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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Approved _____ Mayor
Veto _____
Override _____

Amended
Agenda Item No. 8(A)(1)(A)
07-24-07

RESOLUTION NO. R-910-07

RESOLUTION RELATING TO MIAMI INTERNATIONAL AIRPORT; APPROVING THE CURRENT ESTIMATE OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) OF THE COST OF THE PROPOSED RENTAL CAR FACILITY (RCF) IN THE AMOUNT OF $370 MILLION; APPROVING COUNTY'S INCREASE IN ITS PARTICIPATION IN THE FEDERAL LOAN FOR THE CONSTRUCTION OF THE RCF FROM $164 MILLION TO $270 MILLION, WITH THE BALANCE OF THE $370 MILLION ESTIMATED COST OF THE RCF TO BE PAID PRIMARILY THROUGH CUSTOMER FACILITY CHARGES ALREADY COLLECTED; AUTHORIZING MAYOR OR DESIGNEE TO EXECUTE FIRST AMENDMENT TO RENTAL CAR CONCESSION AGREEMENT AND FACILITY LEASE AGREEMENT FOR RENTAL CAR COMPANY OPERATIONS WITHIN THE RCF SO AS TO REFLECT SUCH INCREASED COST AND AMEND CERTAIN PROVISIONS THEREOF TO MEET THE REQUIREMENTS OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION AS A CONDITION TO INCREASING THE FEDERAL LOAN PROCEEDS TO FUND THE INCREASED COST OF THE RCF AND TO REFLECT ANY SETTLEMENT OF THE SPACE ALLOCATION ISSUE THAT MAY BE AGREED UPON BY THE PARTIES; AUTHORIZING MAYOR OR DESIGNEE TO EXECUTE SUCH FIRST AMENDMENT UPON EXECUTION THEREOF BY THE PARTICIPATING RENTAL CAR COMPANIES, AND TO EXECUTE ALL OTHER DOCUMENTS NECESSARY TO PLACE THIS RESOLUTION INTO EFFECT

WHEREAS, by Resolution No. R-1268-99, approved on December 7, 1999, this Board approved in principle a Memorandum of Understanding between Miami-Dade County and the Florida Department of Transportation (FDOT) regarding the implementation of the Miami Intermodal Center (MIC) five-year work program for the project adjacent to Miami International Airport; and

MEMORANDUM

(Revised)

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

DATE: July 24, 2007

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

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

5

WHEREAS, such resolution set forth the Board's intent to approve in the future rental car user fees in an amount sufficient to pay the County's portion of a federal loan to FDOT under the federal Transportation, Infrastructure, Finance and Innovation Act (TIFIA), with the County's portion being in an amount not to exceed $164 million, unless otherwise amended by the Board, which was then the County's portion of the estimated cost of FDOT's design and construction of the proposed Rental Car Facility (RCF); and

WHEREAS, the interested parties to the RCF, including FDOT, the County, and the car rental companies, have since worked together to determine the configuration and size of the RCF and FDOT has now determined that the estimated costs of the design and construction of such facility will be $370 million, of which the County shall be liable for payment through Customer Facility Charges (CFCs) in an amount not to exceed $270 million, with the difference being paid through CFCs already collected; and

WHEREAS, the parties have discussed a resolution of the issue involving space allocations within the RCF, and if the parties reach a settlement of such issue, the First Amendment may include the settlement terms reached by the parties,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby (a) accepts the Florida Department of Transportation's current estimate of cost for the design and construction of the proposed Rental Car Facility in the amount of $370 million; (b) authorizes the County's increase in its participation in the federal loan for the construction of the RCF from $164 million to $270 million, with the balance of the RCF cost to be paid primarily through Customer Facility Charges already authorized by this Board to be collected; (c) authorizes the Mayor or designee to execute the First Amendment to the Rental Car Concession Agreement and

Facility Lease Agreement in substantially the form attached hereto, upon execution first by the participating car rental companies, such First Amendment to reflect the $370 million estimated cost and to amend portions of the Agreement so as to meet the requirements of the United States Department of Transportation (USDOT) as a condition to USDOT's increase in the federal loan proceeds to fund the increased cost of the RCF; (d) authorizes the Mayor or designee to include in the First Amendment the terms of any settlement of the space allocation issue that may be reached by the parties; (e) authorizes the Mayor or designee to impose CFCs in the amounts recently amended by this Board so as to discharge the County's liability for (i) debt service related to the $270 million in increased federal funding, (ii) all other maintenance and operational costs associated with the RCF that are the obligation of the County to pay through CFCs, and (iii) all other previously-established obligations of the County relating to the RCF to be paid through the CFC collections; and (f) authorizes the Mayor or designee to execute all documents or agreements relating to the RCF so as to reflect this Board's acceptance of FDOT's current estimate of $370 million to complete the RCF, and to execute any documents required or reasonably necessary to reflect the provisions of this Resolution, upon review by the County Attorney.

