Memorandum

MIAMI-DADE COUNTY

Date: July 17, 2008

Agenda Item No. 8(Q)(1)(A)

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

From: George M. Burgess
County Manager

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

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, L.C., ("POMTOC") providing for the return of 14.16 acres of land within POMTOC's existing terminal area to the Port of Miami ("Port").

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 Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

This Amendment will not have a fiscal impact on the Port.

TRACK RECORD/MONITOR

POMTOC has been at the Port since 1994. Currently, a receivable of approximately $630,000 exists in the Port's accounting records. This receivable arises from recalculations in land rent payments to the Port as a result of land and usage adjustments to their terminal area. Unrelated to the above receivable, POMTOC asserts that it overpaid approximately $650,000 to the Port for approximately six acres of land not available to POMTOC throughout the first six years of their terminal operating agreement with the County. These two issues are being addressed currently as part of the existing negotiations with POMTOC for an extension to their terminal operating agreement.

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.

DELEGATED AUTHORITY

In accordance with Section 2-8.3, of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond that specified in the resolution which include authority for the Mayor or designee to execute the Amendment.

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 with POMTOC to operate, maintain, and secure a terminal area comprising approximately 135 acres on the Port; subsequently reduced due to land and usage adjustments. 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.

Since 1996, POMTOC has sublet 14.16 acres of their terminal area to Seaboard Marine ("Seaboard"), as shown on the attached "Exhibit A". This assignment has been beneficial to all parties, including the Port, as it has allowed Seaboard to increase its cargo volume at the Port almost every year. POMTOC has now agreed to relinquish those acres to the Port.

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 inclusion into Seaboard's terminal area, which under the Amended and Restated Terminal Agreement approved by the Board on May 20, 2008 via Resolution No. R-599-08, will automatically transfer permanently to Seaboard as part of its terminal area. Please be advised that the Port is continuing its negotiations with POMTOC for an extension to their existing terminal operating agreement. We are hopeful that negotiations will be concluded by this summer.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: July 17, 2008

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

SUBJECT: Agenda Item No. 8(Q)(1)(A)

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. 8(Q)(1)(A)
7-17-08

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, L.C.; AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE THE AMENDMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY

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 of Amendment No. 1 to the Terminal Operating Agreement between Miami-Dade County ("County") and Port of Miami Terminal Operating Company, L.C. ("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 for and on behalf of Miami-Dade County after review and approval by the County Attorney's Office.

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 17th day of July, 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. JMM

