

# MEMORANDUM

Special Item No. 7

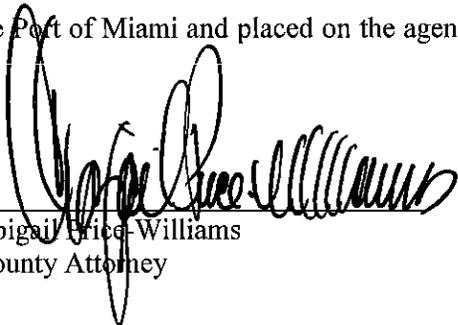
**TO:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**DATE:** September 19, 2019

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Resolution authorizing the County Mayor to negotiate and execute a Third Amendment to the Terminal Operating Agreement between Terminal Link (Miami) LLC ("TLM") and Miami-Dade County with an estimated fiscal impact to the County of approximately \$35,000,000.00 representing the cost of the improvements to be made and reduced rental revenues to the County resulting from TLM's reduced footprint; adding the "Cargo Gates Modification and Process Improvement Project," with an anticipated fiscal impact of \$18,000,000.00, to the list of capital improvement projects to which section 2-8.2.15 applies; finds that the Cargo Yard Improvement and Demolition/Removal Project is a qualifying project under sections 125.012(2) and 125.012(24) of the Florida Statutes and authorizes the County Mayor to contract with TLM for the design and construction of that work, in an amount not to exceed \$2,000,000.00, using any legally available funds to meet the County's obligation; and waives the provisions of Resolution No. R-130-06

The accompanying resolution was prepared by the Port of Miami and placed on the agenda at the request of Prime Sponsor Vice Chairwoman Rebeca Sosa.



Abigail Price-Williams  
County Attorney

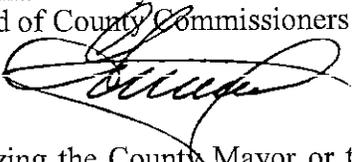
APW/smm

# Memorandum



**Date:** September 19, 2019

**To:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez   
Mayor

**Subject:** Resolution Authorizing the County Mayor or the County Mayor's Designee to Negotiate and Execute the Third Amendment to the Terminal Operating Agreement Between Miami-Dade County and Terminal Link (Miami) LLC; Adding the Cargo Gate Modifications and Process Improvement Process to the List of Capital Improvement Programs to Use the Seaport Expedite Ordinance; Finding that Cargo Yard Improvement and Demolition/Removal Project is a Qualifying Project Under Sections 125.012(2) and 125.012(24) of the Florida Statutes; and Waiving the Requirements of Resolution No. R-130-06

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## **Recommendation**

It is recommended that the Board of County Commissioners (Board) approve the accompanying resolution:

1. Authorizing the County Mayor or the County Mayor's Designee to negotiate and execute the Third Amendment (Amendment) to the Terminal Operating Agreement (Original Agreement) between Miami-Dade County (County) and Terminal Link (Miami) LLC (TLM or Operator) with an estimated fiscal impact to the County of \$35 million in capital improvement costs to be borne by the County and foregone revenues from the reduced footprint of TLM's yard;
2. Adding the "Cargo Gates Modifications and Process Improvement Project," with an anticipated fiscal impact to the County of \$18 million to the list of Capital Improvement Projects to which the "Miami-Dade Seaport Department Capital Improvement Programs Expedite and Acceleration Ordinance," Section 2-8.2.15 of the Code of Miami-Dade County, Florida, applies;
3. Finding that the cargo yard improvement and demolition/removal project is a qualifying project under Section 125.012(2) and 125.012(24) of the Florida Statutes, and authorizing the County Mayor or County Mayor's designee to enter into a contract with TLM for the design and construction of the cargo yard improvement and demolition/removal project, provided that said contract shall not have a fiscal impact to the County exceeding approximately \$2,000,000; and
4. Waiving the provisions of Resolution No. R-130-06 requiring execution by all parties of the agreement prior to approval by this Board.

**Scope**

PortMiami is located within District 5 of Miami-Dade County, which is represented by Commissioner Eileen Higgins. The impact of this agenda item is countywide, as the Port is a regional asset and generates employment for residents throughout Miami-Dade County.

