MEMORANDUM

Agenda Item No. 14(A)(1)

TO:	Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners	**DATE:**	September 18, 2012
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution approving and authorizing the County Mayor to Execute Standard Foreign-Trade Zone Site Operator Agreements to allow Operators to conduct Foreign Trade Zone Activity at Sites with Boundaries of Miami-Dade

This item differs from the original version as stated in the Mayor's memorandum.

The accompanying resolution was prepared by the Seaport Department and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa.

R. A. Cuevas, Jr.
County Attorney

RAC/lmp

Memorandum

MIAMI-DADE COUNTY

Date: September 18, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
County Mayor

Subject: Resolution Establishing Standard Foreign Trade Zone Site Operator Agreement for Conducting Foreign Trade Zone Business Activities within Miami-Dade County's Service Area

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This substitute item differs from the original in that Foreign Trade Zone No. 281 has been approved by the Foreign Trade Zone Board and is no longer pending approval. It also deletes the Foreign Trade Zone Magnet Site Agreement and it makes minor modifications to the Foreign Trade Zone Operator Agreement. These minor modifications include a simplification to the Grantee Fee schedule to reflect that there is no Foreign Trade Zone Magnet Site Agreement. The Foreign Trade Zone Operator Agreement now includes two attachments which are a Letter of Understanding from the Zone Site Property Owner and a Letter of Understanding from the Company seeking to be a User of the Zone Site.

RECOMMENDATION

It is recommended that the Board approve the accompanying Resolution authorizing the establishment of a Standard Form Foreign Trade Zone Site Operator Agreement ("Agreement").

SCOPE

The Foreign Trade Zone will initially encompass Miami-Dade County north of South West 8th Street (U.S. 41). It will include District 1 - Commissioner Barbara J. Jordan; District 2 - Commissioner Jean Monestime; District 3 - Commissioner Audrey M. Edmonson; District 4 – Commissioner Sally A. Heyman; District 5 - Commissioner Bruno A. Barreiro; District 6 - Commissioner Rebeca Sosa; District 7 - Commissioner Xavier L. Suarez; District 10 - Senator Javier D. Souto; District 12 - Commissioner Jose "Pepe" Diaz; and District 13 - Commissioner Esteban Bovo, Jr. The impact of this agenda item is countywide as Port*Miami* ("Port") is a regional asset and generates employment for residents throughout Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

Miami-Dade County will not be fiscally impacted by the proposed Agreement. The Agreement requires payment of fees to the County to cover the costs of administering the County's Foreign Trade Zone. The fees are itemized in the attached Agreement under "Grantee's Foreign Trade Zone Fee Schedule" and have been established based on state and national research of similarly administered Zones. Contingent on Board approval, the fees reflected in the Agreement shall be superseded by, and subject to, the Seaport Department's annual Terminal Tariff No. 010, which is approved as part of the budget process pursuant to Board action.

TRACK RECORD/MONITOR

The Seaport Department staff members responsible for monitoring the Agreements are Juan Kuryla, Deputy Port Director, and Kevin Lynskey, Assistant Port Director, Business Initiatives.

BACKGROUND

In November of 2011, the Board of County Commissioners passed Resolution No. R-929-11, authorizing the Mayor to file an application with the United States Foreign Trade Zones Board for the purpose of establishing and administering a general purpose foreign trade zone. Miami-Dade County was approved as a new grantee for Foreign Trade Zone No. 281 on August 9, 2012, under

1A

Board Order No. 1844. The attached Foreign Trade Zone Operator Agreement is a standard form contract to be used for all future operators within our service area. Agreements are required under federal regulations.

Foreign Trade Zones provide valuable commercial benefits to communities such as ours that participate in international trade. Foreign trade zones are geographically designated areas adjacent to ports of entry where commercial merchandise receives preferable Customs treatment. Merchandise may be held in the Foreign Trade Zone without being subject to Customs duties and other ad valorem taxes, thereby allowing US businesses to compete with entities operating from foreign soil.

