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

Memorandum

MIAMI-DADE COUNTY

Date: July 1, 2008

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

From: George M. Burgess, County Manager

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

Resolution No. R-763-08

Subject: Resolution Authorizing Execution of Terminal Operating Agreement between Miami-Dade County and Terminal Link (Miami) LLC; and Execution of Termination, Release and Reservation of Rights Agreement between Miami-Dade County and Maersk, Inc.

RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the execution of a Terminal Operating Agreement ("Agreement") between Miami-Dade County ("County") and Terminal Link (Miami), LLC ("TLM") for marine terminal operations at the Port of Miami ("Port"); and the execution of a Termination, Release and Reservation of Rights Agreement ("Termination Agreement") between Miami-Dade County and Maersk, Inc., ("Maersk") terminating Maersk's existing terminal agreement. As these two agreements are related, and address the same parcel of Port property, the two agreements must be considered together, as a pre-condition of either agreement's effectiveness is the approval of both agreements by the Board.

SCOPE

The Port of Miami is located within District 5 – Chairman Bruno A. Barreiro. The impact of this agenda item is countywide as the Port of Miami is a regional asset and generates employment for residents throughout all of Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

This Agreement will generate approximately $15.3 million in annual revenues to the Port during its first year, of which $11.9 million will be guaranteed. Current annual revenues from Maersk to the Port are approximately $6.4 million, of which only $3.4 million are guaranteed. The guaranteed revenues under the proposed Agreement shall increase annually at a weighted average rate of approximately 4.7% throughout the Agreement's fifteen-year initial term. When taking into consideration the existing Maersk cargo volume plus the shift of existing CMA CGM cargo from the POMTOC terminal to the new TLM terminal, the "net" revenue improvement to the Port will be nearly $4 million annually.

Additionally, should the Board approve this Agreement; TLM will pay the County $15,000 per gross terminal acre for the entire 71.32 acre terminal area shown on attached "Exhibit B", for a total of $1,069,800. Over the life of the Agreement, the County will be committing up to $16 million in rubber tired gantry (RTG) related infrastructure capital improvements to TLM's terminal area, subject to and conditioned upon the future negotiation and approval of an RTG Development Agreement between the County and TLM. These improvements are consistent with the typical infrastructure responsibilities of a landlord port and are included in the Port's Five Year Capital Improvement Program. Funding for this commitment will come from future borrowings (to be paid from the additional revenues generated from this Agreement) and from federal and state grants.

TLM shall abide by Section 36 of the Agreement related to the County's Inspector General's review of this Agreement. However, it shall be exempt from the one quarter (1/4) of one percent (1%) fee assessment as this is considered a revenue generating contract.

TRACK RECORD/MONITOR
The Seaport Department staff members responsible for monitoring the Agreement are Kevin Lynskey, Manager, Business Initiatives and Juan Kuryla, Assistant Port Director, Maritime Services.

BACKGROUND
The proposed terminal operating agreement strategically positions the Port of Miami to potentially retain and expand the shipping activities of the world's largest and third largest shipping lines (AP Moller-Maersk and CMA CGM, respectively) for a minimum period of fifteen years. (Both companies were considering leaving the Port of Miami, as CMA CGM has been actively searching for equity at a terminal in South Florida, while APM Moller-Maersk has considered discontinuing its South Florida operations in favor of Jacksonville.) In addition to providing a very solid annual financial guarantee of $11.9 million to the Port, this Agreement expands and encourages competition for third party cargo terminal business at the Port, while at the same time increases net revenues to the Port by approximately $4 million annually. With approval of this Agreement and that of a similar one with Seaboard Marine, which the Board approved last month, we will have succeeded in closing a $10 million annual structural deficit in Port finances.

Furthermore, this Agreement allows for shipping lines to select any of the Port's permitted stevedoring companies as their stevedore to work through the TLM terminal (provided such stevedores are properly insured, equipped, and qualified). This provision will be viewed favorably by Port customers (the actual shipping lines), as it will ultimately provide them with more choices for stevedoring services. This enhanced competition for both terminal operators and stevedores will serve as a significant footprint for the future growth of the Port of Miami. Our shipping lines will now have additional and more accessible options regarding which terminal at the Port they want to use and which permitted stevedore they want handling their cargo.

Before providing summary information concerning this long-term agreement, it is helpful to understand the history of its primary participants.

MAERSK
In 1904, AP Moller-Maersk ("Maersk") was founded for the purpose of providing ocean transportation services. Maersk is currently the largest cargo shipping line in the world and owns or operates over 540 containerized cargo vessels. In 2007, it transported approximately 13.5 million twenty foot equivalent unit containers ("TEUs") to more than 620 ports in over 150 countries. In addition, AP Moller-Maersk also operates, either itself or through subsidiary entities, more than 50 cargo terminals throughout the world through its stevedoring or terminal companies (Universal Maritime Services ("Universal") or APM Terminals ("APMT"), respectively) or through joint ventures with other major shipping conglomerates. This integrated global network provides container terminal operating and management services to more than 60 shipping lines in 35 countries and five continents. APMT is currently the world's third largest cargo terminal operator, with the largest capacity of any terminal operator. APMT has 14 new or expanded terminal facilities currently in development or under construction in Europe, North America, South America, West and Central Asia, Africa, and the Far East.

Maersk's relationship at the Port began in 1982, with one vessel calling at Miami. In 1983, it began running its own four acre terminal; and, from that time, Maersk has retained an important presence at the Port of Miami. In 1995, the Board approved a five (5) year terminal agreement with Maersk, Inc., which agreement included three (3) five-year mutual renewal options (the "1995 Agreement"). Among other things, the 1995 Agreement provided for (i) discounted tariff rates (per each TEU) in exchange for minimum yearly throughput requirements guaranteed by Maersk; (ii) mutual rights of reimbursement and indemnity for any damages caused by one party to the other in connection with the operation of the facility; and (iii) approximately 72 acres of land on the Port's east end.

Maersk currently averages approximately 21 monthly sailings from the Port of Miami – providing the second highest throughput of all cargo carriers at the Port. Maersk's volumes have decreased by almost 30% over the last three years, as certain routes calling on Maersk's Miami cargo terminal were cancelled or redirected elsewhere by the line. This illustrates how easily a shipping line can move or terminate a service at a particular port. However, should the Board approve the proposed Agreement, TLM and APMT will be in a position to solicit other business through their extensive global network of subsidiaries, existing customer bases, and other business relationships to bring additional third party cargo to the Port of Miami.

CMA CGM

In 1978, CMA was founded with the initial focus of containerized shipping in the Mediterranean. Since its establishment, CMA has become a global carrier through planned acquisitions and investment, gradually broadening its geographical scope and range of services. In 1996, CMA acquired French shipping line CGM and merged both companies in 1999; creating CMA CGM, a French shipping line. CMA CGM (TLM's ultimate parent company) is currently the third largest cargo shipping line in the world and owns or operates over 380 containerized cargo vessels. In 2007, it transported 7.7 million TEUs and provided services to more than 400 ports in over 148 countries. In addition, CMA CGM, either itself or through affiliates, has controlling interest in container terminal operations, primarily through its terminal operating arms (Terminal Link and Terminal Link USA) at 18 seaports worldwide with a total throughput of approximately 5 million TEUs. CMA CGM is experiencing significant growth in cargo terminal operations and is presently considering approximately 90 additional global container terminal management projects; some of which are currently under review or negotiation.

Throughout the past seven years, CMA CGM has significantly increased its presence at the Port. Its throughput has grown from 15,771 TEUs in 2000 to 106,654 TEUs in 2007. CMA CGM vessels also call at the Port of Miami an average of 21 times a month – providing the third highest throughput of all carriers at the Port. Nearly two years ago, as CMA CGM's throughput at the Port increased, the company approached the Port about possibly leasing 30 to 40 acres of land to run its own cargo terminal operations at the Port of Miami. As the Port did not have sufficient land available, it could not accommodate the request. Such requests are not unusual in the industry once a particular shipping line accounts for a large percentage of the total volume at a port or particular cargo terminal, as is the case with CMA CGM at its present terminal operator in Miami (POMTOC). Simply stated, once a shipping line's volume reaches certain levels, the line often seeks to integrate vertically and operate its cargo-handling activities through its own terminal. The Port experienced this about five years ago when POMTOC's largest customer at the time, MSC, left the Port of Miami to move to Port Everglades ("PEV"), as MSC desired its own cargo terminal and PEV had available land to accommodate MSC's request. MSC, the world's second largest shipping line, currently operates out of approximately 40 leased acres at PEV from its Port Everglades Terminal.

In response to CMA CGM's prior request to operate its own cargo terminal, while Port staff advised that the Port did not have available land to offer, staff suggested that CMA CGM could speak with the Port's existing terminal operators to see if any would be interested in having them join as a potential partner in their terminal operations. At the time of CMA CGM's request, the Port had already commenced contract negotiations with its three cargo terminal operators for potential time extensions as well as new agreement terms. Although CMA CGM approached all three terminal operators, only Maersk expressed an interest in working out an arrangement satisfying CMA CGM's needs in Miami and joint venturing with CMA CGM to jointly run a cargo terminal at the Port of Miami. These companies have recently executed a similar agreement at the Port of Mobile, Alabama. Toward this end, Maersk asked the Port for permission, and the Port agreed, to bring CMA CGM to the next round of negotiations on or about July 2007. As negotiations proceeded between the Port and Maersk/CMA CGM as well as between Maersk and CMA CGM, it was agreed that the executing party for this proposed Agreement would be an entity from CMA CGM's terminal operating unit (TLM), while the firm operating the terminal would be a joint

venture between CMA CGM (51%) and APMT (49%) – South Florida Container Terminal. Under this arrangement, while neither Maersk nor CMA CGM is a party to the proposed Agreement, it is anticipated that both Maersk and CMA CGM will continue to have a significant presence in Miami through their respective affiliates and joint venture partners. CMA CGM's commitment to Miami is further evidenced by its selection of downtown Miami as its management center for all of its Caribbean trades. Maersk's commitment to Miami is also evidenced by its recent action in closing down its cargo terminal at Port Everglades.

As Maersk's 1995 agreement is in the third year of its second five-year renewal option, in an effort to keep CMA CGM and its growing throughput at the Port of Miami, and to provide both companies with the required space and infrastructure necessary to keep and grow their businesses at the Port, the parties wish to extend their relationship via the proposed Agreement between the County and CMA CGM affiliate TLM, which is also an affiliate of Terminal Link (USA) LLC, which is a joint venture partner of Maersk-affiliate Universal. The Agreement shall have an initial term of fifteen (15) years plus the number of months/days between the effective date of the Agreement and September 30, 2008, to make the dates coincide with the County's fiscal year as well as future rate adjustments; with two (2) five (5) year renewal options. Each renewal option shall be subject to a reappraisal of the land by independent appraisers subject to procedures governed by the Agreement. The land rental rate to apply during the renewal periods will be determined by two certified appraisers, one selected per side, who shall determine the then-fair market rental value of the terminal area land (on a square footage rate basis and taking into account all improvements), subject to a minimum appraised value of the then-applicable land rate under the Agreement plus three percent (3%) (the "Deemed Minimum Appraised Land Rental Rate"). The two appraisers will independently determine the terminal area's as-improved fair market rental value and their independent appraisal results, subject to the Deemed Minimum Appraised Land Rental Rate, will then be averaged to determine the land rental rate to apply in year one of the renewal period, provided, that should the averaged appraisal values yield a land rental rate that exceeds the then-applicable land rate by more than 15%, TLM will have the right to rescind its exercise of the renewal option within ten calendar days. If the renewal option is not rescinded, the rental rate for year one of the five-year renewal period will be the rate determined by the appraisal process, and the rate shall increase thereafter by three percent (3%) per year compounded. This process is repeated for the second renewal option, if timely exercised by TLM.

Additionally, among other things, the Agreement provides for TLM to:

- Commit to an annual minimum throughput guarantee of 2,750 TEUs per acre with 2% compounded yearly growth. The 2,750 TEU per acre throughput guarantee is close to 75% of TLM's anticipated year one volume; exceeding similar industry pledges that are generally closer to 60% of actual volumes. TLM's anticipated year one volume takes into consideration CMA CGM's and Maersk's existing throughput;
- Pay the following per TEU throughput rates (for dockage and wharfage combined): $28.00 for the first 2,750 TEUs per acre; $25.20 for TEUs 2,751 - 3,750; $22.40 for TEUs 3,751 - 4,750; $19.60 for TEUs 4,751 - 5,750; and $16.80 for all TEUs above 5,751 TEUs per acre. These rates shall become effective 60 days after the effective date of the Agreement. This tier structure provides rate incentives for additional volume and shall escalate at a rate of 3% compounded annually commencing on October 1, 2008, as shown on "Exhibit A" of the Agreement;
- Pay the following per TEU transshipment rates for dockage and wharfage combined: $10.00 for the first 15,000 TEUs transshipped; $15.00 for TEUs 15,001 – 30,000; and $14.00 for all TEUs above 30,001 TEUs transshipped. During the first five years of the Agreement, these rates shall not escalate by a rate of more than 3% (compounded) per fiscal year. After the first five years, the Port may set a different rate;
- Pay $1.25 land rent per gross square foot annually throughout its entire terminal area as defined on "Exhibit B". This initial land rent rate shall become effective 60 days after the effective date of

the Agreement and shall escalate automatically at the rate of 3% (compounded) annually commencing on October 1, 2008, through the 15th year of the Agreement. This component of the deal is the largest concession gained by the Port during negotiations and will account for more than 90% of the additional revenues generated under the terms of this Agreement. Maersk currently does not pay land rent;

- Contribute up to $12.5 million towards the improvements defined and in accordance with the funding schedule on "Exhibit C" (subject to negotiation and approval of a future RTG Development Agreement between TLM and the County);
- Pay the Port a one-time infrastructure improvement fee of $15,000 per gross terminal acre for 71.32 acres as shown on "Exhibit B" for a total of $1,069,800; payable in three equal installments as follows: first installment due within ten calendar days of the effective date; second installment due on or before September 1, 2008; and third installment due on or before December 1, 2008;
- Pay a termination fee should TLM desire to terminate the Agreement (i) during the initial term - equal to the lesser of (a) the sum of three years of land rental payments plus three years of minimum guaranteed annual TEU throughput revenue payments or (b) the sum of aggregate land rental payments and minimum guaranteed annual TEU throughput revenue payments that would have been due for and through the period remaining on the initial term; and (ii) during any renewal period - equal to the sum of one year of land rental payments and one year of minimum guaranteed TEU throughput payments subject to certain limited exceptions, such as certain catastrophic *force majeure* events.
- Provide a corporate guarantee from Terminal Link, a wholly owned subsidiary of CMA CGM, which subsidiary will guarantee and be legally responsible for all of TLM's payment, performance, and other obligations to the County for the later of (i) the expiration or termination of the initial term or (ii) if applicable, the properly exercised renewal term(s) of this Agreement plus six years;
- Pay an assignment fee of $500,000 for each year remaining on the Agreement and both renewal periods should TLM elect to assign this Agreement to an entity that is neither a wholly-owned subsidiary nor affiliate of CMA CGM. However, should TLM elect to assign this Agreement to Universal (Maersk's stevedoring arm), the assignment fee shall be $300,000 for each fiscal year remaining during the initial term and both five year renewal periods, less $100,000 for every $1 million that Universal pays the County in TEU fees in excess of the then applicable minimum guaranteed TEU throughput revenue during and for that fiscal year;
- At the County's request, reduce its terminal area if TLM's aggregate actual TEU throughput for two successive three-year periods falls short of its aggregate minimum guaranteed TEU throughput for those consecutive six years. Should such a reduction take place, the minimum guaranteed TEU throughput shall be adjusted downward and the land rent shall not be payable for the land which was removed from their terminal area; and
- Commit to annual minimum gantry crane rental payments based on a minimum of 4,358 annual crane hours. This rate shall increase annually by 2% commencing on October 1, 2008, and shall increase by additional 2% increments (compounded) annually each October 1 thereafter throughout the initial term and any applicable renewal term. Notwithstanding how many gantry crane hours TLM actually uses in any given fiscal year, it shall pay the County the greater of (i) the gantry crane fees and charges due the County for the actual number of crane hours used by or on behalf of TLM, its joint venture partners (or the joint venture), designated operator, customers, or operator affiliated vessels in such fiscal year or (ii) an amount computed by multiplying the then applicable gantry crane rate(s) (under Section 6.D.1) by the then-applicable adjusted minimum annual crane hour guarantee for the applicable fiscal year. In return for this minimum guarantee (approximately $2.5 million based on the existing Tariff crane rate), the County agrees to provide a discount of 4% off the then prevailing gantry crane rate per the Tariff for each 1,000 hours of crane usage exceeding the then applicable adjusted annual minimum crane hour guarantee, not to exceed 16%.

In return, the County agrees to:

- Make available 71.32 acres of terminal area as shown on "Exhibit B";
- Provide (i) preferential berthing rights for bays 99 to 116, as well as 2,000 linear feet of gantry berth area and (ii) preferential gantry crane rights for a minimum of four cranes (both rights are conditioned upon Terminal Link meeting its minimum three-year TEU throughput guarantees and operating (and paying for) sixty or more gross terminal acres);
- Allow for the servicing of non-affiliated (third party) customers in or using the terminal area (subject to applicable laws and security requirements/restrictions);
- Extend the first right to attempt to negotiate for the use of contiguous cargo terminal space, if such additional land becomes available for permanent use;
- Work cooperatively with TLM to design, procure, construct, install, and co-fund a fully functional Rubber Tired Gantry System ("RTG System") and related infrastructure improvements within the terminal area in accordance with the funding schedule shown on "Exhibit C", with maximum expenditure of $16 million and $12.5 million by the County and TLM, respectively, and subject to and contingent upon the future negotiation and approval of a written RTG Development Agreement. However, TLM may, at their option, expend additional funds to enhance the RTG system and/or its related needs. Once the RTG System has been constructed, it will be operated and maintained by TLM at its sole cost and expense.

As stated previously, should the Board approve this Agreement, the Port will generate an additional $4 million annually taking into consideration the new land rent component and other charges at Tariff rates, as indicated below. This $4 million figure also takes into consideration the elimination of existing refrigerated container charges which will now be captured under the land rent. Additionally, under the proposed Agreement, crane rental rates will be based upon Port of Miami Terminal Tariff No. 010 rates subject to annual increases up to 4%. This will eliminate Maersk's current crane rental rate discount of approximately twenty percent (20%) from the Tariff rate and generate an additional $400,000 annually based on its existing crane rental usage. Although the proposed agreement also provides crane rental rate volume incentive discounts, such discounts only commence above 4358 annual crane hours and are smaller than those available under the 1995 Agreement. Additionally, the Port may implement a reasonable security fee on TLM, but only if the security fee is equitably implemented on all other Port cargo terminal operators whose terminals are twenty-five (25) acres in size or greater. The security fee shall not be applied to TLM if the Port's operating security budget for any one fiscal year does not exceed $20,000,000, compounded five percent (5%) annually at the start of each fiscal year commencing on October 1, 2008. The above provision also protects the County throughout the entire term of the Agreement in the event the Port incurs substantial increases in security costs; as has occurred following the events of September 11, 2001. Since FY 2001, the Port's operating security costs have increased from approximately $4.1 million to $20.1 million ($19.3 million for FY 08-09) as a result of new security requirements imposed by federal and state agencies.

MAERSK, INC. TERMINATION AGREEMENT

In order to effectuate this new Agreement, the Maersk 1995 Agreement must first be terminated. As per the proposed Termination Agreement, the parties have already conducted an inspection of the terminal area. The purpose of the inspection was to indentify and list readily identifiable and conspicuous defects and needed repairs to the terminal area for which Maersk and the County shall be responsible. During this inspection, neither the County nor Maersk had or shall have had any duty to identify, among other things, (i) latent defects and needed repairs related to such defects; (ii) subsurface defects and needed repairs related to such defects; (iii) patent defects and needed repairs related to such defects which are in whole or in part inconspicuous, partially obstructed or shrouded; nor (iv) all environmental conditions, releases, hazards, and contamination of any kind.

Subsequent to the inspection, the County and Maersk jointly prepared a list of needed repairs (the Terminal Area Inspection and Repair List), shown as "Attachment A" to the Termination Agreement.

Under the proposed terms, the County and Maersk agree to perform the repairs listed under each party's responsibility at its own cost. Such repairs performed by the County shall count towards the $16 million cap per "Exhibit C" of the Agreement.

Further, while the Termination Agreement terminates the 1995 Agreement and provides generally for a release of obligations under the 1995 Agreement, the Termination Agreement's releases are limited and do not include certain types of liability. In particular:

(1) The parties have reserved the right to pursue claims against each other for inconspicuous and latent defects and needed repairs to the property so long as those defects are not listed on the Terminal Area Inspection and Repair List, and provided that a demand for repair or payment is made within 24 months of the effective date of the termination;

(2) The parties have reserved their indemnity rights against each other for claims brought by third parties and caused by the act or omission of the other party, so long as the claim for indemnification is made within three years after the expiration of the statute of limitations for the third party claim expires; and

(3) The parties have emphasized that they are in no way releasing each other from any potential duty to indemnify the other for any environmental liability either or both parties may face. This is of particular benefit to the County because the County has not had working possession of the property since 1995, and it preserves all rights the County may have against Maersk for any environmental conditions or hazards caused by Maersk while it has had working possession of the property.

The Termination Agreement also settles a long standing dispute related to a 1995 side-letter agreement made by the Port offering Maersk a $1.2 million credit for future terminal expenses. Based on the Port's research of this long outstanding matter, the rationale for this credit was that a terminal operating agreement was verbally agreed to in 1993 between Maersk and the Port; however, the agreement was delayed for two years before being brought to the Board of County Commissioners for review and approval in 1995. Maersk claimed that this delay caused them to lose the benefit of the lower contract prices totaling approximately $1.2 million in additional charges. The Port then agreed to reimburse this amount via refrigerated container credits as stated in the aforementioned 1995 side-letter agreement shown as "Attachment B" to the Termination Agreement. From limited available information, it appears that between 1995 and 1997, the Port invoiced Maersk for refrigerated containers at a 50% discount from the applicable unit charges. Maersk would subsequently pay those invoices and indirectly receive the credit towards the $1.2 million. Once those invoices were paid in full, they would be cleared from the Port's accounts receivable system.

Following the resignation of the then Port Director in 1997, the Seaport Transition Team issued instructions to immediately stop this practice and invoice at full contract rates. Following this, Maersk started to pay only 50% of those invoices and, in effect, continued taking the credit toward the balance of the $1.2 million. As a result, approximately $870,000 appears in the Seaport's accounts receivable records as past due from Maersk. A reconciliation of the credits conducted by Maersk and the Port revealed a discrepancy of the actual amount of the credits issued towards to $1.2 million. Maersk records indicate that they were over-credited approximately $35,000, while the County's number is approximately $95,000. In order to settle this dispute, Maersk has agreed to pay the County $65,000 as part of this Termination Agreement. It is important to note and recognize the Office of the Inspector General's efforts in working with Port staff to resolve this outstanding issue. Should the Board approve this item, the disputed amount in Maersk's accounts receivable balance will be cleared.

As mentioned to the Board in the County Manager's accompanying memorandum to the Seaboard Agreement approved on May 20, 2008, there are significant advantages for a port to enter into long term agreements with its customers. These include: (i) certainty and predictability regarding the utilization of

the Port's facilities and income streams; (ii) a continuous revenue stream that will assist the Port in its efforts to borrow money to finance capital improvement projects (the dependable revenue flow provides lenders more confidence that the Port has a stable and reliable financial base); and (iii) the operator's (in this case TLM's)) eventual consent to contribute funds toward infrastructure and capital improvement projects to enhance their cargo handling operations in their terminal area, thereby easing the infrastructure investment burden on the Port.

A possible drawback to a port entering into a long term terminal agreement is that it could be locked in, for an extended period of time, with an income stream that may not reflect future market conditions or may not be adequate to cover future costs. However, this possibility would only occur if the escalation clauses in the long term agreement were too low and did not allow for prudent periodic market rate adjustments. The Agreement has addressed this concern by providing competitive annual rate adjustments as follows: (i) minimum throughput guarantee (2% automatic increase compounded annually); (ii) TEU throughput rates for dockage and wharfage combined (3% automatic increase compounded annually); (iii) land rent (3% automatic increase compounded annually); and (iv) crane usage guarantee (2% automatic volume increase compounded annually and up to 4% rate increases compounded annually).

Equally important, the Agreement provides for TLM to remain on Tariff for other Port charges, such as harbor fees and crane rentals, and allows for the Port to institute a security fee should a major unforeseen incident occur in the future. As previously stated, over the Agreement's fifteen-year initial term, these escalation clauses will enable the Port's guaranteed revenues from TLM to increase annually at a weighted average rate of 4.7%. As a result, whenever the industry experiences a prolonged period of growth and profitability, the Agreement's annual rate escalations will further enable the Port to share in the upside of the business benefits reaped by TLM; while at the same time, safeguard the Port's revenue stream in the event of a downturn in the industry. The inclusion of the above provisions provides for a very solid business deal for the County, both in the short and long term. Approval of this Agreement will provide the Seaport with approximately $4 million in additional annual revenues and the necessary financial incentives for TLM to increase its cargo volume at the Port of Miami, as the more cargo they handle the lower the TEU rates become. These additional funds will be critical in balancing the Port's budget for FY 2008-09 and beyond.

DELEGATION OF AUTHORITY

In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond those specified in the resolution, such as for termination or cancellation (ie, in the event of an uncured default or in certain force majeure events (sections 24 and 27, respectively)). Although the Agreement provides for two five-year renewal option(s), such options are at TLM's election, subject to certain stipulated conditions and procedures set forth in the Terminal Agreement.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: July 1, 2008

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

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

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(Q)(1)(D)
7-1-08

RESOLUTION NO. R-763-08

RESOLUTION AUTHORIZING EXECUTION OF (i) A TERMINAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND TERMINAL LINK (MIAMI) LLC FOR TERMINAL OPERATIONS AT THE PORT OF MIAMI; AND (ii) A TERMINATION, RELEASE AND RESERVATION OF RIGHTS AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MAERSK, INC., TERMINATING EXISTING TERMINAL AGREEMENT, RESOLVING DISPUTED CLAIMS, AND RESERVING CERTAIN RIGHTS; AND AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE EACH SUCH AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY, TO EXERCISE ANY RESPECTIVE CANCELLATION AND RENEWAL PROVISIONS; AND TO EXERCISE ALL OTHER RIGHTS CONFERRED IN EITHER AGREEMENT

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:

Section 1. Approves the execution of (i) a Terminal Agreement Between Miami-Dade County and Terminal Link (Miami) LLC for Terminal Operations at the Port of Miami; and (ii) a Termination, Release and Reservation of Rights Agreement between Miami-Dade County ("County") and Maersk, Inc., Terminating Existing Terminal Agreement, Resolving Disputed Claims, and Reserving Certain Rights, in substantially the form attached hereto and made a part hereof.

Section 2. Authorizes the County Mayor or his designee to execute each such agreement for and on behalf of Miami-Dade County, to exercise any respective cancellation and renewal provisions after review and approval by the County Attorney's Office; to exercise all other rights conferred in either Agreement.

