximately \$444,000 in additional open ground rent revenue annually to the Port, as this land will be leased at a rate of \$1.00 per square foot versus the existing \$0.28 per square foot.

TRACK RECORD/MONITOR

POMTOC has been at the Port since 1994. Currently, a receivable of approximately \$650,000 exists in the Port's accounting records. These receivables arise from recalculations in land rent payments to the Port as a result of modifications to their terminal area and the non-payment to the Port since June 2006 of the rent POMTOC has collected from Seaboard Marine for the aforementioned 14.16 acres. These two issues are being addressed currently as part of the existing negotiations with POMTOC for an extension to their terminal operating agreement with County.

The Seaport Department staff members responsible for monitoring the Amendment are Juan Kuryla, Assistant Port Director, Maritime Services and Cristina Calderon, Manager, Seaport Real Estate and Economic Development.

BACKGROUND

In 1994, the four (4) active independent stevedoring and terminal operators at the Port formed a single common-user container cargo terminal company (POMTOC), assigning all their individual container cargo business to that company. Subsequently, on September 15, 1994, the County entered into a twenty (20) year Terminal Operating Agreement ("Agreement") with POMTOC to operate, maintain and secure a terminal area comprising approximately 135 acres on the Port. POMTOC functions as a common cargo terminal for the use of its members by operating, maintaining and securing its common gate, as well as, supervising and coordinating the receipt and delivery of containers and break-bulk cargo.

Honorable Chairman Bruno A. Barreiro and Members,
Board of County Commissioners
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Since 1995, POMTOC has sublet 14.16 acres of their terminal area to Seaboard Marine, as shown on the attached "Exhibit A". This assignment has been beneficial to all parties, including the Port, as it has allowed Seaboard Marine to increase its cargo volume at the Port almost every year. At this time, the Seaport is negotiating a lease extension with Seaboard Marine, which incorporates the said 14.16 acres within Seaboard's proposed terminal area. POMTOC has agreed to relinquish those acres to the Port for Seaboard's use permanently throughout the term of their new lease (also presented for consideration by the Board under separate cover).

Toward this end, it is respectfully requested that the Board authorize the execution of this Amendment, providing for the conveyance of the 14.16 acres, currently under POMTOC's lease, to the County for subsequent lease to Seaboard Marine. Please be advised that the Port is continuing its negotiations with POMTOC for an extension to their existing terminal operating agreement.


Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: April 8, 2008

FROM: 
R. A. Cuevas, Jr.
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

Agenda Item No.

Veto _____

Override _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE TERMINAL OPERATING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND PORT OF MIAMI TERMINAL OPERATING COMPANY, LLC; AND AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE THE AMENDMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY, TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED 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. Authorizes the execution Amendment No. 1 to the Terminal Operating Agreement between Miami-Dade County ("County") and Port of Miami Terminal Operating Company, LLC, ("POMTOC") in the form attached hereto and made a part hereof; and

Section 2. Authorizes the Mayor or his designee to execute this Amendment No. 1 after review and approval by the County Attorney's Office; to exercise any cancellation and renewal provisions, 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:

Bruno A. Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of April, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this 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.



Jess M. McCarty

**AMENDMENT NO. 1 TO TERMINAL OPERATING AGREEMENT
BETWEEN MIAMI DADE COUNTY AND PORT OF
MIAMI TERMINAL OPERATING COMPANY, LLC**

THIS AMENDMENT NO. 1 is entered this ____ day of ____, 2008, by and between Port of Miami Terminal Operating Company, LLC (hereinafter "POMTOC"), a Florida limited liability corporation, and Miami-Dade County, Florida, a political subdivision of the State of Florida (hereinafter the "County"). POMTOC and the County are hereinafter collectively referred to as the "Parties."

WHEREAS, the County owns certain lands located in Miami-Dade County, Florida, on which the Dante B. Fascell Port of Miami-Dade (hereinafter the "Port") is located; and

WHEREAS, the County operates the Port through the Miami-Dade County Seaport Department which is a department of the County; and

WHEREAS, on September 15, 1994, the County entered into a 20-year Terminal Operating Agreement with POMTOC to operate, maintain and secure a terminal area comprising approximately 135 acres on the Port ("the Agreement"); and

WHEREAS said Agreement permits the Operator to assign land back to the County; and

WHEREAS it is the County's intent to reassign these 14.16 acres to Seaboard Marine as part of a proposed Amended and Restated Terminal Operating Agreement; and

WHEREAS such proposed Amended and Restated Terminal Operating Agreement is being submitted to the Board as a companion item on today's agenda;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions, and agreements herein contained, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 1.2 of the Agreement related to the Premises is hereby amended to reduce the POMTOC Terminal Area by 14.16 acres from the approximate total 135 acres of the terminal area as more specifically indicated and in the location specified in Exhibit "A" of this Amendment No. 1. Such 14.16 acres of land shall revert to the County for its sole use.
2. The Agreement, as amended by this Amendment No. 1 and all of the terms, conditions and warranties contained in the Agreement, are hereby reaffirmed and