The attached Agreement contains fees consistent with those found in other foreign trade zones for processing applications and for administering annual grantee responsibilities, as follows:

PORTMIAMI FOREIGN TRADE ZONE FEE SCHEDULE[1]

Application Fee Usage Driven / Subzone	$2,500				
Application Fee New Magnet Site	$10,000				
Application Fee for Manufacturing	$2,500				
Annual Operator Fee	**Based on square feet of Zone Site**				
	Less than 100,000 s.f.	**100,000 - 200,000 s.f.**	**200,000 - 400,00 s.f.**	**400,000 – 750,000 s.f.**	**Over 750,000 s.f.**
Active Site	$5,000	$10,000	$15,000	$20,000	$20,000 plus $0.025 per additional s.f.
Non-Active Site	$2,500				
Additional Fees					
Alteration	$2,500				
Penalty Fee for Late Annual Reporting	$1,000.00 per month until in compliance				
Other Fees and Charges[2]	$65.00 per hour or part thereof				

[1] Refer to PortMiami FTZ 281 Grantee Zone Schedule, available on website, for detailed description of process and fees.

[2] Other fees and charges include any other fees, charges, or expenses incurred by Grantee for the purpose of obtaining Foreign Trade Zone Board approval and/or U.S. Customs & Border Protection approval on behalf of client, and not specifically listed herein, at the discretion of the Grantee, will be assessed to client at cost.

Subject to Board approval, the fees payable to the County in the Agreements will be superseded by fees to be placed in Port*Miami* Terminal Tariff No. 10, which will be subject to annual modification pursuant to Board approval.

As previously stated to the Board in the recommendation memorandum for Resolution No. R-929-11, it remains the intention of the County to collapse Foreign Trade Zone #166, which is currently administered by the Vision Council and serves the needs of Homestead, into the Miami-Dade County Foreign Trade Zone. This unified foreign trade zone will allow the County to provide foreign trade zone services throughout the entire geographical area of the County. In cooperation with the Vision Council, an item will be presented to the Board this fall requesting approval to unite the zones through an application to the Foreign Trade Zone Board.

Jack Osterholt, Deputy Mayor

MEMORANDUM
(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: September 18, 2012

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

SUBJECT: Agenda Item No. 14(A)(1)

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**

_____ **Ordinance creating a new board requires detailed County Manager'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. 14(A)(1)
9-18-12

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE STANDARD FOREIGN-TRADE ZONE SITE OPERATOR AGREEMENTS TO ALLOW OPERATORS TO CONDUCT FOREIGN TRADE ZONE ACTIVITY AT SITES WITHIN THE BOUNDARIES OF MIAMI-DADE FOREIGN TRADE ZONE NUMBER 281 SERVICE AREA

WHEREAS, on November 3, 2011, by Resolution No. R-929-11, this Board authorized the County to apply to the Foreign-Trade Zones Board for a grant to designate a portion of the County as a Foreign Trade Zone; and

WHEREAS, the Foreign-Trade Zones Board [[~~is anticipated to issue a grant~~]][1] >>passed Board Order No. 1844 issuing a grant of authority on August 9, 2012,<< to the County to operate Foreign Trade Zone No. 281 (the "County's Zone"); and

WHEREAS, an Operating Agreement must be established between the County and any entity seeking to conduct foreign-trade zone operations within the County's Zone; and

[[~~**WHEREAS**, a Magnet Site Agreement must be entered into between the County and any entity seeking to establish a foreign-trade zone magnet site within the County's Zone; and~~]]

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, which is incorporated herein by reference,

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

Section 1. [[~~This Board approves the form Miami-Dade County Foreign Trade Zone Magnet Site Agreement in substantially the form attached hereto.~~]]

[1] The differences between the substitute and the original item are indicated as follows: Words stricken through and/or [[double bracketed]] shall be deleted, words underscored and/or >>double arrowed<< are added.

[[~~Section 2.~~]] This Board approves the Miami-Dade County Foreign Trade Zone Operator Agreement in substantially the form attached hereto.

Section [[3]]>>2.<< This Board authorizes the County Mayor or the County Mayor's designee to execute such form agreements with entities seeking to utilize the County's Zone, and to exercise any cancellation, termination and renewal provisions contained 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:

Joe A. Martinez, Chairman
Audrey M. Edmonson, Vice Chairwoman

Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 18th day of September, 2012. 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.

Richard Seavey

MIAMI-DADE COUNTY

PORTMIAMI FOREIGN TRADE ZONE No. 281

FOREIGN TRADE ZONE SITE OPERATOR AGREEMENT

Effective _____

MIAMI-DADE FOREIGN TRADE ZONE SITE OPERATOR AGREEMENT

This Agreement made this _____day of_____,20_____ ("Agreement") by and between Miami-Dade County, Florida, a political subdivision of the State of Florida, hereinafter called "County", "MDC", "PortMiami" or "Grantee"; and _____ _____, with offices at _____ _____hereinafter referred to as "Operator".