The foregoing resolution was offered by Commissioner Jose "Pepe" Diaz, who moved its adoption. The motion was seconded by Commissioner Rebeca Sosa and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	aye		
Barbara J. Jordan, Vice-Chairwoman	aye		
Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Joe A. Martinez	absent	Dennis C. Moss	aye
Dorrin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 24th day of July, 2007. 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

COUNTY COMMISSIONERS MIAMI-DADE COUNTY FLORIDA

By: KAY SULLIVAN
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. TPA

Thomas P. Abbott

FIRST AMENDMENT TO RENTAL CAR CONCESSION AGREEMENT AND FACILITY LEASE AGREEMENT FOR OPERATION OF A NONEXCLUSIVE RENTAL CAR CONCESSION AT MIAMI INTERNATIONAL AIRPORT AND LEASE OF PREMISES IN THE CONSOLIDATED RENTAL CAR FACILITY AT THE MIAMI INTERMODAL CENTER

THIS FIRST AMENDMENT TO THE RENTAL CAR CONCESSION AGREEMENT AND FACILITY LEASE AGREEMENT ("AGREEMENT") FOR OPERATION OF A NONEXCLUSIVE RENTAL CAR CONCESSION AT MIAMI INTERNATIONAL AIRPORT ("MIA") AND LEASE OF PREMISES IN THE CONSOLIDATED RENTAL CAR FACILITY AT THE MIAMI INTERMODAL CENTER ("First Amendment"), made and entered into as of this _____day of _____, 2007, by and between MIAMI-DADE COUNTY, FLORIDA acting through the Miami Dade Aviation Department ("County"), and _____, a _____ [corporation], authorized to do business in the State of Florida ("Concessionaire").

RECITALS

A. The County and Concessionaire (collectively the "Parties") entered into the Agreement that outlines the terms applicable to the Concessionaire's use of and operation of its MIA rental car business inside the Rental Car Facility ("RCF") during the fifteen year period of the Agreement.

B. The Agreement also makes provisions for a Customer Facility Charge ("CFC"), as defined hereinfor the payment of RCF-related costs as described herein and in the TIFIA Loan C. As anticipated in the Agreement, including Section 3.03 and Section 9.05 thereof, the Parties acknowledge that the terms of the Agreement shall be modified in order to accommodate changes made in the TIFIA Loan Agreement, and this First Amendment to the Agreement accomplishes those changes made to the TIFIA Loan Agreement as of the effective date hereof.

D. Whenever reference is made herein to the "Agreement," such reference shall include the original Agreement and this First Amendment, unless the context specifically provides otherwise.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties by and through this First Amendment agree to amend the Agreement as set forth below:

1. Section 1.01 of the Agreement is hereby amended by deleting the definition of "Administrative Expenses" therein in its entirety and replacing it with the following:

> "Administrative Expenses" means fees and expenses to be paid to the RCF Fiscal Agent, loan-servicing fees due under the RCF portion of the TIFIA Loan Agreement, and fees and expenses incurred by MDAD for the ongoing monitoring of transaction days including feasibility or verification analysis updates and audits, and annual rating agency fees.

Memorandum

MIAMI-DADE COUNTY

Date: July 24, 2007

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

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

From: George M. Burgess
County Manager

Subject: Resolution Approving Amendments to the Miami Intermodal Center Rental Car Facility Concession Agreement and Related Ordinances

R-910-07

Recommendation

It is recommended that the Board approve the attached resolution authorizing execution of the First Amendment to the Miami Intermodal Center (MIC) Rental Car Facility (RCF) Concession Agreement and Facility Lease Agreement in substantially the form attached hereto. This Resolution amends the RCF Concession Agreement to allow for an increase in the cost of the RCF to $370 million as well as an increase in the federal Transportation Infrastructure Finance and Innovation Act (TIFIA) loan from $164 million to $270 million. These amendments are necessary in order to comply with the requirements of the U.S. Department of Transportation (USDOT) and the Florida Department of Transportation (FDOT) relating to the additional federal loan proceeds necessary to fund the increased cost of the RCF. A companion ordinance accompanying this Resolution will increase the levels of Customer Facility Charges (CFCs) required to be collected by the sixteen (16) car rental companies that signed the Agreement and will relocate their car rental operations into the RCF.