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

Bruno A. Barreiro, Chairman absent
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	absent	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 1st day of July, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

SBB/RS

Steven B. Bass
Richard Seavey

TERMINAL AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND TERMINAL LINK MIAMI LLC

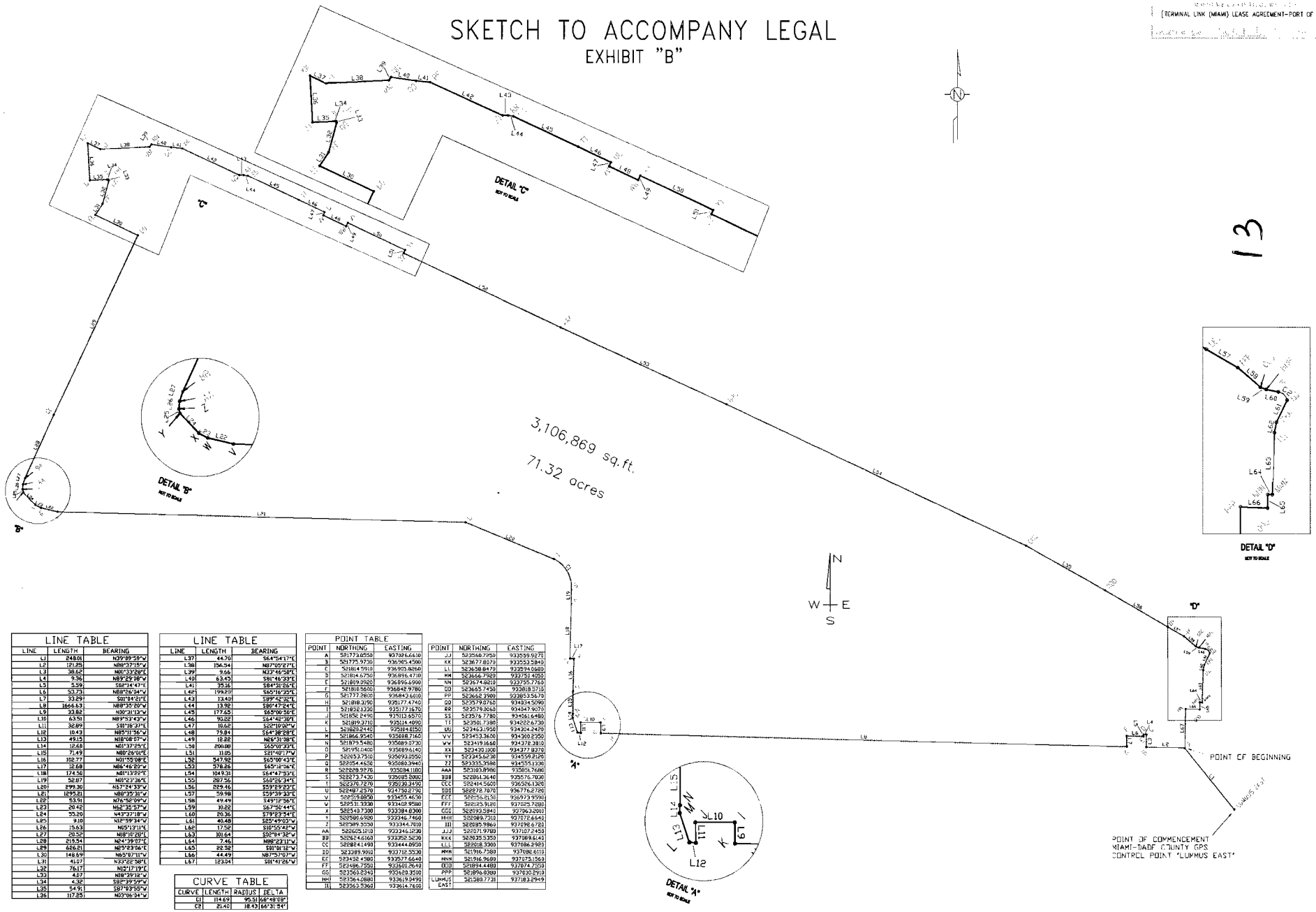
2007/08 - 2032/33

	YEAR	ANNUAL MINIMUM TEU THROUGHPUT GUARANTEE (per acre)	TEU RATE				
			DISCOUNT	10%	20%	30%	40%
			MINIMUM THROUGHPUT	MIN to MIN + 1000	MIN +1001 to MIN + 2000	MIN +2001 to MIN + 3000	MIN +3001 to ALL
	2007 / 08	2,750	$28.00	$25.20	$22.40	$19.60	$16.80
	2008 / 09	2,805	$28.84	$25.96	$23.07	$20.19	$17.30
	2009 / 10	2,861	$29.71	$26.73	$23.76	$20.79	$17.82
	2010 / 11	2,918	$30.60	$27.54	$24.48	$21.42	$18.36
	2011 / 12	2,977	$31.51	$28.36	$25.21	$22.06	$18.91
	2012 / 13	3,036	$32.46	$29.21	$25.97	$22.72	$19.48
	2013 / 14	3,097	$33.43	$30.09	$26.75	$23.40	$20.06
	2014 / 15	3,159	$34.44	$30.99	$27.55	$24.11	$20.66
	2015 / 16	3,222	$35.47	$31.92	$28.38	$24.83	$21.28
	2016 / 17	3,287	$36.53	$32.88	$29.23	$25.57	$21.92
	2017 / 18	3,352	$37.63	$33.87	$30.10	$26.34	$22.58
	2018 / 19	3,419	$38.76	$34.88	$31.01	$27.13	$23.26
	2019 / 20	3,488	$39.92	$35.93	$31.94	$27.94	$23.95
	2020 / 21	3,557	$41.12	$37.01	$32.90	$28.78	$24.67
	2021 / 22	3,629	$42.35	$38.12	$33.88	$29.65	$25.41
	2022 / 23	3,701	$43.62	$39.26	$34.90	$30.54	$26.17
RENEWAL 1	2023 / 24	3,775	$44.93	$40.44	$35.95	$31.45	$26.96
	2024 / 25	3,851	$46.28	$41.65	$37.02	$32.40	$27.77
	2025 / 26	3,928	$47.67	$42.90	$38.13	$33.37	$28.60
	2026 / 27	4,006	$49.10	$44.19	$39.28	$34.37	$29.46
	2027 / 28	4,086	$50.57	$45.51	$40.46	$35.40	$30.34
RENEWAL 2	2028 / 29	4,168	$52.09	$46.88	$41.67	$36.46	$31.25
	2029 / 30	4,251	$53.65	$48.29	$42.92	$37.56	$32.19
	2030 / 31	4,336	$55.26	$49.73	$44.21	$38.68	$33.16
	2031 / 32	4,423	$56.92	$51.23	$45.53	$39.84	$34.15
	2032 / 33	4,512	$58.63	$52.76	$46.90	$41.04	$35.18

EXHIBIT A

SKETCH TO ACCOMPANY LEGAL

EXHIBIT "B"



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LINE TABLE		
LINE	LENGTH	BEARING
L1	248.01	N39°09'58"W
L2	121.25	N88°37'15"W
L3	38.62	N00°33'28"E
L4	9.36	N89°29'08"W
L5	5.59	S52°14'47"E
L6	53.73	N88°26'04"W
L7	33.29	S01°04'21"E
L8	1666.63	N88°35'20"W
L9	33.82	N00°31'13"W
L10	63.51	N89°53'43"W
L11	32.89	S01°18'37"E
L12	10.43	N85°11'56"W
L13	49.15	N18°08'07"W
L14	12.68	N01°37'25"E
L15	71.49	N80°26'01"E
L16	102.77	N01°55'08"E
L17	12.68	N86°46'20"W
L18	174.50	N81°13'22"E
L19	52.87	N01°23'36"E
L20	299.30	N67°24'33"W
L21	1295.21	N88°35'31"W
L22	53.51	N76°52'09"W
L23	20.42	N62°35'57"W
L24	55.20	N43°37'18"W
L25	9.10	N18°59'34"W
L26	15.63	N05°13'11"E
L27	20.52	N18°10'20"E
L28	219.54	N24°59'27"E
L29	626.21	N25°23'06"E
L30	148.69	N65°07'11"W
L31	41.07	N33°22'58"E
L32	76.17	N15°17'19"E
L33	4.07	N18°39'18"W
L34	4.32	S82°39'59"W
L35	54.91	S87°33'55"W
L36	117.85	N03°06'34"W

LINE TABLE		
LINE	LENGTH	BEARING
L37	44.70	S64°54'17"E
L38	156.34	N87°05'27"E
L39	9.66	N33°46'58"E
L40	63.43	S81°46'33"E
L41	35.16	S84°31'26"E
L42	199.80	S65°16'25"E
L43	13.40	S89°42'02"E
L44	13.92	S80°47'24"E
L45	177.45	S65°00'55"E
L46	90.22	S64°40'38"E
L47	10.62	S22°10'02"W
L48	75.84	S64°38'28"E
L49	12.22	N26°31'08"E
L50	200.06	S65°05'33"E
L51	11.05	S21°40'17"W
L52	547.92	S65°00'43"E
L53	578.26	S65°12'06"E
L54	104.31	S64°47'53"E
L55	287.56	S60°25'24"E
L56	229.46	S59°29'23"E
L57	59.98	S59°39'33"E
L58	49.49	S49°12'55"E
L59	10.22	S67°50'44"E
L60	20.36	S79°23'54"E
L61	40.48	S85°49'03"W
L62	17.52	S10°55'42"W
L63	101.64	S02°04'32"W
L64	7.46	N88°23'11"W
L65	22.52	S01°01'12"W
L66	44.49	N87°57'07"W
L67	123.04	S01°41'26"W

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	114.69	95.51	68°48'08"
C2	21.40	18.43	66°31'34"

POINT TABLE		
POINT	NORTHING	EASTING
A	521773.0550	937086.6610
B	521775.9730	936905.4580
C	521814.5910	936905.8260
D	521814.6750	936896.4710
E	521809.0920	936896.6900
F	521810.5600	936848.9780
G	521777.2800	936843.6010
H	521818.3190	935177.4740
I	521832.1330	935177.1670
J	521852.2490	935113.6570
K	521819.3710	935114.4690
L	521820.2440	935104.6150
M	521866.9540	935088.7160
N	521875.5480	935089.0730
O	521951.0400	935089.6140
P	522653.7510	935093.0550
Q	522654.4652	935083.3940
R	522828.9276	935084.1180
S	522273.7430	935085.2080
T	522370.7270	935030.3490
U	522487.2570	934759.2790
V	522519.0850	933455.4630
W	522531.3330	933452.9580
X	522543.7330	933384.8300
Y	522586.6920	933346.7460
Z	522589.5550	933344.7610
AA	522605.1210	933346.3230
BB	522624.6160	933352.5020
CC	522824.1490	933444.0950
DD	523389.9910	933712.3530
EE	523438.4980	933577.6640
FF	523486.7550	933600.2649
GG	523560.2340	933628.3500
HH	523564.0880	933619.9490
II	523563.5360	933614.7600

POINT	NORTHING	EASTING
JJ	523560.7950	933559.9270
KK	523677.8070	933553.5840
LL	523658.8479	933594.0680
MM	523666.7920	932751.4050
NN	523674.4820	932755.7760
OO	523665.7450	933818.5710
PP	523662.3900	933833.5670
QQ	523579.0750	934034.5090
RR	523579.0060	934047.9070
SS	523576.7780	934061.4480
TT	523561.7380	934222.6730
UU	523463.1950	934204.2420
VV	523453.3600	934300.2350
WW	523419.1660	934378.2810
XX	523430.1900	934377.8370
YY	523345.6230	934559.2120
ZZ	523335.3590	934555.1330
AAA	523103.8980	935016.7680
BBB	522861.3640	935576.7000
CCC	522414.5600	936526.1320
DDD	522278.7070	936776.2720
EEE	522156.8130	936973.9590
FFF	522125.9180	937025.7280
GGG	522093.5840	937063.2010
HHH	522089.7310	937072.6640
III	522085.9860	937082.6780
JJJ	522071.9760	937107.2450
KKK	522035.5350	937089.6140
LLL	522018.3300	937086.2980
MMM	521916.7380	937086.6110
NNN	521916.9680	937073.1560
OOO	521894.4480	937074.7550
PPP	521896.0380	937030.2910
LUMMUS EAST	521983.7731	937183.2949

THIS IS NOT A BOUNDARY SURVEY

MICHAEL J. WHITLING, PLS#4688

PORT OF MIAMI –
TERMINAL LINK (MIAMI) LEASE AGREEMENT

PUBLIC WORKS DEPARTMENT
HIGHWAY DIVISION

EXHIBIT C

TERMINAL AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND TERMINAL LINK (MIAMI) LLC

The following schedule presents the cost sharing between the Port and Operator for paving, drainage and concrete runs required for rubber tired gantry (RTG) operations within the Operator's terminal, as described in Section 4(F) of this Agreement and subject to the prior satisfaction of all RTG conditions precedent set forth in Section 4(F) (1) and (2) of this Agreement (including the successful negotiation and mutual approval and execution of a future RTG Development Agreement between the County and OPERATOR). The parties agree to split certain RTG infrastructure capital costs (excluding RTG and equipment acquisition, operating and maintenance costs, which shall be paid by OPERATOR) according to the following schedule, subject to a cap on Port contributions of $16 million USD and a cap on OPERATOR's contributions of $12.5 million USD, and also subject to the prior satisfaction of each of the above-referenced RTG Conditions:

Cost Increments	Port % & $		Operator % & $	
$1 M	100%	($1M)	0%	($0)
$7.5 M	70%	($5.25M)	30%	($2.25M)
$7.5 M	60%	($4.5M)	40%	($3M)
$7.5 M	50%	($3.75M)	50%	($3.75M)
$5 M	30%	($1.5M)	70%	($3.5M)
$28.5M		$16M		$12.5M

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Attachment A

Port Miami

MAERSK, INC., CONTAINER YARD ASSESSMENT

Maersk Repairs Required			
Item	Description	Unit	Qty
1	Fence Damage Coord. 11, 12, 39, 40, & 41. & misc.	LF	360
2	Fence Post Foundation in Pavement, Coord. 13 - 22, 42 - 58, 92 - 105	EA	38
3	Concrete Sign Foundation, Coord. Refer to Drawing; & misc	EA	30
4	Electrical Pedestal Repair	EA	2
5	Pipe Bollard 12" dia. Protecting High Mast Lights; Remove and Reinstall	EA	30
6	Pipe Bollard 12" dia. Protecting High Mast Lights; Straighten in Place and Repair	EA	35
7	Asphalt Pavement Damage; 300 SF plus misc. areas.	SF	1000
8	Remove and Replace Traffic Rated Electrical Box	EA	3
9	Restore Concrete Trenches	LF	1263

POM Improvements Required Due to Normal Wear and Tear			
Item	Description	Unit	Qty
Mill 1" and Resurface with 2" Type S-1 Asphalt			
1	S/O of H.M. # 25, n/o north reefer platform; Coord 138-141	SF	4,875
2	S/O of H.M. #34; s/o south reefer platform; Coord 106 - 114	SF	15,630
3	S/O of H.M. #36; Coord 119 - 120	SF	2,440
4	Coord. 182; S/O HM # 21	SF	390
Mill .75 and Resurface with 1.5" Type S-1 Asphalt			
5	Coord. 68 - 71; 81 - 82; NW of HM # 47	SF	1656
6	Coord. 85 - 88; SW of HM # 36	SF	2364
7	Coord. 89, 90, & 91; N/O between HM # 48 - 49	SF	956
8	Coord. 106 - 114; S/O HM #34, S/O south reefer	SF	15630
9	Coord. 115 - 118; S/O HM # 36	SF	3750
10	Coord. 119 - 120; SW of HM # 36	SF	2440
11	Coord. 121 - 124; NE of HM # 36	SF	868
12	Coord. 138 - 141; S/O HM #25	SF	4875
13	Coord. 149 - 152	SF	1000
14	Coord. 158 - 161; N/O Electrical Vault	SF	40
15	Coord. 186 - 194; E/O HM # 15	SF	276
16	Coord. 196 - 198; E/O HM # 15	SF	507
17	Coord. 201 - 204; SE of HM # 13	SF	368
18	Coord. 205 - 210; W/O APM Gate	SF	2819
19	Coord. 211 - 214; SW of Roadability Bldg.	SF	511
20	Coord. 222 - 225; NW of HM # 33	SF	7638
21	Coord. 226 - 229; N/O & between HM # 33 - 34	SF	1680
22	South of HM # 25, S/O north reefer line	SF	1330
23	Cut excess steel casing above grade. Weld plate back on. Mill and resurface 8 total	SF	1800
Mill .75 and Resurface with 1.5" Type S-1 Asphalt			
24	Mill uneven pavement edges and Resurface 264 LF	SF	1584
12" Limerock Base, 3" of Asphalt Type S-1			
25	Coord. 148 - 152; SW of Elec. Vault. Adjust Elec. J-Box; 12" limerock base, w/3" asph.	SF	1000
26	South Side of Electrical Vault	SF	496
Demolition			
27	Demo and Dispose Concrete Slab	CY	3.5
Electrical J-Box			
28	Remove and Replace Traffic Rated Electrical Box (north of electrical vault)	EA	1
29	Electrical Box with depressed cover, replace elec box, between HM # 33 - 46	EA	1

On behalf of their principals, the undersigned state by signing below that they are not aware of any readily identifiable and conspicuous defects and needed repairs to the Terminal Area for which Maersk or Miami-Dade, as applicable, is responsible which are not included on this Terminal Area Inspection and Repair List.

Mark Baker

Maersk, Inc.

Bill Johnson

Miami-Dade Seaport Department

ATTACHMENT B

OFFICE OF THE DIRECTOR • 1015 NORTH AMERICA WAY • MIAMI, FLORIDA [illegible] • [illegible] • TELEX [illegible]

May 30, 1995

Mr. Jorgen E. Palmbak
General Manager, Operations
Giralda Farms, Madison Avenue
P.O. Box 880
Madison, NJ 07940-0880

Re: Terminal Expenses

Dear Mr. Palmbak:

Miami Terminal Agreement - Sideletter

Whereas, the Port of Miami agrees to credit Maersk Inc. USD 1,200,000.00 (one million two hundred thousand).

Whereas, the parties have agreed that the above mentioned monies shall be paid to Maersk Inc. as credits against Maersk Inc.'s terminal expenses (i.e. the payments that Maersk Inc. otherwise would be required to make to the Port of Miami for terminal service shall be reduced accordingly).

The said credits shall be given as follows:

October 1995:	*USD 300,000*
November 1995:	*USD 300,000*
December 1995:	*USD 300,000*
January 1996:	*USD 25,000*
February 1996:	*USD 25,000*
March 1996:	*USD 25,000*
April 1996:	*USD 25,000*
May 1996:	*USD 25,000*
June 1996:	*USD 25,000*
July 1996:	*USD 25,000*
August 1996:	*USD 25,000*
September 1996:	*USD 25,000*
October 1996:	*USD 25,000*
November 1996:	*USD 25,000*
December 1996:	*USD 25,000*

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ATTACHMENT B

For the avoidance of any doubt the above mentioned "October 1995" means that the credit shall be applied against the invoice to be forwarded for terminal operations during the month of October. The same principle applies for all the other mentioned dates.

If Maersk during one or more months does not accrue terminal expenses of at least the same amount as the credit for the month in question the difference shall be carried over the next month as an increase in the credit for said next month.

Carmen J. Lunetta
Port of Miami
Metro-Dade Seaport Department
Dade County Florida

Jorgen E. Palmbak
General Manager. Operations
Maersk Inc.

CJL:nv

TERMINAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND TERMINAL LINK MIAMI LLC

THIS TERMINAL OPERATING AGREEMENT is hereby made and entered into as of the __ day of _____, 2008, by and between MIAMI-DADE COUNTY, FLORIDA, ("County"), and TERMINAL LINK (MIAMI) LLC, a Delaware limited liability company registered and authorized to do business in the State of Florida (hereafter, "TERMINAL OPERATOR" OR ""OPERATOR"), by and through their authorized representatives in accordance with the terms, conditions and covenants contained herein below. The County and OPERATOR are jointly referred to as "the Parties."

W I T N E S S E T H :

WHEREAS, the County and Maersk, Inc. ("Maersk"), an affiliate of AP Moller-Maersk A/S ("AP Moller-Maersk"), are parties to a Terminal Agreement entered into in 1995 (the "Original Agreement"), under which Maersk has operated a cargo terminal at the Dante B. Fascell Port of Miami ("PORT"); and

WHEREAS, AP Moller-Maersk is currently the largest cargo line in the world, which owns or operates over 540 cargo vessels, with approximately 80 additional cargo vessels on order, and which also operates, either itself or through subsidiary entities, over 55 cargo terminals throughout the world; and

WHEREAS, CMA CGM, ("CMA CGM") is a French shipping line that owns or operates over 380 cargo vessels, with approximately 77 additional cargo vessels on order, making it the third largest cargo line in the world; and

WHEREAS, both AP Moller-Maersk and CMA CGM currently own and operate containerized cargo vessels that call on the Port of Miami; and

WHEREAS, CMA CGM, either itself of through affiliates, including Terminal Link, a French company and wholly owned subsidiary of CMA CGM, operates 14 cargo terminals throughout the world; and

WHEREAS, AP Moller-Maersk and CMA CGM, either themselves or through certain of their respective affiliate entities, have previously entered into, or anticipate entering into, a cargo terminal joint

venture agreement in order to achieve certain collaborative-producing cargo terminal synergies and efficiencies; and

WHEREAS, AP Moller-Maersk, through its affiliate Universal Maritime Service Corporation, a New York corporation, and CMA CGM, through its affiliate Terminal Link (Miami) LLC, wish to establish a joint venture for the purpose of collaborating in the operation of a cargo terminal at the Port of Miami to service AP Moller-Maersk, CMA CGM, and third party cargo vessels, and to also cultivate and bring new cargo line business to the Port of Miami; and

WHEREAS, the Port has a limited amount of land available for cargo terminal operations and, consequently, it is in the County's interest to encourage and/or facilitate improvements to existing cargo terminal areas that enhance terminal capacity and productivity, including, without limitation, development of infrastructure to accommodate the use of rubber tired gantries (RTGs); and

WHEREAS, the County and OPERATOR wish to make substantial commitments herein to fund the development of certain cargo terminal infrastructure improvements needed to accommodate a RTG system that will greatly enhance the throughput capacity and productivity of the cargo terminal that is the subject of this Agreement, all subject to the terms and conditions set forth herein; and

WHEREAS, Maersk a party to the Original Agreement, is only willing to surrender and terminate its remaining rights and interest in the Original Agreement if the County approves the instant superseding Terminal Agreement, under which certain Maersk affiliates may derive indirect benefits through or in connection with the above-referenced cargo terminal operator joint venture between OPERATOR and Universal Maritime Service Corporation, a New York Corporation and a wholly-owned subsidiary of AP Moller-Maersk affiliate APM Terminals North America, Inc.; and

WHEREAS, the County and OPERATOR now desire to enter into a Terminal Operating Agreement under the terms and conditions set forth herein below;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreements hereinafter contained, the parties hereto do and hereby mutually covenant, agree and bind themselves as follows:

Section 1. Rules of Construction.

For all purposes of this Agreement, unless otherwise expressly provided:

A) A term has the meaning assigned to it;

B) An accounting term not otherwise defined has the meaning ordinarily given to it by accountants in accordance with generally accepted accounting principles;

C) Words in the singular include the plural, and words in plural include the singular;

D) A pronoun in one gender includes and applies to other genders as well; and

E) The terms "hereunder," "herein," "hereof," "hereto" and such similar terms shall refer to the instant Terminal Agreement in its entirety and not to individual sections or articles.

F) The Parties hereto agree that this Agreement shall not be more strictly construed against either the County or OPERATOR.

Section 2. Definitions as used herein:

"Actual TEU Throughput" or "Actual Throughput" means the total number of TEUs loaded or unloaded from a waterborne Vessel to or from the Terminal Area each Fiscal Year (excluding Transshipped TEUs) as reflected in Port records.

"Agreement" means this Terminal Operating Agreement between Miami-Dade County and OPERATOR, including all attachments and exhibits, and any documents incorporated by reference herein.

"AP Moller-Maersk" means AP Moller-Maersk A/S, a Danish corporation.

"APMT" or "APM Terminals" mean APM Terminals North America, Inc., a Delaware corporation and a wholly owned subsidiary of Maersk, Inc.

"Applicable Laws" means any and all federal, state, and County laws, rules, ordinances, resolutions, administrative orders, implementing orders, and tariffs, including, but not limited to Port of Miami-Dade Terminal Tariff No. 010, that apply to the conduct of operations at the Port and the Parties'

conduct under, arising out of or related to this Agreement, , all as such may be amended from time to time, including but not limited to all federal, state and County security requirements.

"Base TEU Rate" means the rate to be paid by OPERATOR to County for the Minimum Guaranteed TEU Throughput each Fiscal Year as identified in Exhibit "A".

"Cargo" means any kind of commodities ladened or unladened, containerized or not from a vessel.

"CMA CGM or "CMA means CMA CGM, a French corporation.

"Container" means a marine cargo container or a trailer, flatbed, lowboy or flatrack.

"County" means Miami-Dade County, a political subdivision of the State of Florida, and all departments, agencies and instrumentalities thereof, including but not limited to the Miami-Dade County Seaport Department.

"Discount TEU Rate" means the discount rates that are paid by the OPERATOR starting with the first TEU in each Fiscal Year (excluding Transshipped TEUs and Non-Operator TEUs) that exceeds the number of Minimum Guaranteed Throughput per Fiscal Year as identified in Exhibit "A" hereto.

"Dockage" means the charges the County assesses pursuant to the Tariff against a vessel for berthing at a wharf, pier, bulkhead structure, or bank, or for mooring to a vessel so berthed. In this Agreement, Dockage is included in the TEU Rate as to those TEUs for which the TEU Rate is paid by OPERATOR to County as required herein, provided however, that to the extent TEUs and/or Non-TEU Cargo are loaded to and/or discharged from a Vessel to or from a Port cargo terminal other than OPERATOR's Terminal Area, then in such event Dockage shall be due the County from such Vessel pro rata to the percentage of total TEUs and Non-TEU Cargo loaded or discharged to or from said Vessel to or from a cargo terminal other than OPERATOR's Terminal Area. By example, if 40% of the TEUs and Non-TEU Cargo loaded and/or discharged on or from a Vessel is processed to or from OPERATOR's Terminal Area and the other 60% is processed to or from a cargo terminal at the Port other than OPERATOR's Terminal Area, then in such event the Vessel would be charged 60% of the Dockage due under the Tariff.

"Effective Date" means the effective date of the Board of County Commissioners' resolution approving this Agreement, as defined in said resolution, provided, however, that this Agreement shall not become effective until the Original Agreement is terminated (which termination may be contemporaneous with this Agreement becoming effective) pursuant to a written termination, settlement and reservation of rights agreement between the County and Maersk, in a form acceptable to the County, executed by Maersk, and approved (as to the County) by an effective resolution of the Board of County Commissioners of Miami-Dade County, and executed by the County Mayor or his designee.

"Expiration Date" means the date this Agreement shall expire, subject to any applicable and consummated Renewal Terms as set forth in Section 3 and subject to other terms and conditions of this Agreement.

"Fiscal Year" means the County fiscal year, which runs from October 1 through September 30.

"FMC" means the Federal Maritime Commission or any other federal agency that might act as successor to or in the capacity of the Federal Maritime Commission.

"Gross Terminal Acres" means the total number of acres included in the Terminal Area, whether improved or unimproved, and including partial acres.

"Initial Term" means the time during which this Agreement shall be in effect between the Effective Date and the Expiration Date but before any Renewal Terms are exercised as set forth in Section 3.

"Joint Venture" or "South Florida Terminals" means South Florida Container Terminals, LLC, a Delaware limited liability company, which is or will be registered and authorized to do business in the State of Florida by the Effective Date, which Joint Venture is composed of Terminal Link (USA) LLC (a Delaware limited liability company and an affiliate of Terminal Link) and Universal Maritime, and its successors and permitted assigns.

"Land Rental Rate" means the per square foot rental rate applicable to open ground leases at the Port as set by the County pursuant to Applicable Laws.

"Lay Berth" means any Vessel using a berth solely for maintenance or lay up and not for loading or discharging cargo and shall be subject to the dockage charges set forth in item no. 312 of the Tariff. Notwithstanding the foregoing, when an Operator Affiliated Vessel is berthed at the Port and is undergoing repairs (excluding routine maintenance) concurrent with loading/discharging operations, there shall be an allowance of up to 24 hours after the completion of loading/discharging operations before Lay Berth Rates apply, provided that the Port may, at its discretion, require such vessel to relocate to another berth during such 24 hour allowance period at OPERATOR's sole cost and expense.

"Maersk" means Maersk, Inc., a New York corporation, a wholly-owned affiliate of AP Moller-Maersk.

"Minimum Guaranteed TEU Throughput" means the minimum number of TEUs (excluding Transshipped TEUs) OPERATOR agrees to guarantee County each Fiscal Year per acre (as set forth in column two (2) of Exhibit A) multiplied by the number of Gross Terminal Acres, payable at the full Base TEU Rate, as set forth in column three (3) of Exhibit "A" hereto.

"Minimum Guaranteed Annual TEU Throughput Revenue" means the product calculated by taking the minimum number of TEUs OPERATOR agrees to guarantee in a given Fiscal Year per acre (as set forth in column two (2) of Exhibit A) multiplied by the number of Gross Terminal Acres or fraction thereof in the Terminal Area multiplied by the applicable full Base TEU Rate for that year as set forth in column three (3) of Exhibit "A". By example, the parties agree that the Minimum Guaranteed Annual TEU Throughput Revenue due the County from OPERATOR for the first Fiscal Year of the Initial Term shall be $5,491,640.00 (2,750 minimum TEUs per acre (excluding Transshipped TEUs) x 71.32 Gross Terminal Acres (size of Terminal Area on Effective Date) x $28.00 per TEU (minimum throughput TEU rate on Effective Date) = $5,491,640.00).

"Non-Operator TEUs" or "Third Party TEUs" means TEUs loaded to or discharged from any Non-Operator Vessel while calling the Port of Miami, but shall not include Transshipped TEUs.

"Non-Operator Vessel" means a Vessel other than Operator Affiliated Vessels.

"Non-TEU Cargo" shall mean all cargo of any type not contained or carried in a cargo container and shall include, without limitation, vehicles, vessels, boats, yachts, heavy equipment, bulk cargo, break bulk cargo and any other non-containerized cargo.

"Operator Affiliated TEUs" means TEUs loaded to or discharged from any Operator Affiliated Vessel while calling the Port of Miami, but shall not include Transshipped TEUs.

"Operator Affiliated Vessel" means any waterborne vessel or barge that uses the Port, including, without limitation, container vessels, RoRo vessels, bulk carriers and any other type of vessel (i) owned, operated or chartered by Operator, CMA CGM and any CMA CGM wholly- or majority-owned direct or indirect subsidiary company that is a shipping line or AP Moller-Maersk and any AP Moller-Maersk wholly- or majority-owned direct or indirect subsidiary company that is a shipping line, (ii) that is part of an FMC-filed vessel sharing agreement (VSA) with CMA CGM or AP Moller-Maersk, or any shipping line directly or indirectly wholly- or majority-owned by CMA CGM or AP Moller-Maersk, and (iii) that is part of any other similar FMC-filed (mulit-vessel) cooperative working agreement between two or more ocean carriers that includes as a party CMA CGM, AP Moller-Maersk, or either's wholly- or majority-owned direct or indirect subsidiary shipping line company, provided, however, that no vessels within the purview of (ii) or (iii) above shall be deemed an Operator Affiliated Vessel unless and until OPERATOR first provides written notice to the Port Director identifying such vessel(s), which notice shall include copies of the FMC-filed VSA, slot charter, slot purchase or other cooperative ocean carrier working agreement(s) in question, and shall further identify the names of all parties to said agreements, the durational terms thereof, and the services and names of vessels covered therein, and OPERATOR shall promptly advise the Port Director of the termination, expiration, or any modification of any of such agreements.

"Original Agreement" means the Terminal Agreement between Miami-Dade County and Maersk, Inc. entered into in 1995.

"Port" means the Miami-Dade County Seaport Department, also known as the Dante B. Fascell Port of Miami-Dade, or its successors or assigns.

"Preferential Berthing Rights" means a preferential right to use specified bays over any other similarly situated vessel, but expressly does not mean an exclusive right, as more particularly set forth in Section 4.I of this Agreement.

"Port Director" means the Director of the Miami-Dade County Seaport Department or designee, or anyone acting in the capacity of Port Director as designated by the Mayor or designee.

"Renewal Term" means the time during which this Agreement shall be in effect in the event any renewal option is exercised as set forth in Section 3.

"Shortfall Fees" means the difference between Actual Throughput (excluding Transshipped TEUs) and the Minimum Guaranteed TEU Throughput multiplied by the Base TEU rate for any applicable Fiscal Year as set forth in Section A and shall be calculated each Fiscal Year of the Initial Term and any applicable Renewal Term.

"Tariff" means the Port of Miami-Dade Terminal Tariff No. 010, Rates, Rules, and Regulations for the Seaport Facilities of Miami-Dade County, Florida, as such may be amended from time to time.

"Terminal Area" means the existing land designated in Exhibit "B attached hereto and incorporated by reference herein, and includes existing buildings, structures, and fixtures thereon. Such area consists of approximately 71.32 acres of mostly-paved cargo terminal space, part of which is adjacent to the berthing area between Port Bays 99 and 116, all as more particularly described and identified in Exhibit B attached hereto. The Terminal Area is subject to adjustment pursuant to Section 5(f) hereof or as otherwise provided in this Agreement.

"Terminal Link" means Terminal Link (Société par Actions Simplifiée Unipersonnelle), a company incorporated under French Law and wholly owned subsidiary of CMA CGM.

"TEU" means one twenty (20) foot equivalent unit Container, whether full or empty, and does not include Non-TEU Cargo. Any container of thirty (30) to forty-five (45) feet in length shall count as two TEUs. All containers longer than forty-five (45) and up to forty-eight (48) feet in length shall count as two and one-half (2.5) TEUs. All containers over forty-eight (48) feet and up to sixty (60) feet in length shall

count as three (3) TEUS. Containers of any other length shall be divided by twenty (20) feet to determine a TEU value.