Witnesseth:

WHEREAS, Grantee applied for and received a grant for Foreign Trade Zone ("FTZ") No. 281 (the "Grant") from the Foreign Trade Zones Board ("FTZB") under Board Order No. 1844 and the Grantee has the authority to allow the Operator the authority to operate within Foreign Trade Zone No. 281, Site No._____, located at _____ _____which is further described in Exhibit 1 to this Agreement (the "Zone Site") and the Operator has the authority to operate said Zone Site with the approval from the Property Owner in Exhibit 2 and for the company described in Exhibit 3 to this Agreement;

WHEREAS, the purpose of this Agreement is to grant the Operator the right to operate, and the obligation to maintain, the Zone Site in accordance with standards of operations required by the Grantee, the U.S. Customs and Border Protection ("CBP"), the FTZB, and any other governmental agency having jurisdiction. It is the understanding of the Grantee and Operator that the responsibility for the operations of the Zone Site will be under the supervision and management of the Operator.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below the parties agree to this operating agreement:

DEFINITIONS

"Board" is the Foreign Trade Zone Board.

"Customs" is United States Customs and Border Protection.

"Director" is the Director of PortMiami.

"Magnet Site" is an FTZ Site intended to attract multiple potential Foreign Trade Zone Operators/Users.

"Miami-Dade County (MDC)" is the grantee of Foreign Trade Zone No. 281.

"Operator" is an organization, corporation, partnership, or person that operates under the terms of an agreement with MDC to conduct Foreign Trade Zone activity.

"Property Owner" is an organization, corporation, partnership, or person that owns a property for which an Operator is seeking Foreign Trade Zone Site status.

"Usage-Driven Site" is a site designated to meet a specific user's present need for Foreign Trade Zone designation; usage-driven sites cannot be used by any entity other than the Operator.

"User" is any person, partnership, corporation or other entity storing, manipulating, manufacturing, destroying or exhibiting goods or otherwise engaging in Foreign Trade Zone activity.

"Subzone" is a site designation is a site designated to meet a specific user's present need for Foreign Trade Zone designation that is located outside of the Grantee's Service Area.

"Zone" is Foreign Trade Zone No. 281, Miami-Dade County, Florida, administered by PortMiami, and all sites where Foreign Trade Zone activity is occurring under an agreement with the PortMiami.

"Zone Site" is the location within Foreign Trade Zone No. 281 approved by the Board for Foreign Trade Zone activity and operated by the Operator.

"Tariff" is the Seaport Terminal Tariff 010 specifically Section 10-A, PortMiami Foreign Trade Zone No. 281.

INCORPORATION OF WHEREAS CLAUSES

The Whereas clauses above are incorporated herein, and are part of this Agreement.

TERM

This Agreement shall be effective upon execution by the Operator and the County Mayor or the County Mayor's Designee contingent upon final written approval by Customs and Border Protection (CBP) to operate an FTZ Zone Site and upon payment of the Annual Fee as outlined in the Grantee Fee Schedule and shall continue until (1) the Agreement is terminated according to the termination provisions below, or (2) the Board of County Commissioners approves a form Foreign Trade Zone Operator Agreement subsequent to the approval of this Agreement, in which case this Agreement shall terminate within thirty (30) days of such approval and the Operator shall execute the newer form Foreign Trade Zone Site Operator Agreement.

APPLICATION OF RATES

Unless superseded by provisions of Miami-Dade County Seaport Tariff 010 ("Tariff"), the Operator shall pay the rates identified in, and as described and directed in, the Grantee's Foreign Trade Zone Fee Schedule to the Grantee for operating under this Agreement.

USE DEEMED ACCEPTANCE

The use of the Zone Site shall be deemed complete acceptance of the terms and conditions of this Agreement and all applicable rules, regulations, terms and conditions of the Tariff.

GENERAL RULES AND REGULATIONS

COMPLIANCE WITH LAWS

Operator and all Users shall comply with all applicable federal, state and local laws and regulations.

ZONE SITE DAMAGE AND LOSS

The County shall not be liable for any claim, damage, injury or other loss occurring at or within the Zone Site.