This First Amendment does not impact the space allocation for the car rental companies.

Scope

The MIC RCF is located with District 6; however, this agenda item has a countywide impact.

Fiscal Impact/Funding Source

This item has a positive fiscal impact in that the increased Customer Facility Charges will be collected by the car rental companies from their customers and remitted to Miami-Dade County.

Track Record/Monitor

N/A

Background

In April 2004, the County executed a concession agreement with those rental car companies planning to relocate their business into the RCF upon its completion. The existing concession agreement contained, among other things, the terms of the financing for the RCF. The financing for the RCF consists primarily of a federal loan of $164 million, awarded to FDOT under the federal Transportation Infrastructure Finance and Innovation Act (TIFIA). Under the terms of the TIFIA loan documents, the pledged repayment source for the loan are the Customer Facility Charges (CFC) and the Contingent Rent that can be imposed if the CFC revenues are not sufficient. FDOT and the County were in the process of negotiating with the US DOT the terms of the TIFIA loan when the concession agreements

were signed in April 2004. It wasn't until April 2005 that FDOT and the County executed the TIFIA loan documents and the RCF estimate at that time was $190 million.

The TIFIA loan documents consists of a Loan Agreement and a Calculations and Forecasting Agreement, executed by and between FDOT and the US DOT, and a Security Agreement, executed by and among the US DOT, FDOT, and the County. The Security Agreement contains a County covenant that requires the RCF concession agreement and related County ordinances to conform to the terms of the loan documents. Additionally, the terms of the Loan Agreement limit FDOT's ability to draw on its existing $164 million loan until all the conforming amendments are made to the County documents.

Following the closing on the TIFIA loan in April 2005, FDOT was unable to reach agreement with its Construction Manager at Risk (CM at Risk) contractor, Turner Construction Company (Turner), on a negotiated price to complete the RCF. Turner's final price proposal had increased beyond FDOT's expectations due in large part to the volatile nature of the South Florida construction market at that time. FDOT instead opted to complete all design plans and advertise the RCF using a conventional low-bid procurement method. Construction bids for the RCF were received in September 2006; however, even the lowest bid of $345 million was too expensive for FDOT to proceed with the project.

In order to avoid further delay in completing the RCF, FDOT rejected all bids and again entered into price negotiations with Turner under its existing CM at Risk contract. Price negotiations were successfully concluded in March 2007 in the amount of $302.5 million, or nearly $45 million below the lowest bid received in September 2006. In order to lock in the negotiated price, FDOT already has executed two "Early Release" letter agreements with Turner. These agreements are funding preconstruction activities; including ordering certain materials where Turner has been placed on notice that the project will be subject to price increases if orders are not placed by a specified date.

To fully fund the RCF and sign a contract with Turner committing to the total negotiated price, FDOT has requested from the US DOT that its TIFIA loan be increased by an additional $106 million, bringing its total borrowing capacity to $270 million. FDOT's revised plan of finance for the RCF to support the increased loan amount is based on the following terms:

- Increase the current CFC rate from $3.25 to $4.00 during the construction period and until the RFC opens. Currently, Ordinance No. 04-137 caps the CFC rate during the construction period at $3.25.

- When the facility opens, increase the CFC rate from $4.00 to no less than $4.60. The plan of finance for the RCF at the TIFIA closing in April 2005 assumed the CFC would be set at $4.00 per day when the RCF opened.

- Collect approximately $14 million in Contingent Rent payments from the participating rental car companies upon opening of the RCF. The $14 million in projected rent payments would be spread over the first three years of RCF operations.

The attached table compares the terms of the finance plan for the RCF in April 2005, when FDOT and the County closed on the existing $164 million TIFIA loan, to the revised plan FDOT proposed to the US DOT to support the additional $106 million in new borrowing capacity.

As shown on the table, the proposed project budget of $370 million includes the cost to complete the RCF and the cost for the owner's (FDOT's) contingency, Construction Engineering Inspections (CEI) and post-design services, as well as reimbursements to FDOT of all RCF prior costs, including planning, design and construction costs. Construction costs will be paid from both loan proceeds and CFC collections (cash payments).