"TEU Rate" means the rate that the County shall charge OPERATOR for each TEU (loaded or unloaded) transferred either to or from Vessels calling the Port, in lieu of the Dockage and Wharfage rates otherwise applicable in the Tariff, pursuant to Section 6.A and, if applicable, 6.B hereof, but such TEU Rate expressly does not apply to shifted or re-stowed Containers (meaning Containers temporarily removed from a vessel solely to access other Containers and then stowed back on the vessel) or Transshipment Containers (which Transshipments shall be subject to the Transshipment rates and charges set forth in Section 6.E hereof). For clarification purposes, a forty (40) foot container discharged from a Vessel to the Terminal Area and then discharged off the Port via truck, barge or rail would be billed to OPERATOR at the applicable TEU Rate multiplied by two (as a forty foot container counts as two TEUs). A forty-six (46) foot container loaded onto a Vessel from the Terminal Area would be billed to OPERATOR at the applicable TEU RATE multiplied by 2.5 (as a 46 foot container counts as 2.5 TEUs).

"Transshipment" or" Transhipped TEU" means the transfer of a TEU from one vessel at the Port to any other vessel at the Port, and shall be charged at the transshipment rates set forth in Section 6.E of this Agreement, provided, however, a TEU (whether loaded or unloaded) leaving or entering the Port by barge to or from any terminal or marine facility on or along the Miami River shall not be deemed a Transshipped TEU subject to Transshipment rates set forth in Section 6.E hereof, but shall instead be subject to TEU Rates under Section 6.A and, if applicable, 6.B hereof.

"Universal" or "Universal Maritime" means Universal Maritime Service Corp., a New York corporation and subsidiary of APM Terminals North America, Inc..

"Vessel" means any waterborne vessel or barge that uses the Port, including, without limitation, container vessels, RoRo vessels, bulk carriers and any other type of vessels.

"Wharfage" means the charges that the County assesses pursuant to the Tariff or otherwise against the cargo or vessel on all cargo passing or conveyed over, onto, or under wharves or between vessels (to or from barge, lighter, or water), when berthed at a wharf or when moored in a slip adjacent to

the wharf. Wharfage is solely the charge for the use of the wharf and does not include charges for any other service. In this Agreement, Wharfage is included in the TEU Rate as to those TEUs for which the TEU Rate is paid by OPERATOR to County as required herein.

Section 3. Effective Date and Term

A. Initial Term. The Initial Term of this Agreement shall be fifteen years and _____ months, provided that such Initial Term shall commence on the Effective Date and shall expire on September 30, 2023 (the "Expiration Date") unless Renewal Terms are fully and properly exercised and subject to the cancellation, termination and other terms and conditions contains set forth herein. The potential Renewal Terms shall consist of two (2) renewal options of five (5) years each, exercisable by OPERATOR in accordance with the Renewal Term terms, conditions and procedures set forth Section 3.B below.

B. Renewal Term Procedures. OPERATOR shall notify the County in writing of its intent to exercise the first renewal option no less than fifteen (15) months prior to the expiration of the Initial Term, and shall notify the County in writing of its intent to exercise the second renewal option, should the first renewal option be timely noticed and consummated, no less than fifteen (15) months prior to the expiration of the first renewal term. Upon receipt of Operator's timely written notice of its intent to exercise the applicable renewal term, each party shall within twenty calendar days select an independent Florida licensed land appraiser to undertake a certified appraisal of the then-fair market rental value of the Terminal Area (as improved) on a square footage basis. Notwithstanding and prevailing over any contrary term or implication contained herein, in no event may any of the appraisals contemplated in this Section result in a land rent square footage rate below the then-current annual land rental rate plus 3% thereof (the "Deemed Minimum Appraised Land Rental Rate"). If any appraisal results in a then-current land rental rate below the Deemed Minimum Appraised Land Rental Rate, then notwithstanding such result, the parties hereto mutually agree to nonetheless treat such appraisal result as being the Deemed Minimum Appraised Land Rental Rate. Upon completion of said appraisals, each party shall transmit a certified original appraisal to the other party no later than ten days from receipt of same, it being

understood that any appraisal yielding a rental rate below the Deemed Minimum Appraised Land Rental Rate shall be treated for all purposes hereunder as having yielded the Deemed Minimum Appraised Land Rental Rate. The resulting two land rental rates shall then be averaged to produce the new land rental (square footage) rate to apply in year one of the exercised applicable renewal term, subject to subsequent annual increases pursuant to Section 5.A hereof, provided however, that should the resulting (averaged) new land rental (square footage) rate be more than 15% higher than the then-current rate, then OPERATOR shall have ten calendar days in which to rescind, via written notice to the Port Director, OPERATOR's prior notice of intent to exercise renewal option, in which case such option shall become null, void and of no further effect and OPERATOR shall have no obligation to consummate said renewal option. If no such written rescission is timely made, OPERATOR's limited right to rescind shall expire and such renewal option shall be deemed fully exercised. If following OPERATOR's timely provision of rescission in accordance with the requirements set forth above, the County completes negotiation of a new terminal agreement for the Terminal Area with a new operator prior to the earlier of (i) the expiration or (ii) early termination of the Initial Term, plus ninety (90) days, and as part of a non-competitive selection process, and if such proposed new agreement contains substantive terms such that the total amount of annual revenues guaranteed to the County in years one through five of the proposed new agreement are more than ten percent (10%) less (in aggregate) than the total amount of guaranteed land rent and annual throughput revenues that would have been committed to County by OPERATOR in years one through five (in aggregate) of the applicable renewal term under the prior OPERATOR-rescinded renewal term extension, then, and only in such limited conditions, the OPERATOR shall have ten calendar days (from receipt of notice from the County of the proposed new agreement with a new operator) in which to match and accept the guaranteed annual land rent, annual throughput revenue terms of same, and all other guaranteed revenue provisions and other terms of such new terminal agreement in a writing (without exception, condition or qualification) delivered to the Port Director via certified mail, return receipt requested, along with contemporaneous delivery to the Port Director of a written approval and acceptance of same by OPERATOR's Guarantor (also without exception, condition or qualification), and

in such event such guaranteed annual land rent, annual throughput terms, and all other guaranteed revenue provisions and other terms (from the proposed finalized agreement with the new operator) will then apply to OPERATOR in the revived Renewal Option (as modified with the substituted guaranteed annual land rent, throughput and other guaranteed revenue terms and provisions), provided in no event shall the above-described process result in any extension of the duration of the Initial Term or any renewal option period described in this Section 3.A above (hereafter, "OPERATOR Limited and Conditioned Right of First Refusal"). If OPERATOR does not timely provide County with all unqualified written approvals (including that required from Guarantor) strictly as required above, Operator's Limited and Conditioned Right of First Refusal shall expire, become null and void and be of no further force or effect. Notwithstanding the above Limited and Conditioned Right of First Refusal, whether same is exercised or not, such limited right shall not give rise to any claim by OPERATOR or any permitted-assignee of OPERATROR against the County or Port for monetary or consequential damages of any kind or nature (excluding potential equitable remedies if allowed under Applicable Laws).

In the event the resulting new land rental rate is not more than 15% higher than the then-current rate, OPERATOR shall not have a right to rescind its prior notice to exercise the applicable renewal option and such renewal option shall be deemed fully exercised, and in such event OPERATOR shall not have any right of first refusal.

In the event OPERATOR does provide timely written notice of rescission, as set forth above, the Agreement shall remain in effect for the duration of the remaining portion of the Initial Term or, if applicable, the previously exercised and consummated renewal term, and Operator shall remain responsible to County for all payment and other obligations hereunder through the end of the Initial Term or the previously in effect Renewal Term (if applicable), and Operator shall further remain liable to the County for any and all Agreement obligations, defaults, or liabilities that survive the termination or expiration of the Agreement or that exist at common law or independent of the Agreement. In no event will any delays in the renewal term land base rent issue being resolved extend the duration of the Initial

Term or any of the Renewal Terms. If the first renewal option becomes null or void or otherwise expires unconsummated, the second renewal option automatically becomes null, void and of no further effect.

Section 4. County commitment to OPERATOR.

The County agrees to allow OPERATOR **Preferential Berthing Rights** as set forth in Section 4.I hereof to 2,000 linear feet starting at Bay 99 and extending through Bay 116, as may be adjusted pursuant to Section 4 of this agreement. Subject to the terms and conditions of this Agreement, the County agrees to allow exclusive use of the Terminal Area in conjunction with OPERATOR's marine transportation business, including the berthing of Vessels for loading, discharging, storage and efficient transfer of cargo from Vessels to either other Vessels or land-based (principally truck or rail) transport modes, logistics activities including the receipt and delivery of loose cargo to be packed or unpacked from/into containers, warehousing and related storage activities (including chassis storage), handling, packing, labeling, cargo consolidation, container repair and acquisition, installation and maintenance of additional equipment, and provision to its customers of any services ancillary to the above defined OPERATOR's marine transportation business not otherwise prohibited herein or in violation or inconsistent with Applicable Law;

A) In addition, The County agrees that the OPERATOR may service non-affiliated (third party) customers in or using the Terminal Area. Subject to Applicable Laws and security requirements and restrictions, OPERATOR has the right to permit access to the Terminal Area by vendors and service providers for itself and its customers and affiliates, but may not assign, sub-lease or subcontract its rights hereunder to operate a cargo terminal, except to the extent otherwise expressly authorized in Section 32 of this Agreement. All other uses of the Terminal Area by OPERATOR, including, but not limited to, construction of any improvements thereon, shall require the prior written approval of the Port Director, in addition to meeting all other applicable requirements, including, but not limited to, submission of a Facilities Modification Form, provided as Exhibit D, or similar document as required by the Port for all improvements to real property at the Port and as well compliance at all times with all Applicable Laws. The Port Director's approval may not be unreasonably withheld

providing the changes or improvements sought to the yard are identified in this agreement or reasonably relate to improving the efficiency of the yard for the purpose of managing and handling cargo and further provided such sought improvements will be in compliance with all Applicable Laws.

B) The County agrees to allow OPERATOR the exclusive use of the Terminal Area for the duration of this Agreement, pursuant and subject to the terms and conditions contained herein and Applicable Laws. Further, OPERATOR acknowledges and agrees that from time to time County may award, create, modify, or relocate easements, in its discretion, on, through, or under all or portions of the Terminal Area for purposes of permitting the installation, modification, maintenance, repair, or relocation of utilities, roadways, or security equipment or facilities, provided same may not block Operator's ingress or egress to or from the Terminal Area or have a permanent and material adverse effect on terminal operations .

Prior to the County granting, modifying or relocating an easement(s) on, within, through, under, over all or part of the Terminal Area, the County shall provide OPERATOR with thirty (30) calendar days prior written notice of its intent to do so. Thereafter, OPERATOR shall have ten (10) days to provide the County with written notice of its objection to said location of said easements or facilities and the factual bases thereof, including OPERATOR recommendations for alternative locations within the Terminal Area. The failure of OPERATOR to provide such timely written notice and objections within ten days shall be deemed a waiver by OPERATOR of any objections thereto. If timely notice and objections are timely provided by OPERATOR as required, the County shall itself consider such comments and alternative recommendations or, as applicable, provide same to the utility or entity requiring said easement or facility for its/their consideration. Thereafter, the County may submit to OPERATOR notice of an alternative proposed easement, utility or facility, or modification or relocation of an existing easement, utility or facility, or may resubmit the original submission. Such notice shall indicate to OPERATOR if it must temporarily or permanently vacate any portion of the Terminal Area to accommodate the

easement, utility or facility set forth in the notice and, if so, OPERATOR shall timely comply with such directive and the costs of such compliance, to the extent incurred in, arising from, or relating to the moving and/or relocating of TEU cargo or Non-TEU Cargo or otherwise making land available for the requested and noticed easement, utility or facility shall be born solely by OPERATOR, and provided further that should the County's granting, modifying, or relocating of an easement, utility or facility on, in, through, under, or over part of the Terminal Area be solely and directly responsible for rendering a portion of the Terminal Area in excess of 5000 square meters unusable by OPERATOR for any cargo terminal or related or ancillary purpose for a period of 15 successive days, Operator shall thereafter be entitled to a temporary pro rata abatement of Land Rent and reduction of the Minimum Annual Guaranteed TEU Throughput Revenue based pro rata on the amount of Terminal Area beyond 5000 square meters rendered unusable for any purpose thereby for 15 or more successive days, it being understood that such pro rata Land Rent abatement and pro rata Minimum Annual Guaranteed TEU Throughput Revenue reduction shall cease as soon as the size of the portion of the Terminal Area rendered wholly unusable is reduced in size to less than 5000 square meters. Further, notwithstanding the foregoing, no pro rata Land Rent abatement or reduction of the Minimum Annual Guaranteed TEU Throughput Revenue may occur unless OPERATOR first provides written notice to County identifying the precise portions of the Terminal Area that OPERATOR contends have been rendered wholly unusable, within five calendar days of the commencement of the event(s) giving rise to same, and a period of ten calendar days expires without the County having mitigated the situation such that the area rendered unusable has been reduced to less than 5000 square meters. If the County grants, modifies, or relocates an easement on or through the Terminal Area, OPERATOR provides timely written objections of same as required in this Section 4.B, and the County nonetheless grants, modifies, or relocates such easement in a manner that renders a portion of the Terminal Area wholly and permanently unusable for any purpose, then OPERATOR may, within five calendar days of discovering said condition, request from County in a writing

properly demonstrating such wholly unusable and permanent condition and the precise location thereof and all alleged bases therefore, approval of pro rata Land Rent abatement and pro rata reduction of the Minimum Annual Guaranteed TEU Throughput Revenue for such portion of the Terminal Area that OPERATOR timely demonstrates to be rendered wholly and permanently unusable for any purpose, and County's approval thereof may not be unreasonably denied. Notwithstanding and prevailing over any contrary term or implication contained herein, OPERATOR shall not be entitled to any pro rata or other Land Rent abatement or to any pro rata reduction in the Minimum Annual Guaranteed TEU Throughput Revenue on account of any improvements or repairs being made in or to the Terminal Area by or on behalf of the County which are for the benefit of the OPERATOR, expressly including, without limitation, any improvements or repairs requested by or on behalf of the OPERATOR or any improvements contemplated in Section 4.F below.

C) The County agrees to provide OPERATOR with the right of ingress and egress leading to and from the Terminal Area, subject to any and all security requirements imposed by Applicable Laws or otherwise and subject to the County's other rights set forth herein. In the event the Port operated main terminal gate complex is not able to process vehicles owing to a backup caused by any other cargo terminal OPERATOR, the Port will use reasonable efforts to marshal traffic to allow for the processing of OPERATOR vehicles at such main gate complex or a suitable alternative gate (if available). In the event that the County fails to provide any ingress or egress for reasons unrelated to security, severe weather, labor disputes, strikes, or strife, or public safety, and such complete absence of ingress or egress continues unabated for more than 24 continuous hours (excluding holidays and periods when the terminal is closed) OPERATOR shall have the right to the abatement of Land Rent and the reduction of the Minimum Guaranteed TEU Throughput and associated minimum Base TEU Rate charges pro rata to the period that ingress and/or egress is denied beyond 24 continuous hours (excluding holidays and periods when the terminal is closed) for reasons other than those listed above.

D) The County represents and warrants that it has good title to the Terminal Area free and clear of mortgages, valid liens or encumbrances and the County covenants that it will not grant any mortgage liens on the Terminal Area. Likewise, Operator will not grant any mortgage, collateral assignment, hypothecation or any other liens or encumbrances on the Terminal Area and shall ensure that none of its employees, agents, Joint Venture or other partners, affiliates, contractors, subcontractors, vendors, invitees, or guests take any actions that result in any such liens, hypothecations, mortgages, collateral assignments, or encumbrances of any kind being placed on any land owned by the County, and, should any liens, mortgages, hypothecations, or encumbrances be place on any County land due to the acts or omissions of Operator or any of its employees, agents, Joint Venture or other partners, affiliates, contractors, subcontractors, vendors, invitees, or guests, OPERATOR shall promptly take all steps required to remove, defend against and otherwise satisfy such liens, mortgages and encumbrances at its cost and expense.

E) First Right to Negotiate for Available and Contiguous Cargo Terminal Space. The County acknowledges that OPERATOR desires to conduct its terminal operations from a contiguous tract of land on the Port. In this regard, the County agrees that if additional land contiguous to the Terminal Area becomes available for permanent use, and if such land is free from contractual or other obligations and is not needed for general or other Port uses (in the discretion of the Port Director), then the County must extend to OPERATOR the first right to attempt to negotiate for the use of such land. Under OPERATOR's limited first right to negotiate (if applicable), the Parties agree to negotiate in good faith regarding such land and improvements thereto (if available, unencumbered and not otherwise needed for other Port purposes). If cargo terminal space at the Port, contiguous to the Terminal Area, becomes available and, in the judgment of the Port Director, is not needed for other Port purposes, the Port will so advise OPERATOR. Upon receipt of such notice, OPERATOR shall advise the Port in writing within ten (10) calendar days whether it intends to make a proposal to the Port relating to OPERATOR's proposed use of such available land. If no written proposal or notice is received within ten (10) calendar days, or if

OPERATOR does not indicate a clear interest in such land, OPERATOR's first right to negotiate shall cease. If OPERATOR does provide timely notice of its interest in the land, then COUNTY shall not enter into any binding long-term contract with any third party for the use of such land (in excess of 18 months) for a period of an additional eighty (80) calendar days from the date of receipt by the County of the Operator's timely submitted notice (but in no event longer than the 90 calendar days from the above-referenced County's notice of available land to OPERATOR), during which time OPERATOR and County may attempt in good faith to negotiate a potential written agreement with respect to the use of such land. Any resulting written agreement shall require and be subject to Board of County Commissioners approval via a duly adopted and effective resolution of the Board. If no agreement is reached with OPERATOR during the ninety day period from OPERATOR's receipt of written notice of the availability of contiguous terminal area space, regardless of cause, OPERATOR's limited first right to negotiate shall cease and and be of no further effect. Notwithstanding and prevailing over any contrary provision or implication set forth in this agreement, the County reserves the right to use available County lands for any lawful purpose, including any non-cargo terminal purposes, and to receive, solicit, and consider offers from third parties with respect to such available County land for any purpose.

(F) RTG System Development for Terminal Area.

(1) RTG System Development. Subject to the satisfaction of certain conditions precedent set forth below (the "RTG Conditions"), the County and OPERATOR agree to work cooperatively together to design, procure, construct, install, and fund a fully functional Rubber Tired Gantry System ("RTG System") within the Terminal Area, which, once constructed, will be operated and maintained by OPERATOR at its sole cost and expense. The RTG System shall generally consist of (a) concrete running pads, and related paving, lighting and drainage improvements needed to support the RTG System ("RTG Infrastructure") and (b) rubber tired gantries capable of placing and retrieving TEUs in densely-stacked rows (hereafter "RTGs"), a computerized terminal operating system ("TOS") to track and coordinate the storage and

retrieval of TEUs in the Terminal Area, and ancillary equipment, all in sufficient numbers to deploy, operate, and support a fully functional RTG System (together, the "RTG Equipment"). Notwithstanding the conditioned terms set forth in this Section 4.F, OPERATOR may stack and/or transport empty containers within the Terminal Area using handling methods other than RTGs provided same at all times complies with all Applicable Laws. Subject to satisfaction of each of the below listed RTG Conditions, the COUNTY and OPERATOR agree to budget sufficient funds to meet the respective RTG System funding contributions set forth in Exhibit C hereto relating to construction of the RTG Infrastructure. Subject to the satisfaction of each of the RTG Conditions, OPERATOR, in addition to its funding obligations as set forth in Exhibit C hereto, shall also be required to fund and procure the acquisition of the RTG Equipment (to be more particularly defined in the future RTG Development Agreement) and to operate and maintain same at its sole cost, to promptly implement a fully functional and state of the art RTG system to service the Terminal Area, provided that (i) OPERATOR's financial commitment to the RTG Infrastructure portion of the RTG System shall in any case be limited to a maximum USD $12,500,000, the expenditure of which may be done in phases to be defined in the below described future RTG Development Agreement, and (ii) the County's commitment to support the RTG Infrastructure portion of the RTG System shall in any case be limited to a maximum USD $16,000,000, the expenditure of which may be done in phases to be defined in the below described future RTG Development Agreement. In no event shall the County's conditioned obligation set forth in this Section 4.F regarding its share of future RTG Infrastructure costs exceed 56% of such future verifiable incurred RTG Infrastructure costs (not to exceed a maximum of $16,000,000), and similarly, in no event shall OPERATOR's conditioned obligation set forth in this Section 4.F regarding its share of future RTG Infrastructure costs exceed 44% of such future verifiable incurred RTG Infrastructure costs (not to exceed a maximum of $12,500,000).

(2) RTG Conditions. The RTG System infrastructure development obligations set forth in Section 4.F.1 above shall be subject to and conditioned upon the prior satisfaction of each of the below set forth RTG Conditions (a) and (b).

(a) Negotiation of Future RTG Development Agreement. The County and OPERATOR shall in good faith attempt to reach mutual written agreement on the terms of an RTG infrastructure development agreement within two years from the Effective Date of this Agreement, the terms of which shall set forth, among other things: (i) the scope of concrete running pad infrastructure required to support a Terminal Area RTG System; (ii) design responsibilities and rights with respect to such system; (iii) responsibility for procuring and constructing such infrastructure; (iv) the responsibility and timing for funding same; and (v) OPERATOR's funding, acquisition, operating and maintenance obligations with respect to the RTG equipment, TOS and other ancillary equipment and systems needed to install, operate, and maintain a fully functional RTG System and TOS to support OPERATOR's terminal operations in the Terminal Area in a productive and efficient manner (hereafter, the "RTG Development Agreement").

(b) Mutual Approval of Future RTG Development Agreement. Within two years of the Effective Date of this Agreement, the parties hereto shall endeavor to complete all negotiations with respect to, and to mutually execute, the RTG Development Agreement, which agreement shall also be executed by Guarantor to guaranty OPERATOR's payment and performance obligations thereunder to the County should OPERATOR be in default of any such obligations and such default having remained uncured during the applicable allowed cure period (if applicable).

(c) In the event the conditions precedent set forth above in Sections 4.F.2(a) and (b) are not fully satisfied within two years from the Effective Date of this Agreement, then the conditional obligations set forth in Section 4.F.1 above shall become null, void, and of no further effect.

G) During the time the County is making the improvements referenced in the preceding paragraph, the County shall undertake commercially reasonable efforts to make up to ten (10) acres of land available to OPERATOR during the time needed to complete improvements, to attempt to provide alternate land for that portion of the cargo terminal on which improvements are being constructed, and on which terminal operations cannot take place, provided the Port determines, in its sole discretion, that such land is available for such purpose. Such temporary replacement land if available and provided, will be subject to the same rental rates and TEU requirements as set forth in this Agreement, provided, however, that its provision will not result in OPERATOR being assessed additional land rent over what it would otherwise pay the County had no temporary replacement land been provided. Irrespective of whether temporary replacement land is made available to OPERATOR, OPERATOR shall not be entitled to rent abatement or reduction nor to reduction of the Minimum Annual Guaranteed TEU Throughput Revenue requirement during the period when maintenance, repairs, or improvements to the Terminal Area are being undertaken by OPERATOR or on its behalf or by the County or its employees, agents or contractors.

H) Preferential Berthing. The County will offer 2,000 linear feet starting at Bay 99 and extending through Bay 116 for Preferential Berthing provided OPERATOR is meeting its minimum three-year TEU Throughput Guarantees and operating (and paying for) sixty (60) or more gross terminal acres. Commencing in year three of the Initial term and continuing thereafter, if OPERATOR fails to meet the three-year minimum throughput or acreage requirements, the Port Director can reduce the preferential berthing to 1,000 linear feet until such time the OPERATOR meets both its minimum throughput and acreage requirements. Such requirements to be measured on a month to month period and berthing space will be returned to normal (2,000 feet) upon OPERATOR completion of requirements at the beginning of the next full month after OPERATOR resumes full compliance with the above-referenced minimum monthly TEU Throughput and acreage requirements (based on a monthly averaged calculated on a six

month period). Preferential berthing for Bays 99 through 116 requires that the OPERATOR provide no less than 24 hours notice to the Port. Should the Port refuse a non-OPERATOR vessel berthing request at the request of the OPERATOR or due to an OPERATOR berthing request, and the OPERATOR's vessel fails to use the slot, the OPERATOR will be responsible for paying dockage charges for such slot as would be typically due under the Tariff except if the Port is able to accommodate the Non-OPERATOR Vessel at another Port berth and does so with the Port incurring no loss of Dockage or other Port revenue.

I) Crane Assignment. The Port will allocate a minimum of four cranes for preferential (non-exclusive) use by OPERATOR, provided OPERATOR is meeting minimum throughput guarantees and operating 60 or more gross terminal acres and provided further that Port may assign OPERATOR alternative berth space, not necessarily between bays 99 and 116, as necessary to accommodate OPERATOR's need for a minimum of four gantry cranes. Port may assign additional cranes as available, and enter into discussions with OPERATOR or third parties for the addition of new cranes.

J) Maintenance Dredging: Subject to Applicable Laws, the County commits to maintaining its dredging depth in the access channel and along Bays 99 through 116 at forty (40) feet M.L.W. as follows. If at anytime during the Initial Term or any applicable Renewal Term Operator shall have a reasonable basis to believe the Port's South Channel along bays 99 and 116 has a depth of less than -40' M.L.W. (the "Alleged Dredging Condition"), OPERATOR shall provide immediate written notice thereof to the Port Director, which notice shall include the precise location(s) of the Alleged Dredging Condition and the factual bases of thereof. Upon receipt of such notice, the Port shall within ten (10) calendar days commence to take reasonable steps to investigate such allegations, which shall include conferring with the Biscayne Bay Pilots, a Port retained marine surveyor, or such other qualified person or entity that the Port elects to retain in the exercise of its reasonable discretion in order to obtain written verification of the Alleged Dredging Condition. The County shall provide the results of its investigation (including any written response received from,

as applicable, the Biscayne Bay Pilots, the retained marine surveyor, or other retained person or entity, as the case may be) within fifteen (15) days after expiration of the ten (10) day period following receipt of OPERATOR's notice. If such investigation confirms that part of the South Channel along bays 99 and 116 is less than -40' M.L.W. (the "Maintenance Dredging Condition"), the County shall take swift action to facilitate maintenance dredging to return such area of the channel to a depth of -40' M.L.W. or greater, which steps shall include: (i) reporting such condition to the Jacksonville District of the Army Corps of Engineers; (ii) requesting the Jacksonville District of the Army Corps of Engineers to promptly provide maintenance dredging to remove the condition complained of in an expedited manner; or (iii) undertaking steps to obtain required permits and approvals to allow the County to procure the services of a dredging contractor to undertake maintenance dredging to remove the condition complained of at the County's cost, reserving the right to seek reimbursement from potentially responsible parties pursuant to Applicable Law, contractual rights or otherwise (or any combination of i, ii, or iii above). Should the depth of the South Channel not be returned to -40' M.L.W. within forty-five (45) days of the later of (i) the conclusion of the County's investigation and confirmation of the Maintenance Dredging Condition and (ii) receipt by the County of written verification from the Biscayne Bay Pilots, a Port retained marine surveyor or other person or entity retained by the Port, as the case may be, that the Maintenance Dredging Condition complained of precludes OPERATOR from berthing certain of its OPERATOR Affiliated Vessels at the Port of Miami (hereafter, the "Pre-Cure Period Verification") (the 45 day period commencing with the later if (i) or (ii) above shall be the "Maintenance Dredging Cure Period"), and in the event, following expiration of the Maintenance Dredging Cure Period, the Biscayne Bay Pilots, a Port retained marine surveyor, or other such investigative person or entity retained by the Port, as the case may be, provide written confirmation to the Port (which the Port shall promptly copy to OPERATOR) attesting that the Maintenance Dredging Condition complained of continues to preclude OPERATOR from berthing certain of its OPERATOR Affiliated Vessels at the Port of

Miami (the "Post-Cure Period Verification"), then, in such events, OPERATOR shall be entitled to the limited and temporary abatement remedies set forth in sub-paragraphs (i) and (ii) below:

(i) partial reduction of its then-applicable annual Minimum Guaranteed TEU Throughput requirement by reducing same by the number of reported and verifiable OPERATOR Vessel TEUs (previously scheduled to call the Port) diverted to other Ports solely due to an uncured, properly noticed, and unmitigatable channel depth condition above -40' M.L.W. that is not caused by OPERATOR, or any of its Joint Venture partners, agents, designees, or affiliates, the Joint Venture, or any of their respective employees, agents, affiliates, contractors, invitees (on any Operator Affiliated Vessel), or guests, or due to act or omission of an Operator Affiliated Vessel or such vessel's agents, employees, officers, stevedores, contractors, or invitees (hereafter, a "Non-Operator Channel Condition"), provided that such partial reduction of OPERATOR's then-applicable annual Minimum Guaranteed TEU Throughput requirement shall immediately cease upon either the elimination of the Non-Operator Channel Condition or the mitigation of said condition such that the dredging depth in the Port's South (access) Channel and along Bays 99 through 116 is restored to minus forty (-40) feet M.L.W.; and

(ii) pro rata reduction of its annual Land Rent based on the number of reported and verifiable OPERATOR Vessel TEUs (previously scheduled to call the Port) diverted to other Ports solely due to an uncured, properly noticed, and unmitigatable channel depth condition above -40' M.L.W. that is not caused by OPERATOR, or any of its Joint Venture partners, agents, designees, or affiliates, or any of their respective employees, agents, affiliates, contractors, invitees (on any Operator Affiliated Vessel), or guests, or due to act or omission of the Joint Venture or an Operator Affiliated Vessel or such Joint Venture's or vessel's respective agents, employees, officers, stevedores, contractors, or invitees, as compared to the greater of (x) the then-applicable Minimum Guaranteed TEU Throughput, (y) OPERATOR's Actual TEU Throughput for the prior year, or (z) the total Actual TEU Throughput OPERATOR would have realized in that same year but for the Non-Operator Channel Condition, provided that such pro rata reduction of Land Rent shall immediately cease upon either the elimination of the Non-

Operator Channel Condition or the mitigation of said condition such that the dredging depth in the Port's South (access) Channel and along Bays 99 through 116 is restored to minus forty (-40) feet M.L.W..

If OPERATOR does not receive from the Port within the first 20 days of the Maintenance Dredging Cure Period written notice setting forth the Port's maintenance dredging plan to promptly remove the complained of and confirmed channel condition above -40" M.L.W., or, if following receipt of such plan, the Port or County becomes legally enjoined from proceeding with such plan or is otherwise legally prevented from proceeding with same, then in such event, and to the extent not prohibited by Applicable Laws, OPERATOR may on its own seek to obtain all required permits and approvals from all necessary agencies and governmental entities (including, without limitation, the U.S. Army Corps of Engineers) to allow OPERATOR to competitively procure (on a lowest responsible responsive bidder basis) the services of a properly licensed dredging contractor to undertake maintenance dredging to remove the confirmed condition complained of at the County's reasonable cost.