LIABILITY OF OTHERS

If the Operator and any other entities are permitted to perform services at the Zone Site, the Operator and those entities shall be solely responsible for all loss, damage, or theft by themselves or persons in their employ and solely liable for any injury or death of persons in their employ. The Operator is not an agent, employee or representative of the County.

PUBLIC INTEREST, HEALTH, OR SAFETY

No operation, process, treatment or other activity will be permitted at the Zone Site that, in the sole judgment of the Port Director or the Director's Designee, is detrimental to the public interest, health, or safety; or that are contrary to activities prohibited by the Board or CBP.

ZONE REGULATIONS

General rules and regulations in this section governing procedure within Foreign Trade Zone No. 281 are issued in conformity with, and supplemental to, the Board's regulations and all applicable federal and State laws and regulations relating to ports of entry and Foreign Trade Zone operations.

OPERATIONAL MANAGEMENT PROCEDURES/"FOREIGN-TRADE ZONESMANUAL"

Operator shall establish and agrees to comply with standards of operation and management which conform to the requirements of the Board and Customs, and all applicable laws, ordinances and regulations of the State of Florida and Miami-Dade County. Operator shall require all persons, firms, and corporations admitted by it to the Zone Site to conform to such standards. Operator shall prepare and file with Customs in accordance to the "Foreign-Trade Zones Manual" (a copy of which the Operator acknowledges having received).

SCOPE OF AUTHORITY

Foreign Trade Zone No. 281 is authorized by Foreign Trade Zone Board Order No. 1844 to undertake warehousing and distribution activities only. All production and manufacturing (including kitting) activity that results in a substantial transformation of the product and a change in the imported material's classification under the Harmonized Tariff Schedule of the United States must be authorized by the Board. Operator shall promptly notify the Port Director or the Director's designee of any activity requiring Board notice and authorization.

SUNSET PERIODS

Any entity operating within a Magnet Site should be aware that the Magnet Site authorization will expire if no portion of that site has been activated within the period specified in the original grant of authority. A Usage-Driven site authorization will expire if there is no actual zone admission and activity within three years of approval.

DEACTIVATION

Deactivation is the voluntary discontinuation of the activation of a Magnet Site, Usage Driven site or Subzone site by the Operator. A written application to deactivate must be made to Customs and shall include a concurrence letter from the Grantee along with Customs required documentation. A Zone Site that has been deactivated shall pay the "Non-Active Site" annual fee, outlined in the Grantee's fee schedule, with the calendar year commencing on the date the deactivation is granted.

REACTIVATION

Reactivation is the resumption of the activated status of an entire area that was previously deactivated without any changes in the Operator or the area boundaries. If the boundaries are different or the Operator is different, the action is an alteration, not a reactivation. A written application to reactivate must be made to Customs and shall include a concurrence letter from the Grantee along with Customs required documentation. A Zone Site that has been reactivated shall pay the "Active Site" annual fee, outlined in the Grantee's fee schedule, with the calendar year commencing on the date the reactivation is granted.

ALTERATION

Alteration is a change in the boundaries of an activated Magnet Site, Usage Driven site or Subzone site, activation of a separate site of an already activated Magnet Site, Usage Driven site or Subzone site with the same Operator, or the relocation of an already activated site with the same Operator, the discontinuance of active status of part of a Magnet Site, Usage Driven site or Subzone site and the resumption of activated status of a previously deactivated area, but with different boundaries. A written application to alter a Zone Site must be made to Customs and shall include all Customs required documentation. A Zone Site applying for alteration shall pay the "Alteration" fee, outlined in the Grantee's fee schedule. The Alteration fee as outlined in the Grantee Fee Schedule includes changes to the manufacturing approval and/or status for a Zone Site.

SALE OR TRANSFER OF PROPERTY OWNERSHIP FOR USAGE-DRIVEN SITES

Should title to land or facilities be transferred after a grant of authority is issued, the zone grantee must retain, by agreement with the new owner, a level of control which allows the grantee to carry out its responsibilities as grantee. Foreign Trade Zone Site designation is not tied to the property and the sale or transfer of land or facilities will result in the deactivation of active status and the termination of this Agreement. The new owner must provide a new letter of owner concurrence for inclusion in the Operator Agreement.