**Background**

On July 1, 2008, the Board adopted Resolution No. R-763-08, approving the Original Agreement. This agreement included granting terminal operation rights to the Operator on approximately 71.32 acres of land while providing the Port with guaranteed cargo throughput volumes starting at 2,750 twenty-foot equivalent units (TEUs) per acre, escalating throughput guarantees, escalating TEU rates, guaranteed minimum crane rental revenues and escalating land rental rates. The Original Agreement also committed the parties to work together to construct a fully functional Rubber-Tired Gantry (RTG) system to densify the terminal area and increase capacity within two years of its original execution. Due to the world economic recession in 2008-09, this RTG densification phase did not occur at that time.

On July 6, 2016, the Board adopted Resolution R-578-16, approving Amendment No. 1 to the Original Agreement which included expanding the leased area to approximately 80.62 acres and further increased the guaranteed cargo volumes and revenues.

On November 8, 2018, the Board adopted Resolution No. R-1166-18, approving the Second Amendment to the Original Agreement. The Second Amendment reduced TLM's operating footprint by approximately 20 acres, subject to completion of certain required improvements to provide adequate space for Cruise Terminals AA and AAA, while simultaneously creating higher cargo throughput capacity per acre through TLM's purchase and use of electric Rubber-Tired Gantries (e-RTGs). Also, as part of the Second Amendment, the County committed to 1) construct the Phase I e-RTG densification project which provides increased cargo capacity on a smaller footprint; 2) construct cargo gates within TLM's smaller footprint; 3) acquire and transport four (4) diesel RTGs; and 4) contribute towards TLM's redevelopment of its Maintenance and Repair building (as it needs to be relocated for construction of the Cruise Terminal AA and AAA footprint) and purchase of bus bars, which are a component of the e-RTG project.

This proposed Third Amendment is structured to construct the Phase II e-RTG densification project that was contemplated as part of the Second Amendment. This resolution adds that project to the list of Capital Improvement Projects, so that the County Mayor or County Mayor's designee may procure design and construction of the project in accordance with the "Miami-Dade Seaport Department Capital Improvement Programs Expedite and Acceleration Ordinance," Section 2-8.2.15 of the Code of Miami-Dade County, Florida. This project is eligible for the Seaport Expedite Ordinance because it will be required by a revenue-generating contract, the Original Agreement as amended through the Third Amendment, and, as of the effective date of the resolution, remaining portions of the project would be listed on the Multi-Year Capital Plan.

The key benefits of this proposed Third Amendment allow growth for both the County and the Operator and include: 1) the return of approximately six acres of land from the Operator to the County to accommodate a future cruise Berth 10 and a common access road; 2) County's

construction of the Phase II project and a 250-space shared parking garage; 3) TLM's construction of an additional floor in the Operator's administration building, within the same timeframe agreed upon in Amendment No. 2, to be leased to PortMiami Crane Management (PMCM); 4) allow early access to certain areas to advance construction of the berths for Cruise Terminals AA and AAA and authorizes modification of certain land turnover milestones in the Second Amendment to the Terminal Operating Agreement; 5) extension of the term of TLM's current lease agreement for an additional 20 years for a new expiration date of September 30, 2053, and two five-year renewal options that would extend the term through 2063; and 6) TLM will order up to an additional twelve (12) e-RTGs at an estimated cost of \$18 million. The Agreement maintains guaranteed TEUs per acre and crane hours. With the extension of the term for an additional 30 years, including the renewal options, the guaranteed volumes will be capped in FY 2042-2043 at a maximum capacity of 5,500 TEUs per acre and 8,700 crane hours respectively. Rates for TEUs and crane rentals will continue to increase at 3 percent per annum throughout the term. Land rental rates will also continue to increase at 3 percent per annum.

The resolution also includes a finding that certain cargo yard improvement and demolition/removal is a qualifying project under Sections 125.012(2) and 125.012(24) of the Florida Statutes. This finding will allow TLM to utilize its already engaged contractor, subject to reimbursement by the County, for the completion of that work. The work is part of the work that the County committed to perform under the Second Amendment to the Original Agreement and the clearing of the land is necessary in connection with the County's ground lease for Cruise Terminals AA and AAA.

As each of the contemplated agreements have not been finalized, it is recommended that the requirements of Resolution No. R-130-06, requiring execution of agreements prior to Board consideration, be waived in this instance in the best interest of the County.