Project revenues (CFC collections and Contingent Rent) will not only fund the completion of the RCF and the costs described above, but also the long-term operation and maintenance of the RCF, the costs for transporting rental car customers to/from the RCF and the airport terminal, and reimbursements to FDOT of $95 million, to the extent permitted by law, for the acquisition of land for the facility. Land reimbursement payments are subordinated to debt service on the TIFIA loan.

The costs for transporting rental car customers to/from the RCF and the airport terminal consist of either interim busing costs or a portion of the MIA Mover operating costs. Interim busing costs would only be incurred if the MIA Mover is not operational when the RCF opens. The proposed plan of finance for the RCF conservatively assumes an 18-month gap in the completion dates for the RCF and MIA Mover. However, since busing costs are at least twice as much as the RCF's portion of MIA Mover operating costs, the schedule for completing the MIA Mover should be accelerated to reduce or eliminate the gap and avoid the more costly interim busing service.

Summary

The proposed amendments to the RCF concession agreement would accomplish the following:

- Amend the CFC rate schedule to incorporate the proposed rate schedule required to support FDOT's request for the additional $106 million in TIFIA loan borrowing capacity.
- Amend the definition of TIFIA Loan Agreement to include the existing loan documents, any amendments thereto, and any new loan documents required by the US DOT to support FDOT's request for the additional $106 million in TIFIA loan borrowing capacity.
- Amend the conditions under which Contingent Rent would be assessed by the County, which simply conforms the concession agreement to the existing TIFIA loan documents. The amendments bring the concession agreement into conformance with the TIFIA loan documents executed in April 2005 and no further changes to this provision are being proposed.

As noted above, a companion Ordinance to this Resolution amends Sections 25-4.1(f) (4) and (5) of the Miami-Dade County Code in order to provide for the increase in pre-construction and post-construction CFCs to meet the increased costs of the proposed RCF.

Assistant County Manager

Summary	2005 TIFIA Closing	2007 TIFIA Proposed	Notes
RCF Project Budget	$190,000,000	$370,000,000	Includes cost to complete, owner's contingency, CEI, post design, and prior costs.
- Portion of construction costs to be paid by early CFC collections	$63,501,542	$109,906,407	
- CFC collections to date	$17,166,242	$51,997,631	Through February 2007 (includes $2.5 million in interest earnings)
RCF Opening	Jun 1, 2007	Oct 1, 2009	
MIA Mover Start Date	Nov 1, 2008	Apr 1, 2011	
Gap (in Months)	17	18	Gap between RCF opening and MIA Mover start date requires interim busing solution (and higher transporation O&M).
TIFIA Principal Draws	$127,748,458	$261,343,593	
TIFIA First P&I Payment	Oct 1, 2010	Oct 1, 2012	
TIFIA Maturity Date	Oct 1, 2040	Oct 1, 2044	
USDOT Pay-Off Date	Oct 1, 2025	Oct 1, 2036	
FDOT Pay-Off Date	Apr 1, 2024	Apr 1, 2027	
Contingent Rent Payments	$0	$13,893,100	Contingent Rent assessed upon opening of RCF.
Years of Contingent Rent	-	3.0	Contingent Rent assessed upon opening of RCF.
CFC - During Construction Period	$3.25	$4.00	
CFC - Oct 2009 (RCF Opening)	$4.00	$4.60	
CFC - Oct 2044	$5.50	$6.10	
Secondary Reserve Ending Balance Oct 2044	$272,932,050	$213,932,568	

2. Section 1.01 of the Agreement is hereby amended by deleting the definition of "Base CFC Schedule" therein in its entirety and replacing it with the following:

> "Base CFC Schedule" means the Base CFC Schedule defined in the TIFIA Loan Agreement as the following CFC Schedule: beginning on the earlier of the effective date of this First Amendment or the effective date of the amendment to the County's amendment to Ordinance No. 00-87 and until the RCF begins revenue operations, the CFC shall be set at $4.00 per transaction day; beginning at earlier of the initiation of RCF revenue operations or the date on which the Aviation Department Director determines under Ordinance No. 00-87 and the Operational Directive issued thereunder that the RCF is operational , the CFC shall be set at no less than $4.60 per transaction day; and every fifth year after start-up of revenue operations the CFC shall be increased by $0.25 per transaction day. The Aviation Department Director shall have the authority to modify through an Operational Directive, the per transaction day amount to conform to the terms and requirements of the TIFIA Loan Agreement.

3. The County through its Aviation Department Director shall issue an amended Operational Directive to confirm the Base CFC Schedule payments as defined in the Agreement.