HANDLING MERCHANDISE

Operator will be responsible for the receipt and verification of all merchandise admitted to the Zone Site on the proper forms prescribed by Customs and for handling of all merchandise within the Zone Site. Operator will perform all these functions according to all Customs Regulations. Operator further agrees not to allow removal of any merchandise located within the Zone Site without prior approval from Customs under the applicable laws, rules and regulations of Customs and the United States.

RIGHT OF ENTRY

Representatives of the Port, the Board, Customs and other authorized United States Government officers, shall have the right to enter the Zone Site during normal business hours for the authorized and lawful purpose of examining the Zone Site; conferring with Operator, its agents, invitees, and employees; inspecting and checking operations, supplies, equipment and merchandise; and determining whether the business is being conducted in accordance with the procedures established for the operation and management of the Zone Site and as required by this Agreement and Customs Regulations.

FURTHER INSTRUMENTS AND ACTIONS

Subject to any necessary approval of the Board of County Commissioners, the County and Operator shall deliver such further instruments and take such further action as may be reasonably requested by the other in order to carry out the provisions and purposes of Operator's operations within the Zone. Without limiting the County's rights as provided herein, the County is not obligated to, and does not intend to, monitor the day-to-day activity of the Zone Site. The appearance of the County and PortMiami's name on any forms associated with Zone Site operations are not intended to represent that the County has any knowledge, actual or constructive, of the quantity, character, status designation, identification, or time of admission, transfer or release of goods into or from the Zone Site, and that any information contained on any forms associated with Zone Site operations are the representations solely of Operator and not of the County.

COMMUNICATION

In order to maintain knowledge of operations, Operator shall first inform the Port Director or the Director's designee of any substantive written or oral communication with Customs or the Board with respect to Zone Site activity. All written submissions to the Board with respect to Operator's activity must be made by the County.

ANNUAL REPORTS

Operator shall submit a report to the Port Director no later than December 1st after the end of each fiscal year (October 1 – September 30) containing data required by the Board. All such statements shall be signed by appropriate Operator officials, certifying the accuracy of the reports. Operator shall prepare a narrative and submit photographs as required for the Annual Report to the Board.

AUDITS, INSPECTIONS AND REQUESTS FOR INFORMATION

Operator shall promptly notify the Port Director or the Director's designee of any oral or written request for information, inspection, spot check, or audit of any kind from Customs or the Board or other reports requested by any government agency and of any audit or investigation commenced by any government agency which directly concerns zone operations, and shall accompany such notification with copies of all related letters, requests, reports and investigative documentation.

RECORD DEFICIENCIES

In the event that any audit, inspection, or examination by Customs, the Board, or the County discloses that books, records or operational procedures of Operator are not in conformance with the requirements of Customs Regulations or other federal, state or local laws or regulations, Operator will undertake immediate corrective actions once it becomes aware of the non-conformity. In the event that Operator anticipates that such correction will take more than five (5) working days, Operator shall submit a plan of performance to the Port Director or the Director's designee for the correction of such deficiency which shall be approved by the

County and, if necessary, by the Board and Customs, and shall proceed with all due diligence to correct the deficiency as described in the approved plan.

RECORD DETENTION

All financial and accounting records of Operator concerning Zone Site operations shall be retained for five (5) years after the merchandise covered by such records is removed from the Zone Site, and all such records shall be available for inspection and audit by the Board, Customs, the County or any other appropriate government agency during normal business hours.

ADVERTISING

The County may advertise that Operator's operations are within Foreign Trade Zone No. 281. Such advertising shall always seek to preserve a favorable image of Operator.

FEES FOR OPERATORS, USAGE DRIVEN SITES AND MAGNET SITES

Operator shall pay the fees outlined in the attached Seaport Terminal Tariff 010 "Foreign Trade Zone Grantee's Fee Schedule" to the County, until Operator notifies the Port it has ceased Foreign Trade Zone activity at the Site. The County, in its sole discretion, may amend this fee in the future through Seaport Terminal Tariff 010. For services for which a fee has not been established, Operator will reimburse the County for the value of actual services rendered by the County.

CUSTOMS BOND EXPENSE

Operator shall secure in its name and pay the full cost of any bond required by Customs for operation of the Zone Site. A copy of the Foreign Trade Zone Operator's bond shall be provided to the Port Director or the Director's designee.