**Fiscal Impact/Funding Source**

This Agreement will guarantee \$975.3 million in County revenues through 2053 and \$1.75 billion if both extension options are exercised. Approximately \$400.1 million of these guaranteed revenues were listed as option revenue in the Second Amendment and are now guaranteed revenue.

The Third Amendment will have a fiscal impact of approximately \$35 million in additional funding obligations for the County.

The \$35 million represents the County's estimated expenditures on infrastructure upgrades for the Phase II project and includes the County's maximum expenditures towards TLM's purchase of busbars, which are a component of the e-RTG system, the 250-space shared parking garage for TLM, PMCM, and other port workers and gate automation support. This Third Amendment includes the reallocation of \$2 million that were to be used for acquisition and transportation of four diesel RTGs identified in the Second Amendment to be used as part of the approximate \$35 million infrastructure upgrades costs to the County.

Upon completion of the parking garage, at least 75 percent of the Phase II project, and return of approximately 6 acres of land, TLM's land rent will be reduced in accordance with the per acre rent amounts set forth in the Original Agreement, which will result in a reduction of the land rent

received by the County in the amount of approximately \$500,000 per year. This fiscal impact is part of the estimated \$35 million above.

Notwithstanding the costs of the aforementioned improvements, the County anticipates that this Amendment will have a positive fiscal impact to Port revenues. The proposed Third Amendment will further reduce TLM's operating footprint, increase its cargo capacity by 35 percent, and provide adequate space for a future Cruise Berth 10. This cruise berth will have the capacity to handle approximately one million additional cruise passenger movements per year by FY 2023-24. On average, based on existing agreements, one million passengers generate approximately \$20 million gross revenue.

TLM has committed to incurring the cost of ordering up to an additional 12 e-RTGs for the Phase II project at an estimated cost of \$18 million.

The construction contract solicitation for the Cargo Gates Modification and Process Improvements project was advertised, and bid submittals are expected September 23, 2019, in accordance with the standard County procurement process. A component of the Cargo Gates Modification and Process Improvements project (\$4 million) was obligated through the Second Amendment on November 8, 2018 which the Board approved through Resolution No. R-1166-18. Since the County has received grant funds to upgrade and modernize the Port's cargo gates through the United States Department of Transportation – Nationally Significant Freight and Highway Projects (INFRA Grants) for Fiscal Year 2017 (Board Resolution No. R-705-19) and the Florida Department of Transportation – Grant No. 440616, the entry gates contemplated in the Second Amendment are now part of the \$18 million Cargo Gates Modification and Process Improvement project.

The County has also committed to demolition/removal of certain TLM structures in an amount not to exceed \$2 million.

Funding for the County's portion of the Phase II project, the Cargo Gate Modifications Process Improvement project, and demolition/removal of certain TLM structures shall be allocated from the Port's Fiscal Year 2020, 2021 and 2022 capital budgets using available proceeds from the Port's Commercial Paper Program (CPP), capital reserves and bond proceeds.

#### **Track Record/Monitor**

The Seaport Department staff members responsible for monitoring the Agreement are Hydi Webb, Deputy Director; Andy Hecker, Assistant Port Director, CFO; and Elizabeth Ogden, Assistant Port Director, Capital Development.

#### **Delegated Authority**

This item authorizes the County Mayor or County Mayor's designee to (1) negotiate and execute the Third Amendment to the TLM Operating Agreement on behalf of Miami-Dade County and to exercise, approve, or deny (as applicable) any cancellation rights, termination rights, berthing requests, and/or other County rights conferred in the Agreement; (2) utilize the "Miami-Dade Seaport Department Capital Improvement Programs Expedite and Acceleration Ordinance," Section 2-8.2.15 of the Code of Miami-Dade County, Florida, to perform work for the "Cargo

Gates Modifications and Process Improvement Project” by adding the project to the list of Capital Improvement Projects; and (3) enter into an agreement with TLM for the performance of the cargo yard improvement and demolition/removal project, provided that said contract shall not have a fiscal impact to the County exceeding approximately \$37 million and to make payments due under that agreement utilizing any legally available funding source.