As soon as reasonably practicable following expiration of the Maintenance Dredging Cure Period, but by no later than thirty (30) days from such expiration, the County shall obtain written confirmation from either the Biscayne Bay Pilots, a Port retained marine surveyor, or other Port retained investigative person or entity regarding whether the previously reported and confirmed Maintenance Dredging Condition persists to the extent that OPERATOR is still prevented (by such condition) from berthing certain of its OPERATOR Affiliated Vessels at the Port of Miami. If such written confirmation indicates that OPERATOR continues to be so prevented (following expiration of the Maintenance Dredging Cure Period), then the abatement provisions set forth above in paragraphs (i) and (ii) of this Section 4.J shall apply retroactively from the day following the expiration of the Maintenance Dredging Cure Period until the first day that the Maintenance Dredging Condition is sufficiently remediated to allow OPERATOR Affiliated Vessels to berth at the Port of Miami.

Notwithstanding and prevailing over any contrary term or provision contained in this Agreement, to the limited extent maintenance dredging is required in any portion of the Port's shipping channels or berthing areas due to an act or omission of OPERATOR, or any of its Joint Venture partners, agents,

designees, or affiliates, or any of their respective employees, agents, contractors, invitees (on any Operator Affiliated Vessel), or guests, due to act or omission of the Joint Venture or its partners, agents, affiliates, employees, contractors, subcontractors (of any tier), invitees or guests, or due to an Operator Affiliated Vessel or such Joint Venture's or vessel's respective agents, employees, officers, stevedores, contractors, or invitees, then (i) OPERATOR shall not be entitled to any abatement or reduction of Land Rent, the then-applicable Minimum Guaranteed TEU Throughput Revenue requirement, nor reduction or abatement of any other OPERA TOR payment or performance obligation set forth in this Agreement, and further (ii) OPERATOR shall be responsible to pay the County upon demand for the costs incurred in undertaking any such required maintenance dredging, including, without limitation, that required to remove a high spot, obstacle or obstruction to navigation to the limited extent caused or contributed to by OPERATOR, any Joint Venture partner, agent, contractor or affiliate thereof, any Operator Affiliated Vessel, or any of their respective partners, contractors, stevedores, agents, officers, employees, invitees (on any Operator Affiliated Vessel) or guests.

K) Terminal Operator: The County acknowledges that OPERATOR intends to appoint a joint venture composed of Terminal Link, SA and APMT (the "Joint Venture") as marine terminal operator for the Terminal Area and that said Joint Venture is authorized to act as designee for OPERATOR to exercise the rights of OPERATOR under this Agreement, provided however that such designation will in no way relieve OPERATOR of any of its contractual obligations to the County under this Agreement. Notwithstanding the foregoing, during the first twelve (12) months of the Initial Term, unless such period is extended in writing by the Port Director in his sole discretion, OPERATOR may authorize Universal Maritime to act as the marine terminal operator of the Terminal Area on OPERATOR's behalf, provided, however, that: (i) such authorization or delegation shall in no way relieve or diminish any of OPERATOR's payment, performance or other contractual obligations hereunder; (ii) OPERATOR shall at all times properly supervise Universal Maritime in carrying out its duties as interim marine terminal operator in compliance with all Applicable Laws and all requirements of this agreement; and (iii) OPERATOR shall at all

times be vicariously responsible to the County for all acts, omissions, negligence, violations of Applicable Laws, and breaches of this Agreement by Universal Maritime or any of its affiliates, agents, employees, contractors, subcontractors (of any tier), invitees or guests committed on, in or in connection with the Terminal Area or any other County owned property.

L) No Subordination. Notwithstanding and prevailing over any contrary term or implication contained herein, in no event shall the County be obligated to subordinate, hypothecate or otherwise encumber its fee simple ownership interest in the Terminal Area or any other Port property. Any attempt by or on behalf of OPERATOR or any of its Joint Venture or other partners, agents, affiliates, designees, contractors, subcontractors (of any tier), permitted assignees, invitees or guests, or by or on behalf of the Joint Venture, to pledge, hypothecate, subordinate or otherwise encumber the Terminal Area or any other County owned property shall be void ab initio.

Section 5. OPERATOR Commitments to the County.

A) Land Rent. Beginning sixty (60) days after the Effective Date and continuing throughout the Initial Term and any exercised Renewal Terms, OPERATOR agrees to pay $1.25 per gross square foot of the Terminal Area, based on the legal description and map to be set forth in exhibit "B", paid annually in monthly installments in advance, due on the first of each month. Such initial $1.25 per square foot land rental rate shall be subject to an automatic three percent (3%) annual increase, with such increase becoming effective on October 1 of each Fiscal Year during the Initial Term and each applicable Renewal Term, provided, however, that during the Initial Term of this Agreement, the Land Rent rate may not vary by more than $0.25 per square foot in any one year than would have been charged had the annual increases been calculated, in lieu of the three percent (3%) escalator, based on the Southeast Regional CPI escalator. By example, if on the third anniversary of the Effective Date of the Initial Term, the base land rate would be $1.37, based on the annual 3%

escalator, but the base land rate would have risen to $1.67 using the Southeast Regional CPI escalator—a difference of .30--then because the latter number is more than 25 cents above the former number, pursuant to the terms of the preceding sentence, the annual base land rental rate to apply at the commencement of year four would be $1.42 per gross square foot of the Terminal Area ($1.67 - .25 = 1.42). If for any reason the County does not increase the Land Rent square footage rate in any given Fiscal Year(s), the County may thereafter add the amount of such allowed (but not imposed) annual increase in later years. By example, if the County elects not to impose a Land Rental rate increase in Fiscal years two or three, in Fiscal year four the County could impose a Land Rent square footage rate increase of nine percent (9%) (compounded) to account for the two prior years in which no annual rental rate increase was imposed.

B) Infrastructure Fee. OPERATOR shall pay the County a one-time Infrastructure Fee of $15,000 per Gross Terminal Acre or $1,069,800 ($15,000 X 71.32 acres = $1,069,800.00). The OPERATOR shall pay the Infrastructure Fee in three equal installments of $356,600.00, the first payment being due within ten (10) calendar days of the Effective Date of this Agreement. OPERATOR shall pay the County the second Infrastructure fee installment payment by September 1, 2008, and shall pay the third and final installment by December 1, 2008. The Infrastructure Fee shall apply to partial acres on a pro rata basis.

C) Minimum Guaranteed TEU Throughput. During each Fiscal Year of the Initial Term and any Renewal Term, and irrespective of the annual Actual Throughput achieved by OPERATOR, OPERATOR shall pay the County the Minimum Guaranteed Annual TEU Throughput Revenue amount as set forth in Exhibit "A", payable on a monthly basis (1/12 per month) in advance, due on the first of each month and subject to, at the County's election, annual, quarterly and/or monthly reconciliations and adjustments to the extent the monthly TEU and other fees due the Port from OPERATOR hereunder exceed the 1/12 monthly Minimum Guaranteed Annual TEU Throughput Revenue payment required in advance pursuant to this

section. The Minimum Guaranteed Annual TEU Throughput Revenue payment requirement will commence 60 days after the Effective Date of this Agreement and will be adjusted pro rata to reflect any partial year. Until the expiration of the 60-day period, OPERATOR will pay the TEU rate that applies to the Minimum TEU Throughput requirement in Exhibit "A", provided, however, that during such first sixty day period only, TEUs carried on Vessels owned, chartered, or operated by AP Moller-Maersk shall be billed for dockage and wharfage to OPERATOR at the combined rate of $23.63 per TEU entering or leaving the Terminal Area, it being understood that a TEU entering or leaving the Terminal Area to or from a Vessel calling the Port shall be subject to only one TEU charge per Vessel call (or crossing of the wharf).

D) In any Fiscal Year in which OPERATOR fails to meet the Minimum Guaranteed TEU Throughput, OPERATOR shall pay the County Shortfall Fees within sixty (60) days of the receipt of an invoice from the County at the end of the Fiscal Year. Shortfall Fees shall be the difference between Actual TEU Throughput and the Minimum Guaranteed TEU Throughput multiplied by the Base TEU rate for the applicable Fiscal Year.

E) Within ninety (90) days of the end of each third full Fiscal Year during the Initial Term and any applicable Renewal Term, the County shall evaluate OPERATOR's Actual TEU Throughput for those three (3) Fiscal Years. If OPERATOR's aggregate Actual TEU Throughput exceeds its aggregate Minimum Guaranteed TEU Throughput for those three (3) years, then OPERATOR will be eligible to receive a full credit for prior Shortfall Fees paid during the applicable three-year period. The credit will be provided over the remainder of the County Fiscal Year against invoiced charges.

F) At the end of each third full Fiscal Year during the Initial Term and any applicable Renewal Term, the County reserves the right in its sole discretion to reduce the size of the Terminal Area if OPERATOR's aggregate Actual TEU Throughput for two successive three-year periods falls short of its aggregate Minimum Guaranteed TEU Throughput. The reduction in

the size of the Terminal Area shall correspond on a percentage basis to the percentage that OPERATOR's aggregate Actual TEU Throughput falls short of its aggregate Minimum Guaranteed TEU Throughput for those consecutive six (6) years. The particular part of the Terminal Area that the County uses to reduce the size of the Terminal Area shall be determined by the Port Director in his reasonable discretion after consultation with OPERATOR, it being understood that the Port Director shall attempt to exercise his reasonable discretion to provide for the overall efficiency of the Port and OPERATOR Terminal taking into account that the land to be removed from the Terminal Area must have access to existing Port roads and utilities and provided further that the removal of such land may not deprive the remaining Terminal Area from access to existing Port roadways nor deprive it of access to Port utilities. Following the above-referenced reduction of the Terminal Area, OPERATOR shall vacate that portion of the Terminal Area designated by the Port Director, shall leave such vacated section in a clean and tidy condition free of any refuse or debris, and shall be responsible for any damages to and/or the costs of any needed repairs, cleaning, or maintenance to the vacated area. Following OPERATOR vacating such designated area in compliance with the conditions and requirements set forth above, OPERATOR's land rent shall be calculated based on the new adjusted dimensions of the terminal area ("Revised Terminal Area") as determined by survey undertaken by the Port engineering division. Notwithstanding such land reduction, with respect to any payment, repair, indemnity, hold harmless and/or duty to defend obligation of OPERATOR or Guarantor contained in or arising from this Agreement and relating to OPERATOR's prior occupation or use of such area, or the use of same by OPERATOR's employees, agents, partners, affiliates, contractors, invitees, and/or guests, such obligations shall survive for the later of the expiration of the applicable statute of limitations period plus five additional years therefrom.

G) All Tariff rates shall govern OPERATOR activities at the Port other than those Tariff rates expressly identified in this agreement as being superseded by particular rates set forth herein.

H) Vicarious Responsibility of OPERATOR. OPERATOR is and shall be vicariously and otherwise legally responsible to the County for the management, supervision, maintenance, security, and other activities, acts, omissions, misconduct, breaches of contractual obligations hereunder, and violations of Applicable Laws of or performed by OPERATOR's employees, agents, affiliates, contractors, Joint Venture partners (and the Joint Venture), designees and designated terminal operators and their respective employees, stevedores, agents, contractors, subcontractors (of any tier), invitees and guests occurring in, on, or relating to the Terminal Area or other County property. This Section 5(H) shall survive the expiration of the Initial Term and any applicable Renewal Term and shall survive any termination of this Agreement by any party hereto.

(I) Annual Escalator Adjustments. All annual rate and Minimum Guaranteed TEU Throughput volume increases referenced in or required by this Agreement (including, without limitation, Base TEU Rate increases per Section 6.A and Exhibit A, Land Rent rate increases per Section 5.A hereof), all annual adjustments to Minimum Guaranteed TEU Throughput requirements per Exhibit A hereto, and the minimum annual gantry crane hour annual adjustments (required per Section 6.D.2 hereof) shall take effect on October 1 of each Fiscal Year during the Initial Term and any applicable Renewal Term.

Section 6. Scheduled Rates Applicable to OPERATOR

The County and OPERATOR agree that the following rates and charges shall apply to OPERATOR during the Initial Term or any applicable Renewal Term, except as otherwise provided herein:

A) Base TEU Rate: From the Effective Date hereof and continuing through the end of Fiscal Year 2007-08, the annual Base TEU Rate payable by OPERATOR to County shall be $28.00

per TEU entering or leaving the Terminal Area or otherwise receiving terminal services from OPERATOR or its designated terminal operator, agents, employees or contractors, which TEU Base Rate shall be subject to an automatic annual increase of three percent (3%) (compounded), as set forth in Exhibit "A", provided, however, that from the Effective Date hereof and continuing 59 calendar days thereafter, the combined dockage and wharfage rate applicable to TEUs carried on AP Moller-Maersk Vessels shall be $23.62 per TEU entering or leaving the Terminal Area, billable to and payable by OPERATOR, it being understood that a TEU entering or leaving the Terminal Area to or from a Vessel calling the Port shall be subject to only one TEU charge per Vessel call (or crossing of the wharf). In subsequent Fiscal Years, the annual Base TEU Rate payable by OPERATOR to County for each TEU entering or leaving the Terminal Area shall be as set forth in column three to Exhibit A, "Minimum Throughput Base Rate" subject to potential volume incentive discounts thereto as set forth in columns 4 – 7 of Exhibit A. Non-TEU Cargo shall be subject to the applicable dockage and/or wharfage rates and terms set forth in the Tariff except that all such Tariff charges shall here by billed to and payable by the OPERATOR.

B) Discount TEU Rate: Commencing sixty (60) calendar days from the Effective Date hereof, OPERATOR shall be eligible to receive Discount TEU Rates as set forth in columns 4 -7 of Exhibit "A to the extent certain annual TEU volume throughput incentive levels are achieved by OPERATOR, excluding (i) Transshipped TEUs (ii) Non-Operator TEUs, (iii) TEUs carried on Non-Operator Vessels, and (iv) Non-TEU Cargo, none of which shall be eligible for any discount TEU rates under Exhibit A hereto or otherwise. Notwithstanding that Non-Operator TEUs are always subject to the then-applicable Base TEU Rate under Section 6.A hereof, and are not eligible for discount TEU rates under Exhibit A or otherwise, the number of Non-Operator TEUs loaded or unloaded from a Vessel calling the Port to or from the Terminal Area in a given Fiscal Year shall count for purposes of calculating OPERATOR's eligibility for

potential Discount TEU Rates (and for determining the relevant potential discount) applicable to OPERATOR Affiliated TEUs.

C) Adjustment to TEU Rate Schedule: Should the Base TEU Rate in any one year exceed 90% of the comparative cost per TEU as derived from the Port of Miami Tariff for wharfage and dockage, the OPERATOR may request and the County shall grant an adjustment to the Base TEU Rate with commensurate adjustments to the discounted tiers. The adjustment shall ensure that the OPERATOR does not pay more than 90% of the amount the OPERATOR would pay if it were charged Tariff for wharfage and dockage. For the purpose of determining the 90% figure, the County will use twelve months of previous OPERATOR data to calculate and compare two hypothetical charges. The first hypothetical charge will be derived by multiplying total TEUs (not counting transshipped TEUs) for the year in question by the applicable Base TEU Rate. The second hypothetical charge will be derived by multiplying the total tonnage by the base rate appearing in the Tariff, multiplying the total container tare weight by the Tariff rate, multiplying the total OPERATOR ship weights by the Tariff rate, and then adding the resulting amounts. Should the result of the second calculation, once multiplied by 90%, fall below the result of the first calculation, the OPERATOR may request and will receive an adjustment to its Base TEU Rate. The Base TEU Rate will be adjusted downward until the first calculated amount yields a sum equal to 90% of the second calculated amount.

D) Crane Charges, Minimum Annual Crane Revenue Guarantee, and Incentive Discount:

1. Crane Charges. Rates and charges related to County-owned cranes shall be at the prevailing rates and charges as set forth in the Tariff as amended from time to time. However, the Crane Charge for the OPERATOR shall be the lesser of the Tariff rate then in effect, or the Tariff rate as of the Effective Date and annually increased with each new County Fiscal Year during the Initial Term and applicable Renewal Term by 4% compounded. Notwithstanding the above, during the first sixty (60) days of the Initial Term only, crane rates

applicable to AP Moller-Maersk Vessels shall be $548 per hour, billable to and payable by OPERATOR.

2. Minimum Annual Crane Revenue Guarantee. Commencing on the Effective Date hereof, OPERATOR shall guarantee County minimum annual payments of gantry crane rental charges (at rates governed by the Tariff in conjunction with Section 6.D.1 above) computed based on a minimum number of annual crane hours of 4,358 (the "OPERATOR Minimum Crane Hour Guarantee Base"), which minimum base crane hour annual guarantee shall increase annually by two percent (2%) commencing on October 1, 2008 and shall increase in further two percent (2%) increments (compounded) annually each October 1 thereafter throughout the Initial Term and any applicable Renewal Term. Such minimum annual OPERATOR crane hour guarantee, as so annually adjusted, shall be deemed the "Adjusted OPERATOR Minimum Annual Crane Hour Guarantee." Notwithstanding how many gantry crane hours OPERATOR actually uses the Port's gantry cranes in any given Fiscal Year, OPERATOR shall pay the County the greater of (i) the gantry crane fees and charges due the County for the actual number of crane hours used by or on behalf of OPERATOR, its Joint Venture partners (or the Joint Venture), designated operator, customers, or Operator Affiliated Vessels in such Fiscal Year or (ii) an amount computed by multiplying the then applicable gantry crane rate(s) (under Section 6.D.1 above) by the then-applicable Adjusted OPERATOR Minimum Annual Crane Hour Guarantee for the applicable Fiscal Year. If following the end of any Fiscal Year during the Initial Term or applicable Renewal Term, OPERATOR has paid the County crane fees during the preceding Fiscal Year in an amount less than the amount of minimum crane fees due under this Section 6.D.2 (the "Crane Fee Deficiency"), OPERATOR shall pay the County the full amount of such Crane Fee Deficiency by October 15 immediately following the just concluded Fiscal Year.

3. Potential Incentive Discounts. To the extent in any given Fiscal Year during the Initial Term or any applicable Renewal Term hereunder, OPERATOR hires (and pays for) Port

gantry cranes for more hours (in aggregate during said Fiscal Year) than required by the applicable Adjusted OPERATOR Annual Minimum Crane Hour Guarantee (as defined in Section 6.D.2 above, then in such Fiscal Year OPERATOR shall be entitled to the following gantry crane rate discounts in accordance with the following tiers:

Tier 1: For all annual gantry crane hours used by OPERATOR in any given Fiscal Year during the Initial Term or any applicable Renewal Term (in aggregate) between one and the then-applicable Adjusted OPERATOR Annual Minimum Crane Hour Guarantee ("Tier 1 Crane Hours"), OPERATOR shall pay the County the full applicable prevailing gantry crane rates per the Tariff and Section 6.D.1 above ("Prevailing Gantry Crane Rate");

Tier 2: For the first thousand hours of crane time above the then-applicable Adjusted OPERATOR Annual Minimum Crane Hour Guarantee consumed and paid for by OPERATOR in a Fiscal Year at the full prevailing rate ("Tier 2 Crane Hours"), OPERATOR shall be entitled to a discount of four percent (4%) off the then Prevailing Gantry Crane Rate on said Tier 2 Crane Hours above the tier one threshold during the same Fiscal Year;

Tier 3: For the second thousand hours of crane time above the then-applicable Adjusted OPERATOR Annual Minimum Crane Hour Guarantee consumed and paid for by OPERATOR in a Fiscal Year at the full prevailing rate ("Tier 3 Crane Hours"), OPERATOR shall be entitled to a discount of eight percent (8%) off the then Prevailing Gantry Crane Rate on said Tier 3 Crane Hours during the same Fiscal Year;

Tier 4: For the third thousand hours of crane time above the then-applicable Adjusted OPERATOR Annual Minimum Crane Hour Guarantee consumed and paid for by OPERATOR in a Fiscal Year at the full prevailing rate ("Tier 4 Crane Hours"), OPERATOR shall be entitled to a discount of twelve percent (12%) off the then Prevailing Gantry Crane Rate on said Tier 4 Crane Hours during the same Fiscal Year; and

Tier 5: For any crane hours over the sum of (x) the then-applicable Adjusted OPERATOR Annual Minimum Crane Hour Guarantee plus (y) 3000 hours that OPERATOR

consumes and pays the County for at applicable crane rates in a given Fiscal Year ("Tier 5 Crane Hours"), OPERATOR shall be entitled to a maximum discount of sixteen percent (16%) off the then Prevailing Gantry Crane rate on said Tier 5 Crane Hours during the same Fiscal Year.

E) Transshipment Containers: The OPERATOR will be charged by the County a rate inclusive of wharfage and dockage for transshipment containers at the following rates: $10 per TEU for annual transshipped TEUs 1 - 15,000; $15 per TEU for annual transshipped TEUs 15,001 – 30,000; and $14 per TEU for all annual transshipped TEUs beyond 30,001. The preceding sentence notwithstanding, to the extent not prohibited by Applicable Law, OPERATOR will be entitled to charge its customers for said transshipment fees. The transshipment fee rates set forth herein may be adjusted annually by the County during the first five years of the agreement, but may not escalate more than 3% per Fiscal Year compounded. After the expiration of five years, OPERATOR and County will renegotiate the transshipment rates. Should OPERATOR and County fail to agree on a rate, the Tariff rate for Transshipments shall apply. Notwithstanding the manner of calculation of minimum throughput, the OPERATOR will be responsible for paying the Port each Fiscal Year the equivalent Base TEU Rate (as adjusted per Exhibit A) for all TEUs falling under OPERATOR's annual Minimum Guaranteed TEU Throughput and for paying the County each Fiscal Year during the Initial Term and applicable Renewal Terms the Minimum Guaranteed TEU Throughput Revenue.

F) Lay Berth: Notwithstanding and prevailing over any other provision of this Agreement, the rates that apply to any Lay Berth Dockage shall be the Tariff rates.

G) Outlets for Refrigerated Containers: OPERATOR shall keep and maintain any electrical outlets, wiring, conduit, junction and electrical boxes and connections, electrical feeders, and other related equipment in good working condition and repair, and shall replace same as needed, all at its own expense, subject to reasonable wear and tear. OPERATOR shall be

responsible for, and shall pay the County, for actual electric costs as billed plus a twenty percent (20%) Port administrative and equipment usage fee. The County shall provide OPERATOR copies of electric utility company billings with the County's monthly billings to OPERATOR. OPERATOR shall be responsible for the installation and maintenance of any new infrastructure and equipment related to outlets for refrigerated containers and trailers. Notwithstanding the foregoing, at the County's election, the County may, upon prior ten days written notice to OPERATOR, rescind such 20% administrative and equipment usage fee and, in lieu thereof, may annually recoup an equivalent amount of the resulting lost revenue by making commensurate adjustments to the then-applicable Land Rent rate per Section5.A hereof.

H) Security Charges: The Port may implement a reasonable security fee for cargo terminal operations, but only if the fee is implemented on all other Port cargo terminal operators whose terminals are at least 25 acres in size and expressly excluding ferry and barge operations at the Ports. The fee will not be applied to the LESSEE if Port security costs for any one fiscal year do not exceed $20 million. Notwithstanding the foregoing, OPERATOR shall be solely responsible to provide, at OPERATOR's sole cost, security for and within the Terminal Area, including security for all equipment, personnel, improvements, structures, containers, and cargo located thereon.

I. Utilities. OPERATOR shall be solely responsible to pay for all utility costs and charges in connection with the Terminal Area and any improvements or equipment located thereon, including, without limitation, any and all costs and charges for electricity, water, sewer, telecommunications, fiber optics, electronic or internet services, trash and waste removal and for any other utility costs and charges relating to or in connection with the Terminal Area or any improvements or equipment located thereon, provided, however, that the cost of electricity for refrigerated containers stored in the Terminal Area shall be governed by Section 6.G hereof.

J. Applicability of New Tariff Fees and Charges. Notwithstanding and prevailing over any contrary term or implication contained herein, the County may impose new fees and charges in the Tariff and/or pursuant to Applicable Laws applicable to OPERATOR and/or its customers and invitees, and may increase existing Tariff fees and governmental charges (other than the land rent and TEU rates set forth in Sections 5.A, 6.A and 6.B hereof, which rates can only be increased in accordance with the terms and limitations set forth herein), provided, however, that such new Tariff or other governmental fees and charges, and increases to existing fees and charges, must be fairly and proportionately imposed on allcargo terminal operators at the Port with cargo terminals of at least 25 acres in size so as not to unfairly discriminate against OPERATOR, taking into account, and further providing, that the overall terms, discounts, and rate structures set forth in the County's existing and future cargo terminal agreements, either individually or in aggregate, may vary.

Section 7. Use of the Terminal Area

OPERATOR shall not use the Terminal Area for any unlawful purpose, including, without limitation, any unauthorized use, or any use prohibited by Applicable Laws. OPERATOR agrees not to abandon or cease service to the Terminal Area, unless expressly permitted to do so by another provision of this Agreement or authorized to do so by the County or other governmental agency.

A) Cargo Lines Select Among Permitted Port Stevedores: Notwithstanding and prevailing over any contrary term or implication contained in this Agreement, and irrespective of whether the following is required by Applicable Law, cargo lines calling the Port may select their stevedore among the various port-permitted stevedores, and neither OPERATOR nor any person or entity operating on OPERATOR's behalf may condition entry into or use of the Terminal on the hiring of a stevedore affiliated with or selected by OPERATOR or OPERATOR's agent or designee. Notwithstanding the above, and to the extent not prohibited by or inconsistent with Applicable Laws, OPERATOR may deny admittance to the Terminal Area of a Port permitted stevedore only upon a bonafide determination by

OPERATOR that such Port permitted stevedore (i) lacks safe, properly maintained and otherwise suitable cargo handling equipment upon which to transport TEUs or other cargo on or through the Port in a safe and proper manner, (ii) has an unsuitable safety record and/or employs inadequate employee supervision and/or employee safety procedures such that the use of such stevedore within the Terminal Area would create an undue risk of harm to human health and property or (iii) lacks proper or adequate insurance coverage. In addition to any other indemnity, hold harmless, and duty to defend obligations of OPERATOR contained in this Agreement, OPERATOR shall indemnify and hold the County harmless for, and shall defend the County from, any and all asserted claims, damages, liabilities, fines, costs, and legal fees and costs, including the cost of appellate proceedings, relating to, arising from, or in connection with, in whole or in part, OPERATOR's denial of access to or use of the Terminal Area by any Port permitted stevedore, regardless of cause.

B) Third Party Rights of OPERATOR. OPERATOR may provide cargo terminal services hereunder to cargo lines and Vessels calling the Port regardless of whether such Vessels are Operator Affiliated Vessels or Non-Operator Vessels (as defined herein), and OPERATOR may, to the extent permitted by Applicable Law, charge to its clients its own properly noticed and filed tariffs in consideration of such services.

Section 8. Maintenance and Repair of Terminal Area

A) Subject to subsection (B) below, except for damage caused by the act or omission of the County and its employees and direct (first tier) contractors (other than and expressly excluding damage caused by any act or omission of OPERATOR, its Joint Venture partners and affiliates, and designated operator(s), the Joint Venture, and their respective contractors, subcontractors (of all tiers), affiliates, invitees and guests) and subject to reasonable wear and tear, all general day-to-day maintenance and repairs of the Terminal Area shall be OPERATOR 's sole responsibility and at OPERATOR's sole cost and expense. OPERATOR shall, at its own cost and expenses, keep the Terminal Area, and the improvements constructed thereon, including, without limitation, all security gates, gate complexes,

fencing, lighting and other security related facilities, in a clean, safe and orderly condition, free of rubbish and trash, and in good working order and repair. The County may provide this service if requested by OPERATOR, and accepted by the County in its discretion, at Tariff rates. If the parties cannot agree upon such rates, all maintenance and repair responsibilities shall remain OPERATOR's sole responsibility. Prior to or at the termination of this Agreement, damages done by the installation or removal of personal property of OPERATOR shall be repaired at OPERATOR's sole cost so as to restore the Terminal to its original state immediately prior to the Effective Date, subject to reasonable wear and tear and except as the Terminal may have been altered by OPERATOR with the written approval of the Port (provided such County approved OPERATOR alterations within the Terminal Area must nonetheless be at all times properly maintained and repaired by OPERATOR), and to quit and surrender up the Terminal in the same good order and condition, subject to reasonable wear and tear, as it was at the commencement of this Agreement; provided however, that such return of the Terminal under this Section shall not relieve OPERATOR of its obligations for damages to the Terminal that may be specifically provided elsewhere in this Agreement. In this regard, OPERATOR and the County shall perform a joint inspection of the Terminal at the commencement of this Agreement in order to determine the condition of the Terminal.

B) OPERATOR shall maintain and make repairs at its own expense to keep in safe and good working order and condition all buildings and structures in the Terminal Area, including, without limitation, the foundations, roofs, HVAC and other building systems, exterior walls, all access and common areas, fencing, gate complexes, lighting and security facilities, and underground and other utilities, and OPERATOR shall be responsible for all damages to or within the Terminal Area, including damages to equipment, cargo, buildings, or structures, or personal injuries to the extent proximately caused or contributed to by OPERATOR or its partners, agents, servants, employees, contractors, subcontractors, invitees or guests. Any damage to County property or facilities caused or contributed to by OPERATOR or its partners, agents, servants, employees, contractors, subcontractors, invitees or guests, including but not limited to damage to paved surfaces and damage caused or contributed to by

tracked or other off-road vehicles, shall be repaired by OPERATOR at its sole cost and expense. OPERATOR shall not be responsible for repair of damages to the extent proximately caused solely by the County, its authorized agents, servants, employees, or contractors (other than OPERATOR or its partners, affiliates, designees, or their respective contractors, agents, employees, invitees or guests).

C) The County, its agents and/or representatives may during normal business hours and with reasonable notice enter the Terminal Area to view, inspect, and/or show the Terminal Area and facilities, or for any other purpose. Sworn law enforcement officers may enter the Terminal Area at all times without notice, when lawfully allowed to do so.

D) The County shall have the responsibility to remedy any inherent defects in buildings on the Terminal Area (excluding trailers) constructed by it prior to the Effective Date (excluding any buildings or structures covered under separate written leases with the County as of the Effective Date) and excluding any defects or deterioration to the extent caused or contributed to by the acts or omissions of OPERATOR, its agents, employees, partners, contractors, invitees or guests, or by Maersk, Universal or APMT or either's employees, agents, contractors or invitees.

