MEMORANDUM

Agenda Item No. 7(K)

TO:	Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners	**DATE:**	July 1, 2008
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Ordinance relating to North Terminal Development at Miami International Airport

This Ordinance as adopted on first reading granted the Mayor or, if authorized by the Mayor, the Aviation Director, the authority to issue change orders, extend contract time, and take other contract actions without need for prior Board of County Commissioners approval on contracts assumed from American Airlines.

The Airport and Tourism Committee amended the item to apply to additional North Terminal contracts awarded by the Board of County Commissioners.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.

R. A. Cuevas, Jr.
County Attorney

RAC/bw

Memorandum

MIAMI-DADE COUNTY

Date: July 1, 2008

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

From: George M. Burgess
County Manager

Subject: Ordinance relating to North Terminal Development at Miami International Airport

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The ordinance relating to North Terminal Development at Miami International Airport will have a positive fiscal impact to Miami-Dade County. The ordinance will enable the Miami-Dade Aviation Department to expedite contract modifications which will save approval processing time.

Ysela Llort
Assistant County Manager

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MEMORANDUM

(Revised)

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

DATE: July 1, 2008

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

SUBJECT: Agenda Item No. 7(K)

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 _____

Agenda Item No. 7(K)

7-1-08

ORDINANCE NO. _____

ORDINANCE RELATING TO THE NORTH TERMINAL DEVELOPMENT AT MIAMI INTERNATIONAL AIRPORT; AUTHORIZING COUNTY MAYOR OR, IF AUTHORIZED BY THE COUNTY MAYOR, THE AIRPORT DIRECTOR, TO EXECUTE CHANGE ORDERS, EXTEND CONTRACT TIME, WAIVE LIQUIDATED DAMAGES, AND MODIFY CONTRACT TERMS FOR CONTRACTS RELATING TO NORTH TERMINAL DEVELOPMENT PROJECT WITHOUT THE NEED FOR PRIOR COMMISSION APPROVAL; ESTABLISHING CONDITIONS FOR EXERCISE OF DELEGATED AUTHORITY; WAIVING COMMITTEE REVIEW OF NEW NORTH TERMINAL CONTRACTS AUTHORIZING TIME EXTENSIONS BEFORE AND AFTER EXPIRATION OF CONTRACT TIME; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS Miami-Dade County, through its Aviation Department, is engaged the construction of the North Terminal Development, the largest airport construction project in the Southeast United States; and

WHEREAS the North Terminal Development is an extraordinarily complex project involving new construction and the demolition and renovation of existing facilities; and

WHEREAS the North Terminal Development involves construction within and around existing structures all within the context of the uninterrupted operation of the area's busiest airport; and

WHEREAS, pursuant to the Fourth Lease, Construction, and Finance Agreement between American Airlines and Miami-Dade County, American Airlines assigned to the County in excess of ninety design and construction contracts for contractors performing work on the North Terminal Project; and

WHEREAS the North Terminal Development has suffered from the need to use successor contractors and has to date suffered extensive delays; and

WHEREAS an expedited process for the award and modification of North Terminal Development contracts would allow for the expedient handling of contract issues including addressing incomplete items, changes in scope, and owner directed changes, and would allow for more efficient construction and faster payments to contractors and subcontractors, restoring confidence in the project in the contracting community; and

WHEREAS the expedited process would be subject to established safeguards and Board oversight through ratification; and

WHEREAS this Board desires to institute procedures to expedite administration of awarded and assumed contracts for the design, construction and installation of good related to North Terminal Development Project, so as to foster greater efficiency in the contracting process, while reflecting at all times this Board's policy decisions relating to procurement practices for the County and the Board's sensitivity to small business contracting goals as expressed from time to time by the Board,

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

Section 1. The Code of Miami-Dade County, Florida is hereby amended by adding the following new section thereto as Section 2-285.1:[1]

>>**Section 2-285.1 Mayor's authority as to contracts relating to the North Terminal Development Project at Miami International Airport.**

(1) With respect to contracts assigned to Miami-Dade County pursuant to Resolution R-735-05, or other contracts previously procured by American Airlines and previously assumed by Miami-Dade County via action of the

[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double-arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

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Board of County Commissioners, or contracts to finish work begun but left incomplete as of August 1, 2005, or contracts related to the construction, design, or construction management of the North Terminal Development which were awarded by the Board of County Commissioners prior to May 1, 2008, and notwithstanding and prevailing over any other provision of the Code of Miami-Dade County, Florida to the contrary, the Mayor and the Airport Director, shall have the authority to: extend the contract time and waive liquidated damages for failure to comply therewith before the specified date for completion of the contract provided good cause exists and the contract provides that after the expiration of the contract time the County may extend the contract time or waive liquidated damages; and may otherwise modify the contract terms, may increase or reduce in any amount the scope and compensation payable under any contract, and may grant compensable and non-compensable time extensions. Additionally, to the extent that a contract listed above has expired, and such contract was competitively procured and contains no minority goals or measures, the County Mayor, and the Airport Director, may recommend to the Board of County Commissioners that a contract be re-awarded to the firm holding such expired contract, and such request will be heard by the full Board of County Commissioners without need for prior Committee Approval. The authority delegated in this section is intended to be supplemental to, and shall not limit, authority otherwise granted to the Mayor, County Manager, or Airport Director by ordinance or by administrative order.

(2) The authority in this Subsection is subject to the following limitations:

(a) Any amendment in excess of ten million dollars in value shall be subject to the prior approval of the Board of County Commissioners, but shall not require prior committee approval.

(b) Any exercise of authority to this section shall be subject to the budget approved by the Board for the North Terminal Development Project as a whole.

(c) Any exercise of authority pursuant to this Section shall require ratification by the Board.

(d) Nothing in this section shall affect the requirements of State law for the competitive purchase of goods and services, including those related to public construction work and those contained in the Consultants Competitive Negotiation Act.

(e) Any exercise of authority pursuant to this section shall be in conformity with the policies and procedures which may be established by implementing order to be approved by this Board. The implementing order shall, contain guidelines for the exercise

of the authority conferred under this section, and shall specifically provide for the application of County policies with respect to contracting, including but not limited to procedures for bid protests, inclusion of small business measures, community business enterprises, community small business enterprises, community workforce, and responsible wages. The provision of the Code relative to such programs shall not be applicable to the contracts specified herein except as specifically provided for in the implementing order.

(f) Nothing in this section shall affect the process for settlement of construction disputes relating to the North Terminal Development approved by separate resolution of the Board.

(g) The provisions of this Ordinance shall not apply except to those contracts listed in Resolution R-735-05, or other contracts previously procured by American Airlines and previously assumed by Miami-Dade County via action of the Board of County Commissioners, or contracts to finish work begun but left incomplete as of August 1, 2005, or contracts related to the construction, design, or construction management of the North Terminal Development which were awarded by the Board of County Commissioners prior to May 1, 2008.<<

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective within ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

Section 5. This ordinance shall sunset upon the earlier of January 1, 2011, or upon the substantial completion of the North Terminal Development Project, or upon longer the Director of the Miami-Dade County Aviation Department.

PASSED AND ADOPTED:

Approved by County Attorney as to form and legal sufficiency:

Prepared by:

David M. Murray

Prime Sponsor: Commissioner Jose "Pepe" Diaz