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Jack Osterholt  
Deputy Mayor



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**DATE:** September 19, 2019

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Special Item No. 7

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
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Special Item No. 7  
9-19-19

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO NEGOTIATE AND EXECUTE A THIRD AMENDMENT TO THE TERMINAL OPERATING AGREEMENT BETWEEN TERMINAL LINK (MIAMI) LLC ("TLM") AND MIAMI-DADE COUNTY WITH AN ESTIMATED FISCAL IMPACT TO THE COUNTY OF APPROXIMATELY \$35,000,000.00 REPRESENTING THE COST OF THE IMPROVEMENTS TO BE MADE AND REDUCED RENTAL REVENUES TO THE COUNTY RESULTING FROM TLM'S REDUCED FOOTPRINT; ADDING THE "CARGO GATES MODIFICATION AND PROCESS IMPROVEMENT PROJECT," WITH AN ANTICIPATED FISCAL IMPACT OF \$18,000,000.00, TO THE LIST OF CAPITAL IMPROVEMENT PROJECTS TO WHICH SECTION 2-8.2.15 APPLIES; FINDS THAT THE CARGO YARD IMPROVEMENT AND DEMOLITION/REMOVAL PROJECT IS A QUALIFYING PROJECT UNDER SECTIONS 125.012(2) AND 125.012(24) OF THE FLORIDA STATUTES AND AUTHORIZES THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO CONTRACT WITH TLM FOR THE DESIGN AND CONSTRUCTION OF THAT WORK, IN AN AMOUNT NOT TO EXCEED \$2,000,000.00, USING ANY LEGALLY AVAILABLE FUNDS TO MEET THE COUNTY'S OBLIGATION; AND WAIVES THE PROVISIONS OF RESOLUTION NO. R-130-06

**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.** Adopts the foregoing recital as true and correct and incorporates said recital as if set forth herein.

**Section 2.** Authorizes the County Mayor or County Mayor's designee to negotiate and execute the Third Amendment to the Terminal Operating Agreement between Terminal Link

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(Miami) LLC (“TLM”) and Miami-Dade County, to accomplish substantially the same objectives as set forth in the accompanying memorandum, all with an estimated fiscal impact to the County of approximately \$35,000,000.00, representing the cost of the improvements to be made to the TLM terminal area and reduced revenues to the County as a result of TLM’s reduced footprint.

**Section 3.** Adds the “Cargo Gates Modifications and Process Improvement Project,” with an anticipated maximum fiscal impact of \$18,000,000.00, to the list of Capital Improvement Projects to which the “Miami-Dade Seaport Department Capital Improvement Programs Expedite and Acceleration Ordinance,” Section 2-8.2.15 of the Code of Miami-Dade County, Florida, applies.

**Section 4.** Finds that the cargo yard improvement and demolition/removal project, is a qualifying project under Sections 125.012(2) and 125.012(24) of the Florida Statutes, and authorizes the County Mayor or County Mayor’s designee to enter into a contract with TLM for the design and construction of the cargo yard improvement and demolition/removal project, provided that said contract shall not have a fiscal impact to the County exceeding approximately \$2,000,000. In connection with payment to TLM for this work, the County Mayor or County Mayor’s is authorized to use any legally available funding source to meet the County’s obligation.

**Section 5.** In connection with the contracts required under Sections 2 through 4 of this resolution, this Board approves the waiver of the provisions of Resolution No. R-130-06 requiring the completion of negotiations and execution by non-County parties before presentation to the Board.

**Section 6.** Pursuant to County Resolution No. R-791-14, a copy of the proposed third amendment shall be provided by the County Mayor or County Mayor’s designee to the County Property Appraiser within 30 days of the execution thereof.

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:

- |                                |                      |
|--------------------------------|----------------------|
| Audrey M. Edmonson, Chairwoman |                      |
| Rebeca Sosa, Vice Chairwoman   |                      |
| Esteban L. Bovo, Jr.           | Daniella Levine Cava |
| Jose "Pepe" Diaz               | Sally A. Heyman      |
| Eileen Higgins                 | Barbara J. Jordan    |
| Joe A. Martinez                | Jean Monestime       |
| Dennis C. Moss                 | Sen. Javier D. Souto |
| Xavier L. Suarez               |                      |

The Chairperson thereupon declared this resolution duly passed and adopted this 19th day of September, 2019. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the 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. BB

Miguel A. Gonzalez  
Steven B. Bass