DEFAULT AND TERMINATION

Operator expressly agrees to abide by all the rules, regulations, charges and rates set forth in this Agreement and Seaport Terminal Tariff 010, and that any violation of the terms of this Agreement or Seaport Terminal Tariff 010 shall be deemed a default under Operator's Agreement with the County. If Operator defaults in the performance of any of its obligations or breaches any terms of this Agreement with the County or the terms of Terminal Tariff 010, and such default is not remedied to the sole satisfaction of the Port Director or the Director's designee within thirty (30) days after notice of such default, then the Port may terminate this Agreement upon written notice to Operator.

INDEMNIFICATION

Operator shall hold harmless, indemnify and defend the County, its respective officers, agents and employees (the "Indemnified Parties") from any and all losses, damages, costs, expenses, liabilities, obligations, fines, penalties, actions, judgments, suits, and causes of action, claims, demands and proceedings of any kind or description ("Claims") and all costs and expenses of any kind or nature, including, without limitation, all reasonable attorneys' fees, disbursements, court costs and any other costs of litigation related thereto arising out of, resulting from or directly or indirectly connected to Operator's operation of the Zone Site or the performance by Operator of this Agreement, including, but not limited to Claims arising out of, resulting from or directly or indirectly connected to negligence, intentional misconduct, breach of contract, violation of Customs Regulations or other applicable federal, state, or local laws or regulations or other violation of or by Operator, its employees or its agents. The County will provide Operator with notice in writing of any facts or situations arising out of Zone Site use that give rise to a claim by the Port for indemnification. In case any action shall be brought against the Indemnified Parties, or any of them, arising out of Zone Site usage, the Indemnified Party or Parties shall promptly notify Operator in writing, and Operator shall assume the defense, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement with the consent of the Indemnified Party or Parties, which consent shall not be unreasonably withheld or delayed. An Indemnified Party shall have the right to

employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party unless the employment of such counsel has been specifically authorized by Operator, or unless the representation of both Operator and the Indemnified Party would represent a conflict of interest. Operator shall not be liable for any settlement effectuated without its consent, but if any such action is settled with the consent of Operator, or if there be a final judgment for the plaintiff in any such action, Operator agrees to indemnify and does hereby hold harmless the Indemnified Parties from and against any and all loss or liability by reason of such settlement or judgment. The provisions of this section shall survive the termination or cancellation of the Operator's agreement with the Port

INSURANCE

Operator further agrees at its expense to place with an insurance company and keep in effect during the life of any agreement with the Port to operate a Zone Site insurance covering comprehensive general liability for the Zone Site in an amount not less than $1,000,000 combined single limit for bodily injury and property damage per occurrence. Operator shall provide to MD Ca Certificate of Insurance or other proof of such insurance satisfactory to MDC or a letter indicating a program of self insurance and its limits and availability of funds sufficient to meet the claims.

NO ASSIGNMENT

Operator shall not transfer in any way its status as a Zone Site Operator without the Port Director's prior written approval.

TERMINATION BY OPERATOR

Operator shall have the right, at any time, to terminate without cause its Zone Site Operator Agreement with the County and all rights and obligations upon sixty (60) days prior written notice. Operator shall immediately provide all records and reports for MDC, the Board, and

Customs required to complete any report required under Board or Customs rules and regulations.

TERMINATION BY THE COUNTY

Upon sixty (60) days written notice from the Port Director, the County may terminate this Agreement with or without cause. The County also may terminate its participation in Foreign Trade Zone or subzone activities for any reason. Operator shall have no claim against the County by reason of such termination.

WITHDRAWAL OF GRANT

If the Foreign Trade Zone grant to the County is revoked or canceled with or without the fault of the County, Operator's Agreement with the County shall terminate and Operator shall have no claim against MDC by reason of such revocation or cancellation, and Operator shall have no further interest in the subject matter of this Agreement.

TERMINATION BY THE COUNTY

If, at any time after three (3) years for Usage-Driven sites and five (5) or ten (10) years for Magnet site, from the effective date of this Agreement the zone site has not been activated and no plan to commence such activity is submitted to the Port Director within thirty (30) days after receipt of written notice from the Port Director of the County's intent to terminate this Agreement, this agreement may be terminated by either party giving written notice of such termination to the other party. Upon such termination, the rights and obligations hereunder of Operator shall terminate, except Operator's reporting, record retention indemnification obligations and the obligations of Operator to take action or abstain from taking action after the termination.