4. Section 1.01 is hereby amended by deleting the definition of "Contingent Rent" therein in its entirety and replacing it with the following:

> "Contingent Rent" means an annual assessment on each of the Participating Rental Car Companies by the County that is triggered when the PLCR falls below 1.30, pursuant to the requirements of the TIFIA Loan Agreement and Article 9 of this First Amendment and the Agreement. Contingent Rent will be imposed in a time sequence to correspond with the County budget process and MDAD Fiscal Year, and will be payable monthly by each one of the Participating Rental Car Companies on a pro-rata basis according to its proportionate share of space occupied within the RCF.

5. The last paragraph of the definition of "MIA Mover Operating Expenses" in Section 1.01 is hereby deleted in its entirety and replaced with the following:

> In no event shall the amount of MIA Mover Operating Expenses allocated to the RCF exceed the equivalent of Consolidated Busing Operation costs as incurred during the last 12 month period prior to the operation of the MIA Mover, adjusted annually by changes in the CPI for the Miami-Dade County area;

6. Section 1.01 is hereby amended by deleting the definition of "TIFIA Loan Agreement" therein in its entirety and replacing it with the following:

> "TIFIA Loan Agreement" shall include the Loan Agreement executed by and between USDOT and FDOT, the Security Agreement executed by and among USDOT, FDOT and the County in connection with the RCF Portion of the TIFIA Loan, and the Calculations and Forecasting Agreement executed by and between

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the USDOT and FDOT, all of which are dated as of April 1, 2005, and as may be amended from time to time, and any additional Loan Agreement executed by and between USDOT and FDOT, Security Agreement executed by and among USDOT, FDOT and MDAD, and Calculations and Forecasting Agreement executed by and between the USDOT and FDOT required to finance the amended RCF cost as contained in Section 3.01 herein.

7. The second paragraph of Section 3.01 is deleted in its entirety and replaced with the following:

The estimated cost of planning, design and construction of Phase 1 of the RCF as identified on Exhibit A is $370,000,000.

8. Section 3.03 is amended by deleting sub-sections (B), (C), and (D) therefrom in their entirety and replacing them with the following:

(B) Debt service on the RCF Portion of the TIFIA Loan and Additional RCF Financing shall be paid solely from CFCs and Contingent Rent, if any. In no event shall MDAD be required to use general airport revenues for the payment of debt service on the RCF portion of the TIFIA Loan or any Additional RCF Financing. In no event shall FDOT or the State of Florida be requested to use any funds for the payment of debt service on the RCF Portion of the TIFIA Loan or other Additional RCF Financing other than those funds pledged under the TIFIA Loan Agreement. In no event shall a Participating Rental Car Company be required to assume liability for the repayment of debt service on the TIFIA Loan or other Additional RCF Financing other than through the collection of a CFC and Contingent Rent, if any.

(C) To the extent that each one is a party thereto, FDOT, USDOT and the County will execute those certain Agreements collectively making up the TIFIA Loan Agreement as defined in Section 1.01 herein that contain the terms and conditions with respect to the RCF portion of the TIFIA Loan. The Agreements making up the TIFIA Loan Agreement shall be substantially in the form attached hereto as Exhibit B.

(D) Concessionaire acknowledges and agrees that the CFC and Contingent Rent, if any, shall be utilized in accordance with the priorities and requirements set forth in the TIFIA Loan Agreement and documents relating to Additional RCF Financing.

9. Section 9.06 is amended by deleting sub-section (C) therefrom in its entirety and replacing it with the following:

(C) In accordance with the TIFIA Loan Agreement, once assessed, Contingent Rent shall be applied annually until the RCF Financial Projection Model described in the TIFIA Loan Agreement demonstrates that the following three conditions have been met: (i) the PLCR has exceeded 1.40 for the prior twelve (12) months; (ii) the PLCR is projected to maintain a level of at least 1.30 for every remaining year of the Maturity Period; and (iii) that a Minimum

Payment is not projected to be made on any October 1 during the remainder of the Maturity.

10. Except as amended by the provisions of this First Amendment, all of the remaining provisions of the Agreement shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to the Agreement to be executed by their appropriate officials as of the date first written above.

BOARD OF COUNTY COMMISSIONERS

MIAMI-DADE COUNTY, FLORIDA

BY:_____

County Manager

ATTEST: Harvey Ruvin, Clerk

BY:

_____

Deputy Clerk

CONCESSIONAIRE

BY:

_____

Signature

_____

Print Name

ATTEST:_____

Secretary

_____

Print Name

(SEAL)