MEMORANDUM

Agenda Item No. 8(A)(2)

TO:	Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners	**DATE:**	November 8, 2012
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution authorizing the County Mayor to execute change orders to existing contracts for the design and construction of the North Terminal, for the purpose of transferring funds allocated in such contracts for independent private sector inspector general (IPSIG) purposes into general allowance account

The accompanying resolution was prepared by the Aviation Department and placed on the agenda at the request of Prime Sponsor Commissioner Bruno A. Barreiro.

R. A. Cuevas, Jr.
County Attorney

RAC/lmp

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Memorandum

MIAMI-DADE COUNTY

Date: November 8, 2012

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

From: Carlos A. Gimenez
Mayor

Subject: Authorization to execute final contract close-out adjustments through change orders and amendments utilizing available allowances for Miami International Airport's North Terminal Development Program

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RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached resolution granting the Mayor or his designee a limited ability to execute change orders using existing contract funds to expedite close-out of the Miami International Airport (MIA) North Terminal Development (NTD) Program. A quarterly report with justification for all change orders will be provided to the Board for ratification.

SCOPE

Miami International Airport is located primarily within Commissioner Rebeca Sosa's District Six; however, the impact of this agenda item is countywide in nature as MIA is a regional asset.

FISCAL IMPACT/FUNDING SOURCE

There is no fiscal impact to Miami-Dade County. The requested authority utilizes remaining NTD contract funds allocated as dedicated allowances, credits available from ~~unnecessary~~ adjusted contract scope, and balances remaining from close-outs. This authority does not increase the dollar amount of the approved Capital Improvement Program (CIP) budget and therefore no additional bond sale is required.

BACKGROUND

The NTD Program consisted of 85 executed contracts when the Miami-Dade Aviation Department (MDAD) assumed management of the program from American Airlines (AA) back in June 2005; as well as 12 additional, subsequent contracts necessary to complete the program.

The NTD Program is nearly complete. All major portions of the program -- terminal areas, concourses, gates, ticket counters, automated people mover, Federal Inspection Services (FIS) facility, regional commuter facility, fueling system, civil and apron work, concessions, ticket counters -- have been completed. The last phase of the Baggage Handling System (BHS) for international-to-domestic transfers and the FIS domestic re-check area remain.

Consequently, most of the contracts are at or near completion and/or at contract close-out stage. MDAD plans to expeditiously close these contracts and associated permits to minimize the risk of potential claims arising out of any pending issues, and to process the final payments to all tiers of contractors and subcontractors. In a large and complex project such as the NTD Program, where there are multiple layers of subcontractors and suppliers, and multiple permitting entities such as Building, Fire, the Department of Environmental Management, the Transportation Security

Administration, and Customs & Border Protection, contract close-out often involves allocation of minor credits and claims among the owner and its contractors.

In order to close these contracts and to expedite payment to trade and third tier subcontractors, it is necessary to re-allocate monies within them. As construction progressed, MDAD was forced to make use of the contracts' general allowance accounts to resolve issues related to unforeseen or unexpected work, changing regulatory requirements, and delays arising out of the BHS. As a result, these allowance accounts are all at or near depletion, and cannot be used as a source of funds for contract close-out.

However, many of these contracts do have remaining funding locked in dedicated allowance accounts and contract line items that were deemed unnecessary. In order to access these locked funds, the contracts must be modified to allocate these funds into the general allowance accounts. This internal transfer of contract funds would not increase the value of a contract as awarded by this Board, and all such change orders would be zero-dollar changes. In the event that money within a contract is insufficient to close it out, this resolution also allows the Mayor or his designee the limited ability to transfer to it the required portion of the remaining budgeted NTD contingency funds.

MDAD believes that all current contracts can be closed with no impact to the North Terminal budget using the funds available within them, supplemented in some instances by available funds from close-out of other projects that were not affected by the BHS delays.

In the event that this resolution is not approved, it will be necessary for MDAD to bring numerous change orders to the Board to close these contracts. This will delay final payments to the County's contractors as well as small, disadvantaged minority trade and third-tier sub-contractors. Further, the longer it takes to close these contracts, the greater the risk of additional claims; contract close-out serves as a bar to the submission of claims. Delays in close-out often result in County liability for interest on unpaid work. By expediting the close-out process, MDAD avoids these issues.

Jack Osterholt, Deputy Director

MEMORANDUM

(Revised)

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

DATE: November 8, 2012

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

SUBJECT: Agenda Item No. 8(A)(2)

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. 8(A)(2)
11-8-12

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE CHANGE ORDERS TO EXISTING CONTRACTS FOR THE DESIGN AND CONSTRUCTION OF THE NORTH TERMINAL, FOR THE PURPOSE OF TRANSFERRING FUNDS ALLOCATED IN SUCH CONTRACTS FOR INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL (IPSIG) PURPOSES INTO GENERAL ALLOWANCE ACCOUNT; ALLOWING TRANSFER OF UNSPENT FUNDS BETWEEN CONTRACTS; ALLOWING USE OF NORTH TERMINAL CONTINGENCY FUNDING, AND REQUIRING QUARTERLY REPORTING

WHEREAS, many contracts for the construction or design of North Terminal include dedicated allowance accounts to fund discretionary independent private sector inspector general (IPSIG) review; and

WHEREAS, the County has discontinued the independent private sector inspector general (IPSIG) program via R-894-05; and

WHEREAS, transferring monies from the independent private sector inspector general (IPSIG) account into the allowance account of a contract would not increase the contract value; and

WHEREAS, crediting base contract scope which has been found to be unnecessary into allowance accounts will not increase contract value; and

WHEREAS, final commissioning and close-out of North Terminal may require use of allowance accounts to resolve last-minute issues with permitting agencies, and use of allowance accounts to pay for and resolve claims associated with these issues will expedite close-out, help avoid litigation, and will minimize the ultimate fiscal impact to the County; and

WHEREAS, the numerous trade, second, and third tier subcontractors, many of whom are local small businesses, could be negatively affected by delays in processing of final payments,

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

Section 1. Solely 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 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 where necessary to provide funding for work needed for the completion of the North Terminal, the County Mayor or Mayor's designee is may negotiate and execute change orders that:

(a) transfer monies from currently funded independent private sector inspector general (IPSIG) accounts and transfer such funds into such contract's general allowance accounts;

(b) reallocate unused contract funds from base contract funds to such contracts allowance account;

(c) reallocate unspent contract balances from completed projects to currently active projects;

(d) add funds remaining in the North Terminal Program contingency account, currently valued at 7 million dollars, to existing contracts; and

(e) extend contract time.

Section 2. This authority shall not extend to the existing contract with Siemens Automation related to completion of the North Terminal Baggage Handling System.

Section 3. 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, or otherwise exceed the approved North Terminal Budget, without prior authorization of this Board.

Section 4. The County Mayor shall report, via memorandum to the Clerk, and on a quarterly basis, all change orders issued pursuant to this Resolution.

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 8th day of November, 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.

David M. Murray