E) OPERATOR shall be solely responsible for maintaining, repairing and refurbishing (as needed and at OPERATOR's sole cost and expense) all above-ground improvements and fixtures in the Terminal Area existing on the Effective Date of this Agreement or constructed by or on behalf of OPERATOR, its partners, affiliates, contractors, agents, employees, customers, or invitees during the Initial Term or applicable Renewal Term and for maintaining all paving within the Terminal Area, including, without limitation, existing and future paving and concrete pads for rubber tire gantry operations. Notwithstanding such obligations, upon the later of the expiration or termination of this Agreement, Operator may remove its personal equipment from the Terminal Area, provided such equipment was not purchased nor maintained, in whole or in part, by the County and provided further that the removal of such personal equipment will not damage the Terminal Area or any structures, buildings, or fixtures located thereon.

F) <u>Cleaning</u>:

OPERATOR shall, at its sole cost and expense, perform or cause to be performed, services which will at all times keep all portions and elements of the Terminal Area clean, neat, orderly, sanitary, presentable, and free of trash and debris.

G) Removal of Trash:

OPERATOR shall, at its sole cost and expense, remove from the Terminal Area all trash, debris and refuse which might accumulate and arise from its use of the Terminal Area_and/or the business operations of OPERATOR under this Agreement. Such trash, debris and refuse shall be stored temporarily and disposed of in a manner that complies with all Applicable Laws and is approved by the Port.

H) Failure to Maintain:

If it is determined by the County that OPERATOR has failed to properly clean, remove trash and refuse, maintain, repair, replace and refurbish the Terminal Area as required by this Agreement, the County shall provide OPERATOR with a list of deficiencies in writing, reflecting the amount of time to be reasonably allowed for OPERATOR to correct same. If OPERATOR fails to correct such deficiencies within the time allowed, the County, following thirty (30) days further notice to OPERATOR, may enter upon the Terminal and perform all work, which, in the reasonable judgment of the County, may be necessary and the County shall charge OPERATOR for the cost of such work. Subsequent to receipt of the further notice of intent to perform repairs or cleanup from the County, OPERATOR shall not undertake performance of such repairs or cleanup without specific prior written authorization from the County.

I) Environmental Protection:

1) OPERATOR's Obligations: At all times during the term of this Agreement, OPERATOR shall comply with the following:

a) Disposal of Wastes: OPERATOR shall dispose of all industrial, domestic, hazardous, and solid wastes generated by it in accordance with all Applicable Laws, it being OPERATOR's responsibility to determine the approved method of disposal of its wastes and take action accordingly.

b) Records: OPERATOR shall maintain such records as are reasonably necessary to adequately assess environmental compliance in accordance with all Applicable Laws.

c) Monitoring Equipment: OPERATOR agrees at its expense, to the extent required by Applicable Law, to install monitoring equipment in a number and type sufficient to monitor OPERATOR's activities in its use of the Terminal Area, and to assign appropriate personnel to monitor such equipment and provide periodic written reports to the County at a frequency which shall be the greater of (i) that required by Applicable Law or (ii) quarterly.

2) OPERATOR's Failure to Comply with Environmental Laws: OPERATOR acknowledges that material non-compliance with its obligations under this Section 8(I)which is not remedied further to and within applicable cure periods (if any) constitutes a material breach of this Agreement, and that illegal discharges and violations may result in penalties, issuance of civil violation notices and penalty orders, which non-compliance and violations are also subject to termination of this Agreement.

3) OPERATOR shall comply with all Applicable Laws, including, without limitation, all those related to environmental protection and/or regulations applicable to the use, storage and handling of hazardous substances, hazardous materials, industrial wastes and hazardous wastes in, on, or near the Terminal Area or other County Property. OPERATOR shall indemnify, defend and hold the County, its officers, employees, agents, successors and assigns (Collectively "County Indemnitees") harmless from, and assumes any and all liability for, any and all claims, liabilities, causes of action, obligations, damages, penalties, costs, charges and expenses (including, but not limited to reasonable attorney's fees, environmental response and remediation costs and the costs and expenses of appellate action, if any), imposed on, incurred by, or asserted against County Indemnitees, by any other parties or

entities (including, with limitation, a governmental entity), to the limited extent arising out of, in connection with, or relating to any environmental condition of contamination caused, created, or contributed to, in whole or in part, by OPERATOR, its Joint Venture partners, agents, employees, affiliates, designated terminal operator(s), or contractors (of any tier), by the Joint Venture or by any of its or their respective employees, agents, contractors, invitees or guests in existence as of or after the Effective Date, or any violation of any federal, state, or local environmental law with respect to the Terminal Area . Notwithstanding the foregoing, OPERATOR shall not be responsible to the County under this Agreement for conditions of environmental contamination within or under the Terminal Area existing prior to the Effective Date of this Agreement, and which conditions were not caused or contributed to, in whole or in part (as of or after the Effective Date), by OPERATOR, any of its Joint Venture partners or designated operator(s), the Joint Venture, or any of their or OPERATOR's respective employees, agents, contractors, subcontractors (of any tier), invitees or guests, provided, however, OPERATOR shall be responsible for and liable to the County hereunder, and shall indemnify, hold harmless and defend the County from and for (including mitigation and other costs and fees, damages, fines and legal fees and costs) conditions of environmental contamination and violations of environmental laws, and for violations of other Applicable Laws, occurring on, in, under, near, or in connection with, the Terminal Area as of and following (after) the Effective Date of this Agreement and also for conditions of environmental contamination and violations of environmental laws (and other Applicable Laws) occurring on, in or under County property other than the Terminal Area to the extent arising out of, in connection with, or relating to, in whole or in part, the acts, omissions, activities or negligence of OPERATOR, its Joint Venture partners, designated terminal operator(s), the Joint Venture, or any of their or OPERATOR's respective agents, affiliates, employees,

contractors, subcontractors (of all tiers), designated terminal operator(s), invitees or guests as of or after the Effective Date.

4) COUNTY shall comply with all Applicable Laws related to environmental protection and regulations applicable to the use, storage and handling of hazardous substances, hazardous materials, industrial wastes and hazardous wastes in, on, or near the Terminal Area. COUNTY shall indemnify and hold the OPERATOR, its officers, employees, agents, successors and assigns (Collectively "OPERATOR Indemnitees") harmless from, and assumes any and all liability for, any and all claims, liabilities, causes of action, obligations, damages, penalties, costs, charges and expenses (including, but not limited to reasonable attorney's fees, environmental response and remediation costs and the costs and expenses of appellate action, if any), imposed on, incurred by, or asserted against OPERATOR Indemnitees, by any other parties (including, without limitation, a governmental entity), to the limited extent arising out of, in connection with, or relating to any environmental condition of contamination within the Terminal Area arising after the Effective Date of this Agreement which was caused solely by the County, and expressly excluding any condition of contamination in the Terminal Area or other property to the extent caused or contributed to by Maersk, Universal, APMT, OPERATOR, any of OPERATOR's designated terminal operators or Joint Venture Partners, the Joint Venture, or any of OPERATOR's or such aforementioned non-party's respective employees, agents, contractors, subcontractors (of any tier), affiliates, partners, invitees or guests.

J) Use of Public Port Facilities: The County grants to OPERATOR, in common with all others desiring to use the Port, the nonexclusive privilege to use the roads of ingress and egress, service roads and such other facilities and improvements as may be now in existence or hereafter constructed for the use of persons lawfully using the Port. Such grant of use shall only be to the extent necessary to

carry out the rights granted OPERATOR under this Agreement and Applicable Laws and shall be subject to the County's rights set forth herein and otherwise. Nothing contained herein shall be construed to grant OPERATOR the right to use any real or personal property that is leased or otherwise under contract to a third party.

K) Right To Search: OPERATOR agrees that its vehicles, cargo, goods and other personal property are subject to being searched when attempting to enter or leave the Terminal Area pursuant to Applicable Law. OPERATOR acknowledges and understands that these provisions are for the protection of all users of the Port and are intended to reduce the incidence of thefts, cargo tampering, sabotage and other unlawful activities at the Port.

Section 9. Port Bond Obligations.

Notwithstanding and prevailing over any other provision of this Agreement, the County reserves the right to increase the rates of charges contained in this Agreement at a percentage increase no greater than that applied to other cargo operators, upon a reasonable determination by the County's independent Financial Advisor if it is determined that Port revenues in the aggregate will not be sufficient to meet the rate covenant and/or additional bond tests on all outstanding Seaport bonds obligations or any bond coverage requirements. The County shall give OPERATOR sixty (60) days written notice of its intent to increase the rates of charges contained herein pursuant to this provision of the Agreement, and shall make reasonable efforts, within the limitations of the applicable bond documents, to provide OPERATOR more than sixty (60) days notice. OPERATOR shall have the right to terminate this Agreement by written notice to the County within thirty (30) days of the date of such notice.

. If OPERATOR does not terminate this Agreement within the thirty (30) day period, the increased rates shall become effective immediately and OPERATOR shall have no other recourse with respect to such increase..

Section 10. Right to Regulate

Subject to Applicable Law, nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate OPERATOR or its operations or to administer the Port.

Section 11. Zoning Changes and Approvals

Notwithstanding any rights under this Agreement this Agreement shall not bind the Miami-Dade Board of County Commissioners, the Zoning Appeals Board, the Building Department, the Planning and Zoning Department, any successor board or department, or any other department or board of the County, including Community Councils, to agree to or grant any zoning changes, permits or any other approvals.

Section 12. Licenses, Permits and Approvals

OPERATOR shall obtain all land use, construction, and operating permits and approvals required by any and all Applicable Laws for OPERATOR's activities in the Terminal Area at OPERATOR's sole cost and expense. The County shall take reasonable steps to cooperate with OPERATOR with obtaining the foregoing permits and approvals provided such steps do not require the County to expend funds or become exposed to any liabilities, and provided further that nothing contained in this Agreement shall be construed as in any way waiving or limiting the County's police or regulatory powers or authority, all of which the County expressly and fully retains and preserves.

Section 13. Audits

OPERATOR agrees that the County and its duly authorized representatives or governmental agencies may, for up to five (5) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce, upon demand, any of OPERATOR's books, documents, papers and records and of its Joint Venture partners, designees, agents, stevedores, contractors, subcontractors and suppliers, and of the Joint Venture which apply or relate to the operation or use of the Terminal Area or the enforcement of any of County's rights or potential claims under this Agreement, Applicable Laws or otherwise.

OPERATOR agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining all fees and charges

due from OPERATOR under this Agreement or otherwise, including, without limitation, on an annual and monthly basis throughout the Initial Term and any applicable Renewal Term the Actual Throughput, the number of Transshipped TEUs and the amount of TEU and Non-TEU Cargo moved, stored, or processed through or using the Terminal Area, the number of gantry crane hours used by or on behalf of OPERATOR per Fiscal Year, and also for determining the allowability and allocability of costs.

To the extent permitted by Applicable Laws, the County shall keep OPERATOR proprietary information confidential provided OPERATOR clearly and conspicuously demarcates all such proprietary information as confidential prior to providing same to County.

Section 14. Suitability of Terminal Area.

OPERATOR acknowledges that the County has made no representations, except as provided in this Agreement, as to the Terminal Area, the condition of the Terminal Area or the suitability of the Terminal Area for OPERATOR's purposes. OPERATOR further acknowledges that it has previously inspected and otherwise become familiar with the Terminal Area, the preferential berthing area identified herein, and the Port's gantry cranes, gate complex, and other facilities, and hereby accepts such areas, cranes and facilities in their present conditions as suitable for the purposes for which they are to be used hereunder.

Section 15. Terminal Agreement. It is agreed this Agreement is not a lease and that no interest or estate in real property or the improvements located in or on the Terminal Area is created by this Agreement.

Section 16. Commitment on Indemnity and Insurance

A) OPERATOR shall procure and maintain throughout the Initial Term and any Renewal Terms, at its sole cost and expense, the following insurance policies on which the County shall be named as an additional insured, with not less than the limits specified for each policy below:

1) Workmen's Compensation Insurance to cover all persons employed by OPERATOR in and about the Terminal Area (including longshoremen and harbor workers coverage) as required by Florida Statute 440 or any successor thereto.

Whenever applicable, protection shall also be provided for liability under the Jones Act, 46 U.S.C. Section 688, and under General Maritime Law.

2) General Liability Insurance - With respect to the use and activities of OPERATOR, its employees, agents, customers and guests in and around the Terminal Area, General Liability Insurance in the minimum amount of $1,000,000 combined single limits for the death of or personal injury to one or more persons and for property damage for each occurrence in connection with the use thereof or the activities of OPERATOR thereon.

3) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with OPERATOR's operations in an amount not less than $500,000 combined single limit per occurrence for bodily injury and property damage.

4) Terminal OPERATOR's Liability Insurance shall be for the amount of at least $4,000,000 per occurrence.

5) All-risk property insurance in the amount of $7,500,000 per occurrence.

6) All insurance policies required by this section shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division, or companies holding a valid Florida Certificate or Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to do Business in Florida," issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

All such insurance policies shall be occurrence policies and each shall contain a provision to the effect that the insurance company shall not reduce coverage or cancel such policy without first giving

written notice thereof to the additional insured at least 30 days in advance of such cancellation or material modification. Claims made policies are not acceptable. OPERATOR and the County shall promptly provide to the other, certificates evidencing that insurance has been obtained meeting the requirements of this section.

(B) OPERATOR shall indemnify, defend and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Agreement, and only in proportion to that which can be attributable and caused by the negligence of OPERATOR or its employees, agents, partners, principals, contractors, subcontractors, invitees, or guests. OPERATOR shall pay all claims and losses proportionally in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon in the same manner. OPERATOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by OPERATOR shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided but shall be used to offset OPERATOR's costs first before distribution to insured. The foregoing indemnity shall not apply to the extent caused solely by the negligent acts or omissions of the County or its employees, agents, partners, principals or subcontractors.

(C) In those situations where this Agreement imposes an indemnity obligation on OPERATOR, the County may, at its expense, elect to participate in the defense if the County should so choose.

Section 17. Choice of Law and Exclusive Venue

The parties agree that this Agreement was entered into in the State of Florida and that the laws of Florida, and any applicable federal law, shall govern its interpretation, application and enforcement.

Venue for any suit or dispute arising under this Agreement shall lie exclusively in Miami-Dade County, Florida.

Section 18. Entirety of Agreement; No Oral Change or Termination

This Agreement is the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof. No change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or discharge is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought and, in the case of the County, such change is approved by the Board of County Commissioners. This Agreement cannot be changed or terminated orally.

Section 19. Compliance with Applicable Laws

At all times throughout the Initial Term and any applicable renewal term, OPERATOR, its employees, Joint Venture partners, designated terminal operators, agents, affiliates, contractors, subcontractors, invitees, and guests, and the Joint Venture and its employees, agents, contractors, subcontractors (of all tiers), invitees and guests shall comply with all Applicable Laws while conducting any activity in or relating to the Terminal Area or on any other County property or otherwise in its/their actions related to this Agreement and while conducting any activity in the Terminal Area or on any other County property.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency

acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

OPERATOR shall comply with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.

b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.

c) Environmental Protection Agency (EPA), as applicable to this Contract.

d) Miami-Dade County Code, Chapter 11A, Article 3. OPERATOR shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. OPERATOR agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.

f) Miami-Dade County Code Section 10-38 "Debarment".

g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.

h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Commencing on the Effective Date of this Agreement and continuing throughout the Initial Term and any applicable renewal term plus a period of six years thereafter, OPERATOR shall provide written notice to the County of any actual, suspected, or reported violation of any Applicable Law taking place on, within, under, or in connection with the Terminal Area or any of OPERATOR's activities on County owned property (including activities of the Joint Venture and Operator's Joint Venture Partners, affiliates, and their respective contractors, subcontractors, and employees) as soon as practicable but in no event later then five calendar days from OPERATOR, any terminal operator designated by OPERATOR, the Joint

Venture, any Joint Venture partners, or any of their respective agents, employees, contractors, or subcontractors (of any tier) receiving notice of, observing, or otherwise becoming aware of any such actual, threatened, suspected or alleged violation(s) of Applicable Law. Such written notice shall specify the type, nature, scope, date, and location of such actual, suspected or alleged violations, as well as what steps have been taken or are being taken to address, mitigate, and prevent the recurrence of same.

Section 20. Taxes and Other Charges

OPERATOR shall pay all applicable property, excise, and other taxes and other governmental charges of any kind whatsoever which are lawfully assessed, levied, or imposed with respect to the Terminal Area or any improvements placed thereon by or on behalf of OPERATOR, its partners, agents, affiliates, contractors, employees, or invitees or by or on behalf of the Joint Venture.

Section 21. Nuisance

OPERATOR shall not commit any nuisance (as defined and construed under Florida law, taking into account the scope of OPERATOR's permitted operations hereunder) in the Terminal Area or any other County property, nor do or permit to be done anything that may result in the creation or commission of a nuisance in the Terminal Area or any other County property, nor shall OPERATOR permit its agents, partners, affiliates, employees, contractors, invitees, or guests, nor permit the Joint Venture or its employees, agents, contractors, subcontractors, invitees or guests, to commit any nuisance in or on the Terminal Area or any other County property.

Section 22. No Exclusive Remedies

No remedy or election given by any provision in this Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon a default of the other party shall be cumulative and in addition to all other remedies at law or equity arising from such event of default, except where otherwise expressly provided.

Section 23. Failure to Exercise Rights Not A Waiver

The failure by either party to promptly exercise any right arising hereunder shall not constitute a waiver of such right unless otherwise expressly provided herein.

Section 24. Events of Default

A) OPERATOR shall be in default under this Agreement if any of the following events occur and continue beyond the applicable grace period:

(i) OPERATOR fails to timely comply with any payment obligation arising hereunder which is not cured within thirty (30) days from OPERATOR's receipt of written notice from the County of failure to meet such payment obligation, with exception to all payments reasonably disputed.

(ii) OPERATOR fails to perform or breaches any material term, covenant, or condition of this Agreement (other than the failure to timely comply with any payment obligation hereunder, which is governed by Section 24.A(i) above) which is not cured within sixty (60) days after receipt of written notice from the County specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within sixty (60) days, and such breach does not materially interfere with the operations of the Port, OPERATOR shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently prosecutes such cure to completion.

(iii) If OPERATOR shall be adjudicated bankrupt, or if OPERATOR shall make a general assignment for the benefit of creditors, or if any proceedings based upon the insolvency of OPERATOR are commenced and not dismissed within 60 days of filing or a receiver is appointed for all the property of OPERATOR which is not dismissed within 60 days of such appointment.

(iv) Any default by OPERATOR may be cured by any subsidiary, affiliate or sub-OPERATOR or permitted assign or subcontractor or sub-subcontractor provided

such cure takes place within the applicable cure period set forth above or herein and provided further that prior to commencement of such cure by any entity other than OPERATOR, OPERATOR provides prior written notice to the Port Director specifying the curative actions to be taken either on OPERATOR's behalf or by the non-OPERATOR entity.

(v) For the avoidance of doubt, a shortfall does not trigger an Event of Default if (i) the Shortfall Fees are fully and timely paid to the County as required hereunder and (ii) to the extent OPERATOR is required to surrender part of the Terminal Area back to the County under Section 5.F hereof or otherwise, OPERATOR timely surrenders such land as required or contemplated herein.

B) The County shall be in default under this Agreement if the County fails to perform or breaches any material term, covenant, or condition of this Agreement and such failure is not cured within sixty (60) days after receipt of written notice from OPERATOR specifying the nature of such breach (except where a longer cure period may be provided herein); provided, however, that if such breach cannot reasonably be cured within sixty (60) days (or longer period if applicable) and such breach does not materially interfere with the operations of OPERATOR at the Port, the County shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently prosecutes such cure to completion.

(C) Upon the occurrence of a default under this Agreement not cured within the applicable grace period, the non-defaulting party may pursue all remedies available at law or in equity, including but not limited to specific performance of this Agreement, termination of this Agreement, and, as to the County, the right to re-enter the Terminal Area and expel OPERATOR in which case OPERATOR shall remain liable for all charges due at the time of such termination under the

terms of this Agreement and any repairs and alterations necessary to prepare the Terminal Area for further Port use.

Section 25. Obligations Surviving Termination or Expiration Hereof

Notwithstanding and prevailing over any contrary term or provision contained herein, in the event any party hereto exercises any lawful termination rights herein, or should this Agreement expire in accordance with its terms, the following obligations shall survive such termination or expiration, as applicable, and continue in full force and effect until the expiration of a five year term following the later of the termination date or the expiration of this Agreement: (i) any and all outstanding payment obligations hereunder of any party hereto arising prior to termination; (ii) any and all indemnity, hold harmless and/or duty to defend obligations hereunder of any party hereto; (iii) notwithstanding the foregoing, the exclusive venue and choice of law provisions contained herein shall never expire, and (iv) any other term or provision herein which expressly indicates either that it survives the termination or expiration hereof or is or may be applicable or effective beyond the expiration or permitted early termination hereof.

Section 26. Lack of Agency Relationship

Nothing contained herein shall be construed as establishing an agency relationship between the County and OPERATOR and neither OPERATOR nor its employees, agents, contractors, subsidiaries, divisions, affiliates or guests shall be deemed agents, instrumentalities, employees, or contractors of the County for any purpose hereunder, and the County, its contractors, agents, and employees shall not be deemed contractors, agents, or employees of the OPERATOR.

Section 27. Force Majeure - Inability to Perform

A. OPERATOR Inability to Perform. OPERATOR shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to causes, conditions, acts or omissions beyond the reasonable control of, and without the fault of (i) OPERATOR, and its agents, employees, Joint Venture partners, contractors, subcontractors (of any tier), invitees and guests and (ii) the Joint Venture and its agents, partners, employees, contractors, subcontractors (of any tier), invitees, and

guests, including, without limitation, acts of God, an act or state of war, public emergency, strikes, boycotts, picketing, work stoppages or labor troubles of any other type not within the reasonable control of any person or entity listed in Section 27.A(i) or (ii) above; providing further that the party claiming the existence of a force majeure event delivers written notice of such event to the other party, when possible, within fifteen (15) calendar days of the commencement of such event. OPERATOR shall be entitled to a pro-rata reduction of its TEU and land rental commitments throughout the duration of any properly noticed Force Majeure event to the limited extent such timely noticed force majeure event renders a portion of the Terminal Area wholly unusable and provided further that neither such event, nor the damage or impairment resulting therefrom, could have been avoided by the exercise of due diligence by OPERTATOR or its Joint Venture partners, affiliates, agents, designated operators, contractors, subcontractors, invitees or guests or by the exercise of due diligence by the Joint Venture or its employees, agents, contractors, subcontractors, invitees or guests.

B. County Inability to Perform. County shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to causes, conditions, acts or omissions beyond the reasonable control of, and without the fault of, the County and its legally authorized Port employees, agents, contractors and subcontractors (other than and expressly excluding all of the persons and entities listed in Section 27.A(i) and (ii) above), including, without limitation, acts of God, an act or state of war, public emergency, strikes, boycotts, picketing, work stoppages or labor troubles of any other type not within the reasonable control of the County; providing further that the party claiming the existence of a force majeure event delivers written notice of such event to the other party, when possible, within fifteen (15) calendar days of the commencement of such event.

C. Terminal Area Catastrophic Loss. In the event that the Terminal Area is damaged or destroyed by fire or other catastrophic casualty, not caused or contributed to, in whole or in part by, by Operator, its Joint Venture partners, the Joint Venture or any of their respective affiliates, agents, contractors, subcontractors, designated terminal operator(s), employees, invitees, or guests, to such an extent that the Terminal Area is rendered completely and wholly unusable and beyond repair (hereafter, a

"Terminal Area Catastrophic Loss Event"), then Operator may upon 90 days prior written notice to the County terminate this Agreement provided each of the following pre-conditions is met: (1) such notice is delivered to County no later than fifteen (15) calendar days from the commencement of such catastrophic event; (2) provided OPERATOR shall remain liable to the County for all payment and performance obligations hereunder arising prior to or through the effective date of said termination; (3) provided that, notwithstanding such termination, all obligations listed in Section 25 hereof as surviving a termination of this Agreement shall survive in accordance with the terms of that Section; and (4) provided that prior to the effective date of such termination OPERATOR shall assign to the County all policies of insurance required under Section 16 hereof pertaining to, covering, or potentially covering such noticed Terminal Area Catastrophic Loss Event(s), including assignment of any and all OPERATOR, Joint Venture, and each Joint Venture partner's (and other named insured's (other than County)) entitlement to any and all proceeds and disbursements therefrom and rights to make claims therefor. In the event all requirements and conditions set forth in this Section 27.B are fully and timely satisfied, then in such event a proper and timely termination under this Section 27.B for a Terminal Area Catastrophic Loss Event shall not trigger OPERATOR's additional early termination payment obligation under Section 31.B (i) or (ii).

Section 28. Severability

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term of provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

Section 29. Sole Benefit of Parties

The County and OPERATOR intend that the mutual covenants contained in this Agreement shall be for their sole benefit and that no other person, corporation or other entity is intended to be a third party beneficiary of this Agreement. Notwithstanding and prevailing over any contrary term or implication contained in this Agreement, there are no actual or intended third party beneficiaries of or to this Agreement.

Section30. Representations.

Each party represents and warrants that it is empowered to enter into this Agreement and to perform any and all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this Agreement.

Section 31. Early Termination.

OPERATOR shall have the option to terminate this agreement for any reason or no reason, subject to the conditions set forth herein upon fulfillment of the termination payment obligations set forth below, in addition to payment of any other charges or fees due or owing hereunder or under the Tariff through the effective date of such termination. OPERATOR shall give the County written notice of early termination ninety days notice in advance of its desired termination date. OPERATOR shall pay the County upon exercise of the Early Termination option, in addition to payment of any other charges or fees due or owing hereunder or under the Tariff through the effective date of such termination, an amount equal to the lesser of (i) the sum of three (3) years of Land Rental payments plus three (3) years of Minimum Guaranteed Annual TEU Throughput Revenue payments, or (ii) the sum of aggregate Land Rental payments and Minimum Guaranteed Annual TEU Throughput Revenue payments that would have been due for and through the period remaining on the Initial Term. During any renewal period, the OPERATOR shall pay the County upon exercise of the Early Termination option an amount equal to the sum of one (1) year of Land Rental payments and one (1) year of Minimum Guaranteed TEU Throughput payments. For avoidance of doubt, the OPERATOR and County acknowledge that, except as otherwise provided herein, the County's contractual rights to unilaterally terminate this Agreement early (prior to expiration in accordance with its terms) are limited to (i) the exercise of available remedies in response to the failure of OPERATOR to properly fulfill payment, performance or other obligations set forth herein, including the commission of any event of default set forth in Section 24 hereof, (ii) a focre majeure event under Section 27 hereof, (iii) remedies available pursuant to or under Applicable Laws, and/or (iv) pursuant to or under common law.

Section 32. Assignment

A. Except as otherwise expressly provided in sub-section 32(B)(ii), below, OPERATOR shall not transfer or assign its rights under this Agreement without the prior written consent of the County. Any "Assignment" of this Agreement, in whole or in part, made without strict conformance to and satisfaction of all requirements and conditions set forth in this Section 32 shall be void ab initio. An "Assignment" shall include any transfer of this Agreement including, without limitation, a transfer of this Agreement by sale, assignment, merger, consolidation or liquidation, by operation of law, or otherwise. Should OPERATOR assign or transfer this Agreement to any person or entity other than (i) a wholly-owned-subsidiary or -affiliate of OPERATOR under and in strict accordance with sub-section 32.B(i)(a), (ii) in the limited event of an OPERATOR material default hereunder, to Universal under and in strict accordance with sub-section 32.B(i)(b) below, or, (iii) in any circumstances other than Universal timely curing a material default by OPERATOR, to Universal under and in strict accordance with sub-section 32.B(ii) below, then OPERATOR shall pay the County $500,000.00 for each year remaining on the Initial Term and both Renewal Terms, which aggregated fee shall be paid to the County within thirty (30) calendar days of the date of such assignment or transfer. By example, and for elimination of doubt, if OPERATOR assigns or transfers this Agreement in the middle of Fiscal Year ten (10) of the Initial Term hereof (ie, with five and one-half (5 ½) years remaining in the Initial Term and ten (10) years remaining in the two unexercised five year renewal options under Section 3) to a person or entity other than Universal or a wholly-owned- subsidiary or -affiliate of OPERATOR, then OPERATOR shall pay the County (as an assignment or transfer fee hereunder) the sum of $7,750,000.00 (15 ½ years remaining X $500,000/year = $7,750,000.00) within thirty (30) calendar days of the date of such assignment or transfer.

B. Subject to the satisfaction of all requirements and conditions set forth in this Section 32.A, .B, .C, and .D, OPERATOR shall have the right to assign this Agreement to (i)(a) any wholly-owned-subsidiary or –affiliate of OPERATOR or (b) Universal (but only in the limited event of a material default hereunder by OPERATOR that Universal elects to cure, and does timely cure) and further subject to and conditioned upon Universal (as proposed assignee) obtaining the prior written consent of the Port Director, which consent shall not be unreasonably withheld or delayed, or (ii) to Universal in any

circumstance(s) other than those set forth in sub-section 32.B(i)(b) above, provided, however, that in the event of any assignment or transfer made under this sub-section 32.B(ii), OPERATOR shall be liable to the County for the additional payment obligations set forth in sub-section 32.D below and shall pay the County all fees due under sub-section 32.D.

C. In addition to any other requirements and conditions set forth in this Section 32, any purported or attempted assignment or transfer of this Agreement shall be subject to and conditioned upon the prior satisfaction and fulfillment of the following requirements and conditions: (i) OPERATOR must first provide an executed assignment and assumption agreement between the proposed assignor and assignee, in a form acceptable to the County, in which assignee shall irrevocably assume, without exception, qualification, or reservation, all of the payment, performance and other obligations of OPERATOR under or arising from this Agreement (hereafter, the "Assignee AAA"); (ii) prior to such assignment or transfer becoming effective, the assignee shall provide the County with a new guarantor of and for all of assignee's assumed obligations and liabilities under this Agreement, pursuant to a written guarantee in favor of the County, in a form acceptable to the County, and in compliance with all of the guarantor requirements and standards set forth in Section 42 of this Agreement; and (iii) all other applicable requirements and conditions set forth in this Section 32 or this Agreement.

D. In the event of an assignment to Universal per Section 32.B(ii) above, OPERATOR shall pay the County an amount equal to (1) the sum of $300,000.00 for each Fiscal Year remaining during the Initial Term and both (five year) Renewal Terms less (2) $100,000.00 for every $1,000,000.00 that Universal (in its then capacity as OPERATOR) pays the County in TEU fees (under Section 6(A) and 6(B) hereof, excluding Transshipment fees) in excess of the then-applicable Minimum Guaranteed TEU Throughput Revenue during and for that Fiscal Year, provided that such potential reduction of the assignment fee due the County under this sub-Section 32.D shall be capped at, and may not exceed, $300,000. The assignment fee due from OPERATOR to County under this Subsection 32.D shall be paid within thirty (30) calendar days of the end of the Fiscal Year in which the assignment or transfer (under Section 32.B(i))was made or issued.