SURVIVAL OF OBLIGATIONS

Operator, upon termination or expiration of this Agreement for any reason whatsoever, shall not be released or relieved from fulfilling any and all of its obligations or duties which arose or

accrued during the term of this Agreement, and Operator will, upon termination or expiration of this Agreement for any reason whatsoever, completely perform and fulfill any and all of its obligations or duties which arose or accrued during the term of this Agreement, including the immediate preparation and filing of all necessary reports with the Board and Customs. Operator's indemnity obligations, bond obligations, and record and record retention obligations shall survive termination or expiration of this Agreement.

ZONE SITE ACTIVATION/DEACTIVATION/VOLUNTARY SUSPENSION

In the event Operator chooses not to activate the Zone Site or to deactivate the Zone Site, this Agreement will remain in effect, but Operator will not have to pay the annual fee to the County during the period the Zone Site is not activated. In the event Operator chooses to deactivate the Zone Site, Operator shall provide sixty (60) days prior written notice to the Port Director. Deactivation will be deemed to occur on the effective date so fixed by Customs. In the event the Operator chooses to voluntarily suspend activity within the Zone Site when no foreign non-duty paid merchandise passes through the facility, Operator shall notify MDC, and this Agreement will remain in effect. During a period of voluntary suspension, the Zone Site will remain activated. Operator may reduce its Zone Site Operator's Bond to the minimum amount permitted by Customs. Operator may re-commence activity at its own discretion by notifying the Port Director. At such time as the Operator chooses, it may reactivate or no longer voluntarily suspend the Zone Site and resume payment of the applicable fees, including a pro rata share of the annual fee for the remaining portion of the first year of the restoration of activity. Operator shall furnish the Port Director with a copy of any deactivation, reactivation, suspension, or restoration of activity letters provided to Customs.

APPLICABLE LAW/VENUE

Any agreement between Operator and MDC shall be governed by and construed in accordance with the Foreign Trade Zones Act, regulations adopted by the Board and Customs and all amendments thereto, and the applicable laws of the State of Florida, without regard to principles of conflicts of laws. Any legal action or proceeding brought or instituted with respect

to any dispute or disagreement arising hereunder or with respect to any breach of the terms and provisions of this Agreement shall be brought in a Court of competent jurisdiction in Miami-Dade County unless federal law requires that the dispute be determined by another Court or body.

CONFIDENTIALITY

Grantee herby acknowledge and agrees that it and its respective directors, officers, agents, representatives, and employees are subject to the Trade Secret Act as it relates to confidentiality of information concerning Property Owner and Operator's operations at the site.

NOTICES

All notices, consents, approvals, waivers and other communications required or permitted under this Agreement shall be given in writing, signed by an authorized representative of the County or Operator, and sent by electronic mail and copied via standard mail, addressed as follows:

To Grantee:

Attn: Port Director
1015 North America Way, 2nd Floor
Miami, Fl. 33132

To Operator:

Attn:_____
_____
_____

IN WITNESS WHEREOF,

MIAMI-DADE COUNTY and _____, acting through their duly authorized representatives have executed this Agreement.

OPERATOR

By:_____

Its:_____

Date:_____

MIAMI-DADE COUNTY

By:_____

Its:_____

Date:_____

Attachments:

Attachment A: Seaport Terminal Tariff 010 – Grantee's Foreign Trade Zone Fee Schedule

Exhibit 1: Zone Site – Site Plan

Exhibit 2: Property Owner Memorandum of Understanding

Exhibit 3: Company Owner (User) Memorandum of Understanding

Approved as to legal form and sufficiency:_____

ATTACHMENT A

SEAPORT TERMINAL TARIFF 010 – GRANTEE'S FOREIGN TRADE ZONE FEE SCHEDULE

Tariff Item: PortMiami Foreign Trade Zone No. 281
Section 10-A page 42-A

PortMiami Foreign Trade Zone No. 281

Foreign Trade Zone Site Operators shall pay all applicable fees as outlined in the Grantee Fee Schedule. Fees are subject to change without notice. The below fees do not include any additional fees charged by the Foreign Trade Zone Board or Customs.