Jess M. McCarty

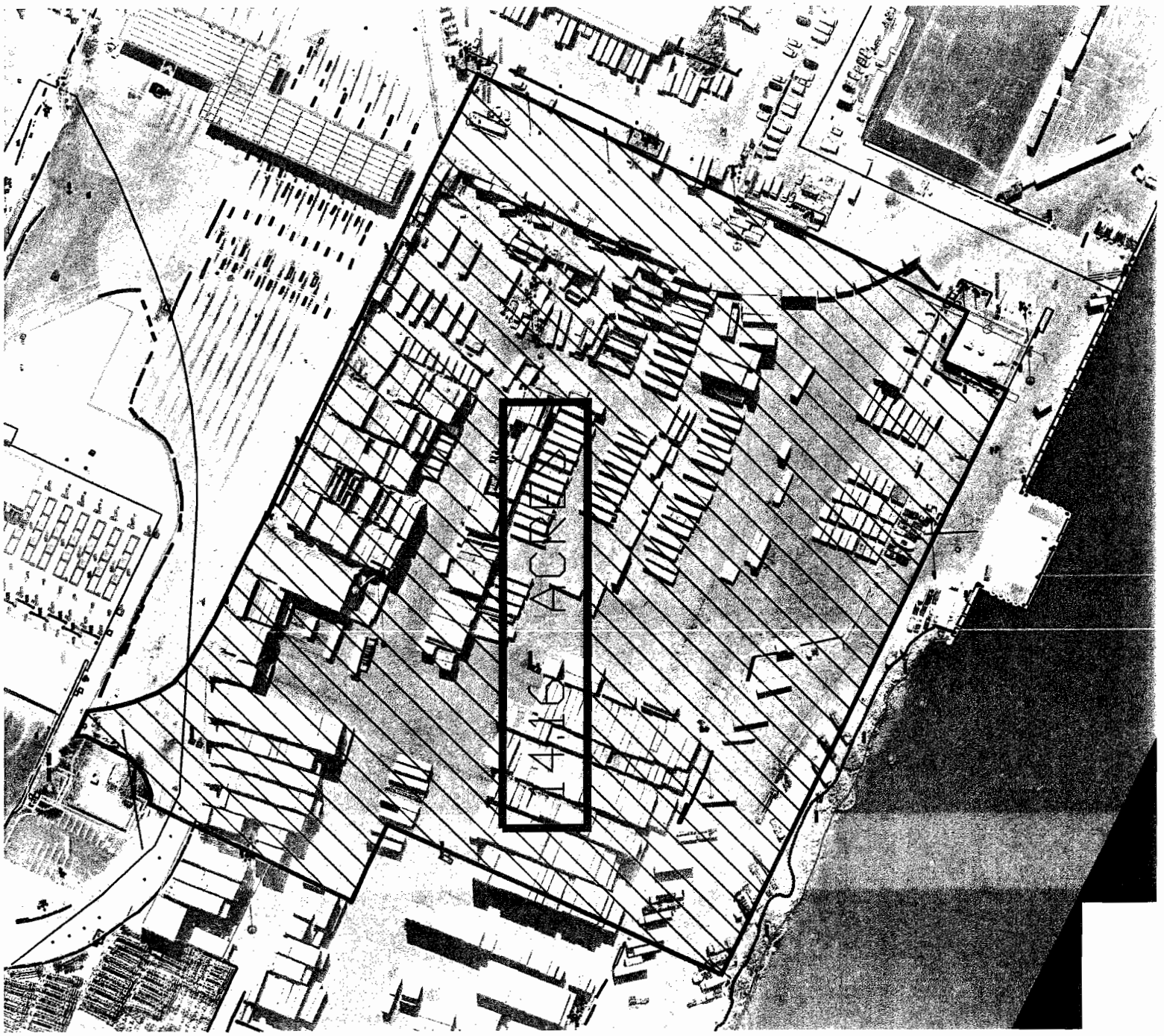

Exhibit A

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

THIS AMENDMENT NO. 1 is entered this ____ day of June, 2008, by and between Port of Miami Terminal Operating Company, L.C. (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 a marine terminal facility at the Port (the "POMTOC Agreement"); and

WHEREAS, since substantially the commencement of the POMTOC Agreement, POMTOC has, with the consent of the County through the Seaport Department, subleased a portion of its leased land in the amount of 14.16 acres (hereinafter the "Subleased Land"), as more specifically identified on Exhibit "A" attached hereto; and

WHEREAS, POMTOC desires to technically adjust the POMTOC Agreement to reflect present conditions with respect to the Subleased Land, and to release the Subleased Land from the POMTOC Agreement in order for the County to directly lease the Subleased Land to its current occupant;

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. POMTOC hereby releases the Subleased Land, more specifically the 14.16 acres indentified on Exhibit "A", from the POMTOC Agreement to County for use as described above.
2. Section 1.2 of the POMTOC Agreement related to the Premises is hereby amended to reduce the Premises, as the term is defined therein, by the 14.16 acres released under this Agreement No. 1.
3. The definition of the term "Terminal Area", as defined in the POMTOC Agreement, and such other provisions or references to the quantum of leased land or premises in the POMTOC Agreement shall also be deemed amended hereby, as required, to reflect a 14.16 acre reduction.

4. County acknowledges and agrees that this Amendment No. 1 is made by POMTOC on a without prejudice basis, and shall not constitute a waiver or be construed to impair any of its legal rights, remedies or defenses, under the POMTOC Agreement, any other agreement, applicable law or otherwise. POMTOC shall not be deemed to have ratified, consented to, or be bound by any subsequent lease of the Released Land, any related agreement(s) or writing(s), or representations made by Port or others in regards to the Released Land or any subsequent lease.
5. All terms and conditions of the POMTOC Agreement not modified by this Amendment No. 1 shall remain in full force and effect.
6. The whereas clauses set forth above are incorporated into the body of this Amendment No. 1 as if fully set forth herein.
7. This Amendment No. 1 shall be governed by Florida Law.

IN WITNESS WHEREOF the parties have caused this Amendment No. 1 to be executed in their respective corporate names by their appropriate officers, and have their respective corporate seals affixed thereto, all as of the day and year first written above.

BOARD OF COUNTY
COMMISSIONERS OF MIAMI-DADE
COUNTY, FLORIDA

By: _____
County Manager

ATTEST:
CLERK OF THE COURT

By: _____
Deputy Clerk

_____ Approved as to Form
and Legal Sufficiency.

PORT OF MIAMI TERMINAL
OPERATING COMPANY, L.C.

By: _____
Name:
Title: Senior V. Pres.

ATTEST:

By: Harry Elden
Name:
Title:

NOTARY PUBLIC STATE OF FLORIDA
HARRY ELDEN
MY COMMISSION # DD426578
EXPIRES: May 05, 2009
1-800-3-NOTARY Fl. Notary Discount Assoc. Co.