Section 33. Amendments

This Agreement may be amended from time to time provided the County and OPERATOR mutually agree to such amendment and the amendment is stated in writing, executed by both parties and attached to the original executed copies of this Agreement. Any amendment to this Agreement shall not be effective until approved by the Board of County Commissioners.

Section 34. Surrender at End of Term

During the Initial Term and any Renewal Terms, OPERATOR shall not allow the Terminal Area or the rights of OPERATOR in the same to become subject to any lien, charge, or encumbrance whatsoever. OPERATOR further agrees that, at the expiration or termination of this Agreement, whichever come first, it shall peaceably yield up to the Port, the Terminal Area free of any lien or encumbrance and in the same condition as that agreed to during the joint inspection conducted prior to the Effective Date, reasonable wear and tear expected.

Section 35. Notices

All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing, delivered by personal service, or shall be sent by telex, telecopy, telegram, United States Registered or Certified Mail, return receipt requested, postage prepaid, to the parties at the following addresses:

To the County:	Seaport Director Miami-Dade Seaport Department, Suite 200 1015 North American Way Miami, Florida 33132
With a copy to:	Miami-Dade County Attorney 111 N.W. 1st Street, Suite 2810 Miami, Florida 33132
To OPERATOR:	President, Terminal Link (Miami) LLC Attn. Frank Baragona One Biscanye Tower 2 South Biscayne Boulevard, Suite 2000 Miami. FL 33131
With a copy to:	CMA CGM S.A. Legal Department 4 Quai d' Arenc13002 Marseille France

Section 36. Inspector General Reviews.

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, OPERATOR shall make available to the IPSIG retained by the County, all lawfully requested records and documentation pertaining to this Agreement or to the conduct or activities authorized herein for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall OPERATOR's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to OPERATOR, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to lawfully conduct an audit or investigate the operations, activities and performance of OPERATOR_in connection with this Agreement. The terms of this Article shall not impose any liability on the County by OPERATOR_or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits, inspections, and reviews of any or all County contracts. This right to conduct a random audit, inspection and/or review is separate and distinct from any other County right to audit, inspect, or review. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception:

Upon written notice to OPERATOR from the Inspector General or IPSIG retained by the Inspector General, OPERATOR shall make all lawfully requested records and documents available to the Inspector General or IPSIG for inspection and copying.

Section 37. MUTUAL OBLIGATIONS

Except as otherwise expressly provided for herein, nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party.

Section 38. Business application and forms

OPERATOR shall be a registered vendor with the Miami-Dade County, Department of Procurement Management, for the duration of this Agreement. It is the responsibility of OPERATOR to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 39. Nondiscrimination

By entering into this Contract with the County, OPERATOR attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. This Agreement shall be void if OPERATOR submits a false affidavit pursuant to this Resolution or OPERATOR violates the Act or the Resolution during the term of this Contract, even if OPERATOR was not in violation at the time it submitted its affidavit.

Section 40. Conflict of interest

OPERATOR and County represent that:

a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

b) There are no undisclosed persons or entities interested with OPERATOR or County in this Agreement. This Agreement is entered into by OPERATOR and County without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

i) is interested on behalf of or through OPERATOR_directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

ii) is an employee, agent, advisor, or consultant to OPERATOR.

c) Neither OPERATOR nor any officer, director, employee, agency, parent, subsidiary, or affiliate of OPERATOR shall have an interest which is in conflict with OPERATOR's or County's faithful performance of its obligation under this Agreement; provided that the County in its sole discretion, may consent in writing to such a relationship, provided OPERATOR provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship and the County thereafter provides written approval of such disclosed conflict.

d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

e) In the event OPERATOR has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, OPERATOR shall promptly bring such information to the attention of the Port Director. OPERATOR shall thereafter cooperate with the County's review and investigation of

such information, and comply with the instructions OPERATOR receives from the Port Director in regard to remedying the situation.

Section 41. No Port Endorsements Permitted

Except as may be required by Applicable Laws, OPERATOR, its Joint Venture partners, the Joint Venture, and their respective employees, agents, contractors, subcontractors (of all tiers) and suppliers will not represent, directly or indirectly, that any product or service provided by OPERATOR or such parties has been approved or endorsed by the County or the Port.

Section 42 Guarantee of Operator Obligations.

By signing below as guarantor, Terminal Link, a French limited liability company and wholly owned subsidiary of CMA CGM, (hereafter, "Guarantor") hereby guarantees, and shall be legally responsible for, all of OPERATOR's payment and performance obligations to the County set forth in this Agreement to the extent OPERATOR fails to fully and timely satisfy same and such failure is not cured within an applicable (if any) cure period. Terminal Link shall continue to serve as guarantor of all of OPERATOR's payment, performance and other obligations for the later of the expiration or termination of the Initial Term or, if applicable, the properly exercised renewal term(s) of this Agreement plus six (6) years. Terminal Link shall provide the County with:

(i) on an annual basis, by August 30 of each Fiscal Year of the Initial Term and applicable renewal term, (x) Terminal Link's audited annual financial statements and (y) a written certification prepared by its outside auditors certifying that its net worth for the immediately preceding year, calculated in accordance with United States generally accepted accounting principles (hereafter, "GAAP"), is not less than USD $45,000,000, which threshold shall increase annually on October 1 of each Fiscal Year during the Initial Term and applicable Renewal Term(s) by 3% (compounded) (hereafter, the "Net Worth Floor"), and

(ii) on a quarterly basis during each Fiscal Year during the Initial term and, if applicable, the renewal term(s), a written certification from Terminal Link's CFO certifying that the

company's net worth for the immediately preceding quarter, calculated in accordance with GAAP, is not less than the above-defined Net Worth Floor.

If either of the above-required annual or quarterly certifications are not timely provided to the County, or, if timely provided, any such certification ever indicates that Terminal Link's net worth for the applicable period, calculated in accordance with GAAP, is or was less than the then-applicable Net Worth Floor, then in such event OPERATOR shall within ten calendar days therefrom provide the County with supplemental security by delivering (and then maintaining) either (1) a $30 million ($30,000,000) irrevocable letter of credit, from an institution and in a form acceptable to the County (hereafter, the "LOC"); or (2) an irrevocable written guarantee from CMA properly executed in a form acceptable to the County. The guarantee obligations set forth in this Section 42 shall survive the termination and expiration of this Agreement. The terms of this Section 42 shall be governed by and construed in accordance with Florida law, and venue for any suit or action to construe or enforce any term or provision contained in this Agreement, expressly including, without limitation, the terms of this Section 42, shall lie exclusively in Miami, Florida, U.S.A..

IN WITNESS WHEREOF, the County and OPERATOR have caused this Agreement to be duly executed this ___ day of _____, 2008.

TERMINAL LINK (MIAMI) LLC.

By: _____

Name: Frank J. Barragora

Title: Director

By: _____

Name: CLIVE MILES

Title: DIRECTOR

Date: _____

Corporate Seal: _____

ATTEST:

Name: _____

By: _____
(print)

Title: _____

Date: _____

MIAMI-DADE COUNTY, FLORIDA,
a political subdivision of the
State of Florida

By _____
County Manager

Date: _____

ATTEST:

CLERK OF THE BOARD

By: _____
Deputy Clerk

Date: _____

_____
Approved as to form and legal sufficiency

TERMINAL LINK, (Société par Actions Simplifiée Unipersonnelle) as GUARANTOR of Terminal Link (Miami) LLC's Payment and Performance Obligations Under this Agreement Per Section 42 Hereof

Name:_____
By:_____
Title:_____
Date: FARID T. SALEM

Attest:_____
By:_____
Title:_____"
Date:_____

Name:_____
By:_____
Title:_____
Date:_____

Attest:_____
By:_____
Title:_____"
Date:_____

Corp. Seal:_____

TERMINAL AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND TERMINAL LINK MIAMI LLC

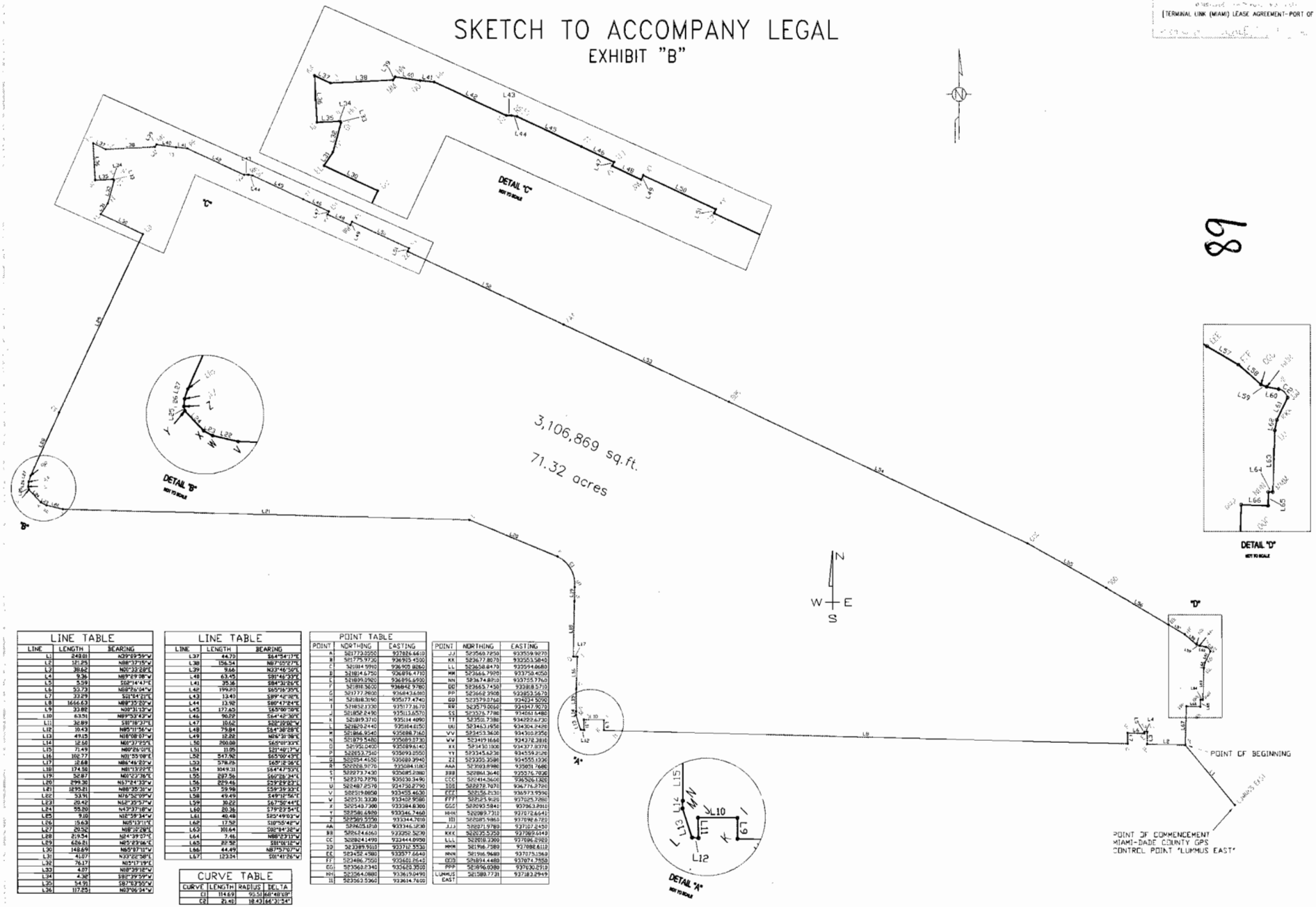
2007/08 - 2032/33

	YEAR	ANNUAL MINIMUM TEU THROUGHPUT GUARANTEE (per acre)	TEU RATE				
			DISCOUNT	10%	20%	30%	40%
			MINIMUM THROUGHPUT	MIN to MIN + 1000	MIN +1001 to MIN + 2000	MIN +2001 to MIN + 3000	MIN +3001 to ALL
	2007 / 08	2,750	$28.00	$25.20	$22.40	$19.60	$16.80
	2008 / 09	2,805	$28.84	$25.96	$23.07	$20.19	$17.30
	2009 / 10	2,861	$29.71	$26.73	$23.76	$20.79	$17.82
	2010 / 11	2,918	$30.60	$27.54	$24.48	$21.42	$18.36
	2011 / 12	2,977	$31.51	$28.36	$25.21	$22.06	$18.91
	2012 / 13	3,036	$32.46	$29.21	$25.97	$22.72	$19.48
	2013 / 14	3,097	$33.43	$30.09	$26.75	$23.40	$20.06
	2014 / 15	3,159	$34.44	$30.99	$27.55	$24.11	$20.66
	2015 / 16	3,222	$35.47	$31.92	$28.38	$24.83	$21.28
	2016 / 17	3,287	$36.53	$32.88	$29.23	$25.57	$21.92
	2017 / 18	3,352	$37.63	$33.87	$30.10	$26.34	$22.58
	2018 / 19	3,419	$38.76	$34.88	$31.01	$27.13	$23.26
	2019 / 20	3,488	$39.92	$35.93	$31.94	$27.94	$23.95
	2020 / 21	3,557	$41.12	$37.01	$32.90	$28.78	$24.67
	2021 / 22	3,629	$42.35	$38.12	$33.88	$29.65	$25.41
	2022 / 23	3,701	$43.62	$39.26	$34.90	$30.54	$26.17
RENEWAL 1	2023 / 24	3,775	$44.93	$40.44	$35.95	$31.45	$26.96
	2024 / 25	3,851	$46.28	$41.65	$37.02	$32.40	$27.77
	2025 / 26	3,928	$47.67	$42.90	$38.13	$33.37	$28.60
	2026 / 27	4,006	$49.10	$44.19	$39.28	$34.37	$29.46
	2027 / 28	4,086	$50.57	$45.51	$40.46	$35.40	$30.34
RENEWAL 2	2028 / 29	4,168	$52.09	$46.88	$41.67	$36.46	$31.25
	2029 / 30	4,251	$53.65	$48.29	$42.92	$37.56	$32.19
	2030 / 31	4,336	$55.26	$49.73	$44.21	$38.68	$33.16
	2031 / 32	4,423	$56.92	$51.23	$45.53	$39.84	$34.15
	2032 / 33	4,512	$58.63	$52.76	$46.90	$41.04	$35.18

EXHIBIT A

SKETCH TO ACCOMPANY LEGAL

EXHIBIT "B"



LINE TABLE		
LINE	LENGTH	BEARING
L1	248.01	N39°59'59"W
L2	121.25	N88°37'15"W
L3	38.62	N01°33'28"E
L4	9.36	N89°29'38"W
L5	5.59	S02°14'47"E
L6	53.73	N89°26'04"W
L7	33.29	S01°04'21"E
L8	1666.63	N89°35'20"W
L9	33.88	N02°31'33"W
L10	63.51	N89°53'43"W
L11	32.89	S01°18'37"E
L12	10.43	N85°11'56"W
L13	49.15	N18°08'07"W
L14	12.56	N01°37'25"E
L15	71.49	N60°26'01"E
L16	102.77	N01°55'08"E
L17	12.68	N86°46'20"W
L18	174.58	N81°13'22"E
L19	52.87	N01°23'36"E
L20	899.30	N57°24'33"W
L21	1893.21	N88°35'31"W
L22	53.91	N76°52'09"W
L23	20.42	N62°35'57"W
L24	55.20	N43°37'18"W
L25	9.10	N18°59'34"W
L26	15.63	N05°13'11"E
L27	20.52	N18°12'28"E
L28	219.54	N24°39'27"E
L29	626.81	N85°23'06"E
L30	348.69	N65°07'11"W
L31	41.07	N33°22'58"E
L32	76.17	N15°17'19"E
L33	4.07	N18°39'18"W
L34	4.38	S82°39'59"W
L35	54.91	S82°53'55"W
L36	117.85	N63°06'34"W

LINE TABLE		
LINE	LENGTH	BEARING
L37	44.70	S64°54'17"E
L38	156.54	N87°05'27"E
L39	9.66	N32°46'50"E
L40	63.45	S81°46'33"E
L41	35.16	S84°31'26"E
L42	199.20	S65°16'25"E
L43	13.40	S89°42'38"E
L44	13.92	S80°47'24"E
L45	177.65	S65°00'09"E
L46	90.22	S64°42'36"E
L47	10.62	S22°10'02"W
L48	79.84	S64°38'28"E
L49	12.22	N06°31'38"E
L50	200.00	S65°01'33"E
L51	11.05	S21°40'17"W
L52	547.92	S65°00'49"E
L53	578.85	S65°12'06"E
L54	304.31	S64°47'53"E
L55	287.56	S60°28'24"E
L56	229.46	S29°29'23"E
L57	59.98	S59°39'32"E
L58	49.49	S49°12'56"E
L59	30.22	S67°50'44"E
L60	20.26	S79°23'54"E
L61	40.48	S25°49'03"W
L62	17.52	S10°55'48"W
L63	101.64	S02°04'32"W
L64	7.46	N88°23'11"W
L65	22.52	S81°06'12"W
L66	44.49	N87°57'07"W
L67	12.34	S01°41'26"W

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	114.69	95.50	68°48'18"
C2	20.40	18.43	66°31'54"

POINT TABLE		
POINT	NORTHING	EASTING
A	521773.0550	937826.6610
B1	521775.9730	936905.4550
C	521814.5910	936905.8260
D	521814.6750	936896.4710
E	521839.2760	936896.6950
F	521818.5600	936842.9780
G	521777.2800	936843.6180
H	521848.3160	935677.4740
I	521832.1330	935177.3670
J	521852.8490	935113.6570
K	521819.3710	935114.4090
L	521820.2440	935164.6150
M	521866.9540	935088.7160
N	521879.5480	935089.0730
O	521951.0400	935089.6140
P	522653.7540	935093.2550
Q	522054.4550	935089.9940
R	522028.9970	935084.1180
S	522973.7430	935085.2080
T	522370.7276	935030.3490
U	521487.2576	934756.2790
V	522519.0850	933455.4630
W	522531.3330	933452.9580
X	522543.7300	933384.8300
Y	522586.6820	933346.7460
Z	522589.5590	933344.7010
AA	522605.1810	933346.1830
BB	522624.6360	933350.5230
CC	522824.1490	933444.0950
DD	523389.9013	933712.3530
EE	523432.4580	933577.6640
FF	523486.7550	933660.8540
GG	523560.2340	933620.3590
HH	523564.2880	933619.0490
II	523563.5360	933614.7600

POINT TABLE		
POINT	NORTHING	EASTING
JJ	523560.7250	933559.9270
KK	523677.8670	933553.5840
LL	523658.8470	933594.6680
MM	523666.7920	933750.4050
NN	523674.8820	933755.3760
OO	523665.7450	933818.5710
PP	523662.3908	933852.5670
QQ	523579.0760	934234.5090
RR	523579.0060	934247.9070
SS	523576.7780	934061.6480
TT	523511.7380	934229.6730
UU	523463.1950	934304.2420
VV	523453.3600	934310.2350
WW	523419.1660	934378.3810
XX	523430.1000	934377.8370
YY	523345.6230	934559.2120
ZZ	523335.3580	934555.1330
AAA	523103.9980	935071.7680
BBB	522884.3640	935576.7090
CCC	522414.5600	936526.1320
DDD	522278.7070	936776.2720
EEE	522156.2130	936973.9590
FFF	522125.9120	937025.7280
GGG	522090.5840	937063.8910
HHH	522089.7310	937072.6640
III	522085.9860	937098.6720
JJJ	522071.9780	937107.2450
KKK	522035.5350	937089.6140
LLL	522018.2300	937096.2980
MMM	521916.7580	937088.6110
NNN	521916.9680	937073.5560
OOO	521894.4480	937074.7850
PPP	521896.0380	937030.2910
LUMMUS EAST	521380.7731	937182.2949

THIS IS NOT A BOUNDARY SURVEY

MICHAEL J. WHITLING, PLS#4688

PORT OF MIAMI -
TERMINAL LINK (MIAMI) LEASE AGREEMENT

PUBLIC WORKS DEPARTMENT
HIGHWAY DIVISION

EXHIBIT C

TERMINAL AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND TERMINAL LINK (MIAMI) LLC

The following schedule presents the cost sharing between the Port and Operator for paving, drainage and concrete runs required for rubber tired gantry (RTG) operations within the Operator's terminal, as described in Section 4(F) of this Agreement and subject to the prior satisfaction of all RTG conditions precedent set forth in Section 4(F) (1) and (2) of this Agreement (including the successful negotiation and mutual approval and execution of a future RTG Development Agreement between the County and OPERATOR). The parties agree to split certain RTG infrastructure capital costs (excluding RTG and equipment acquisition, operating and maintenance costs, which shall be paid by OPERATOR) according to the following schedule, subject to a cap on Port contributions of $16 million USD and a cap on OPERATOR's contributions of $12.5 million USD, and also subject to the prior satisfaction of each of the above-referenced RTG Conditions:

Cost Increments	Port % & $		Operator % & $	
$1 M	100%	($1M)	0%	($0)
$7.5 M	70%	($5.25M)	30%	($2.25M)
$7.5 M	60%	($4.5M)	40%	($3M)
$7.5 M	50%	($3.75M)	50%	($3.75M)
$5 M	30%	($1.5M)	70%	($3.5M)
$28.5M		$16M		$12.5M

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EXHIBIT D

Miami-Dade Seaport Department
Engineering & Construction Management Division

Installation or Modification of Facilities
Port Authorization Application

Submit the following with this application: 1. Two (2) sets signed and seal plans, 2. Miami-Dade County Permit application signed and notarized by applicant's contractor, 3. Specifications, 4. Pertinent Bond (if applicable), 5.. Copy of all permits from other agencies.

Location: _____ Date: _____

Applicant: _____ Phone: _____

Representative: _____ Address: _____

Description of facilities to be installed or modified (attach plans and sketch as required) :

_____

_____

_____

_____

Work to be performed by: _____ Est. Cost: _____

Address: _____ Phone: _____

Est. Start Date: _____ Est. Completion Date: _____

Remarks: _____

_____

Applicant hereby certifies above information to be correct to the best of his knowledge and that all other required permits have been or will be obtained.

Date: _____ Applicant's Representative: _____

Special Conditions (attached additional pages if required)

_____

_____

_____

_____

Final Approval

This permit application is approved subject to the compliance with the following general conditions:

1. The applicant shall comply with all permit requirements as required by the County, State and Federal agencies, as well as being compliant with all applicable code, rules and regulations whether it is for this project or resulting from said work and/or as agreed with the Seaport.
2. Copies of said permits must be provided to the Seaport's Engineering & Construction Management Division ("Engineering"), prior to any commencement of work.
3. Any additional required upgrades or improvements of any Seaport facility as a result of this tenant's improvements are the responsibility of the applicant. Applicant shall submit the additional upgrade(s) for permit to the Seaport and as required by the regulating agency jointly with this application prior to receiving the Seaport's authorization to proceed with proposed work.
4. The applicant shall provide written notice of commencement to Engineering.
5. The Seaport Project Manager may stop work if deemed necessary due to unexpected operational requirements or any other event(s).
6. Applicant may be required to modify or remove facilities at a later date at the request of the Seaport Department.
7. The area must be cleaned and the applicant shall be responsible for damages to other facilities impacted by the applicant's work.
8. Provide written notice of completion to Engineering with copies of as-built drawings, Certificate of Occupancy and/or other applicable final approvals.

Approved by:

Marketing	Date	Facilities Maintenance	Date
Operations	Date	Property	Date
Security	Date	Engineering	Date
Asst. Director of Engineering & Development	Date		

TERMINATION, RELEASE AND RESERVATION OF RIGHTS AGREEMENT

TERMINATION, RELEASE AND RESERVATION OF RIGHTS AGREEMENT, dated as of _____, 2008 (this **"Agreement"**), by and among Maersk Inc., a New York corporation (**"Maersk"**), Miami-Dade County or any successor county or entity that owns the parcel of land on which the Terminal Area (as such term is defined in the Terminal Agreement defined below) is located (collectively, **"Miami-Dade"** and together with Maersk, the **"Parties"** and each a **"Party"**).

WHEREAS, Miami-Dade and Maersk entered into that certain Terminal Agreement, dated as of July 12, 1995, relating to property with a mailing address of 2299 Port Boulevard in the Port of Miami, Florida (the **"Terminal Agreement"**);

WHEREAS, Terminal Link Miami, LLC, a Delaware limited liability company, ("**TL Miami**") has entered or will enter into a certain terminal agreement, dated as of _____, 2008 (the **"CMA Terminal Agreement"**), with Miami-Dade for a term of 15 years plus two (2) extensions of five (5) years each;

WHEREAS, effective upon, and as a condition precedent to, the closing of the transactions contemplated by that certain LLC Agreement, dated as of _____, 2008 (the **"LLC Agreement"**), by and among Universal Maritime Services Corp., a New York corporation (**"APMT"**), TL Miami and Terminal Link (USA), LLC, a Delaware limited liability company (**"TL USA"**), the Parties desire to terminate the Terminal Agreement in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, Miami-Dade wishes to release each of the Maersk Released Parties (as such term is defined below) in accordance with Section 3(c) hereof and Maersk wishes to release each of the Miami-Dade Released Parties (as such term is defined below) in accordance with Section 4(b) hereof; and

WHEREAS, the execution and delivery of this Agreement by Miami-Dade is a material inducement and condition precedent to the execution and delivery by APMT, TL Miami and TL USA of the LLC Agreement.

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Parties hereby agree as follows:

Section 1. Maintenance Survey. As of the date hereof, each of Maersk and Miami-Dade have in good faith (itself or through vendors or consultants, at its own cost) conducted an inspection of the Terminal Area (as such term is defined in the Terminal Agreement) to document a list of needed repairs or defects for which Maersk and Miami-Dade shall be responsible (the **"Maintenance Survey"**). The purpose of the inspection was to identify and list readily identifiable and conspicuous defects and needed repairs to the Terminal Area for which Maersk and Miami-Dade shall be responsible. Neither Miami-Dade nor Maersk had or shall have any duty to identify (1) latent defects and needed repairs related to such latent defects, (2) sub-surface defects and needed repairs related to such sub-surface defects, (3) patent defects and needed repairs related to such patent defects which are in whole or in part inconspicuous,

partially obstructed or shrouded, (4) all environmental conditions, releases, hazards and contamination of any kind, or (5) any other conditions, defects or needed repairs that were not, or are not, readily observable and conspicuous upon a reasonably diligent inspection or which were concealed, covered, shrouded, or not readily observable, in whole or in part, without the need to open, remove, excavate, or partially disassemble the material, equipment, plate, cover or other apparatus concealing, in whole or in part, the condition, defect or needed repair. Following the Maintenance Survey, Miami-Dade and Maersk jointly prepared a list of needed repairs which is the **"Terminal Area Inspection and Repair List"** attached hereto as Attachment A. Maersk and Miami-Dade have consulted with each other reasonably and in good faith in order to mutually agree upon the items that would have been the responsibility of Miami-Dade or Maersk (as applicable) under the Terminal Agreement prior to its termination and the Parties have agreed to perform the repairs for which they are respectively responsible. on the Terminal Area Inspection and Repair List. The purpose of the Terminal Area Inspection and Repair List was to agree on maintenance items, and the Terminal Area Inspection and Repair List did not, and shall not have, included any all environmental conditions, releases, hazards and contamination of any kind. A representative of each of Maersk (who shall be, for the purpose of this provision, Mark Baker) and Miami-Dade signed the Terminal Area Inspection and Repair List (in their respective capacities as representatives of Maersk (and as Director, South Florida Operations for APMT), and Miami-Dade, and not in their individual capacities) and by signing stated that, to their actual knowledge, they are not aware of readily identifiable and conspicuous defects and needed repairs to the Terminal Area for which Maersk and Miami-Dade shall be responsible which are not included on the Terminal Area Inspection and Repair List (excluding the matters not to be identified in the Maintenance Survey and/or set forth in the Terminal Area Inspection and Repair List in accordance with the provisions of this Section 1); provided, however, that neither the representative of Maersk nor the representative of Miami-Dade shall incur or be responsible for any liability, obligation, cost or expense to the other party or any third party in their individual capacity arising out of, resulting from or relating to such statement.

Section 2. Termination of Terminal Agreement. Each of Miami-Dade and Maersk hereby agrees that the **"Effective Date"** of this Agreement shall be contemporaneous with, and the same as, the effective date and time that the Board of Commissioners of Miami-Dade shall have duly authorized and approved the execution and delivery of the CMA Terminal Agreement in accordance with all applicable laws and the required Mayoral veto period has expired without exercise of a veto by the Mayor.. Upon the Effective Date, the Terminal Agreement shall be terminated and, except as expressly set forth or reserved in this Agreement, Miami-Dade and Maersk shall have no further obligations under the Terminal Agreement and the Terminal Agreement shall be of no further effect.

Section 3. Limited Releases By Miami-Dade County.

(a) Maersk, on behalf of itself and its parents, subsidiaries, affiliates, shareholders, members, officers, directors, employees, agents, attorneys, predecessors, successors, assigns and representatives including, but not limited to, APMT hereby acknowledges that the Terminal Agreement provides that its obligations set forth in Sections 6 and 14 of the Terminal Agreement shall survive the termination of the Terminal Agreement subject to any limitations set forth therein; provided, however, that (1) Miami-Dade shall have asserted its claim with respect to a Maersk Post-Termination

Obligation (x) pursuant to Section 6 of the Terminal Agreement prior to the expiration of 24 months after the Effective Date and (y) pursuant to Section 14 of the Terminal Agreement prior to the expiration of three (3) years after the date that any statute of limitations period applicable to the underlying claim for which Miami-Dade is seeking indemnification or contribution shall have expired (in the event that an obligation exists under both Section 6 and Section 14 of the Terminal Agreement, the longer period to assert the claim for indemnification or contribution shall apply), and (2) the relevant condition, damage, needed repair or remediation to or in the Terminal Area, including damage to fixtures and structures located thereon, to the extent that such condition, damage, needed repair or remediation (i) existed or arose prior to the Effective Date, (ii) was caused by Maersk, (iii) was not disclosed on the Terminal Area Inspection and Repair List, and (iv) relates to damage that Miami-Dade had no duty to identify on the Terminal Area Inspection and Repair List (collectively, the **"Maersk Post-Termination Obligations"**).