PORTMIAMI FOREIGN TRADE ZONE FEE SCHEDULE[1]

Application Fee Usage Driven / Subzone	$2,500				
Application Fee New Magnet Site	$10,000				
Application Fee for Manufacturing	$2,500				
Annual Operator Fee	**Based on square feet of Zone Site**				
	Less than 100,000 s.f.	**100,000 - 200,000 s.f.**	**200,000 - 400,00 s.f.**	**400,000 – 750,000 s.f.**	**Over 750,000 s.f.**
Active Site	$5,000	$10,000	$15,000	$20,000	$20,000 plus $0.025 per additional s.f.
Non-Active Site	$2,500				
Additional Fees					
Alteration	$2,500				
Penalty Fee for Late Annual Reporting	$1,000.00 per month until in compliance				
Other Fees and Charges[2]	$65.00 per hour or part thereof				

[1] Refer to PortMiami FTZ 281 Grantee Zone Schedule, available on website, for detailed description of process and fees.

[2] Other fees and charges include any other fees, charges, or expenses incurred by Grantee for the purpose of obtaining Foreign Trade Zone Board approval and/or U.S. Customs & Border Protection approval on behalf of client, and not specifically listed herein, at the discretion of the Grantee, will be assessed to client at cost.

EXHIBIT 1 – ZONE SITE

Attach a site plan of zone operation description and legal description of property

EXHIBIT 2 – PROPERTY OWNER LETTER OF UNDERSTANDING

(Page 1)

The attached Foreign Trade Zone Operators Agreement allows the Operator the right to operate, and the obligation to maintain the Zone Site, identified in Exhibit 1, in accordance with standards of operations required by the Grantee, the U.S. Customs and Border Protection (CBP), the FTZB, and any other governmental agency having jurisdiction. It is the understanding of the Grantee and Operator that the responsibility for the operations of the Site will be under the supervision and management of the Operator.

The Property Owner attests to the following requirements:

- The Property Owner has legal title to the Zone Site Property and if requested by the Grantee can provide proof of ownership.
- The Operator has a contractual lease with the Property Owner.
- The Property Owner allows for Foreign Trade Zone activity to occur on the Site.
- Property Owner shall provide Representatives of the Port, the Board, Customs and other authorized United States Government officers, right of entry to the property and facilities during normal business hours.
- Property Owner shall comply with all applicable federal, state and local laws and regulations.
- The Property Owner shall not hold County liable for any claim, damage, injury or other loss occurring at or within the property.
- The Property Owner shall provide written notice to Grantee of the sale or transfer of title of land or facilities within 14 days of such transfer.

Form continues on following page

EXHIBIT 2 – PROPERTY OWNER LETTER OF UNDERSTANDING

(Page 2)

Property Owner Legal Name:_____

Zone Site Property Address:_____

Property Owner Contact information (office address, telephone, email):_____

_____

Legal Name of Lessee on Contract:_____

Lessee Contact information in the Contract (office address, telephone, email):_____

_____

I, _____ (Name of Property Owner), attest that I am the property owner of the Zone Site located at _____ and the Lessee_____ (Name of Lessee), with offices at_____ _____ has a Contractual lease of the property with a lease term from _____ to _____. I herby agree to comply with the requirements outlined in this form.

PROPERTY OWNER

By:_____

Its:_____

Date:_____

NOTARY PUBLIC (Sign and Seal required)

By:_____

Its:_____

Date:_____

EXHIBIT 3 – COMPANY REPRESENTATIVE LETTER OF UNDERSTANDING

(Page 1)

The attached Foreign Trade Zone Operators Agreement allows the Operator the right to operate, and the obligation to maintain the Zone Site, identified in Exhibit 1, in accordance with standards of operations required by the Grantee, the U.S. Customs and Border Protection (CBP), the FTZB, and any other governmental agency having jurisdiction. It is the understanding of the Grantee and Operator that the responsibility for the operations of the Site will be under the supervision and management of the Operator. This Notarized Letter of Understanding from the Owner and/or Representative of the Company seeking to be a User of the Zone Site in Exhibit 1, attests to owning and/or legally representing said company.

EXHIBIT 3 – COMPANY REPRESENTATIVE LETTER OF UNDERSTANDING

(Page 2)

Company Owner or Representative Legal Name:_____

Company Address:_____

Contact information (address, telephone, email):_____

_____

I, _____ (Name of Company Owner or Representative), attest that I have legal authority to represent the company_____ located at _____ and this company seeks to be a User of Foreign Trade Zone Activities at the Zone Site in Exhibit 1.

COMPANY OWNER/REPRESENTATIVE

By:_____

Its:_____

Date:_____

NOTARY PUBLIC (Sign and Seal required)

By:_____

Its:_____

Date:_____