(b) Upon the Effective Date and subject to Miami-Dade's receipt of a payment by Maersk to Miami-Dade in the amount of $65,000, Maersk shall have no obligation to pay any and all unpaid ordinary charges payable to Miami-Dade that Maersk may have incurred pursuant to the Terminal Agreement prior to the Effective Date except for ordinary charges payable to Miami-Dade involving vessel/terminal activities in the Terminal Area during the trailing 120 calendar days preceding the Effective Date for which Miami-Dade shall have presented an invoice in the ordinary course during the period commencing on the Effective Date and ending November 15, 2008. Each of the Parties hereby acknowledges that the payment of $65,000 by Maersk to Miami-Dade shall constitute a full settlement of all amounts due in connection with a dispute pertaining to Maersk's entitlement to and calculation of an alleged discount of US$1.2 million from ordinary charges payable to Miami-Dade under the Terminal Agreement and that Maersk owes no further amounts in respect of this dispute.

(c) As of the date hereof but effective upon the Effective Date and subject to the limitations set forth in Section 3(a), Miami-Dade, for and on behalf of itself and each of its affiliates, officers, directors, managers, representatives, agents, successors and assigns (collectively, the **"Miami-Dade Parties"**), hereby absolutely and forever remises, releases, acquits, satisfies, and discharges each of Maersk and its parents, subsidiaries, affiliates, shareholders, members, officers, directors, employees, agents, attorneys, predecessors, successors, assigns and representatives including, but not limited to, APMT (collectively, the **"Maersk Released Parties"**) of and from any and all rights, rights to indemnification, causes of action, suits, liens, debts, dues, sums of money, accounts, attorneys' fees, costs, expenses, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, demands and liability of every kind and nature whatsoever, now known or unknown, suspected or unsuspected, in law or equity, whether past, present or future, actual or contingent, which any of the Miami-Dade Parties owns or holds, or at any time heretofore has ever had, owned or held, or may hereafter have, own or hold, based upon, related to or arising out of, whether directly or indirectly, the Terminal Agreement or any other agreement or document related thereto or executed in connection therewith.

(d) Miami-Dade, on behalf of itself and each of the Miami-Dade Parties, further irrevocably covenants and agrees to refrain from, directly or indirectly, asserting any claim or demand, or commencing, instituting, or causing to be commenced, any proceeding of any kind against any of the Maersk Released Parties, based on any matter purported to be released hereby.

Section 4. Limited Releases By Maersk.

(a) Miami-Dade hereby acknowledges that the Terminal Agreement provides that its obligations set forth in Sections 6 and 14 of the Terminal Agreement shall survive the termination of the Terminal Agreement subject to any limitations set forth therein; provided, however, (1) Maersk shall have asserted its claim with respect to a Miami-Dade Post-Termination Obligation (x) pursuant to Section 6 of the Terminal Agreement prior to the expiration of 24 months after the Effective Date and (y) pursuant to Section 14 of the Terminal Agreement prior to the expiration of three (3) years after the date that any statute of limitations period applicable to the underlying claim for which Maersk is seeking indemnification or contribution shall have expired (in the event that an obligation exists under both Section 6 and Section 14 of the Terminal Agreement, the longer period to assert the claim for indemnification or contribution shall apply) and (2) the relevant condition, damage, needed repair or remediation to or in the Terminal Area, including damage to fixtures and structures located thereon, to the extent that such condition, damage or needed repair (i) existed or arose prior to the Effective Date, (ii) was caused by Miami-Dade, (iii) was not disclosed on the Terminal Area Inspection and Repair List, and (iv) relates to damage that Maersk had no duty to identify on the Terminal Area Inspection and Repair List (collectively, the **"Miami-Dade Post-Termination Obligations"**).

(b) As of the date hereof but effective upon the Effective Date and subject to the limitations set forth in Section 4(a), Maersk, for and on behalf of itself and each of its affiliates, officers, directors, managers, representatives, agents, successors and assigns including, but not limited to, APMT (collectively, the **"Maersk Parties"**), hereby absolutely and forever remises, releases, acquits, satisfies, and discharges each of Miami-Dade and its parents, subsidiaries, affiliates, shareholders, members, officers, directors, employees, agents, attorneys, predecessors, successors, assigns and representatives (collectively, the **"Miami-Dade Released Parties"**) of and from any and all rights, rights to indemnification, causes of action, suits, liens, debts, dues, sums of money, accounts, attorneys' fees, costs, expenses, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, demands and liability of every kind and nature whatsoever, now known or unknown, suspected or unsuspected, in law or equity, whether past, present or future, actual or contingent, which any of the Maersk Parties owns or holds, or at any time heretofore has ever had, owned or held, or may hereafter have, own or hold, based upon, related to or arising out of, whether directly or indirectly, the Terminal Agreement or any other agreement or document related thereto or executed in connection therewith.

(c) Maersk, on behalf of itself and each of the Maersk Parties, further irrevocably covenants and agrees to refrain from, directly or indirectly, asserting any

claim or demand, or commencing, instituting, or causing to be commenced, any proceeding of any kind against any of the Miami-Dade Released Parties, based on any matter purported to be released hereby.

Section 5. No Assignment of Claims.

(a) Miami-Dade hereby warrants to each of the Maersk Released Parties that none of the Miami-Dade Parties has assigned or transferred, nor purported to assign or transfer, to any person, firm, partnership, corporation or entity whatsoever, any rights, rights to indemnification, causes of action, suits, debts, dues, sums of money, accounts, attorneys' fees, costs, expenses, reckonings, liens, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, demands or liability released pursuant to this Agreement. Miami-Dade hereby agrees to indemnify, defend and hold harmless each of the Maersk Released Parties from and against any such claims, damages or liabilities in any way arising from, connected with or related to any such assignment or transfer or purported assignment or transfer.

(b) Maersk hereby warrants to each of the Miami-Dade Released Parties that none of the Maersk Parties has assigned or transferred, nor purported to assign or transfer, to any person, firm, partnership, corporation or entity whatsoever, any rights, rights to indemnification, causes of action, suits, debts, dues, sums of money, accounts, attorneys' fees, costs, expenses, reckonings, liens, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, demands or liability released pursuant to this Agreement. Maersk hereby agrees to indemnify, defend and hold harmless each of the Miami-Dade Released Parties from and against any such claims, damages or liabilities in any way arising from, connected with or related to any such assignment or transfer or purported assignment or transfer.

Section 6. No Admission. In entering into this Agreement or otherwise acting hereunder, none of the Parties admits any claims made by any other Party, and each Party disputes each and every one of such claims.

Section 7. Non-assistance.

(a) Miami-Dade, on behalf of itself and each of the Miami-Dade Parties, further agrees that it will not voluntarily, and without compulsion, legal process, or receipt of a request for public records pursuant to Chapter 119, Florida Statutes or other applicable law, assist or encourage any third party to assert any of the claims released, or purported to be released, hereunder, against Maersk or against any affiliate, related entity, officer, director, manager, shareholder, member, employee and/or agent of Maersk, or to commence or maintain litigation against Maersk, or any affiliate, related entity, officer, director, manager, shareholder, member, employee and/or agent of Maersk, that relates to any of the claims released, or purported to be released, hereunder.

(b) Maersk, on behalf of itself and each of the Maersk Parties, further agrees that it will not voluntarily, and without compulsion or legal process, assist or encourage any third party to assert any of the claims released, or purported to be released, hereunder, against Miami-Dade or against any affiliate, related entity, officer, director, manager, employee and/or agent of Miami-Dade, or to commence or maintain litigation against Miami-Dade, or any affiliate, related entity, officer, director, manager, employee and/or agent of Miami-Dade, that relates to any of the claims released, or purported to be released, hereunder.

Section 8. Inspection Rights. Each of the Parties agree that upon written request by the other Party, it shall provide documents to the other party that are (1) necessary for such Party to adequately complete a Phase One environmental study pursuant to the standards contained in ASTM-1527E-05 on the Terminal Area and (2) in its possession. The obligation to provide documents pursuant to this Section 8 shall expire upon the date that is eighteen (18) months after the Effective Date.

Section 9. Insurance Policies. Maersk acknowledges it was required under the Terminal Agreement to at all times maintain certain policies of insurance, and to at all times include Miami-Dade as an additional insured on each such policy. Maersk hereby warrants and represents to Miami-Dade that, as of the date hereof, it complied with the insurance requirements set forth in the Terminal Agreement. Maersk has, prior to the Effective Date hereof, delivered a certificate to Miami Dade as required under the Terminal Agreement.

Section 10. Reservation of Rights.

(a) Notwithstanding and prevailing over any contrary term, provision, or implication contained herein, except with respect to the Maersk Post-Termination Obligations and the Miami-Dade Post-Termination Obligations (as applicable), each of the Parties hereby agrees and acknowledges that, effective upon the Effective Date, the Terminal Agreement and any other related written agreement between the Parties (excluding this Agreement) is hereby terminated and shall be of no further force or effect.

(b) Each of the Parties hereby expressly reserves any and all rights and remedies that may exist under applicable law including, without limitation, any rights to indemnification or contribution arising under applicable law for any and all fines, penalties, cost of mitigation and investigation damages, and reasonable legal fees and costs at all administrative, judicial and appellate levels that are recoverable under applicable law and that arise from, relate to or are incurred in connection with any condition of environmental contamination, release or hazardous waste, or any violation of an environmental related applicable laws, but which rights and/or remedies are not expressed in the Terminal Agreement and/or any other written agreement between the parties, with respect to Maersk Parties' use of the Terminal.

Section 11. Representations and Warranties. As an inducement to each of the other Parties to enter into this Agreement, each Party hereby represents and warrants, as of the date hereof and as of the Effective Date, to each other Party that: (a) it is validly existing under the laws of the jurisdiction in which it was duly organized; (b) it has all requisite legal and corporate

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power to execute and deliver this Agreement and to carry out and perform its obligations under the terms of this Agreement; (c) its execution and delivery of this Agreement have been duly authorized by all necessary action on its part and that the officer, representative or other agent executing and delivering this Agreement on its behalf has the power and authority to do so and to bind it to the terms and conditions of this Agreement; (d) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with the terms hereof; (e) each Party acknowledges that it will derive a substantial direct and/or indirect benefit from the transactions contemplated by this Agreement, and that such direct and/or indirect benefit constitutes adequate consideration for the releases that such Party has granted pursuant to this Agreement; and (f) each Party acknowledges that each of the representations and warranties contained in this Section constitutes a material inducement for Maersk and TL to enter into this Agreement and consummate the transactions contemplated hereby and thereby.

Section 12. Further Assurances. Each of the Parties shall execute and deliver all such further documents and instruments and do all acts and things as may be required to carry out the full intent and purpose of this Agreement.

Section 13. No Voluntary Disclosure. Subject to Chapter 119 of the Florida Statutes or other disclosure requirements under applicable law, from and after the date hereof, each of the Parties shall, and shall cause its respective affiliates to, use all reasonable efforts to not voluntarily disclose any documents exchanged under this Agreement to any person, and all matters relating to all matters contemplated herein, unless required by statute or ordinance, compelled by act of law or governmental authority, or in connection with formal legal proceedings.

Section 14. Entire Agreement; Amendment. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior discussions, agreements and understandings of the Parties with respect to such subject matter. This Agreement shall not be amended, supplemented, rescinded or otherwise modified, nor may any provision hereof be waived or terminated, except by a written instrument signed by all of the Parties.

Section 15. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida without giving effect to any conflicts of laws principles. The exclusive venue for any legal action pursuant to this Agreement shall be in Miami-Dade County, Florida. The exclusive venue for any legal action pursuant to this Agreement shall be in Miami-Dade County, Florida.

Section 16. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier shall be effective as delivery of a manually executed counterpart.

Section 17. Attorneys' Fees. The prevailing Party in any dispute under this Agreement shall be entitled to recover all costs and reasonable attorneys' fees incurred by such

party in such dispute, whether suit be brought or not, including, but not limited to, all costs and reasonable attorneys' fees in any trial, appellate or bankruptcy proceedings.

Section 18. Invalidity. If any provision in this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement, held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 19. Waivers and Remedies. The waiver by any of the Parties of any other Party's prompt and complete performance, or breach or violation, of any provision of this Agreement shall not operate nor be construed as a waiver of any subsequent breach or violation, and the failure of any of the Parties to exercise any right or remedy that it may possess hereunder shall not operate nor be construed as a bar to the exercise of such right or remedy by such Party upon the occurrence of any subsequent breach or violation.

[Signature Page to Follow]

IN WITNESS WHEREOF, each of the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives as of the date first written above.

MIAMI-DADE COUNTY

By _____
Name:
Title:

Approved as to legal form and sufficiency: _____
Assistant County Attorney

MAERSK INC.

By _____
Name: G. O. DORSEY
Title: SENIOR VICE PRESIDENT, OPERATIONS

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Attachment A

Port Miami

MAERSK, INC., CONTAINER YARD ASSESSMENT

Maersk Repairs Required

Item	Description	Unit	Qty
1	Fence Damage Coord. 11, 12, 39, 40, & 41. & misc.	LF	360
2	Fence Post Foundation in Pavement, Coord. 13 - 22, 42 - 58, 92 - 105	EA	38
3	Concrete Sign Foundation, Coord. Refer to Drawing; & misc	EA	30
4	Electrical Pedestal Repair	EA	2
5	Pipe Bollard 12" dia. Protecting High Mast Lights; Remove and Reinstall	EA	30
6	Pipe Bollard 12" dia. Protecting High Mast Lights; Straighten in Place and Repair	EA	35
7	Asphalt Pavement Damage; 300 SF plus misc. areas.	SF	1000
8	Remove and Replace Traffic Rated Electrical Box	EA	3
9	Restore Concrete Trenches	LF	1263

POM Improvements Required Due to Normal Wear and Tear

Item	Description	Unit	Qty
	Mill 1" and Resurface with 2" Type S-1 Asphalt		
1	S/O of H.M. # 25, n/o north reefer platform; Coord 138-141	SF	4,875
2	S/O of H.M. #34; s/o south reefer platform; Coord 106 - 114	SF	15,630
3	S/O of H.M. #36; Coord 119 - 120	SF	2,440
4	Coord. 182; S/O HM # 21	SF	390
	Mill .75 and Resurface with 1.5" Type S-1 Asphalt		
5	Coord. 68 - 71; 81 - 82; NW of HM # 47	SF	1656
6	Coord. 85 - 88; SW of HM # 36	SF	2364
7	Coord. 89, 90, & 91; N/O between HM # 48 - 49	SF	956
8	Coord. 106 - 114; S/O HM #34, S/O south reefer	SF	15630
9	Coord. 115 - 118; S/O HM # 36	SF	3750
10	Coord. 119 - 120; SW of HM # 36	SF	2440
11	Coord. 121 - 124; NE of HM # 36	SF	868
12	Coord. 138 - 141; S/O HM #25	SF	4875
13	Coord. 149 - 152	SF	1000
14	Coord. 158 - 161; N/O Electrical Vault	SF	40
15	Coord. 186 - 194; E/O HM # 15	SF	276
16	Coord. 196 - 198; E/O HM # 15	SF	507
17	Coord. 201 - 204; SE of HM # 13	SF	368
18	Coord. 205 - 210; W/O APM Gate	SF	2819
19	Coord. 211 - 214; SW of Roadability Bldg.	SF	511
20	Coord. 222 - 225; NW of HM # 33	SF	7638
21	Coord. 226 - 229; N/O & between HM # 33 - 34	SF	1680
22	South of HM # 25, S/O north reefer line	SF	1330
23	Cut excess steel casing above grade. Weld plate back on. Mill and resurface 8 total	SF	1800
	Mill .75 and Resurface with 1.5" Type S-1 Asphalt		
24	Mill uneven pavement edges and Resurface 264 LF	SF	1584
	12" Limerock Base, 3" of Asphalt Type S-1		
25	Coord. 148 - 152; SW of Elec. Vault, Adjust Elec. J-Box; 12" limerock base, w/3" asph.	SF	1000
26	South Side of Electrical Vault	SF	496
	Demolition		
27	Demo and Dispose Concrete Slab	CY	3.5
	Electrical J-Box		
28	Remove and Replace Traffic Rated Electrical Box (north of electrical vault)	EA	1
29	Electrical Box with depressed cover, replace elec box, between HM # 33 - 46	EA	1

On behalf of their principals, the undersigned state by signing below that they are not aware of any readily identifiable and conspicuous defects and needed repairs to the Terminal Area for which Maersk or Miami-Dade, as applicable, is responsible which are not included on this Terminal Area Inspection and Repair List.

Maersk, Inc.

Miami-Dade Seaport Department

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ATTACHMENT B

OFFICE OF THE DIRECTOR • 1015 NORTH AMERICA WAY • MIAMI, FLORIDA [illegible] • TELEX [illegible]

May 30, 1995

Mr. Jorgen E. Palmbak
General Manager, Operations
Giralda Farms, Madison Avenue
P.O. Box 880
Madison, NJ 07940-0880

Re: Terminal Expenses

Dear Mr. Palmbak:

Miami Terminal Agreement - Sideletter

Whereas, the Port of Miami agrees to credit Maersk Inc. USD 1,200,000.00 (one million two hundred thousand).

Whereas, the parties have agreed that the above mentioned monies shall be paid to Maersk Inc. as credits against Maersk Inc.'s terminal expenses (i.e. the payments that Maersk Inc. otherwise would be required to make to the Port of Miami for terminal service shall be reduced accordingly).

The said credits shall be given as follows:

October 1995:	*USD 300,000*
November 1995:	*USD 300,000*
December 1995:	*USD 300,000*
January 1996:	*USD 25,000*
February 1996:	*USD 25,000*
March 1996:	*USD 25,000*
April 1996:	*USD 25,000*
May 1996:	*USD 25,000*
June 1996:	*USD 25,000*
July 1996:	*USD 25,000*
August 1996:	*USD 25,000*
September 1996:	*USD 25,000*
October 1996:	*USD 25,000*
November 1996:	*USD 25,000*
December 1996:	*USD 25,000*

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ATTACHMENT B

For the avoidance of any doubt the above mentioned "October 1995" means that the credit shall be applied against the invoice to be forwarded for terminal operations during the month of October. The same principle applies for all the other mentioned dates.

If Maersk during one or more months does not accrue terminal expenses of at least the same amount as the credit for the month in question the difference shall be carried over the next month as an increase in the credit for said next month.

Carmen J. Lunetta
Port of Miami
Metro-Dade Seaport Department
Dade County Florida

Jorgen E. Palmbak
General Manager, Operations
Maersk Inc.

CJL:nv

Memorandum

MIAMI-DADE COUNTY

Date:	July 1, 2008
To:	Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners
From:	George M. Burgess County Manager
Subject:	Resolution Authorizing Execution of Terminal Operating Agreement between Miami-Dade County and Terminal Link (Miami) LLC; and Execution of Termination, Release and Reservation of Rights Agreement between Miami-Dade County and Maersk, Inc.

Supplement to
Agenda Item No. 8(Q)1D

On June 10, 2008, the Office of the Inspector General ("OIG") issued a memorandum (attached) to the Mayor and the Board regarding their observations, review, and comments on the proposed Terminal Operating Agreement ("Agreement") between Miami-Dade County ("County") and Terminal Link (Miami) LLC ("TLM"); and Termination, Release and Reservation of Rights Agreement ("Termination Agreement") between the County and Maersk, Inc., ("Maersk"). Although the OIG mentions that the proposed Agreement fosters fair and balanced competition, which may be a catalyst towards attracting new business and eventually increasing growth in container business at the Port of Miami ("Port"), the OIG also expresses concerns, primarily regarding the following four issues.

1) A NEW AGREEMENT WITH A NEW ENTITY - The proposed Agreement with TLM is a new agreement with a newly formed entity, which was not the result of a public procurement process but through negotiations involving the current lessee, Maersk, even though Maersk is no longer a party to the agreement. The OIG is also concerned that the newly formed entity does not have the financial strength of its parent company and, thus, recommend that the parent company serve as the guarantor of the agreement.

2) FINANCIAL TERMS – REFRIGERATED CONTAINER REVENUE LOSSES - While it appears that the financial terms of the proposed Agreement significantly increase near-term revenues, the OIG is concerned about the true value of land rent.

3) CAPITAL IMPROVEMENT AND DEVELOPMENT – A review of the projects listed in the Agreement indicate that the main beneficiary of the upgrades would be TLM. The OIG believes that the Port should not commit capital contributions to the extent proposed in the Agreement.

4) SIDE-LETTER AGREEMENT – The OIG is concerned about a 1995 Side-Letter Agreement valued at $1.2 million that was never brought to the attention of the Board for approval, and is troubled by the proposed $65,000 settlement which would, in effect, retroactively authorize the $1.2 million credit and, thus, void a $879,812 account receivable.

In response to the first issue, we concur with the OIG's observation that the proposed Agreement with TLM represents a new agreement – not an assignment of an existing agreement. We likewise agree that the proposed Agreement was the product of direct negotiations, not a public bidding process.

Port staff negotiated for nearly a year with representatives from the first and third largest cargo shipping lines in the world - AP Moller-Maersk and CMA CGM, respectively, after they decided to form a partnership for purposes of operating a cargo terminal at the Port. We considered the process to have been part and parcel of the realities of our marketplace, and fully compliant with and supported by State law. Thanks largely to the latitude granted to Florida ports under State Statute F.S.125.35, we were able to bring this complex deal to fruition.

In fact, one of the *Whereas* clauses is particularly instructive in understanding how this deal was constructed. The clause reads:

WHEREAS, Maersk a party to the Original Agreement, is only willing to surrender and terminate its remaining rights and interest in the Original Agreement if the County approves the instant superseding Terminal Agreement, under which certain Maersk affiliates may derive indirect benefits through or in connection with the above-referenced cargo terminal operator joint venture between OPERATOR and Universal Maritime Service Corporation, a New York Corporation and a wholly-owned subsidiary of AP Moller-Maersk affiliate APM Terminals North America, Inc.;

As indicated above, the Port could not bid out the acreage covered under this terminal operating agreement, as Maersk retains certain contractual rights to the terminal for the next several years which they were unwilling to surrender. Maersk conditioned the surrender of its rights on the Board of County Commissioners approving this superseding Agreement.

With regard to the concern of the newly formed entity not having the financial strength of its parent company and the recommendation of the parent company serving as guarantor; Port staff negotiated a very solid backstop whereby Terminal Link, a wholly owned subsidiary of CMA CGM, guarantees all of TLM's payments and performance obligations to the County as set forth in the Agreement. Specifically, Terminal Link shall continue to serve as guarantor of all of TLM's payment, performance and other obligations for the later of the expiration or termination of the initial term of the Agreement or, if applicable, the properly exercised renewal term(s) of this Agreement plus six (6) years. Terminal Link shall provide the County with:

i. On an annual basis, by August 30 of each fiscal year of the initial term and applicable renewal term(s), (i) Terminal Link's audited annual financial statements and (ii) a written certification prepared by its outside auditors certifying that its net worth for the immediately preceding year, calculated in accordance with United States generally accepted accounting principles ("GAAP"), is not less than USD $45 million which threshold shall increase annually on October 1 of each fiscal year during the initial term and applicable renewal term(s) by 3% compounded annually ("Net Worth Floor"); and

ii. On a quarterly basis during each fiscal year during the initial term and, if applicable, the renewal term(s), a written certification from Terminal Link's CFO certifying that the company's net worth for the immediately preceding quarter, calculated in accordance with GAAP, is not less than the above-defined Net Worth Floor.

If either of the above-required annual or quarterly certifications is not timely provided to the County, or, if timely provided, any such certification ever indicates that Terminal Link's net worth for the applicable period, calculated in accordance with GAAP, is or was less than the then-applicable Net Worth Floor, then in such event TLM shall within ten (10) calendar days therefrom provide the County with supplemental security by delivering (and then maintaining) either (i) a USD $30 million irrevocable letter of credit, from an institution and in a form acceptable to the County; or (ii) an irrevocable written guarantee from CMA properly executed in a form acceptable to the County.

With respect to the OIG's concern of the true value of the land rent (once the existing refrigerated container revenue ceases), we assert that this was a trade-off during negotiations which will ultimately benefit the Port. The OIG is correct in its report stating that the Port will lose revenues due to the shifting of the refrigerated container revenues to TLM. However, as stated by the OIG, a substantial portion of this revenue is recaptured with the additional $0.25 per square foot out of the total 1.25 per square foot open ground rental rate. This proposed revenue structure affords the Port a greater revenue guarantee with annual compounded increases throughout the entire term of the Agreement averaging 4.7%. It

should be noted, that under the existing revenue generating structure, revenues from refrigerated containers can increase or decrease at any time depending on the volume and types of cargo that shipping lines import and/or export through the Port; providing no guarantee to the Port.

Additionally, as the terminal becomes more automated and the need for additional space to accommodate future growth becomes imminent, it is likely that TLM may choose a different way of providing refrigerated outlets to its customers and ultimately cease using the existing refrigeration units, whose layout occupies significantly more space than new high density refrigerated container racks capable of providing refrigeration to containers stacked vertically and more densely. Under this scenario, TLM would pay for the improvement and ultimately collect the revenues for the provision of the refrigerated outlets; leaving the Port without any revenue from this source. Thus, we strongly favored structuring the Agreement in this fashion.

In response to the capital improvement and development concerns, we concur with the OIG in its comments related to TLM being the primary beneficiary of the upgrades. However, the Port also stands to benefit from these improvements as the terminal's throughput capacity will be increased; thus potentially increasing the Port's TEU throughput revenue from TLM. It is also worth noting that these types of improvements are not uncommon for landlord ports to make; particularly when the tenant is paying significant rent for the use of the facility. Notwithstanding the above, TLM will also be contributing a significant amount of funds to improve the Port's infrastructure.

As stated previously, the OIG's fourth concern is a May 1995 side letter agreement entered into by the then Port Director; providing credits to Maersk from future terminal charges for $1.2 million. As described in the memorandum of the accompanying agenda item, this arrangement caused an accounts receivable balance of approximately $870,000. Although the Port did not have the legal authority to grant the credit nor was this issue addressed nor ratified through the subsequent 1995 Agreement between the County and Maersk, we are recommending that the Board approve the removal of this receivable from the Port's financial books, as the limited available evidence reflects a commitment by the then Port Director.

Maersk has been at the Port of Miami since 1982 and has been an outstanding customer throughout its tenure at the Port. Its current account balance is clear, and should the Board approve this Agreement, its long outstanding receivable of approximately $870,000 will be removed.

CMA started calling Miami in the 1990s and since 2001, has increased its throughput figures significantly. Their account balance is also current.

Assistant County Manager

Memorandum

19 West Flagler Street ◆ Suite 220 ◆ Miami, Florida 33130
Phone: (305) 375-1946 ◆ Fax: (305) 579-2656
visit our website at www.miamidadeig.org

To: The Honorable Carlos Alvarez, Mayor, Miami-Dade County

The Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners, Miami-Dade County

From: Christopher R. Mazzella, Inspector General

Date: June 10, 2008

Subject: Memorandum of OIG Observations, Review and Comments on the *Proposed Terminal Agreement between Miami-Dade County and Terminal Link (Miami) LLC;* and *Execution of Termination, Release and Reservation of Rights Agreement between Miami-Dade County and Maersk, Inc.*, Ref. IG07-74

As part of the Miami-Dade Office of the Inspector General's (OIG) continuing oversight of Seaport Department (Seaport) operations, the OIG has been monitoring the contract negotiations process and reviewing the current and proposed agreements with the current terminal operators (Operators) serving the Port of Miami (POM). The three Operators serving the POM are Maersk, Inc. (Maersk), Port of Miami Terminal Operating Company, L.C. (POMTOC), and Seaboard Marine, Ltd. (Seaboard).

This memorandum sets forth the OIG's observations and comments with respect to the proposed agreement for the parcel of terminal land currently leased to Maersk on the Transit Committee's Agenda for June 11, 2008.

The OIG would again like to express its gratitude to the Seaport and the Operators for their cooperation and assistance during this process. In particular, the Seaport ensured that the OIG was kept informed of all meetings, provided it with copies of correspondence and documentation, and, in general, provided information on cargo terminal operations.

SUMMARY OPINION

While there are certain terms of this agreement that we believe could be improved upon, overall we believe that it does foster fair and balanced competition, which may be a catalyst towards attracting new business and eventually increasing growth in container business at the Port of Miami. The aspects of the agreement, however, that the OIG has concerns about are:

1. A NEW AGREEMENT WITH A NEW ENTITY - The proposed Terminal Agreement with Terminal Link (Miami), LLC (TLM) is a new agreement with a newly formed entity, which was not the result of a public procurement process but through negotiations involving the current lessee, Maersk, even though Maersk is no longer a party to the agreement. The OIG is also concerned that the newly formed entity does not have the financial strength of its parent company and, thus, we recommend that the parent company serve as the guarantor of the agreement.

2. FINANCIAL TERMS – REFRIGERATED CONTAINER REVENUE LOSSES - While it appears that the financial terms of the proposed Agreement significantly increase near-term revenues, the OIG is concerned about the true value of land rent.

3. CAPITAL IMPROVEMENT AND DEVELOPMENT – A review of the projects listed in the Agreement indicate that the main beneficiary of the upgrades would be TLM. The OIG believes that the Seaport should not commit capital contributions to the extent proposed in the Agreement.

4. SIDE-LETTER AGREEMENT – The OIG is concerned about a 1995 Side-Letter Agreement valued at $1.2 million that was never brought to the attention of the Board of County Commissioners for approval, and we are troubled by the proposed $65,000 settlement which would, in effect, retroactively authorize the $1.2 million credit and, thus, void a $879,812 account receivables.

Each of these issues will be discussed in further detail.

BACKGROUND

In July 2007, the Seaport Director advised the OIG that the Seaport was about to begin terminal operating negotiations with the Operators at the POM. Due to the complexity of simultaneous negotiations with the Operators and the future implications of any or all of those agreements, the Seaport Director requested that the OIG observe and comment on the negotiation processes.

Since that time, OIG activities have included attendance at all scheduled negotiation meetings with the Operators and review of all existing terminal operating contracts, their amendments, Port tariff, historical statistical and financial data, current financial data, and two independent studies of POM operations.[1] OIG staff also made numerous site visits to observe cargo operations and facility conditions. Meetings and interviews

[1] *Port of Miami Tariff Analysis*, Planning and Economics Group, May 24, 2006, and *Port of Miami Cargo Terminal Capacity Analysis*, TranSystems, October 26, 2007.

were held with various Seaport staff members representing the Administration, Finance, Maritime, and Marketing divisions. Thus far, the OIG has issued a final report relative to the Seaboard Marine Terminal Agreement.

With respect to the TLM proposed Agreement, OIG comments have been forwarded to the Seaport Director and his staff since November 2007. Our comments on the most recent terms of the proposed agreement were presented to the Seaport Director in the form of a draft memorandum dated May 2, 2008. His written response to the OIG is attached. (Appendix A) The OIG has taken the Seaport's response into consideration and made revisions to our draft memorandum as appropriate. The following "final" memorandum discusses the agreement as "proposed" for the upcoming June 11th Transit Committee Meeting.

1995 AGREEMENT WITH MAERSK, INC.

On July 11, 1995, the Miami-Dade County Board of County Commissioners adopted Resolution R-944-95, which authorized the current agreement with Maersk, Inc. (Maersk) for terminal operations at the Port of Miami. This agreement provided for an initial term of 5-years with three 5-year options for Maersk but is silent on the methodology for exercising renewal options. The agreement is mid-way through the second renewal period and the entire agreement will expire in 7 years in the year 2015.

The Seaport Director informed the OIG that since Maersk did not take affirmative action to renew the agreement for an additional 5-year term, he had placed them on notice as having a month-to-month agreement.

OIG AREAS OF CONCERN

1. A NEW AGREEMENT WITH A NEW ENTITY

The OIG is concerned that the process of terminating the current agreement with Maersk and entering into a new agreement with the newly created entity, TLM, was not done with the benefit of an open public procurement process to ensure that the County is receiving the best possible terms.

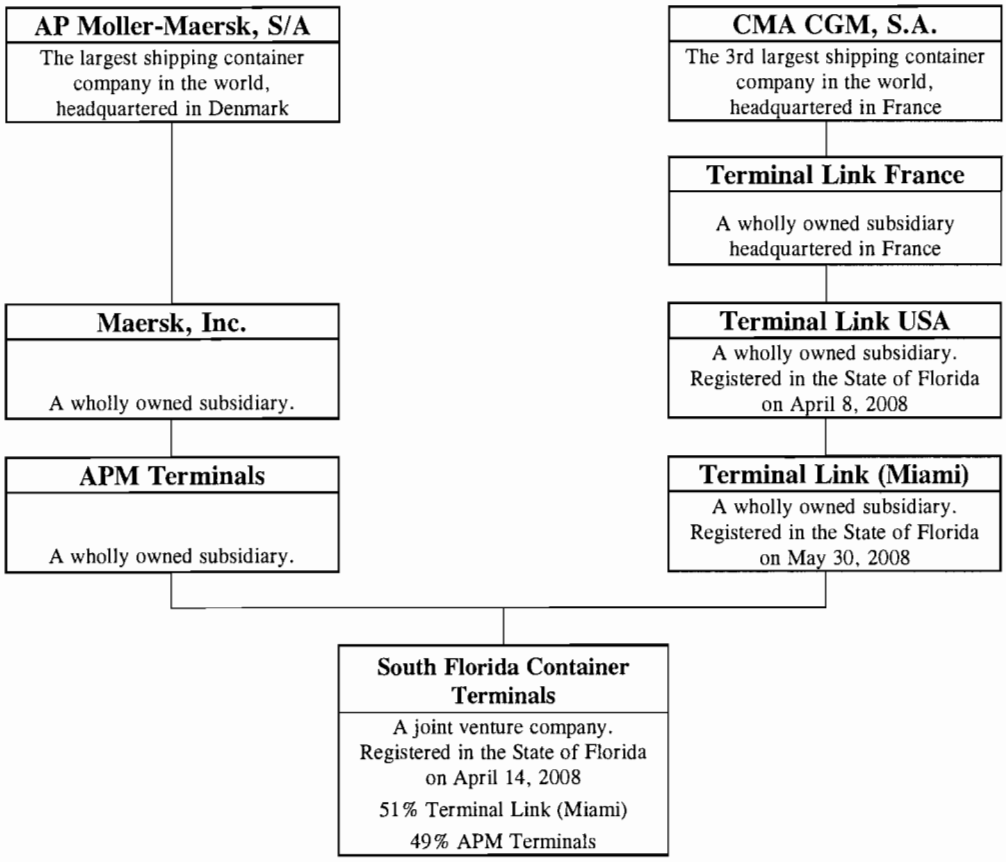
At the first Maersk negotiation session attended by the OIG on September 5, 2007, the Maersk representative stated that Maersk would like to propose a joint venture with CMA CGM[2] (CMA) to provide terminal operating services and requested that negotiations continue on that basis; the Seaport agreed and negotiations continued. At a later meeting in January 2008, the OIG requested further clarification of the identities

[2] CMA CGM is the third largest shipping company in the world, headquartered in France.

and relationships of the various entities relative to the Agreement. The CMA representative stated that the proposed joint venture between CMA and Maersk would provide the terminal services. When prodded further by the OIG as to *"Which entity would sign the agreement or hold the lease?"*, the response from the CMA representative was *"CMA."* It was further explained that CMA would create a wholly owned subsidiary called Terminal Link that would enter into the Agreement with the Seaport. In addition, a joint venture between CMA and Maersk would be created to provide the actual daily terminal services; the joint venture would be 51% CMA CGM and 49% Maersk.

As negotiations neared closure, it was further clarified that Terminal Link USA would create a new subsidiary named Terminal Link (Miami) LLC (TLM) that would actually sign the Agreement. Further, it was stated that the joint venture to provide the terminal services would be named South Florida Container Terminals (SFCT). Maersk would not be a signatory to the Agreement.

For clarity, below is an illustration containing a brief description and relationships of the new entities involved:



In his response of May 23, 2008 (see Appendix A), the Seaport Director concurs that the proposed agreement is a new agreement resulting from direct negotiations and not a public bidding process. Furthermore, he added that Florida Statutes §125.35 provides the authorization and latitude to conduct these types of negotiations. While the OIG concurs that F.S. §125.35 may provide the authorization to conduct these types of negotiations, the OIG believes that conducting negotiations in this manner may not provide the Seaport with an appropriate forum for determining the true value of the Port of Miami land for terminal operations.

The Seaport Director explains in his response to the OIG that *"POM had no ability to bid out this terminal operating agreement as Maersk retains certain contractual rights to the terminal for the next several years which they were unwilling to surrender."* However, it is the OIG's contention that the Seaport did not fully pursue negotiations with Maersk to determine if a renewal could be agreed upon, but rather proceeded directly to what was thought to be a joint negotiation with Maersk and CMA. In fact, early in the process, it was unclear since one individual represented both Maersk and CMA. Moreover, the door opener for a new round of negotiations was the Seaport's position that since Maersk did not take affirmative action to renew the agreement for an additional 5-year term and, thus, was on a month-to-month agreement, the Seaport required renewal renegotiations. The end result was not a renewed agreement with Maersk but a completely new agreement with a new entity—Terminal Link (Miami)—which was incorporated in Delaware two months ago and registered to do business in Florida less than a month ago.

This issue ties with another OIG concern over who is the "guarantor" of the agreement. While this issue has been recently resolved by the parties to the agreement, the OIG is still concerned about whether the guarantor, Terminal Link France, is substantial enough to provide a meaningful guarantee. The Seaport originally requested that CMA be the guarantor. However, CMA was unwilling and insisted that Terminal Link France should be sufficient since it is a wholly owned subsidiary of CMA.

In addition to the Terminal Link corporate and financial information provided by CMA, the Seaport obtained additional information from Dunn & Bradstreet.[3] Based on this information, the Seaport was still not comfortable with the financial strength of Terminal Link to act as the sole guarantor to the Agreement and, as a result, requested additional assurances. These assurances would be in the form of submitting annual financial statements showing a net worth of not less than $45 million with regular quarterly updates and certification that its net worth has not fallen below that threshold for any quarter. Should Terminal Link fail this requirement, CMA would then be

[3] According to the Dunn & Bradstreet report obtained by the Seaport in April 2008, the Dec. 31, 2006 Net Worth for Terminal Link France is reported as €17.5 million (US $27 million). See footnote 4, regarding the retroactive shareholder loan.

required to submit either an irrevocable Letter of Credit for $30 million or an irrevocable guarantee from CMA.

The OIG believes that a more substantial guarantor would be CMA directly, as the Seaport initially requested. Furthermore, having CMA, as the guarantor, would eliminate the need for the Seaport to timely follow up and review one annual report and three quarterly financial reports during each of the 25 years of this Agreement to ensure that the shell company, Terminal Link, has the required minimum net worth.

The BCC, in reviewing this proposed Agreement, should ensure that the County's financial interests are adequately protected by the most substantial guarantor available, namely CMA, and not a wholly owned subsidiary with limited liability that has received artificial infusions of cash to enhance its appearance of net worth.[4]

2. FINANCIAL TERMS – REFRIGERATED CONTAINER REVENUES LOSSES

Although it is stated in the County Manager's Memorandum that this Agreement will generate approximately $15.3 million in revenues, it must be emphasized that $3.9 million would be new revenues to the Seaport due entirely from the land rent component at $1.25 per square foot. Furthermore, the OIG notes that the Seaport's new revenue gain is inclusive of an $850,000 loss due to the Seaport turning over the refrigerated container operations to TLM. Currently, the Seaport charges Maersk a contracted daily rate for each refrigerated container that is connected to the Seaport's electrical infrastructure. The Seaport nets in excess of $850,000 annually after paying for maintenance and electric costs. Under the proposed Agreement, TLM would reimburse the Seaport only for the cost of electricity used.

A substantial portion of this loss ($776,675) is recaptured in the land rent component with the addition of $0.25 per square foot. For comparative purposes, Seaboard Marine's new agreement requires the payment of $1.00 per square foot for land that is acknowledged by all (including the Seaport) to be less desirable. Conversely, TLM will pay $1.25 per square foot for land that is much more desirable. However, when discounting the land rent by the loss of refrigeration revenues, the effective rent for each of the two yards of $1.00 per square foot is the same. We believe that the Seaport Department could have obtained a much higher premium land rental price, especially in light of added third party rights in the Agreement.

[4] On April 7, 2008, the OIG received a copy of letter, dated July 17, 2007, by Pricewaterhouse Cooper Audit, the independent auditor for CMA, addressed to the Directors of CMA CGM S.A. stating that the Year ended December 31, 2006 Net Worth of Terminal Link is US $89,516,865. The letter further states ***"Net worth amounting to 89,516,865 US Dollars as at December 31, 2006 reflects on a pro forma basis, the effect of the amendment of the 50,000,000 euros (US $75 million) shareholders loan dated July 17, 2007."*** (Emphasis added by OIG.)

3. CAPITAL IMPROVEMENT AND DEVELOPMENT – MAINTENANCE, DRAINAGE, AND RUBBER TIRE GANTRY (RTG) PADS

The Agreement requires the Seaport to make phased capital contributions of up to $16 million towards the implementation of a Rubber Tire Gantry (RTG) infrastructure. TLM is required to share in the infrastructure costs by providing up to $12.5 million. The OIG believes that the Seaport should not commit as large a financial contribution as outlined in the Agreement for the following reasons:

- The minimum throughput guarantee of 2,750 TEUs[5] per acre does not justify a Seaport investment in RTG infrastructure.

- The projected cargo volume is 4,206 TEUs per acre.
  - Maersk cargo volume has been steadily declining and is projected to be 2,804 TEUs per acre.
  - CMA cargo volume is projected at 1,402 TEUs per acre. This projected volume is not new cargo to the POM but instead is cargo transferred from one operator to another.

The OIG believes that the proposed financial structure of the development plan is not in the best interest of the POM; however, certain considerations may make it more palatable, such as:

- Increasing the minimum throughput guarantee to a level that justifies the need for RTGs;
- Reducing terminal acreage that would result in a higher throughput per acre for the projected cargo volume; or
- Decreasing the Seaport's financial contribution towards the RTG upgrades.

In his May 23, 2008 response, the Seaport Director states that the projected volume of 4,200 TEUs is at the Sustainable Practical Capacity threshold for considering upgrades to RTGs as recommended in the TranSystems Report and, therefore, justifies the capital upgrades. As previously stated, the OIG does not question the need for the infrastructure upgrade, but is concerned about the amount to be paid by the Seaport since fully one-third of the projected volume (100,000 TEUs) is being transferred from another terminal yard, thus causing the threshold to be attained. This business arrangement fully benefits TLM and not the Seaport. The OIG stands by the three alternatives suggested above, of increasing the minimum TEU throughput guarantee,

[5] TEU = Twenty Foot Equivalent Unit – an industry measure for shipping containers; e.g. a 40-foot container is counted as 2TEUs.

reducing the leased acreage, or decreasing the Seaport's financial contribution towards the improvements.

As a point of reference, in the recently approved amendment to the Seaboard Marine Agreement, the terminal operator agreed to a minimum throughput guarantee of 4,000 TEUs per acre without the benefit of or requirement for RTGs. Seaboard's TEU throughput minimum guarantee is 45% higher than the minimum guarantee proposed in this agreement.

4. SIDE-LETTER AGREEMENT (ARREARAGE)

On November 13, 2007, the OIG advised the Seaport that a Seaport financial report titled *Analysis of Outstanding Customer Balances* (as of 10/24/07), reported a total outstanding balance of $1,023,881.64 in excess of 90-days for Maersk, of which $879,812.31 (86%) relates to "Electric Cont"[6] and is dated between 1997 and 1999, as shown below:

Category	>90 Days
Maersk/Sealand	$24,725.84
P&O Nedlloyd	$27.15
Electric Cont	**$879,812.31**
Late Document	$13,094.95
Late Payment	$103,465.57
Misc. Rev	$1,763.60
Released Cargo	$987.80
Undefined Section	$4.42
	$1,023,881.64

As a result of the OIG's intervention and review, Maersk has since issued two payments totaling $53,267.29 towards the outstanding balance. At that time, Maersk also advised that they do not owe and will not pay the $879,812.31 in *Electric Cont* and the related $103,465.57 in *Late Payment* (interest) charges because it represents the remainder of a "refrigerated container credit" that was owed to them as part of a 1995 side-letter agreement for a $1.2 million operational credit with the Port Director at that time, Carmen Lunetta.[7]

$1.2 MILLION CREDIT

From interviews with various individuals and review of certain documents, the OIG was told that in 1995 former Port Director Lunetta gave Maersk a $1.2 million credit against future terminal expenses to be paid by Maersk to the Seaport. The OIG was

[6] Electric Cont refers connecting refrigerated containers to the Seaport's electrical system.
[7] Carmen Lunetta, Seaport Director, resigned May 1997

advised that the rationale for the credit was that a terminal operating agreement was verbally agreed to in 1993; however, at the request of Lunetta, it was delayed for 2 years before being brought to the BCC for approval in 1995. During that time Maersk claimed that they lost the benefit of the lower contract prices, hence the $1.2 million credit.

HOW IT WORKED[8]

There is a letter from former Seaport Director Lunetta, dated May 30, 1995, agreeing to give Maersk a credit of $1.2 million.[9] The letter contains a credit schedule showing how the credit would be applied against future terminal expenses from October 1995 to December 1996. Apparently, the credit schedule, as proposed in the Lunetta letter, was not immediately implemented. By March 1997, additional correspondence proposed that the $1.2 million credit be applied towards future refrigeration rates in that the Seaport would invoice only 50% of the contract rate until $1.2 million had been reimbursed to Maersk as a result of the reduced charges. Because the Seaport's application of the credit was effected by discounting the invoiced contract rate, the payment of those invoices would show payment in full and, thus, would be cleared from the Seaport's accounting records. Through review of other correspondence, we believe that this occurred from March 1997 to November 1997.[10]

Following the resignation of Lunetta in 1997, the Seaport Transition Team issued instructions to immediately cease the practice of using the discounted rates and that the full contracted rates were to be applied.[11] We believe these instructions were issued in November or December 1997. Nevertheless, Maersk, in a March 24, 1998 letter to the then new Port Director, Mr. Charles Towsley, informed him that since the Port stopped issuing the 50% invoice credits on its monthly invoices, Maersk would continue paying future invoices as if the credit was being provided, until the entire $1.2 million credit had been obtained.

The OIG's review of the invoices, payments and financial reports of balances show that Maersk then began paying 50% of future electrical connection (i.e. refrigerated containers) invoices. Because only partial payments were made, the unpaid invoiced

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[8] Many of the correspondences referenced herein were provided to the OIG by Maersk. Oftentimes, the Seaport did not have copies of the relevant correspondences, and also were provided copies by Maersk.
[9] May 30, 1995 Letter from Carmen Lunetta, Port Director, to Jorgen Palmbak, General Manager – APM Terminals, Subject: *Miami Terminal Agreement - Sideletter*
[10] While our search for pre-November 1997 invoices in storage was unsuccessful and we were unable to confirm whether the 50% reduction in unit price was actually applied to the invoices, subsequent correspondence from Maersk reveals that significant amounts credited during this period did take place.
[11] March 26, 1998 Memorandum from John Ballestero, Chief of Operations to Charles Towsley, Port Director, *Subject Maersk Lines*

amounts remained open and, as a result, $879,812.31 appears in the Seaport's accounts receivable records for Maersk.

SIDE-LETTER AGREEMENT AND SUBSEQUENT TERMINAL AGREEMENT

The OIG has reviewed the July 11, 1995 County Manager Recommendation Memo accompanying the *Terminal Agreement with Maersk, Inc. for Shipping Terminal Operations at the Port of Miami,* Resolution R-944-95 authorizing the Agreement, and the Agreement itself. Not one of these three documents references either a side-letter agreement or a $1.2 million credit towards future terminal charges.

In the current agreement with Maersk, Section 20 entitled *Entire Agreement*, states:

> *This Agreement, including all exhibits, codes, or tariff attached hereto or referred herein, contains the entire agreement of the County and Maersk with respect to the matters stated herein, and may not be modified except by way of a written instrument and approved by the Board of Dade County Commissioners. Any oral or written representations or agreements regarding the subject matter hereof made prior to the execution on this Agreement are hereby merged into and superseded by the Agreement.*

This agreement was signed by both Philip Connors, Executive Vice President, and Jorgen Palmbak, General Manager Operations for Maersk. The OIG notes that the Lunetta "side-letter agreement" was dated May 30, 1995 and was also signed by Jorgen Palmbak on behalf of Maersk.

According to the dates listed above, the Lunetta "side-letter agreement" is superseded by the execution and approval of the Terminal Agreement, which does not mention or include by reference the "side-letter agreement." Furthermore, the OIG notes that any responses from Maersk as to its reliance on the apparent authority of the Port Director is clearly nullified due to the clause which states "*and approved by the Board of Dade County Commissioners.*" Jorgen Palmbak signed both documents on behalf of Maersk and should have been familiar with the contents of those documents.

In addition, the OIG is also concerned that if the Seaport Transition Team was aware of the "side-letter agreement" in 1997, and ordered the discount to cease, why was no action taken against Maersk for unilaterally applying the credit in the form of a 50% discount. Years later, this large account receivables (arrearage) have remained on the Seaport's financial statements, as they do now. Since November 2007, the OIG has been telling the Seaport that this is still an outstanding issue that needs to be brought to

the attention of the BCC for action and resolution prior to the assignment, renewal, or termination of any agreement involving Maersk, Inc.

In his May 23, 2008 response, the Seaport Director stated:

> *We are pleased with your Office's assistance in unraveling a complicated outstanding financial issue with Maersk . . .*
> *Nonetheless, the arrearage issue and "side letter agreement" from a decade ago that your office researched, is an important issue for our Board . . . we intend to fully inform the Board on this issue. In this regard, I believe it best that we reserve our recommendation for resolving this issue for the County Manager's memorandum.*

The OIG is pleased that the results of our research and analysis were of assistance to the Seaport in resolving an issue that has been outstanding for thirteen years. According to the proposed termination agreement, the BCC is being asked to approve a settlement amount of $65,000 to be paid by Maersk. In essence, the settlement only applies to credits claimed by Maersk that exceeded the $1.2 million side deal. The $65,000 settlement is only a compromise between a $35,964 arrearage as acknowledged by Maersk versus $97,142 as calculated by the OIG exceeding the $1.2 million credit. As worded in the proposed agreement, the $65,000 settlement would nullify the $879,812 arrearage for non-payment of electrical connections invoices as shown in the chart on the previous page. Wiping out the $879,812 arrearage would essentially retroactively approve the former Port Director's 1995 side-letter agreement.

The OIG does not condone the side-letter agreement made by the former Port Director but we recognize that the issue is over one decade old and that the Seaport must move forward. Nevertheless, the Board of County Commissioners must ultimately decide on what course of action should be taken to resolve this credit vs. arrearage issue. In conclusion, the OIG supports the Seaport in its efforts to promote competition thereby enhancing the Port of Miami's financial viability and regional standing. However, we do have our concerns, as noted above.

cc: George M. Burgess, County Manager
Robert A. Cuevas, Jr., County Attorney
Ysela Llort, Assistant County Manager
Bill Johnson, Director, Miami-Dade Seaport Department
Denis Morales, Mayor's Chief of Staff
Charles Anderson, Commission Auditor
Clerk of the Board (copy filed)

Attachments

Memorandum

MIAMI-DADE COUNTY

MDC-OFFICE OF THE INSPECTOR GENERAL

2008 MAY 27 PM 12:43

DATE: May 23, 2008

TO: Christopher R. Mazzella
Inspector General

FROM: Bill Johnson
Port Director

SUBJECT: Response to OIG Draft Memorandum IG07-74 of Observations, Review and Comments on the Proposed Terminal Agreement between Miami-Dade County and Terminal Link Miami, LLC

On May 2, 2008, the Office of the Inspector General (OIG) issued Draft Memorandum IG07-74 concerning a proposed terminal agreement between Miami-Dade County (County) and Terminal Link Miami, LLC (TLM). The OIG's memorandum presented four principal areas of concern, and a discussion of current arrearages. This memorandum serves to address the OIG's concerns and is intended to be included within the OIG's final report.

Prior to providing specific responses to the OIG's areas of concern, POM would like to state that it is extremely happy to have successfully navigated a long and complex negotiation process with two of the three largest cargo shipping lines in the world. The proposed agreement is a financial home run for POM and for the inland economy. Taken in combination with the Board of County Commissioners' recent approval of the Seaboard Marine Terminal Operating Agreement, the County has solidified its standing with its three most important cargo shipping partners, while adding over $7 million annually in new revenues to POM's bottom line. Similarly, these two agreements increase the annually guaranteed revenues to POM from approximately $6 million to approximately over $21 million. While this contract, like all contracts, was subject to significant give and take, we are absolutely excited to bring this deal to our Board.

I would also like to point out the importance of this agreement in our effort to reshape POM's cargo operations by reintroducing for the first time in nearly a decade true competition for third party business. Reintroducing the right to compete openly greatly increases the value of land to a terminal operator and thus our ability to charge substantial land rent. The contract calls for $3.9 million in new land rent revenues, which is a close approximation to the total positive net effect of this agreement on POM's finances.

In succeeding months, we hope to actively and productively re-engage POM's remaining terminal operator in negotiations, and we invite your Office to similarly observe and review that process for its business merit and overall fairness.

APPENDIX A

ISSUES/RESPONSES

Issue 1: A New Terminal Agreement - The OIG believes that the Terminal Agreement with TLM is not an assignment of an existing agreement but the granting of a terminal operating agreement to a new entity without the benefit of a public procurement process.

Response: POM concurs with the OIG's observation that the proposed contract with TLM represents a new agreement – not an assignment of an existing agreement; we likewise agree that the proposed contract was the product of direct negotiations, not a public bidding process.

POM negotiated for nearly a year with the first and third largest cargo shipping lines in the world - AP Moller-Maersk and CMA CGM, respectively – after they decided to form a partnership for purposes of operating a cargo terminal at POM. It is important to note, however, that CMA CGM approached AP Moller-Maersk to form a joint venture after AP Moller-Maersk had begun negotiations with POM for an extension of their existing contract. As noted in the Draft Report, the negotiations were complex. We considered the process to have been part and parcel of the realities of our marketplace, and fully compliant with and supported by state law. Thanks largely to the latitude granted ports under Florida Statute 125.35, we were able to bring this complex deal to fruition.

POM intends to make the Board of County Commissioners fully aware of the details of this important transaction in the County Manager's memorandum. We will be clear in our memorandum that this is a new terminal agreement and that it did not result from a public bidding process. In fact, one of the *Whereas* clauses is particularly instructive in understanding the circumstances under which this deal came into being. The clause reads:

> *WHEREAS, Maersk, a party to the Original Agreement, is only willing to surrender and terminate its remaining rights and interest in the Original Agreement if the County approves the instant superseding Terminal Agreement, under which certain Maersk affiliates may derive indirect benefits through or in connection with the above-referenced cargo terminal operator joint venture between OPERATOR and Universal Maritime Service Corporation, a New York Corporation and a wholly-owned subsidiary of AP Moller-Maersk affiliate APM Terminals North America, Inc.;*

As indicated above, POM had no ability to bid out this terminal operating agreement as Maersk retains certain contractual rights to the terminal for the next several years which they were unwilling to surrender. Maersk conditioned

the surrender of its rights on the Board of County Commissioners approving this superseding terminal operating agreement.

Issue 2: Contract Term - The OIG could not find any sound economic, business, or financial reasons to consider entering into a 25-year non-negotiable agreement with TLM.

Response: POM has conducted significant research into the customary lengths of cargo terminal operating agreements, finding that long-term contracts like the one proposed for TLM fall well within the industry norm. (Upon request, POM will provide its updated research to the OIG.)

POM was amenable to a contract of 25 years length (inclusive of options) for several reasons. First, the financial benefits to POM are extraordinary. With this contract, POM exchanged an agreement with a $3 million annual revenue guarantee of approximately $12 million annually, while net revenues to POM are expected to increase by approximately $3.9 million annually. For a port confronted with financial issues, this long-term pledge is of enormous value. We are aware of no similar or reasonably similar pledge anywhere in Florida. Secondly, as a condition of their extraordinarily aggressive financial pledge, the contracting parties made term length a key requirement. This is understandable, as these two dominant cargo entities are well poised to make use of the new and deeper Panama Canal channel. Combined with POM's commensurate plans to improve access to our port by deepening our shipping channel and adding a direct connection to the highway system via tunnel, we believe we have constructed the right agreement with the right parties.

The financial terms agreed to by these entities reflect the fact that they are paying a premium today for access to assets that will not be available until roughly six years in the future. Insistence on a shorter-term contract would have cost the POM financially, and would have likely resulted in our losing these two valuable entities to competing Florida ports that would be very willing to offer long-term homes in exchange for such lucrative deals.

Thirdly, we are comfortable with the long duration of this agreement as it has several protections beyond the guaranteed revenue pledge. Importantly, the terminal operator will be on Tariff, excepting certain specific charges. This important concession by TLM helps protect a future director from incurring unanticipated new costs without an ability to derive new revenues. Additionally, the proposed agreement contains several other protections against inflation and a run-up in land values.

Issue 3: Financial Terms – While the financial terms of the proposed agreement significantly increase the near-term revenues, the OIG is concerned about the

potential effect on the long term growth and development of the POM. In fact, it could also result in near-term chaotic operations between Operators at the POM.

Response: Prior to entering into negotiations with its three terminal operators, POM created a preferred financial model for its cargo operations. The model was designed to achieve several financial and one operational goal. The financial goals were to increase revenue to POM, improve the minimum guarantees, and provide future directors with the ability to generate new revenues to offset new expenses. Our operational goal was to re-establish open competition for third-party shipping business. We are extremely pleased that a year of hard work and negotiations has resulted in new contracts that entirely match our initial goals.

When we created our model for negotiations, it was admittedly difficult to achieve the three financial goals listed above. Ultimately, we decided that the best path to achieving our financial and operational goals was through introducing a substantial land rent requirement and by creating a fee schedule for containers that effectively leveled the playing field for terminal operators competing for third party business and which was, as best as mathematically possible, revenue neutral to POM.

Increasing land rent was an important decision, as it will help end the practice of long-term land banking, which is the norm in the port industry. It likewise encourages terminal operators to efficiently use our assets. The new fee schedule for containers is as near to being revenue neutral as we can make it. The container fee model represents a slight increase to the present Maersk container rate and that of CMA, while various third party customers could experience slight increases or decreases, depending on their overall throughput levels and the terminal yard they elect to use. The modest variances in rates represent a small fraction of the fees paid by shippers at POM.

While the container rate schedule was purposefully designed to be as close as possible to being revenue and cost neutral for customers choosing between terminal operators, the overall deal was constructed to add substantial new net revenues and guarantees to POM. The total new net revenues to POM from this deal, irrespective of the movement of boxes from one terminal operator to another, are projected to be just over $3.5 million, which is the near equivalent to land rent component (adjusted downward for revenues relating to refrigerated container charges and upward for an increase in weighted-average crane fee rates).

In our remaining negotiations with our third terminal operator, POM will seek to continue to create a level playing field for competition for third party business.

Issue 4: Capital Improvement and Development - A review of the projects listed in the Agreement indicates that the main beneficiary of the upgrades would be TLM and so should be funded accordingly. The Seaport should not commit to any capital contribution.

Response: During the course of this agreement, POM definitively believes that the terminal yard will require upgrades to accommodate higher levels of throughput that are achievable through use of a rubber tire gantry (RTG) system. Consequently, we were pleased to share these expenses with the tenant, rather than pay fully for the investment as is frequently the case with landlord ports. We were also pleased to cap our commitment of dollars for this purpose at $16 million. Despite the $16 million maximum commitment level by POM, we actually expect to fund less than this. Our recent engineering cost estimates fall below this figure, while we customarily attract grant funding for these types of investments.

POM disagrees with the assessment contained within the Draft Report that the upgraded terminal yard is not justified by projected cargo volumes. In the first full year of operations under this agreement, POM expects 291,000 TEUs to be moved through the terminal yard, which equates to over 4,100 TEUs per acre. According to POM's recent cargo terminal capacity analysis performed by Transystems of this terminal yard (and to other readily available information concerning cargo yard through-put capacities), we are exactly at the level indicated to begin conversion to RTG operations. Sustainable Practical Capacity (SPC) is the efficiency and cost yardstick used for determining when to invest in terminal infrastructure; for the terminal in question, the SPC is 4,200 TEU per acre.

From a financial perspective, these infrastructure improvements are self-financing. According to our cost sharing formula, with as little an increase as an additional 500 TEUs per acre annually owing to upgraded facilities, POM's anticipated infrastructure investment will be paid back through increased TEU revenues.

ARREARAGES

Regarding outstanding arrearages and disputed amounts, my office has long made it a practice that no deal moves forward to the Board of County Commissioners without resolving arrearages and disputed amounts. This has been the case in each new contract or contract amendment that POM has presented the Board during my tenure as Director. Prior to and during the time the OIG has attended negotiations, we have made it clear that no new terminal agreement could move forward without resolving outstanding financial issues.

We are pleased with your Office's assistance in unraveling a complicated outstanding financial issue with Maersk.

Nonetheless, the arrearage issue and "side letter agreement" from a decade ago that your Office researched, is an important issue for our Board. While I would like to speak to you personally prior to this proposed contract advancing to the Board, we intend to fully inform the Board on this issue. In this regard, I believe it best that we reserve our recommendation for resolving this issue for the County Manager's memorandum. Again, I am grateful for your staff's very professional and competent assistance in unraveling this matter.